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# On The Trail of a Spectre— Destabilisation of Developing and Transitional Economies: A Case Study of Corruption in Nigeria

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*A Spectre haunts Nigeria  
He thrives in a red roof . . .  
He is power drunk and egoistic  
He is callous, brutish, trickish . . .*<sup>1</sup>

## I. Introduction

The impact of corruption is multifaceted. It impedes the moral fabric of developing societies, slows down administrative processes, makes implementation of government policies ineffective, and is detrimental to the economic interest of these countries. Unfortunately, corruption makes these goals illusory resulting in underdevelopment.<sup>2</sup>

The astronomical dimension which corruption has recently taken in most parts of the world is alarming. No economy is left out and all bear the brunt of corruption—which is often expressed as criminality, and nearly always cancerous.

For a cancer which has progressively affected all areas of national life, it is ironic that corruption lacks a universal definition. It is a creature of circumstance and what may be corruption in an instance, may not be so in the other. Suffice it to say that it is any act or omission which spoils, taints or degenerates a hitherto legally thriving system. It has been defined amongst other things as “. . . *the deviation from or pervasion of the system . . .*”<sup>3</sup>

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1. Dr. Nnamdi Azikwe, *A Spectre Haunts Nigeria* in TELL at 23 (1996).

2. A. KALU & Y. OSIBAJO, PERSPECTIVE ON CORRUPTION AND OTHER ECONOMIC CRIMES IN NIGERIA 8 (1991).

3. *Id.* at 31.

In Nigeria, like in many developing countries, the high level of corruption is often attributed to poverty. The argument is that if people were better off, they would yield less to the temptation of corruption. The fallacy of this logic is well brought out by the reasoning of Italian Prime Minister on the chronic disease of the Mafia, which he described as, “. . . not the daughter of underdevelopment but the mother.”<sup>4</sup>

In the same vein, poverty is not sired by corruption. Rather, corruption brings about, and increases the poverty of people, ideals, morals, and the state. When, for example, contract prices are inflated, the result is a rapid depletion of the public treasury, and unavoidable depression in the economy. These lead to hyperinflation, unemployment, and a drastic reduction in the gross national product and per capita income.<sup>5</sup> In nearly all cases where developing economies take tough decisions to restructure and improve society, the implementation of structural adjustment programmes, and attempts at democratisation are stymied, if not thwarted. This is one singular reason which poses as an excuse for most third world coups. In sum, what follows one corrupt practice is a chain of far-reaching events which culminate in poverty, and bad government.

Investigations into corruption in its various degrees have shown that it is not only a problem of the poor, but that its main perpetrators have social status, political clout, economic and/or bureaucratic power. It is submitted that the greatest motivation for corrupt practices is not the desire to be free from penury, but rather a lust for more perpetuated by deep-seated greed. The fact remains that corruption is perpetuated mainly for economic gain.<sup>6</sup>

In most developing countries, after independence, the local elite took over public administration and introduced, a creeping fashion, corruption in government. The resulting underdevelopment paradoxically has led to greater corruption. Although it can be argued that corruption is not the bane of transitional economies but rather lack of growth, the point really is that corruption inevitably destabilises any economy. It is more or less empirical that corruption results in military governments, totalitarianism, and

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4. See TIME, June 10, 1996, at 18.

5. KALU & OSIBAJO, *supra* note 3, at 8.

6. From the clerk in the government ministries who will not produce a required file till he is “seen,” to the recently convicted former heads of government in South Korea.

bad public administration.<sup>7</sup> It is common knowledge that all these are common to developing countries—and have invariably led to the breakdown of the rule of law and the concept of sovereignty.

No doubt, a well-ordered and functioning democracy will appreciably curb the prevalence of corruption because when public officials must openly account for their actions, it is not unlikely that they will not wantonly indulge in corrupt practices.

The three arms of government at all levels and the organised private sector have all been affected by corruption in Nigeria. Unbelievable as it may seem, it is reported that even primary (elementary) school students now bribe their way to good academic results. It would thus be seen that there is more or less a paradigm of corruption in Nigeria. This makes it difficult for the judge, the public administrator, the banker, the policeman, and the teacher to be impartial, honest, and forthright in the face of challenging circumstances.

Commercial certainty and fairness underpin economic growth. Where the Judiciary is corrupt, unreliable, and partial, it can deliver neither. This puts off the interested foreign and even local investor who finds the idea of bribing his way through to justice abominable. Ultimately economic growth crawls, at best. In extreme cases like Zaire, the economy crumbles.

