

# **M**ONEY LAUNDERING IN NIGERIA: AN ANALYSIS OF ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) ACT 2004

**\*ASHIGAR, A. K. SATOMI, \*USMAN ISMAILA & \*\*DANJUMA ABUBAKAR UMAR**

*\*Department of Languages and Liberal Studies, Ramat Polytechnic, Maiduguri, Borno State. \*\*Department of Industrial and Labour Relations, Ramat Polytechnic, Maiduguri, Borno State.*

## **ABSTRACT**

*This article evaluated the activities of the Economic and Financial Crimes Commission on the war against corruption in Nigeria. The article revealed that there is no genuine commitment of government nor its agencies to fight corruption. Most investigated cases are inconclusively pending in courts of law while some indicted ex-governors and top government functionaries are enjoying unchecked freedom. This diluted the tempo and ingredients of the war against corruption in Nigeria. The article concluded that the Presidency has eroded the autonomy of the anti-graft agency and therefore considered some recommendations for future improvement of the Commission.*

***Key words:** Money Laundering, Financial Crime, Corruption, terrorist Financing and Media Fixation.*

democracy came with a lot of public offices to be offered and an opportunity for creation of many offices for political office holders.

## **INTRODUCTION**

Nigeria, is an African country located on the Gulf of Guinea and known for its abundant natural and human resources. World Bank (2014), indicates that, in 2013 Nigeria's population stood as 173.6 million. This shows that Nigeria is the Africa's most populous country and still remains the Africa's largest economy with GDP of 479 billion Dollars. World Bank further reported that despite the availability of these resources, over 62% of Nigeria's population lived in abject poverty with poor infrastructural facilities. Obua (2012) argues that this poverty and underdevelopment are caused by official corruption in Nigeria. Nigeria's journey to third republic started in 1999 and

It is interesting to note that Nigeria's status as the most corrupt country happened in the same time the new public offices have been constructed. Transparency International (TI) (1999), ranked Nigeria as first in its annual perception index, second in 2000 and came back to its first position again in 2001. So as a result of this Nigeria lost its integrity and respect among comity of nations. Consequently, the country was blacklisted by international community, foreign investors refused to do business in Nigeria and thereby bringing the country low and in disrepute, (Igbinovia and Igbinovia, 2014).

The aim of this research is to analyse the activity of EFCC Act 2004, in developing the paper, emphasis was placed on secondary sources of information. Therefore, the methodology employed here is content based analysis.

## **POLITICS OF THE THEORETICAL PERSPECTIVE**

### **What is money laundering?**

Money laundering according to United Nations (UN) Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance known as Vienna Conventions of 1988, which states that, "the conversion or transfer of property which is derived from crime, for the purposes sees, though, the word 'money laundering' was not specifically mentioned, the article 3(b) of concealing the origin in order to avoid legal prosecution". This body of plenary gathered at the UN Conventions in 1988, and took a stand to suppress the problem of money laundering. At this stage, every message from this meeting was taken back to each respective states to implement in their policies on how to regulate or stop the menace. Hence, the creation of Financial Action Task Force (FATF), though it is a non-enforcing organisation but serves as pressure group.

Financial Action Task Force (FATF) is an intergovernmental organisation recognized in 1989 by ministers of its dominions, with the ultimate aim of fighting money laundering activity, terrorist financing and other threats to global financial operations (Obua, 2010). This body's plenary meets three times every year to monitor the progress of its members in implementing necessary measures on terrorist financing, money laundering and if needs be take appropriate measures vis-à-vis its implementation. This gave birth to Inter-governmental Action Group against Money Laundering in West Africa (GIABA) in 1999, with a clear mandate of fighting money laundering and terrorist financing as an associate member of FATF and other national agencies with similar objective in the region like EFCC.

Despite this laudable effort by FATF to checkmate these activities, money laundering remains a global problem. This can be seen in the United Nations Office on Drugs and Crime (UNODC) report of 2015, which indicates that the approximate amount of money laundered at a global scale in a year is put as 5% of global GDP, which is equivalent to 800 billion to 2 trillion in current U.S. dollars (UNODC, 2015). So having considered the UNODC report and FATF associated problems, it can be argued that it is a major global phenomenon and not restricted to one region or country.

Money laundering is a tool in the hands of corrupt officials, and to fight corruption there is need to create obstacle to money laundering. The problem is in the endemic nature of corruption and tribal system of Nigeria. Economic and Financial Crime Commission (EFCC) Act 2004, signed by the then president of Nigeria Chief Olusegun Obasanjo (1999-2007), empowered the EFCC to prevent, investigate and penalise all economic and financial crimes including money laundering among others. The act was enacted with the ultimate aim of fighting corruption and money laundering (Imam-Bello, 2005).

