

Whistleblowing Policy and Anti-Corruption Struggle in Nigeria: An Overview

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Abstract

Corruption is a hidden activity that is difficult to discover unless reported. Its secretive nature makes it impossible to defeat given all the measures that have been adopted across the globe. However, one of the important tools increasingly used around the world today to prevent and uncover corruption in both public and private sectors is whistleblowing. This paper, therefore, focuses on the role of whistleblowing policy in fighting corruption in Nigeria. Within the short period, the policy was introduced, it has yielded considerable positive outcome resulting in the discovery and recovery of looted public resources, as well as prosecution of culprits. However, this policy has not yet been backed by any legislation. This paper, therefore, concludes that for the policy to thrive, the legislature should pass the proposed Whistleblower Protection Bill into law. This will protect whistleblowers from any reprisals and encourage them to disclose more information.

Introduction

Corruption is a global phenomenon that cuts across all society, race, gender and social class. It is deeply rooted and widespread in developed and developing countries (Lynch and Lynch, 2003). Corruption has been identified as the major impediment responsible for poor governance, the inefficiency of state sectors, widespread poverty and underdevelopment of countries around the world, particularly in Africa (Lumumba, 2011; Amadi and Eme, 2014). How to control its spread remains the major challenge of modern society and continues to form the subject of debates, conferences, summits and academic research (Rose-Ackerman, 1999).

Transparency International (2009) describes corruption as the abuse of entrusted public position for personal gain. In the same way, the International Monetary Fund (2005) views corruption as the abuse of public office for private benefit. In a more explicitly terms, Nye (1967:418) describes corruption as:

Behaviours which deviates from the normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influences. This includes such behaviour as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal or patronage by reason of ascriptive

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relationship rather than merit); and misappropriation (illegal appropriation of public resources).

Over the last few decades, corruption around the world has manifested in different forms including bribery, embezzlement, subsidy and pension theft, fraud, contract and procurement inflation, money laundering, price fixing, and rent-seeking among others (Caiden, 2001). In the case of Nigeria, the act of indiscipline, bribery, misuse and misappropriation of public resource as well as favoritism and cronyism are common acts of corruption that forms headlines in the news (Olugbenga, 2007; Folarin, 2012). Other manifestations of corruption in Nigeria include admission fraud, grade trading and all forms of examination misconducts in the educational institutions; perversion of justice among law enforcement agencies and the judiciary; and outrageous criminalities such as foreign exchange swindling, hoarding and smuggling, and over-invoicing of goods perpetrated against the economy and so on (Nageri et al, 2013; Salihu and Gholami, 2018).

The effects of corruption are immense and widely felt across the country (Ewhrudjakpor, 2008). It is evident in the inability of the government at all levels to invest in, and effectively manage the productive sectors and infrastructures, increased production costs, slowed economic growth and weakened rule of law (Adebayo, 2014; Bakare, 2011). The implications of these on the average Nigerian include, but not limited to, poverty, unemployment, provision of substandard goods and uneven service delivery, injustice, and impunity (Ojowu, et al., 2017; Asaju et al., 2014; Salihu and Gholami, 2018). Scholars have identified a number of reasons why corruption continues to spread in Nigeria (and some parts of the world); among the reasons highlighted include greed and boundless desire for wealth and power, cultural value for accumulation of wealth, secrecy in government activities, poor governance, faulty policies and lack of will to prosecute perpetrators (Nageri et al, 2013; Amundsen, 1991; Folarin, 2012).

However, the fight against corruption has been the claimed agenda of successive governments in Nigeria since independence in 1960 (Adebayo, 2014). To this end, a number of policies in the form of detection, preventive and punitive measures are put in place to address all forms of corrupt practices. However, as efforts to eradicate corruption progresses, so does corruption advances in methods (Lumumba, 2011). The simplified cross-border trade aided by technological advancement appears to have encouraged and facilitated corrupt practices across borders and made corruption more difficult to detect and fight (Musila and Sigué, 2010).

