

## WHISTLE BLOWING POLICY IN NIGERIA: ISSUES AND CHALLENGES

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### ABSTRACT

*In Nigeria, as in many countries of the world, mechanism for fighting corrupt practices has been a subject of constant debate and discussion among stakeholders. Corrupt practices have continued to attract the attention of everybody and have experienced series of initiatives to curb its menace on national development. This paper examined whistleblowing policy, being one recent policy of the government to fight corruption, especially among the political class and public office holders, by the Federal Government of Nigeria. It attempt to conceptualize whistleblowing and its component. With regards to the methodology, it explores documentary evidence of recovered fund through whistleblowing since it was launched in Nigeria in 2016. The use of internet, journal, thesis, archival material and the vast expanse of the literature assisted in the source of information. The paper found evidence of pervasive tendencies for improved recovery of looted fund, exposure of corrupt practices and assistance to Anti-graft agencies in fighting corruption in Nigeria. The paper concluded, among others, that whistleblowing policy has assisted anti-graft agencies in fighting corruption in Nigeria.*

**Keywords:** Whistleblowing; Corruption; Mechanism; Government; National; Development; Policy.

### INTRODUCTION

Whistle-blowing Policy is not new in the recent time of Nigeria fight against corruption under the present administration of President Muhammadu Buhari. On 1st October, 2016, during Independence Celebration Speech, President Buhari stated that “Corruption will kill us if we did not kill corruption” (Vanguard, 2016). Corruption has been identified as major cause of underdevelopment and challenges facing socio-economic growth of the country, both in the Nigerian Public sector and Private sector. Corruption is a cancer that has eaten deeply into the fabric of Nigeria polity. The general global perception about graft in Nigeria is that it is generally acknowledged that corrupt practices are endemic and systemic in both public and private sectors of Nigeria.

According to Okolo and Raymond (2014), “corruption is a phenomenon so difficult to define, yet it percolates every structure of the society. It affects the military as well as it soils the hands of the civilians”. Rotimi, Obasaju, Lawal and Ise (2013) defined corruption as an act which deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private- regarding - motive such as wealth, power or status. From the foregoing, corruption can be viewed as deviation from normal standard operating procedure or rules or norms of a company, an organisation, government agencies or parastatals for personal or relatives gain.

Sowunmi (2010) cited in Rotimi *et al* (2013) opined that the history of corruption in Nigeria is strongly rooted in the over 29 years of the military rule, out of 50 years of her statehood since 1960. Ribadu (2006) cited in Rotimi *et al* (2013) claimed that successive military regimes subdued the rule of law, facilitated the wanton looting of the public treasury, decapitated public institutions and free speech and instituted a secret and opaque culture in the running of government business.

However, over 18 years of democratic rule in the country, and despite establishment of various agencies such EFCC, ICPC, Code of Conduct Bureau, etc to reduce or eliminate the corrupt practices in the country, corruption is neither increasing in the public sector especially among the political class, with various allegation and cases of money laundering, diversion of public fund, contract scams, budget padding, non-declaration of assets, etc. against former Presidents, former Governors, former Members of House of representative, former Senators, former Ministers, former Director General, former Local Government Chairman, etc., even former Councillors. These necessitate the present administration of President Muhammadu Buhari, through the Ministry of Finance under Mrs Kemi Adeosun, to introduce whistle-blowing policy, which will enable citizen of the country to serve as watchdog for corrupt practices in Nigeria.

According to the Minister of Finance, Mrs. Kemi Adeosun, the primary goal of the policy is to support the fight against financial crimes and corruption, by increasing exposure of financial crimes and rewarding whistle-blowers. In order to promote such exposure, whistle-blowers are encouraged and offered protection from harassment or intimidation by their

bosses or employers. The hope is that more looted funds will be recovered through the encouragement of voluntary information about corrupt practices (Punch, 2016). This paper tends to study the concept of whistle blowing policy, its genesis, immediate effect on corrupt practices since it's launched and challenges of the policy, amidst political environment in the present day Nigeria.