#### **THE MEDIA FIXATION ON THE ACTIVITY OF THE COMMISSION**

By its very nature, EFCC right from inception has been an organisation generating contentious and controversial news. The media reaction of EFCC activity seems to be flexible and changing depending on whose case is being investigated and at what time. Timing is important at every point in time, because when a case is being investigated close to electioneering campaign period, the media reaction could be different. During such period, media reports or public comments could be sympathetic or attached sentiments to their stories, openly challenging the government of the day. The classical example could be President Olusegun Obasanjo's tenure from 1999-2007. When EFCC started investigation of some governors in 2006, the media went viral and tough on the agency. The commission under its then chairman, Nuhu Ribadu was accused of witch-hunting political opponents and partiality in its handling of war against corruption. The Vanguard Newspaper (2006), gave a caption 'EFCC Liaise with Independent National Electoral Commission (INEC) Against Corrupt Governors and Others'. In addition, Vanguard (2007), published a story title 'EFCC: It Is the Return of the Nigeria Police'. All these stories were geared towards portraying the image of the agency in bad light and tagging its activities as politically motivated rather than seeing it as an agent of policing.

However, there were certain instances where the anti-graft agency seen by the media as an institution of war against corruption and doing the expected. For example, Tell magazine in 2008, published a story titled 'The Anti-corruption War is on course'. This story came when EFCC successfully prosecuted and confiscated property belonging to former Inspector General of Police Mr Tafa Balogun. Similarly, Daily Trust in 2011, carried a story 'EFCC Mandate in Proper Perspective'. This editorial news was aligned to the misconception, misinformation about the activities of the agency by certain segments of the society. At this point, the media was in support of the organisation. The role of the media towards the activities of the commission in most cases come with mixed feelings depending on political climate and body language of the government.

#### **AN EVALUATION OF THE EFCC ACT 2004**

Passing into law of EFCC act by National Assembly in 2004, might have been done with good intention to reduce the corruption associated problems. But that noble intention did not come without hurdles. However, as Obuah (2010), stated that the ant-graft agency faces a lot of problems such as immunity clause of President and his vice, governors and their deputies, unnecessary delay of cases by attorneys from courts and lack of stability and continuity in leadership of the commission. In fact, one may argue that these challenges have created some bottleneck and have contributed to the low performance of the commission.

One of the most critical economic and final crimes in the country is money laundering. In an ideal sense, money laundering is an offence that has to do with many people particularly its conception, planning and the final execution (Igbinoia and Igbinoia, 2014). The advent of EFCC in Nigeria has impacted positively on the global acceptance of the country's anti-corruption crusade, thereby attracting foreign investors and selling the country's image abroad. The commission had recorded many prosecutions and convictions including pipeline vandalism, money laundering, corruption and other related offences. Alluding to this, the then chairman of EFCC, Mrs. Farida Waziri in a paper presented at the United Nations Conference on Least Developed Countries in Istanbul, Turkey in 2011, and reports that the anti-graft agency from inception has vigorously pursued its mandate. She enumerated the successes recorded by the agency in the following eight areas;

The first is about recovery of money worth over 6 billion dollars from various corrupt officials and their cohorts. The money was collected from prosecuted and convicted government public figures like the former Inspector General of police, former president of the senate, ministers, governors, parliamentarians etc. Second was about the agency having over 65 high profile cases and well over 1500 other cases pending in Nigeria courts. The third success recorded was that, the commission had helped in increasing the revenue base of the country by collaborating with agencies like federal inland revenue, maritime authority and sea ports, led to the recovery of over 500 million dollars. Whereas the fourth is about EFCC's help in restoring confidence in financial sector, thereby boosting Nigeria points in TI global index. None the less the fifth is about recovery of over 5 billion dollars as bad debt from customers of commercial banks in Nigeria. In addition, sixth is talking about the commission's effort in reorganisation of some vital agencies like Nigeria police force, custom and national drugs law enforcement agency and removal from office of the heads of these institutions for corruption. Seventh, the agency also facilitated in detection, recovery and return of some proceeds of advance crimes and convictions of key operators of this act. Last but not the least, EFCC was able to secure over 600 convictions including one of the biggest fraud cases in the world, totalling about 242 million dollar bank fraud in Brazil.

Similarly, in another development, EFCC record shows that in 2013 alone the commission secured convictions of 117 people for various offences ranging from 3 months to 91 years imprisonment. Again in 2014, EFCC was able to secure convictions of 126 for various offences.

All these facts claimed by EFCC was supported by the work of Imam-Bello (2005), who argued that EFCC in its embryonic years has made significant impact on the economy vis-à-vis its mandate. This is also made possible by policy initiative of FATF which Petrus Van Duyne (2011) referred to as "Know Your Customer" (KYC) and "Suspicious Activity Report" (SAR). A very good example of this when the United States of America president Barack Obama in 2008, acknowledged that EFCC has recovered millions of dollars in the proceeds of crime and its anti-money laundering efforts have been successful as a result of the cooperation from other countries. In 2009 the former chairman of EFCC Nuhu Ribadu concurred with the Obama's statement that the modest successes recorded by EFCC were supported by UN, regional bodies, and other bilateral bodies like FBI, U.S. Secret Service, U.S. Postal Service and Justice Department among others.