It must be recognized that although abhorrent to most, as a matter of expediency, some investors (both national and foreign), really do not mind giving bribes to facilitate their investments or transactions. They simply pass it on to the consumer as operational costs. For them corruption only becomes a problem when its costs become too high to allow the making of reasonable profit. However, the business man that does not mind giving a bribe ends up doing business in an unstable and unprofitable economic environment.

## II. Corruption As an Economic Crime

The bottom line is that corruption wears different faces. These may be nepotism, bribery, treasury looting, inflation of contract prices, financial services crime, money laundering, banking distress, advance fee fraud, smuggling, obtaining by false pretences, capital flight, forgery, fraud, and a host of other economic crimes. Some

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7. See international commentary on effect of corruption on the Gross Domestic Product (GDP) and economic growth in Thailand, *TIME*, Sept. 2, 1996, at 26-30.

of these crimes that are more debilitating to transitional economies are now considered in this Article.

An economic crime has been defined as

*any criminal act, the commission or omission of which is detrimental to the interest of the nation.*<sup>8</sup>

Economic crimes unfortunately are "elite crimes" often involving influential personalities and organisations.<sup>9</sup> Due to the elitist flavour, economic crimes are often executed and accomplished with a great deal of sophistication and more than average intelligence.

With increasing concerted efforts at combating economic crimes in developed economies, the economic tortfeasor has found transitional economies an interesting alternative. The deregulation in developing economies, the desire to attract foreign investments, and imperatives of structural adjustment have all contributed to making slower developing economies the haven of international economic criminals—a result of the near indiscriminate lowering of guards, standards, regulations, and supervision.

#### A. *Capital Flight*

1. *Introduction.*—One of the oldest forms of corrupt practices in developing economies is capital flight. This occurs when convertible currency accruing to a home country is conspicuously "returned" to foreign countries with little or nothing coming back to the home country as profit or investment returns.<sup>10</sup> In relation to crime, capital flight occurs when the process of flight itself is illegal or criminal in nature. Randomly, after independence, most if not all developing economies continued with, or introduced exchange controls as a measure of the then fashionable economic policy of ensuring economic development by the state control of foreign earnings. Whether right or wrong, it was a crime under various laws to take capital out without ministerial consent.<sup>11</sup>

Flight capital is usually kept in tax havens and respected banking centres in developing economies. In these countries, foreigners are not expected to make any return on their deposits

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8. KALU & OSIBAJO, *supra* note 3, at 31.

9. Documentation of 10th International Symposium on Economic Crimes: *The Misuse and Abuse of Financial Institutions in International Commercial Crime* at 109.

10. *Id.* at 530.

11. E.g., Exchange Control Act of (1949)(UK)- Foreign Exchange Regulation Act (1973) (India); & Exchange Control Act (1962) (Nigeria).

and this obscures the illegal sources of funds invested by foreigners. What capital flight does to the home country is to deplete its foreign exchange reserves and create in it the need to borrow money in order to make ends meet. In other words, one of the untold reasons for the debt crisis is flight of capital from developing countries. Indeed, it has been argued that the size of a third world debt is more or less equivalent to the amount of its flight capital kept abroad. Of course, the resulting problems from the debt crisis need not be told.<sup>12</sup>

Accordingly, the concern about capital flight until the recent deregulation of exchange control was the flight of capital abroad through under-invoicing for imports and over-invoicing for exports. The concern now is the flight of much needed foreign capital especially through dubious banking practices. Private and public sector capital flight is unfortunately now more a species of money laundering which makes it a serious problem that must be tackled by both the losing and recipient economics.

2. *Capital Flight Control Measures Through Ports L Banks.*—In dealing with the problem of capital flight in Nigeria, both administrative and legislative action have been taken to help trace and restore flight capital. The result has not been satisfactory. For example, in order to prevent over-invoicing, the use of Form "M" and the requirements of pre-shipment inspection for most imported items have continued since 1979, by virtue of the Preshipment Inspection of Imports Act Cap 363,1990. Unfortunately, corruption at the ports by customs officials and banking supervisors has made nonsense of the laudable scheme. In 1996, therefore, the government introduced other measures to combat corruption at the ports by passing the duty of collection of import and export duties to reputable firms of chartered accountants. This has yielded better results.

Banks are also instruments used to take capital out of the country. Where letters of credit are patently for an inflated amount or goods undervalued or of a different nature, banks have (affecting to be relying on the common law rule the letters of credit instructions and transactions are more or less sacrosanct, save in clear cases of fraud),<sup>13</sup> permitted payments to be made. Obvious-

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12. Some of the more benign effects of the debt crisis are elaborated upon in L.C. BUCHHEIT, *THE CAPITALIZATION OF SOVEREIGN DEBT*, Sept. 10, 1986.