## **THEORETICAL FRAMEWORK**

This study is perused on the following theories;

### **Standard Theory**

Standard theory is not just about whistle blowing, as such, but about justified whistle blowing and rightly so. Whether this or that is, or is not, whistle blowing is a question for lexicographers. Standard theory corresponds to the original model of generative grammar laid out by Chomsky in 1965 and later developed by Richard De George. A core aspect of this theory is the distinction between two different representations of a sentence, called deep structure and surface structure. The question is, when, if ever, is whistle blowing morally justified that will not result to disloyalty to an organization or the public interest?

According to Standard theory, disloyalty is morally permissible when: the organization to which the would-be whistleblower belongs will, through its product or policy, do serious and considerable harm to the public; the would-be whistleblower has identified that threat of harm, reported it to her immediate superior, making clear both the threat itself and the objection to it, and concluded that the superior will do nothing effective; and the would-be whistleblower has exhausted other internal procedures within the organization or at least made use of as many internal procedure as the danger to others and her own safety make reasonable.

Therefore, whistle blowing is required according to this theory when; the would-be whistleblower has evidence that would convince a reasonable, impartial observer that her view of the threat is correct; and the would-be whistleblower has good reason to believe that revealing the threat will probably prevent the harm at reasonable cost (all things considered).

### **Complicity Theory**

The complicity theory proposed by Michael Davis is an account of when whistleblowing is morally required of one. It is developed out of critique of the now standard theory identified with the work of Richard De George. Davis labels the standard theory as the paradoxes of burden, missing harm and failure. With respect to burden, Davis argues that Standard theory asserts that whistleblower can act with little cost to themselves, but the history of whistleblowing shows this is false. Furthermore, Standard theory provides no justification for the central case of whistleblowing. It fails to justify the considerable burden placed on whistleblower. Whistleblowers are not minimally decent Samaritans. If they are Samaritans at all, they are good Samaritans. They always act at considerable risk to career and generally, at considerable risk to their financial security and personal relations.

### **CONCEPT OF WHISTLE-BLOWING POLICY**

According to the Federal Ministry of Finance, the whistle-blowing programme is designed to encourage anyone with information about a violation of financial regulations, mismanagement of public funds and assets, financial malpractice, fraud and theft to report it. Adeyemo (2015) stated that, the act of whistle-blowing is the disclosure of the behaviour of a company, or those who are placed in a position of responsibility, that is illegal, immoral or could be categorized as a serious wrongdoing.

First Bank of Nigeria (FBN) (2016) opined that, whistle-blowing is the act of reporting an observed/perceived unethical misconduct of employees, management, directors and other stakeholders of an institution by an employee or other person to appropriate authority. It is an early warning system that enables an organization to find out when something is going wrong in time to take necessary corrective action.

There are several characteristics required to qualify the act of “disclosed information”. Firstly, there is the intentional disclosure of information. Secondly, the person disclosing this information would normally be within close proximity to the employer. Thirdly, the information sought to be disclosed needs to be pertaining to the company/organisation in question. Finally, the disclosure needs to be in the public or private interest (Adeyemo, 2015).

According to Minister of Finance, Kemi Adeosun, among the selling points of the policy are;

- a) The possibility of increased accountability and transparency in the management of public funds and;
- b) The possibility that more funds would be recovered that could be deployed in financing Nigeria's infrastructural deficit (Punch, 2016).

In the final analysis, it is hoped that the more accountable the government becomes, the higher will be Nigeria's ranking on the indicators of openness and ease of doing business. The ultimate goal is to develop a corruption-free society and attract more and more foreign investors (Punch, 2016).

### **Components of Whistle-blowing Policy**

Ministry of Finance in 2016 as reported by the Punch stated that, the whistle-blower policy consists of three major components.

#### **1. Channels for reporting information and the type of information to be reported.**

Anyone, said the minister, who has "authentic information about violation, misconduct, or improper activity which can impact negatively on the Nigerian people and government" should report it through one or the other of three channels: The violations include, but are not limited to mismanagement or misappropriation of public funds and assets; financial malpractice or fraud; collecting/soliciting bribes; diversion of revenue; fraudulent and unapproved payments; and procurement fraud (notably, kickbacks and over-invoicing).