While concluding, Imam (2005), argued that the available dividend from the achievement of the anti-graft agency today is that corruption and other illegal activity not only put on check but also banking sector is being sanitised thereby enhancing transparency and accountability in both private and public sectors. Indeed there were noticeable arraignments of some people who were earlier considered as untouchables in Nigeria such as Kenny Martins, Iyabo Obasanjo, Nasiru El-Rufai, Bode George, Femi Fani Kayode, and Dimeji Bankole among others. Therefore, based on the efforts stated above, one may argue that the objective to which the commission was set up had yielded some laudable and good results.

However, many have argued that most of the convictions, prosecutions and confiscation of property made by EFCC affected only non-profile public officials and business men or perceived political enemies. It is a popular norm in Nigeria that individuals and institutions of government prefer to step down on the laws rather than obey it. This is similar to an argument put by Newburn (2009) that crimes come into play when public trust is being violated. Similarly, Van Duynne (2011) argues that whenever people face low risk of being caught crime tend to appear. Therefore, high profile cases involving their allies were either covered or the cases being delayed to enable them escape justice (Obua, 2010). Alluding to this, is the work of Ojukwu and Shopeju (2010) who argues that EFCC under Nuhu Ribadu was known for violating human right and witch hunting political enemies, when the agency was used to attack state governors who constituted political enemies to former president Olusegun Obasanjo. In addition, EFCC was seen as an institution lacking political will to fight corruption and considered as only targeting the perceived political opponents (Ojukwu and Shopeju, 2010). EFCC was also accused of depending the corrupt ex-governors who were allies to late president Yar-Adua instead of vigorously prosecuting those belief to be corrupt officials (Sa'id, 2015).

According to Lumumba (2014) that "it is in the nature of man to hang the small thieves and to elect the big ones into public offices". This is possible in Nigeria. The big blow came when a presidential pardon was granted by President Goodluck Jonathan to his kinsman, a certified criminal and fugitive Diepreye Alamiyeseigha, in March 2013. This singular act has hit the last nail on the coffin of EFCC towards its anti-corruption crusade. The anti-graft agency become an attacking dog and dissenting voice of the ruling government (Igbinovia and Igbinovia, 2014). When a government is in power, they are being twisted to suit

the interest of their pay master in power. For example, Nuhu Ribadu was appointed by President Obasanjo as the pioneer chairman of the commission in 2004, was removed from office in 2007 by President Umaru Musa Yar-Adua and replaced him with his deputy Ibrahim Lamurde. Again in 2008, Farida Waziri was appointed as substantive chairman. In the same vein, she was replaced by Ibrahim Lamurde during President Jonathan's tenure in 2011. Finally, President Muhammadu Buhari replaced Ibrahim Lamurde with Ibrahim Magu in November 2015. So far the Commission under the leadership of Magu has recorded some successes. As disclosed by Amadim, Head of Enlightenment and Reorientation unit of the Commission, in less than three years the Commission had recorded 647 convictions and recovered 500 billion Naira from November 2015 to 2018. This is an improvement over the previous regimes. However, it appears no one had ever completed his four-year term as enshrined in the act. Therefore, one could argue that, the Presidency might have been responsible for this unstable leadership crisis of the commission. The question is, 'why constant change of leadership'. However, the motive is only known to them. Therefore, the country's anti-money laundering crusade could not progress headway as long as it has been marginalised by strong individuals rather than by strong institutions.

### RECOMMENDATIONS

Despite the undue interference by various governments in power in affairs of EFCC, the commission has recorded some reasonable successes by reducing unnecessary wastage of public funds in the country, especially in the areas of corruption, money laundering, and misappropriation of public funds as well as bribery of government officials. It is now a public knowledge that, especially public officials are very careful about their activities while on official duty. The fear of investigation or prosecution by EFCC alone is an important mile stone in Nigeria's journey to anti-corruption war. In addition, the anti-corruption agenda of the EFCC has assisted in repairing the reputation of the country in the eyes of the outside world. Therefore, this has improved foreign investment in the country, taking into consideration the employment index of the period under review. The commission has also succeeded in transforming the attitude of citizens that whatever your position in the country 'with few exceptions' he or she can be investigated and taken to law courts.

However, despite successes recorded by the anti-graft unit, it is desirable that the following recommendations could be considered for future improvement;

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- 1) The EFCC Act 2004 should be amended to make it autonomous, devoid of any governmental interference.
- 2) The commission needs an improvement in area of trained personnel for easy detection of fraud especially in bank transactions involving international business.
- 3) There is need to expand its scope of operations by creating offices in all the 36 states of the federation.
- 4) To take away the agency from political interference of executive arm, the appointment of its leadership should come from judicial arm of government.
- 5) There is need to train the EFCC officials not to dabble into partisan activity but rather operate strictly as professional organisation.
- 6) There is also need to create special courts for speedy dispensation of justice in order to avoid unnecessary delay in trial of offenders. This would go a long way in reducing the big men having their ways out.
- 7) There is need to employ the services of special accountants especially forensic experts to help the commission in understanding the technicalities involve in financial investigation to help advance the organisation's cases in courts.

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