13. See *Akinsanya v. UBA Ltd.* (1986) 4 NWLR 273, *relying on Banque Indochine v.J.H. Rayner Ltd.* (1983) 1 QB 7 17.

ly, in such cases, it is a matter of collusion between the banker and the customer. Regular bank examinations should have revealed these corrupt practices, but as that process itself is corrupt, and internal supervision has been bad, government-introduced legislation to deal with this problem, as well as other economic crimes in the banking industry in Nigeria, has not always yielded desirable results. By law, there is now a greater duty of external and internal supervision of banks and financial institutions and Government agencies now have unreserved access to bank documents. The relevant pieces of legislation include the *Money Laundering Decree No. 3 of 1995*, the *Advance Fee Fraud & Other Fraud Related Offences Decree 13 of 1995*, *The Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree 17 of 1995*, *Central Bank of Nigeria Decree of 1991* and the *Banks and Other Financial Institutions Decree of 1991*.

Many of the duties imposed on the banks and financial institutions under these decrees are those of monitoring and supervision of transactions and reporting of transactions to either the Central Bank of Nigeria (CBN) or the National Drug Law Enforcement Agency established under the *National Drug Law Enforcement Agency Decree No. 48 of 1989*. The results of the earlier of these statutes has not been impressive, and the score card for the later ones has not given much cause for cheer either. Government Agencies and private sector firms continue to lose money in spite of these laws.

3. *The Money Laundering Decree No. 3 1995*.—Although directed at money laundering, the *Money Laundering Decree* can be a useful tool and check on flight of capital—especially of the proceeds of crimes. Under the decree, transfer of funds or securities in excess of \$10,000 to a foreign country must be reported to the Central Bank of Nigeria. The report should include the nature of and amount of money involved in the transfer, and the names and addresses of the sender and receiver of the funds or securities. A report is also required to be made to the Central Bank of Nigeria for transfers less than \$10,000 where the transaction either apparently lacks lawful objective, or economic justification, or is unusually or unjustifiably complex.

Apart from providing that both the Central Bank of Nigeria and Nigeria Drug Law Enforcement Agency have unreserved access to documentation on transactions in banks and financial institutions, the statute expressly states that bank secrecy shall not be invoked as a defence for objecting to the given powers of

surveillance, or for refusing to testify in an action brought pursuant to the statute.

Non-compliance with duties imposed under the decree is an offence for which the penalties range from heavy fines, suspension of professionals (found to have either negligently or otherwise facilitated the offence) from their profession, to the winding up of banks/financial institutions in certain circumstances. Nonetheless, one can say that these statutes have not produced the desired results in relation to capital flight of corrupt monies—given the overall corruption in the system. It is believed within and outside government circles that the agencies responsible for implementation of this law have been weakened by corruption within them.

4. *The Advance Fee Fraud And Other Fraud Related Offences Decree 13 Of 1995.*—This enactment makes it an offence to transfer funds or monetary instruments out of Nigeria where the funds, or monetary instruments represent the proceeds of unlawful activity, or will be used to promote the carrying on of specified unlawful activity.

A Special Tribunal tries offences under the decree and may in prescribed instances, order a bank/financial institution to freeze the account of an accused person and produce documents relating to transactions in the said account. It is believed that although this decree imposes no duty on financial institutions to report any kind of transaction to the Central Bank of Nigeria, the power given to the tribunals to make orders to freeze accounts and also to check banking documents will help to prevent capital flight and restore flight capital.

It is perhaps appropriate at this stage to mention that scourge on Nigeria is described as *419* locally, or *Advanced Fee Fraud* abroad. Not much need be said about it here, other than that it is now clear to the government that this corrupt practice not only tarnishes the image of the country and thus discourages foreign investments, but also has a ruinous effect on local entrepreneurs, pensioners, and government agencies. For instance, the Central Bank of Nigeria has been sued by victims of this crime, when in fact the agency, whose name is used by the '419' criminals, has no involvement in such schemes.

5. *The Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree No 17 1995.*—The Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree, provides checks against capital flight. In consonance with the *Money Laundering Decree*,



the *Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree* provides that transactions involving the transfer of more than \$10,000 to or from a foreign country, must be documented and reported to the Central Bank of Nigeria. Further it prescribes that exportation of foreign exchange out of the country, in excess of \$5,000 or its equivalent, shall be declared at the port of exit from the country by the person desiring to export some. Although the declaration is required for the purpose of statistics only, the declaration will help to check unlawful exportation of capital through such ports.