Typically, Nigeria anti-corruption agencies, particularly the Economic and Financial Crimes Commission (EFCC), rely essentially on public complaints and petitions about corruption allegations to initiate investigations (Okechukwu and Inya, 2011). People are often encouraged to notify the authority of any financial misconducts they noticed around them. However, this method has suffered several challenges. Among the major challenges include lack of credibility in many of the petitions received by the authority (some are politically motivated) and lack of

direction and adequate information that may assist in the investigation and evidence gathering (Ethelbert, 2016). Also, the fear of unknown consequences often prevents many people from reporting corrupt activities around them (Enweremadu, 2012).

Thus, this method seems ineffectual as it fails to produce desirable outcomes (in term of evidence-gathering) within a reasonable time to convict perpetrators. This is evident in the inability of the EFCC to successfully gather evidence to prosecute many individuals accused of corruption; there are cases of corruption under investigation for more than ten years (Ethelbert, 2016). In addition, the Commission continues to lose corruption cases even after spending substantial time and resources on investigation and evidence-gathering. The fact remains that there is hardly any credible evidence rising to a level of conviction (Obuah, 2010). Judges and legal practitioners have, in several cases, suggested to the Commission to conduct proper investigations and gather relevant and tenable evidence before bringing up a trial against suspects (Auwal, 2017; Inyang, 2017). These thus suggest that the petition method has not contributed meaningfully to the fight against corruption in Nigeria.

Recently, however, the Nigerian government through the Federal Ministry of Finance introduced whistleblower policy as a tool to complement the existing anti-corruption measures. The policy seeks to detect corruption in both public and private sectors. Although, the policy has not received legislative approval for it to be fully implemented and supported by law, yet it appears to have produced considerable outcomes compared with the petition system adopted in the past. Generally, whistleblowing policy is one of the anti-corruption tools widely adopted around the world to detect corrupt practices. Its adoption has improved governance, transparency and promoted healthy government in some countries (Transparency International, 2010). It is on this account that this paper examines the roles of whistleblowing as an instrument used in fighting corrupt practices in Nigeria. The paper appraises how the policy has contributed to the discovery of corruption and the recovery of looted resources. It also suggests methods that may be adopted to strengthen its implementation.

Methodology

This paper is basically desk research. It relies solely on a secondary source of data. Its scope is limited to the issue of whistleblowing policy as an instrument used for detecting corrupt practices. Relevant literature was collected in an eclectic manner from official documents and statutes, published outlets such as books, journal publications, online articles, and newspaper reports. Newspaper reports are used because whistleblowing policy is new in Nigeria and it is presently undergoing a test. Also, academic literature that addresses whistleblowing policy is very scanty at this period. Besides, because of their up-to-date information on the policy, newspaper reports were considered appropriate at this time to complement other sources of information.

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Whistleblowing Policy Defined

Whistleblowing is one of the important tools increasingly in use around the world to prevent and detect wrongdoings or misconducts, particularly economic and financial crimes. Whistleblowing is a term largely associated with raising alarm (as when the referee blows the whistle to alert the participants in a game that a foul is committed) (Schultz and Harutyunyan, 2015). Similarly, blowing a whistle is also likened to how people or groups are alerted about something dangerous or a potential threat (Rachagan and Kuppusamy, 2013). In Nigeria, for instance, households are encouraged to get a whistle device to alert their neighbors of potential threats or when in danger or in need of assistance (Ogunbamila, 2014). Whistleblowing is, therefore, an act that seeks to alert people about a particular situation or potential danger. According to Transparency International (2012:1), whistleblowing is the 'disclosure of information about perceived wrongdoing in an organization, or the risk thereof, to individuals or entities believed to be able to effect action'. Eaton and Akers (2007) describe it as when an employee(s) of an organization passes on information concerning the organization's unlawful activity or omission to the authority. More explicitly, Jubb (1999:78) views whistleblowing as a

[...] deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organisation, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organisation, to an external entity that have the power to rectify the wrongdoing.