#### **2. Reward for reporting fraud.**

The whistle-blower will get between 2.5 per cent (minimum) and five per cent (maximum) of the recovered loot, provided that "there is a voluntary return of stolen or concealed public funds or assets on the account of the information provided". It is still not clear how the exact amount of the reward will be calculated. The policy is also silent on whether whistle-blowers will be entitled to a share of the loot recovered after the looter has been duly convicted.

#### **3. Assurance of Protection to Whistle-blowers**

"If you feel that you have been treated badly because of your report, you can file a formal complaint. If you have suffered harassment, intimidation or victimization, for sharing your concerns, restitution will be made for any loss suffered". It is hoped that the details of the restitution will be fully specified in the policy.

## **HISTORY OF WHISTLE BLOWING POLICY IN NIGERIA**

This policy first came into being in the United States of America after the failure of multinational companies such as Eron, Tyco International, Adelphia, Peregrine Systems and Worldcom, which resulted into Global Economic Meltdown in 2001. The collapse of these companies necessitate the enactment of policy which will prevent future occurrence of great loss to shareholder as a result of financial recklessness and window-dressing report by the manager at the expense of stakeholders. The event inspired US Senator Paul Sarbanes and US Representative Michael G. Oxley to sponsor a bill in 2001 and was passed in 2002 tagged Sarbane-Oxley Act 2002, which contain 11 sections, as a reaction to a number of major corporate and accounting scandals in the United State. The Act provide for insiders Whistle Blower for any perceived financial irregularities in an organisation as well as protection of the Whistle-Blower from intimidation, sacking or undue punishment from employers or manager of the victim organisation.

Whistle-blowing is not a new but recent word in the Nigeria polity just that it is being used within corporate governance of financial institutions and non financial institutions before its adoption into the policy of President Muhammadu Buhari administration fight against corruption. Whistle blowing policy has been in the operation in Nigeria especially, within the banking sector. First Bank of Nigeria (FBN) (2016), in his ethical report stated that, the Central Bank of Nigeria 2012 Guideline Section 3.1 provides basis for Whistle-blowing for banks and other financial institution in Nigeria. Also Section 5.3.1 of the Code of Corporate Governance for Banks and Discount House is another form of whistle-blowing in the banking sector of the country.

Adeyemo (2015) opined that, efforts have been made to curtail bad practices and serious wrongdoings within the Nigerian banking system. These efforts are evident within some statutory provisions, but primarily, the Guidelines issued by the Central Bank of Nigeria (CBN) in 2012. These Guidelines consider how best to promote good corporate governance and directs banks and non-financial institutions to implement policies to facilitate the whistle-blowing framework.

On October 1, 2016, the Ministry of Finance, led by its Minister, Mrs Kemi Adeosun launched Whistle-Blowing portal on the website of Federal Ministry of Finance. This is first of its kind in the Federal Government of Nigeria fight against corruption. Despite unconfirmed information that the previous administration of Goodluck Jonathan initiated the policy, the credit goes to the President Muhammadu Buhari administration. According Abiodun Olasupo, a member of Federal House of Representative, stated that, “You should not be surprised that all the measures used in the anti-corruption crusade today were developed by President Goodluck Jonathan’s administration. “The Jonathan administration developed the policies of whistle-blowing, Bank Verification Number (BVN), Treasury Single Account (TSA) but lacked the political will to implement them” (Guardian, 2017).

Till date, there is no legal backing to the Whistle-Blowing Policy, as the National Assembly is yet to pass Whistle-Blowing Protection Bill before it.

### **ISSUES OF WHISTLE-BLOWING ON CORRUPT PRACTICES IN NIGERIA**

Immediately after the launch of Whistle-Blowing Policy by the Federal Government of Nigeria, recovery of looted fund increases with the personnel of Economic and Financial Crime Commission, Independent Corrupt Practices and Other Related Offence Commission, Department of State Security, and other security agencies, on alert with available information. Dailytrust on April 18, 2017 reported that, this laudable initiative has resulted in the discovery of \$9.8 million cash in a Kaduna slum residence in Sabon-Tasha and over \$30 million cash in an apartment in Ikoyi, Lagos State. At an exchange rate of N350 to \$1, the cash recovered so far will be over N14,000,000,000 (fourteen trillion naira in cash), just to name a few.