Moreover, when a person imports more than \$10,000 or its equivalent into the country in cash, and deposits some into a domiciliary account, he can only export such foreign exchange in cash. Exportation of foreign exchange is thereby monitored.

The Law also empowers the Central Bank of Nigeria to check the books of authorised dealers in the market in Foreign Currency. This supervisory power can help in detecting fraudulent transactions and thus check capital flight. Not much can be said now on the efficacy of this law, nor that of the Advanced Fee Fraud Decree.

### III. Money Laundering

#### A. Overview

Money laundering is the process of bringing illicit proceeds into official or legal money circulation, so as to dissemble the origin of the money. It is the processing of funds derived from illegitimate sources through legal financial channels with a view to legitimising and concealing or disguising the source of such funds. For developed economies, usually, the source of these illegal funds is drug trafficking. Obviously, for developing economies not yet part of the drug trade ring, money laundered is money criminally or corruptly obtained from the economy. It must be mentioned, however, that since the late 1980s there has been an upsurge of money laundering activities in developing economies like Nigeria, which have been drug transshipment centres.

In Nigeria, money laundering has always been a serious problem because when proceeds of crimes against the state are concealed, enforcement efforts are frustrated and restitution or reparation is impossible. Indeed, the coup that toppled the last civilian regime was more concerned with recovery of corruptly obtained monies, than the punishment of the corrupt persons involved. By virtue of the Recovery of Public Property Decree

1984, quite a lot of property was recovered locally. Unfortunately, not much came from abroad, as the government seems to have met stiff opposition from the various international banking centres where corruptly earned monies were laundered. There was an unfortunate and inexplicable reversal of most of the laudable recoveries by the government that toppled the "recovery government." However, luckily, today, the government in power seems to be taking corruption seriously.

The enormous proceeds from illegal activities such as drug trafficking, bribery, corruption, theft, and fraud, may (and most probably will), frustrate legitimate business enterprise and corrupt the financial system and ultimately the sociopolitical system. Eventually, the economic system becomes inefficient and tainted, causing loss of confidence in it by the legitimate investor. The resultant effect is underdevelopment of the economy and the political process. However, now fully realising the need to protect the economy from mishap occasioned by economic fraudsters, the Nigerian government has made efforts to remove illegally obtained capital from the money and capital markets.

#### *B. The Money Laundering Decree*

Before the enactment of the Money Laundering Decree, the activities of the laundryman had increased by virtue of measures taken towards deregulation of the economy, and the general increase in corrupt practices—which had impoverished many. Hitherto, only the *Nigeria Drug Law Enforcement Agency Decree* made a passing or parenthetical attempt at controlling money laundering. However, the statute did not go far enough in the face of deregulation laws like the (*Repealed*) *Foreign Currency Domiciliary Accounts Decree of 1985 (FCDA)* and the (*Repealed*) *Second-Tier Foreign Exchange Market Decree of 1986 (SFEM)*.

The FCDA provided that irrespective of any other provision of law, Nigerian residents could open, maintain, and operate domiciliary accounts designated in foreign currency, and were under no obligation to disclose the source of foreign currency paid to such accounts. It further provided that money imported to Nigeria in accordance with the Decree would not be liable to seizure, or forfeiture or suffer any form of expropriation by the Federal or State authorities. Consequently, proceeds of drug trafficking were used to operate such accounts, enjoying the protection provided by the provisions for non-disclosure of the

source of funds and non-expropriation of funds by government authorities.

The SFEM Decree had similar provisions, and further armed the launderer. The statute unwittingly created an avenue for illicit funds from overseas to be co-mingled with the foreign exchange reserves of Nigeria as monies from any source could be sold to the Central Bank of Nigeria. Both the *SFEM Decree* and the *FCDA Decree* provided for secrecy and inviolability of money imported into the country. The SFEM Decree also permitted funds from any source to be invested in local enterprises. Experientially, by the combined effect of these two laws, a lot of dirty money was laundered through Nigeria. In practical terms, it is believed that cars stolen abroad are brought here for sale; cash proceeds of crimes are imported, and then exported through the banking system or invested in property or stocks.