Whistleblowing generally entails four key characteristics: it involves an act done by a person who reveals information to the public, the information is revealed to a party who is an outsider to the organization and who often will take action on it, the information is related to unlawful activity within an organization, and the person disclosing the information is an employee/member or had been an employee/member of the organization (Johnson, 2003). An individual who discloses the information is called 'whistleblower' (Banisar, 2011). Whistleblowing is an age-long method of revealing information or passing message of warning to the public. Its origin or when it started is not clear (Johnson, 2003). Literature has indicated that in the mid-19th century, terms like snitch, informant and sneak were widely used to refer to people who report information to the authorities (Webster, 2015). Ralph Nader coined the term 'whistleblower' in order to avoid wrong connotation and to differentiate the term from other concepts such as informant (Nader et al, 1972). Whistleblowing is also different from making complaints and submitting a written petition to the authority in reaction to grievances ensuing from quarrel or misunderstanding among members of an organization. It involves disclosing information in good faith and for public interest. Individuals that blow

the whistle (whistleblowers) are usually protected against retaliation (Banisar, 2011).

Typically, blowing a whistle involves two major channels to disclose information: internal and external channels. Internal whistleblowing is when a person (usually an employee) reports the misbehavior of a fellow employee to the superior officer, while external whistleblowing is when an individual reports wrongdoing of a fellow employee, superior officers or a group within a place of work to the outside authority, usually the law enforcement agencies (Patheja, 2015). Other channels of adopted by whistleblowers include personal whistleblowing: when an individual discloses information about misconduct that personally affects him/her, usually at work, and impersonal whistleblowing: is when a member of an organization reports wrongdoing that is harmful to other members or the organization (De George, 2010).

In addition, whistleblowers are of two types: government and cooperate whistleblowers. Government whistleblowers are public servants who reveal malpractices committed by their colleagues or superior officers, while cooperate whistleblowers are members of corporate bodies or private enterprises who disclose information about the violation of the statutory regulations by their employer (Lewis, 2001). From the foregoing, this paper defines whistleblowing as a deliberate and voluntary act of revelation made by an individual (whistleblower) who is a member of a particular organization or who has access to information about the unlawful activity of a particular organization or group to the public or authority for the purpose of rectifying the misconduct. The misconduct can be ongoing, in the planning stages or even past act.

Whistleblowing as an anti-corruption instrument

Like other hidden and illicit activities such as trafficking of drugs and humans, corruption (in its entirety) has become a terrifying phenomenon that defies all kinds of measures (Beare, 2003). Investigating corruption and gathering valuable evidence to prosecute perpetrators are among the major challenges of anti-corruption agencies around the world (Osipian, 2009). The secretive and systemic nature of corruption and the category of individuals involved make the fight against it practically impossible. Perpetrators always make sure that all foot-print traceable to them is cleared or covered up; thus, many of them often go unpunished (Lewis et al, 2010).

Information about corruption rarely comes to light, except it is reported by one of the parties involved, usually, a person or group not favoured or cheated in the deal or when some people uncovered certain irregularities in the course of their duties (Transparency International, 2010). Thus, investigating and gathering evidence to prosecute crimes like corruption require a third party (whistleblower) who have access to vital information and who is willing to disclose it in good faith. However, disclosing such information to the authorities often exposes the whistleblowers to

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a number of risks ranging from death threats to loss of lives and job, and other forms of retaliations from wrongdoers (Banisar, 2011). The Clean Gov Biz (2012:12), an Initiative under the Organisation for Economic Co-operation and Development (OECD) observed that reprisal for disclosing vital information or blowing a whistle about the activities of one's organization or employer usually takes the form of disciplinary actions and dismissal.