News Agency of Nigeria reported on February 12, 2017 that, Minister of Information and Culture, Lai Mohammed says the Federal Government’s Whistle blowing policy has yielded \$151million and N8billion in looted funds. In a statement signed by Segun Adeyemi, the Special Assistant to the Minister, Alhaji Mohammed said the looted funds were recovered via the clues provided by three whistleblowers who gave actionable information to the office of the Minister of Justice and Attorney-General of the Federation. The biggest amount of \$136,676,600.51 was recovered from an account in a commercial bank, where the money was

kept under an apparently fake account name. This was followed by the recovery of N7 billion and \$15 million from another person and 1 billion Naira from yet another. The recovered loots do not include the \$9.2 million in cash allegedly owned by a former Group Managing Director of the NNPC, Mr Yakubu, which was also a dividend of the whistleblower policy, All the monies recovered so far totalled over \$160million (NAN, 2017).

Minister of Finance, Mrs Kemi Adeosun, in her word stated that, Whistle-Blowing Policy has made every Nigerian a detective. Speaking about the whistle-blowing policy and the treasury single account (TSA) as tools for fighting corruption, the minister revealed that some whistle blowers are not requesting reward. “We have over 2,500 tips from various quarters. Not just the big money that you all see in the papers, but a lot of these small monies,” she said “Somebody diverting the petty cash for the university, we were able to get in there and stop him. The fight against corruption is now the people’s fight. “And not all the whistle blowers are actually looking for reward. Some are just patriotic citizens who tell us this is what is going on in a particular institution, and they are not asking any reward, they are just sharing information. “We thank everybody who has helped the government. This is a national fight against corruption” (The Cable, 2017).

The question of who is responsible for some of the alleged recovered loot is still hanging on the investigative panels of the police and those set up by the government and the prosecution of those culprits is yet to have a green light. The media reportage of recovered loots cannot be said to be the final answer to the question with which Whistle blowing policy was initiated by the administration of President Mohammadu Buhari. Though, the policy has identified that there is embezzlement of public fund, the next action of investigation and prosecution is the cause for concerns.

### **CHALLENGES OF WHISTLE-BLOWING POLICY IN NIGERIA**

Like other policy of the government, Whistle-Blowing policy is facing its own challenges ranging from lack of legal backing, political terrain, to bureaucratic or administrative cumbersome. Some of the challenges facing whistle blowing are explained below;

**1. Lack of Appropriate Enacted Laws:** As at present, there is no legislation of National Assembly backing Whistle-Blowing Policy in Nigeria. Adeyemo (2015) opined that,

in the event that a person wants to whistle-blow, protection for the identification of whistleblowers can be found in S.39 (1) of the Economic Financial Crimes Commission (Establishment) Act 2004 and S.64 (1) Independent Corrupt Practices and Other Related Offences Act 2000. However, if the identify is for any reason compromised, there is no system in place which offer further protection.

Dailytrust, April 18, 2017 stated that, “The Whistle Blower Protection Bill, 2008 is a bill for an Act to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others, to provide for the protection against victimisation of persons who make these disclosures; to provide for related matters.” Senator Ganiyu Olanrewaju Solomon sponsored the bill. Since then, this bill is yet to be passed by the National Assembly.

Premium Times, May 16, 2017, quoted Senate President, Senator Bukola Saraki, that the Senate will pass the Whistle Blower Protection Bill in July 2017. He made this known at the launch of “Antidotes for Corruption: The Nigerian Story”, a book written by Dino Melaye, the senator representing Kogi West, in Abuja. Mr. Saraki said when backed by legislation, whistle-blowing would have greater value “and it is hoped that we can pass it before July this year”. According to him, other anti-corruption legislation being considered by the Senate includes the Proceeds of Crime Bill, the Special Anti-Corruption Court, which will be done through constitutional amendment and the Mutual Assistance in Criminal Matters Bill. Mr. Saraki said the executive and legislature must work hard to make it difficult for proceeds of corruption to find any hope. Till date, the bill is still lying helpless in the National Assembly.