A welcome relief to this was introduced by the Money Laundering Decree. Although, Nigeria is largely a cash society with a large informal business sector or "black economy," the *Money Laundering Decree*, nonetheless curtails to a great extent the amount and the way in which cash can be dealt with in Nigeria. For example, the enactment limits cash transactions outside banks and financial institutions to N500,000 for individuals, and N2 million in the case of corporate bodies. There is now a duty on banks to report to the Central Bank of Nigeria, any transfer of funds or securities to and from a foreign country, where such funds or securities exceed \$10,000. The source, nature, and amount of transfer and the names and addresses of both sender and receiver of such funds shall be contained in such report. Securities can now only be purchased by cheque, and no longer in cash, pursuant to the provisions of the *Foreign Exchange (Monitoring & Miscellaneous Provisions) Decree 17 of 1995*. Casinos, being avenues for laundering, are now required to verify the identity of gamblers and record all gambling transactions in detail, in a register numbered and initialled by the Federal Ministry of Trade.

The government, realising that money launderers often cleanse dirty money in banks and financial institutions, have imposed duties on these institutions to help check the practice. Financial institutions must now verify customers' identities in the rigorous manner prescribed by the Decree before establishing a business relationship with them. Persons making withdrawals or lodgements involving

more than the prescribed maximum<sup>14</sup> are also required to be properly identified. Persons are also required to be properly identified if the financial institution suspects that the transaction relates to the laundering of drug money whether or not the transaction is below the prescribed maximum.

Transactions exceeding the prescribed maximum must be reported to the National Drug Law Enforcement Agency, apart from the Central Bank of Nigeria, within seven days of such transaction. The National Drug Law Enforcement Agency may issue a stop-notice concerning such transactions which compels the bank to defer such transaction for a maximum of three days. The National Drug Law Enforcement Agency may further order that the funds involved in the said transaction be blocked.

As mentioned already, special surveillance duties are imposed on financial institutions where a transaction either exceeds the specified maximum, is unnecessarily complex, or apparently lacks economic justification or lawful objective. In these cases, the institution is required to obtain information on the origin and final destination of the funds, the aim of the transaction, and the identity of the beneficiary. A report, which must be kept for at least 10 years, is then prepared and sent to the Central Bank of Nigeria.

Banks are also to allow the National Drug Law Enforcement Agency to place any account under surveillance, have access to any computer system, and to obtain copies of any authentic instrument, private contractor, or commercial record. In order to ensure that the statute is properly implemented, financial institutions are required by the law to educate and train their employees on the activities of money launderers, how to recognise funds that come into the bank for laundering, and develop in-house programmes on how to check money laundering.

As may be expected, the *Money Laundering Decree* creates offences and prescribes heavy penalties. The breach of most of the duties and obligations placed on banks constitute offences punishable under the Decree. Under the law, directors or employees of financial institutions may be guilty of offences punishable with 15 to 25 years imprisonment. Professionals found liable under the decree may be suspended from such profession for a maximum of 5 years. Corporate bodies found guilty under the enactment may face the penalty of being wound-up and their assets may be confiscated by government. Owners of casinos or *Bureaux de*

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14. N500,000 for individuals and N2 million for Corporate Bodies.

*change* who contravene the provisions of the enactment also face stiff penal sanctions.

Laudable as the *Money Laundering Decree* may be, some of its requirements may be difficult to execute. For example, one wonders when it can be said that a transaction appears to have no economic justification or lawful objective and how banks and financial institutions should recognise this. Questions have been raised about how a bank should ascertain the validity of documents presented by prospective customers in relation to opening an account. As mentioned, Nigeria is a cash society, with a large informal sector. Credits are not the norm; neither is the cheque clearing system efficient nor is it free of fraud. Regardless, in order not to totally destabilise the society, it will be necessary to implement this law, with perhaps some modification.

*C. The National Drug Law Enforcement Agency Decree No. 48 of 1989*

The Decree established the National Drug Law Enforcement Agency ("the agency") to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs. It empowers the agency to investigate persons suspected to have dealings in hard drugs. The Decree creates a wide range of offences relating to money laundering.<sup>15</sup>

Under the powers of investigation vested in the agency, it may on the approval of the Federal Attorney General, call upon any person to furnish within a specified time information, returns, accounts, books, or other documents in such person's custody as the agency may require. Banks and financial institutions can be required to submit their records, registers, etc. to the agency's scrutiny.