In order to protect whistleblowers against all forms of reprisal, the United Nations Convention Against Corruption (UNCAC) directs all member states to institute whistleblower protection policies to ensure adequate protection for whistleblowers. Article 33 of the Convention provides thus:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention (United Nations, 2004).

Other international mechanisms such as the 2009 OECD Recommendation Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, the Inter-American Convention against Corruption, and the African Union Convention on Preventing and Combating Corruption, the OECD 1998 Recommendation on Improving Ethical Conduct in the Public Service, and the Council of Europe Civil and Criminal Law Conventions on Corruption also recognized and provided support and guidelines for whistleblowers' protection policy (Clean Gov Biz, 2012).

Accordingly, many countries adopted these recommendations and put forward legislations that support the use of whistleblowing and protection of whistleblowers. Consequently, whistleblowing policy is widely embraced as an important instrument to expose corrupt practices across the globe today (Transparency International, 2010). Ogunbamila, (2014) observed that without whistleblowers' information, the anti-corruption crusade in many countries would not have achieved any meaningful outcomes. In order to encourage people to come forward and report corrupt practices around them, some countries introduced compensation of whistleblowers with a certain percentage of the resources recovered through the information disclosed (Howse and Daniels, 1995).

In the United States of America, for instance, False Claim Act was introduced in 1986 as a legal instrument to prosecute frauds perpetrated against the Government. Under this Act, individuals (relators or whistleblowers) are authorized to take legal action, on government's behalf, against any person or group suspected to have defrauded the government. One of the aims this Act seeks to achieve is the recovery of proceeds of financial irregularities. An individual whistleblower is, therefore, eligible to 30 percent of the recovered funds. In 2012, whistleblowers accounted for more than 70 percent of the criminal cases initiated

under the False Claim Act (James and Taugher, 1996; False Claims Act Resource Center, 2016). Similarly, the United States' Dodd-Frank Act also provides for the compensation of whistleblowers. The Act allotted 10 to 30 percent reward to eligible whistleblowers whose information led to a successful recovery of over \$1 million. The Act also provides for the protection of whistleblowers against employers (see Section 922, Laws of United States of America, 2010).

Additionally, the Korean Anti-Corruption and Civil Rights Commission is empowered by the Korean Act on the Protection of Public Interest Whistleblowers 2011 to pay a sum of \$2 million (USD) as rewards to a whistleblower who discloses information that led to the recovery of proceeds of corruption. The Act also offers protections to whistleblowers. (Clean Gov Biz, 2012). Similarly, in Bangladesh, the Public Interest-Related Information Disclosure (Protection) Act of 2010 recognized the use of whistleblowing policy, the protection and compensation of whistleblowers for any useful information disclosed. (Siddiqui, 2012).

Nigeria and the Anti-corruption Crusade

There is no gainsaying that corruption is pervasive in Nigeria and has a wide-ranging effects on its growth and development. Fighting corruption became the campaign promises of successive leaders in the country. Accordingly, different legal and institutional measures were introduced to fight corruption. Among these measures are: Jaji Declaration initiated by General Olusegun Obasanjo (retired) in 1977, Ethical Revolution by Alhaji Sheu Shagari administration between 1981-1983, War Against Indiscipline (WAI) by General Muhammadu Buhari (retired) and Late Babatunde Idiagbon in 1984, the National Orientation Movement 1986 and the Mass Mobilization for Social Justice by General Ibrahim Babangida (retired) in 1987. Others include War Against Indiscipline and Corruption (WAIC) by Late General Sanni Abacha in 1996, the present Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC) introduced by former President Olusegun Obasanjo in 2002 and 2004 respectively (Folarin, 2012; Nwankwo, 2014).