Till date, National Assembly has not deemed it fit to pass the bill. This may be due to various corrupt practices allegations against majority of members, Senate and House of Representatives who are former Governor or State House of Assembly member, or Chairman of Local Government and present political struggle between two main political party in Nigeria.

**2. Prolonged Prosecution of Accused Corruptors:** On February 12, 2017, News Agency of Nigeria reported that Whistle blower rake in \$160million, and #8b for Nigeria, through amount recovered from former Group Managing Director of NNPC (\$9.2m), \$30m

cash in Ikoyi Apartment and others. Till date, former Group Managing Director of NNPC, Mohammed Yakubu, alleged to have illegal possession of huge cash is yet to be jailed or his case yet to be concluded after almost two years of the discovery. This may just be like those corrupt practices allegation against former political office holders that have use more than ten years in the court of law without judgement, with eminent of natural death in Nigeria polity.

**3. Lack of Continuity in Government Policy:** The Whistle-blower policy was initiated and introduced by the present administration of President Muhammadu Buhari, in his quest to finding lasting solution to the stubborn disease called corruption in the Nigeria system. A change in government has always being major setback to major policy of the government in Nigeria. For instance, Operation Feed the Nation, Rural Banking Policy, etc are few of the government policy that has failed to see the light of the subsequent government. Even, less than two years of its initiation, the effect of whistle-blower policy has reduced in this year 2018, may be due to the eminent effect of the coming general election in 2019. What will be the fate of the policy after 2019 general election is a question to answer.

**4. Opposition by Political Party other than Ruling Party:** Political parties, especially the opposition sees the Whistle-blower policy has an instrument of the present administration against the opposition, with believe that member of the ruling party will be protected from its uses. The main opposition is not well disposed to the effect of the policy revealing the level of atrocity committed during their tenure as the ruling party.

**5. Political Terrain of Nigeria:** The political terrain of Nigeria is not usually in support of policy of a ruling party. It is usually seen and viewed as an instrument to fight opposition. Also, policy of government is not usually supported by political parties except the ruling party, which may be seen as lack of patriotism, emanated from political interest of the ruling class. The subsequent government, even belonging to the same political party, usually neglects the policy of the government that handed over. This may be due to lack of political ideology within the Nigeria polity.

## **CONCLUSION**

The study discovered that corruption has eaten deep into the fabric of Nigeria polity with Whistleblowing policy effect exposing various public fund illegally acquire and in custody of

present and past public office holders. Whistleblowing policy came into effect at a time when other mechanism for fighting corruption is facing one challenges or the other with the aim to complement efforts put in place in finding lasting solution to the negative result of corruption on the development of Nigeria. The policy has improved detection of alleged diversion and embezzlement of public entrusted fund by the political office holders in Nigeria since October, 2016, when it was launched. It has assisted Anti graft agency such as Economic and Financial Crime Commission, Independent Corrupt Practices and Other related Offences Commission, e.t.c, in their activities to recovered looted fund from both present and past public office holders. The question is what should be the fate of that whistleblower since there is no law backing the policy till date? This and other challenges are impeding the intending goals of the policy in fighting and exposing corruption within the Nigeria political system.

## **RECOMMENDATIONS**

Based on the study, the following recommendations will improve the effect of whistleblowing policy on the fight against corruption in Nigeria.

- a. The National Assembly should expedite action on the passage of the Whistleblower Protection Bill before it.
- b. The court should ensure quick determination of corrupt cases to ensure that it serve as deterrent to other public office holder who may be thinking of embezzling public fund.
- c. The police should carry out background information before exposing the corrupt cases to the media to avoid way-out for unpatriotic legal practitioners.
- d. There should be adequate protection for whistleblower against lost of job, reputation and adequate compensation.
- e. There should be a separate court for corruption cases to reduce long and indefinite adjournment being experience on cases in Nigeria court system.

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