*D. Other Statutes*

The *Banker Book Evidence Act* enables law enforcement agents to obtain orders to search bank records where criminal activity is suspected. Unfortunately, this statute is not of great assistance in the fight against economic crimes—especially corruption and money laundering. This is in view of the fact that legal

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15. Note, however, that the provision has now been repealed by the *Money Laundering Decree* which creates a more comprehensive range of offences and penalties discussed above.

proceedings must have been instituted in a court before a judge can make an order, under the Act to search the books of a bank.<sup>16</sup>

Section 7(c) of the *Companies And Allied Matters Decree No. 1* (1990) vests powers in the Nigerian Corporate Affairs Commission to investigate into the affairs of companies when it is believed that such an investigation may help to reveal laundering activities and expose companies that are fronts for money launderers. Unfortunately, it appears that the repository of the power does not realise the import of this power, as it is hardly, if ever, used. The same can be said of auditors who under the *Banks and Other Financial Institutions Decree No. 25, (1991)* are expected to report any crime they have cause to suspect while auditing the banks. Indeed, it is believed that the crash in the Nigerian Banking system would have been avoided if auditors and bank examiners had acted prudently and professionally.

#### *E. Tax Legislation*

*The Companies Income Tax Act Cap 60, (1990)* is noteworthy, so is the *Personal Income Tax Decree (1993)*. These laws provide an exception to the rule on confidentiality when the purpose is to obtain full information in respect to profits of any company or person. Banks can also under these laws disclose information on interest paid or credited to any corporate depositor. Banks are further required to prepare a return at the end of each month specifying the names and addresses of their customers to tax authorities.

It may be argued that since the interest of the revenue authorities is ensuring that gains do not go untaxed, the source of profits are not usually scrutinised. The point, however, is that information so obtained could be useful in checking fraudulent practices because the keeping of books may reveal the source of funds, or reveal irregularities. In a developing economy, it will not be unreasonable to permit the tax man to pass information useful in preventing or punishing corruption to the relevant agencies of state.

#### *F. International Co-operation*

In controlling money laundering activities, the Government of Nigeria, realising that the crime is essentially a trans-border offense, has entered into treaties with various countries, or under

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16. *International Merchant Bank of Nigeria Limited v. Magistrate Titus Agbolade & Attorney General of the Federation*. Suit NoM/J126/86 (unreported).

the aegis of various multilateral organisations—undertaking to co-operate in investigations relating to criminal activities. The treaties include the following:

1. Mutual Assistance In Criminal Matters Within The Commonwealth.<sup>17</sup>
2. United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psycotropic Substance (1989).<sup>18</sup>
3. Agreement Between The Government Of The Federal Republic Of Nigeria And The Government Of The United Kingdom Of Great Britain And Northern Island Concerning The Investigation And Prosecution Of Crime And The Confiscation Of The Proceeds Of Crime, 1989.<sup>19</sup>
4. Treaty Between The Federal Republic Of Nigeria And The United States Of America On Mutual Legal Assistance In Criminal Matters (1989).<sup>20</sup>
5. Memorandum Of Understanding Between The Federal Military Government Of The Federal Republic Of Nigeria And The Government Of The United States of America.

The provisions of these various treaties can be effectively employed in checking money laundering activities. They provide for co-operation between parties in the search and seizure of assets, securing the production of official or judicial records, tracing, seizure and forfeiture of the proceeds of criminal activity and so on. Provisions concerning the tracing, seizure, and forfeiture of the proceeds of criminal activity are particularly important in combating money laundering given that a major deterrent apart from imprisonment is seizure of the proceeds of crime.

#### IV. Banking Distress

##### Prologue

It is true that banks have long been subject to a host of criminal activities in Nigeria. Relatively new, however, is the high rate of fraudulent activities in banks, a deliberate mismanagement of investors' funds, and the practice of irregular baking procedures, leading to a systemic insolvency of the banking market.

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17. This has been enacted into law by a Decree in 1988 bearing the same title.

18. See Vol. 3 NIGERIA'S TREATIES IN FORCE (1970-1990) at 603.

19. See Vol. I. NIGERIA'S TREATIES IN FORCE (1970-1991) at 191.

20. *Id.* at 172.

In the early 80s, there were only about 20 licensed banks in Nigeria, and one mortgage bank. Due to the liberalisation efforts of the government, a total of about one hundred banks, three hundred and fifty mortgage banks and five hundred finance houses were licensed between the late eighties and 1990.

This was done without any increase in the supervisory powers or manpower resources of the Central Bank of Nigeria. The corruption that crept into the conservative profession of banking was unparalleled. Within three years, the market and indeed the economy was littered with the debris of insolvency of banks and depositors. Interestingly, this insolvency was brought about not from economic factors, but from the sheer greed, lack of regulation, and resulting corruption in the financial service sector.