It is, however, unfortunate that despite all these measures, corrupt practices are still widespread in Nigeria. The Transparency International Corruption Perception Index consistently ranked Nigeria among the most corrupt countries in the world. Nigeria was rated 136 out 175 countries surveyed in 2014, 136 out of 168 countries in 2015, 136 out of 176 countries in 2016, and 140 out of 180 countries in 2017 (Transparency International, 2014, 2015, 2016, 2017). Stakeholders, civil society organizations and scholars have at different fora blamed the inefficiency of the anti-corruption agencies for the pervasive level of corruption in Nigeria (Aluko and Adesopo, 2003). Despite the powers the law accorded to the anti-corruption agencies, particularly the EFCC to request for any information that may aid investigation and prosecution from both public and private sector and individuals; and arrest, detain and question anyone withholding valuable information or who failed to co-operate (see Part II of Laws of the Federation of Nigeria, 2004), the

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Commission still find it difficult to get useful information needed to prosecute corruption allegations (Albert and Okoli, 2016).

As corrupt practices appear undefeatable in the country, the government introduced whistleblowing policy to complement and assist the existing anti-corruption measures in the fight against economic and financial crimes. The ultimate aim of this initiative is to create an opportunity for people to provide information about financial irregularities in both public and private sectors to the anti-corruption agencies (Daniel, 2017). Disclosure of such information is expected to assist the agencies in tracking and recovering stolen funds. The policy also seeks to promote transparency and accountability in the management of government resources, recuperate looted resources, create a corruption-free society and redeem the image of the country (Daniel, 2017).

In addition, the policy is made up of three key components: the information channels and the type of information required, the rewards, and protection of whistleblowers. The information required includes authentic evidence on financial misconducts such as misuse and embezzlement of public resource, fraud, bribery, pilfering, procurement and contract frauds, kickbacks and money laundering. Anyone with genuine and reliable information on any of these misconducts is encouraged to report to the appropriate authority (EFCC) through 24 hours mobile hotlines channel, email channel and a whistleblower website channel (Daniel, 2017). An individual whistleblower whose information led to the recovery of money up to N1 billion (Naira) is eligible to 5 percent reward. For instance, the guideline of the policy clearly states that a whistleblower would receive rewards for any recovery between N1 and N5 billion (Naira). A reward of 5 percent for the first N1 billion Naira and 4 percent for the remaining N4 billion Naira. Besides, 2.5 percent reward would be paid for any recovery that is more than N5 billion (Naira). In addition, whistleblowers will be protected against any reprisals (Gabriel, 2017).

One of the major concern about the implementation of this policy is that the Nigerian National Assembly (legislature) is yet to approve the Whistleblower Protection Bill and Safeguard Disclosure (for whistleblowers and other special provisions) Bill. This continues to raise different issues as to whether a mere executive proclamation can uphold the implementation of the policy without any legal backing, whether it is possible for the executive to compensate whistleblowers with public funds for a policy not yet supported by law, and most importantly, upon what law will the protection of whistleblowers based. The executive continues to use the policy, while these issues are yet to be addressed.

The implications of this are simple, whistleblowers will be exposed to risks and this may prevent people from disclosing information. In recent times, the government announced that many of the whistleblowers rejected the offered rewards for the information that led to the successful recovery of money (Nwachukwu, 2017). Analysts have, however, disproved this statement by claiming that whistleblowers failed to come forward to claim the rewards simply because they are aware that their protections are not guaranteed.

Many Nigerians had in the past suffered reprisal attacks for disclosing valuable information to the public due to the absence of laws that protect the whistleblower. Typical examples include the case of the former Governor of Central Bank of Nigeria, Mr. Lamido Sanusi who was dismissed from office after disclosing information about the missing of \$20 billion (US dollars) oil revenue from the National Petroleum Corporation in 2014 (Usman, 2014). Also, a member of the staff of National Women Development Centre (NWDC) was fired for disclosing information on the alleged embezzlement of a huge sum of money meant for poverty alleviation program in 2011 (Ajibola, 2017). A member of the National House of Representative, Honourable Jibrin Abdulmumin was also suspended from the house following raising an alarm about budget fraud in 2016 (Ogundipe, 2016). Similarly, Mr. Ntia Thompson, a former Assistant Director at the Directorate of Technical Cooperation in Africa (an institution under the Ministry of Foreign) was sacked after he disclosed information about misappropriation of a sum of \$229,000 by chief officers in 2016 (Soni, 2017).