Although the *Prudential Guidelines For Banks*, in accordance with the Basle Concordance were introduced in 1990, and better legislation<sup>21</sup> was passed in the same period, corruption in the banking sector continued unabated. In 1994, the Managing Director of the Nigeria Deposit Insurance Corporation identified various types of new corrupt practices in the banking sector.<sup>22</sup> These he listed as Advance Fee Fraud, Cheque Kitting, Account Opening Fraud, Money Laundering, Counterfeit Securities, Loans Fraud, Computer Fraud, Telex Fraud, Cheque Clearing Fraud, Money Transfer Fraud, Letters of Credit Fraud and many others. The more alarming type of corruption was fraudulent lending and borrowing by bank promoters and directors. In some instances, about 80% of the bad loans given by banks were given to its majority shareholders, directors, or promoters.<sup>23</sup> The loss of confidence in the financial market has contributed to driving people back to the underground cash economy—which paradoxically provides a good avenue for money laundering. It is no exaggeration, as reported, that apart from insolvency, suicide, destruction of families, and hyperinflation resulted from these ills. In response to the excruciating pain and suffering in economy, the Federal Military Government promulgated the *Failed Banks (Recovery Of Debts) And Financial Malpractice In Banks Decree No. 18 1994* to

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21. See Central Bank of Nigeria Decree (1991); Banks and Other Financial Institutions Decree (1991); Nigeria Deposit Insurance Corporation Decree (1990).

22. J.U. Ebhodaghe, *Effective Internal Control: Basis For Preventing and Detecting Frauds*, 4 NDIC Q. 1, 28 (1994).

23. See the cases of Kapital Merchant Bank, Alpha Merchant Bank and Gamji Bank which have been put in receivership by the Nigeria Deposit Insurance Corporation, and their Directors prosecuted for mismanagement and misappropriation of funds.



deal with this problem. The Decree established a tribunal with powers to recover debts owed to failed banks and try offences created under that decree, under the *Banks and Other Financial Institutions Decree and National Deposit Insurance Corporation Decree* relating to the business or operation of a bank. The offences include improperly granting or approving the grant of a credit facility with defective collateral, granting of a credit facility in excess of the authorised amount; granting or approving the grant of a credit facility in contravention of law or other regulations, receiving any property or pecuniary benefit in connection with the grant of a credit facility or recklessly approving a loan or interest waiver when the borrower can afford to pay; insider abuse; corporate theft; and fraud.

Sanctions for the offences vary and range from the imposition of fines, imprisonment of offenders, confiscation of assets of offenders, to the winding up of offending financial institutions.

Furthermore, the Decree empowers the tribunal, in certain circumstances, to order a bank to freeze the accounts of accused persons and to supply information and produce books and documents relevant to the account. Failure to comply with the order is an offence punishable on conviction with as much as 5 years imprisonment or a fine twice the estimated value of the property affected by the noncompliance. Convictions and sentences have been handed down, and substantial property recovered under the law. The Nigeria Deposit Insurance Corporation reports<sup>24</sup> indicate a clear reduction in fraudulent practices in banks between the end of 1994 and the end of 1995. The number of banking staff and the amount of money involved in bank frauds have reduced considerably within that period as well. According to the Nigeria Deposit Insurance Corporation, this is the first time that a reduction in bank fraud rate will be recorded in Nigeria. This welcome development can be linked to the *Failed Banks Decree*.

#### V. Effects of Measures Taken & Complaints

However, banks and financial institutions have argued that some of the new laws against economic crimes need to be amended. It is argued that undue burden and pressure have been put on financial institutions in the bid to check and monitor money laundering.

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24. Nigeria Deposit Insurance Corporation. 1995 Annual Report and Statement of Account.

It is said that the approved maximum under the *Money Laundering Decree* is too low and unrealistic in a cash economy like Nigeria where large cash transactions are frequently executed. Central Bank of Nigeria reports indicate that only thirty per cent of the money in circulation in Nigeria is kept in banks. To limit cash payments to N500,000 for individuals and N2 million for corporations is to virtually demand, it is argued, that there be a report on nearly all transactions in the economy. It is believed that this places an immense and expensive burden on the banks.

The view also held by bankers is that the burden of verifying a potential customer's identity is unrealistic. It is said that when forged documents are presented, one is at loss as to how the banks should ascertain their validity. It is impractical to expect the banks to go to public establishments to ascertain the validity of documents presented to them by potential customers. Besides, the argument goes, the already ailing banking sector of the economy cannot waste its resources checking up on every potential customer, and spending time filing so many reports.

Bankers also contend that the reporting format designed by the Central Bank of Nigeria, pursuant to the *Money Laundering Decree*, which banks must obtain and fill in order to comply with the necessary reporting provisions in the decrees discussed, is allegedly too bulky and detailed. They suggest that the report be streamlined and the unnecessary details required therein be expunged.

It is gratifying to note, bankers, however, admit that the Decrees will help in checking money laundering, as far as their work will admit government agencies to better and more easily trail illegal transactions. Though banks claim to feel uncomfortable breaking the principle of confidentiality, and are not persuaded that the Central Bank of Nigeria or the Nigeria Drug Law Enforcement Agency possess the human or technological resources to properly assimilate the information obtained from banks, they admit that if properly implemented, these Decrees would certainly help to curb criminal activities.

Smart criminals, on the other hand, have resorted to opening numerous accounts with various banks and making sure that in any one transaction, they do not lodge, withdraw, or transfer more than the prescribed maximum. Conniving banks also make sure that they do not deal with more than the required maximum in any single transaction.

## VI. Enhancing Existing Measures Against Economic Crimes

Much has been said of the efforts of government to curb corruption. It is fervently hoped that these efforts will produce invaluable results. A few suggestions may be made however on what could further be done to help fight corruption. These include:

First, regulatory and Law Enforcement Agencies must introduce better and technologically advanced investigating techniques to closely scrutinise the activities, as well as sources of funds of businesses which require and utilise large cash outlays, and those which require large and consistent supplies of foreign exchange. Examples are, dealership in imported cars, electronics and spare parts, export firms, finance companies, *bureaux de change* and other informal financial institutions;

Second, law enforcement agents should work closely with tax agencies and with each other in order to utilise whatever information is derived from tax and other enquiries;

Third, in the vetting of prospective participants in banks, more attention must be paid to the business record of such persons over a period of about 10 years. Such records should of course indicate the earnings of such individuals over the period as well as taxes paid for the period. This may indicate clearly whether the participant is being used as a front, or whether he is in possession of funds for the purpose of laundering;

Fourth, there must be a proper paper trail, if developing economies want to avoid corruption. A lifestyle, or spending pattern must be consistent with tax returns and earnings from legitimate sources. No doubt democracy, good government, and the rule of law are ineluctable if corruption is to be abated;

Finally, the simplest contribution which the government can make to the anti-corruption war and has in times past made, is to consistently launch enlightenment campaigns on corruption and economic crimes, its impact and devastating effects on the society, and how to help the authorities check the virus rapidly destroying the society.

It is hoped that Law Enforcement Agencies will properly and honestly utilise the powers vested in them. The powers will, if impartially used, greatly reduce corruption and check economic crimes. A situation, for example, in which the agencies established to curb corruption are themselves corrupt, or corruptly run is abominable. So far, the Nigerian Government's best obvious effort to curb corruption is the *Failed Banks Tribunal*, which has actually

prosecuted and convicted some offenders and recovered some debts.<sup>25</sup>

## VII. Last Word

This paper has focused briefly on a few economic crimes, leaving out analysis of other forms of corruption such as nepotism, bribery, forgery, counterfeiting, etc., which equally harm developing economies.

The late Dr. Nnamdi Azikwe, Nigeria's first president, in his poem set at the beginning of this paper, has aptly described the cancerous phenomenon that is so rapidly disintegrating developing and transitional economies, like Nigeria. The poem succinctly sets out the characteristics of corruption. The first step to solving a problem is its identification and analysis. It is hoped that the identification and description of the problem of corruption will help the authorities develop better strategies to curbing corruption. If is indeed a spectre—very present, inebriated with hubris, power-drunk, brutish, and trickish, eating away at the very fabric of national existence. It must not be condoned.

Educating the public consistently on the need to help save the nation from the plight of corruption is needed. This will, however, be better responded to when the public sees that leaders and highly placed individuals are not among those who blatantly cheat the nation by corrupt practices. What better way to end than referring to the comment of one of Nigeria's leading jurists who says that the key to curbing corruption is leadership by example.<sup>26</sup> When the 'Serfs' can see clearly that their 'Lords' are not cheating on them and improperly amassing wealth, then the admonition to be honest and patriotic will be better heeded.

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25. E.g. debtors and officials of Kapital Merchant Bank and Alpha Merchant Bank.

26. Hon. Justice Kayode Eso, Third *Akintola Williams Lecture on Ethics* titled: ETHICS IN BUSINESS & THE PROFESSIONS "YESTERDAY, TODAY & TOMORROW," June 18, 1996.