Appraisal of Whistleblowing Policy in Nigeria

Despite the fact that there is no law that presently guarantees the protection of whistleblowers in Nigeria, some patriot Nigerians have provided valuable information that led to the recovery of funds, arrest and prosecution of guilty parties. So far, the actual amount of money recovered through whistleblowers' information is not known. However, in 2017, the government disclosed that more than \$160 million (US dollars) have been recovered through whistleblowing policy (Jannah, 2017). In addition, record of recoveries reported in the media revealed that on February 3rd, 2017, the EFCC raided an apartment in Kanuna State, following a whistleblower's information, where a sum of \$9.2 million (US dollars) was found. Similarly, on April 10th 2017, N250 million (Naira) was found in an abandoned shop in Lagos. Also, on April 13th 2017, \$43 million, N23 million and £27,000 was found in a building at Osborne Tower in Ikoyi, Lagos (Vanguard News, 2017, Ibrahim, 2017, Akinkuotu, 2017, Akinkuotu and Godwin, 2017, Akinkuotu, 2017).

Whistleblowing policy appears to be an effective instrument for uncovering and fighting corrupt practices in Nigeria. The recovery of looted resources through whistleblowers' information gives the impression that there is hope in the fight against corrupt practices that have distorted the growth and development of Nigeria. However, there is a need for the policy to have legal support for it to be sustained. Also, the policy could be further strengthened through adherence to the established guidelines for the implementation of whistleblowing and protection of whistleblowers as highlighted in the African Union Convention against Corruption, United Nation Convention against Corruption, and whistleblowing policy instructions of the Transparency International.

However, one important thing stakeholders should be wary of, is the 'politicisation' of the policy. It is not a secret that everything in Nigeria is laced in politics,

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including the “fight against corruption” itself (Human Rights Watch, 2007). Allowing politics to play into the implementation of the policy could result in a new form of corruption and malicious trial. Desperate politicians could sponsor some group of people to disclose false information in order to stain the image of their oppositions. Moreover, the promise of financial reward could also motivate some opportunists who want to exploit the situation for their own benefit to engage in malicious reporting thereby resulting in unfair treatment of innocent persons.

Accordingly, reported cases of corruption should be objectively traced regardless of status, ethnicity, or political affiliation of the people involved. In addition, whistleblowers’ anonymity should be adequately protected, even from some officers of the anti-graft agencies. Due to the systemic nature of corruption, no one can be trusted with whistleblowers’ details. These agencies may have been compromised or infiltrated by moles who are ready to reveal (or sell) information about the whistleblowers to the third-party. Finally, it is important that the principles of sincerity and transparency are applied in giving rewards to the whistleblowers, this will encourage people to come forward to unveil information about financial irregularities. However, people should be enlightened that public interest comes first and it is above the rewards or personal interest. Whistleblowing or revealing information about misconducts should, therefore, be seen as moral responsibility.

Conclusion

Corruption is a hidden crime that is difficult to detect except it is reported. Thus, evidence has shown that conventional legal and institutional frameworks are not enough to curtail corrupt activities. Whistleblowing policy is an important instrument widely used in developed and some developing countries to complement other anti-corruption mechanisms. Hence, the introduction of whistleblowing as a tool for detecting and fighting corruption in Nigeria is a welcome idea. However, the legislative arm of government needs to carry out its oversight function by doing whatever is necessary to pass the Whistleblower Protection Bill to allow the policy to thrive. This is because, without legal backing, the policy may suffer serious legal challenges in the future.

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