

THE ROLE OF NIGERIA'S DESIGNATED NON-FINANCIAL INSTITUTIONS IN PROMOTING ECONOMIC AND FINANCIAL CRIMES

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Abstract

The Economic and Financial Crimes Commission Act of 2004 is the operational legal instrument for combating economic and financial crimes in Nigeria. However, the Act is devoid of regulatory provisions on the operations of designated non-financial institutions like the regular financial institutions. This lacuna opens a flood gate of criminality especially money laundering. Whatever the case may be, there is a causal link between criminality and national economy. Based on doctrinal analysis, interviews of some designated non-financial institutions operators were conducted to ascertain the sources of their capital and possible investors. The result revealed that while Banks and other financial institutions are under surveillance by the law to ensure economic stability, designated non financial institutions graze without boundaries in its operations serving as a safe haven for economic and financial crimes. Economic and Financial Crimes are major contributors to global economic crisis. Therefore there is an urgent need for EFCC to keep watch over the operations of designated non-financial institutions like the Banks and Other Financial Institutions.

Keywords: Economic, Financial crisis, Financial institutions, designated non Financial institutions, Economic and Financial crimes, Money Laundering.

Introduction

One of the most popular modes of carrying on business in modern times is the corporate enterprise which has greatly enhanced capital creation and expansion, transcending national boundaries. The duty of any state is to protect and secure capitalist relations of production. Failure to provide the requisite protection and security may impede capital creation and investment, which are necessary catalyst for economic growth and development (Ali, 2008)

Various legislations enacted to regulate economic activities in Nigeria include Companies and Allied Matter Act, Cap 20, Laws of the federation of Nigeria (2004) Investment and Securities Act, Cap 124, Laws of the federation of Nigeria, Economic and Financial Crimes Commission (Establishment) Act 2004, Money Laundering (Prohibition) Act, 2004, Corrupt Practices and

Other Related Offences Act 2000 and a host of others which shall be mentioned in appropriate circumstances.

The Economic and Financial Crimes Commission Act of 2004 (which shall be referred to as the EFCC Act as the Context may permit) is the recent legal instrument for combating economic and financial crimes in Nigeria. A careful examination of the Act suggests that Banks and other Financial Institutions operate under the strict surveillance of the law to conform to regulatory and operational standards of ensuring economic stability. Some banks, other financial institutions and designated non-financial institutions sprang up as a result of the liberalization and deregulation policy of then General Ibrahim Babangida's Administration. With utmost conviction, deregulation and privatization policy changed the economic dynamics in Nigeria (Chukkol,

2004). It became clear that some of the Banks, other financial institutions and designated non-financial institutions came on board with dubious intentions (Chukkol, 2004). This led to the scrutiny of these institutions to conform to government set standards. Employing the provisions of the EFCC Act to confirm the appropriate measures of regulating the operations of the designated non-financial institutions in curbing economic and financial crimes, revealed that while Banks and other Financial Institutions are always under a sort of surveillance to ensure economic stability, designated non financial institutions graze without boundary in its operation, serving as a safe haven for white collar crimes particularly money laundering. White collar crimes or economic and financial crimes contribute a fair share to the recent global economic crisis. This economic crisis emanated from global financial recklessness of over spending as a result of unrestricted cash flow from money laundering and other unregulated financial institutions into the main stream economy (Adeola, 2009). The EFCC Act, provides the legal and institutional framework for the establishment of a commission for economic and financial crimes, for the legislation against economic and financial crimes and for matters connected therewith.(Chukkol,2010).

Definition of key terms

Law' and 'economy' are technical terms in their own ways. A less technical but functional definition of some terms in this paper are postulated. Economy (Black's law dictionary) is the management or administration of the wealth and resources of a community (such as a city, state, or country). (Advanced Learners English Dictionary)

'Financial' means monetary or of monetary value. Crisis- is a time of great danger, difficulty or confusion when problem must be solved or important decisions must be made. (Advanced Learners Dictionary)

Financial crisis-simply means

monetary difficulty, danger or confusion which must be solved or important decision made to solve it. (emphasis mine)

The expression "Financial Institution" means banks, body, association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorization and conversion firms, bureau de change, finance company, money brokerage firms, whose principal business includes factoring, project financing, equipment leasing, debt administrations, fund management, private ledger services, investment services, local purchase order financing, export finance, project consultancy, pension funds management and other business as the Central Bank or other appropriate regulatory authorities may from time to time designate. (Section 46 EFCC Act 2004).

Similarly (Section 46 EFCC Act, 2004) defined the expression "Designated Non-Financial Institutions" to mean dealers in Jewellery, cars and luxury goods, chartered accountants, audit firms tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, super markets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate"

The expression "Designated Non-Financial Institution" is determined by the Federal Ministry of Commerce or any appropriate regulatory authority as deemed fit from time to time. It therefore suggests that the list is not exhaustive. A cursory look at the Designated Non-Financial institutions proves that most of the institutions are not bound by stringent rules and regulations to operate, except for professional bodies that have need of professional qualification to operate; even then, how many of them fulfill the legal requirements for registration?

The porosity of operational manual of these non-financial institutions creates a vacuum in the economic sector where illegal funds can move unnoticed from one country

to another; thus strengthening economic and financial crimes.

The expression "Economic and Financial Crimes" means the nonviolent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and Its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods, etc. (Section 46: EFCC Act)

The Problem

Designated Non-Financial Institutions in Nigeria operates with less surveillance making most of these institutions safe haven for criminal activities. The Nigerian Designated Non-Financial Institutions are sort of free in its operations. Most crimes that contributed largely to global economic recession are conveniently perpetrated there, and the proceed flows free to the mainstream economy. These institutions are at liberty in most cases to do whatever they can to maximize profit by any criminal means. Whatever the case may be there is causal link between criminality and National economy.

Objectives

The main objective of this paper is to examine the operational and regulatory modalities of Nigeria's designated non-financial institutions as it affect economic stability in an economic emerging economy like Nigeria.

To fulfill the aim of this study, an examination of economic activities and criminality became necessary.

Secondly, the study seeks to establish the relationship between operations of designated non-financial institution and other financial institution.

Thirdly, the effect of free cash flow in an emerging economy is investigated to find out the causal link between criminality and national economy.

Finally the role of designated non-financial institutions in promoting economic crimes particularly money laundering and allied crimes is examined.

Methodology

The study made use of the doctrinal research methodology to arrive at an indepth analysis of legal reasoning. This pure theoretical research consists of simple research directed at finding specific statement of the law. The secondary sources relied upon are books, journals, articles, interviews with a few designated non financial institution operators to ascertain the sources of their capital.

Classical Corrective Justice Principles and the Role of Designated Non-Financial Institutions in Economic and Financial Crimes

Globalization has become a buzzword in the contemporary world economy following the collapse of the Soviet Union Model economic system, which was based on planned state ownership. Globalization spawned by technological advancement is almost achieving the integration of the international economy into a single capitalist economy driven by liberalization, deregulation, privatization and commercialization of hitherto state owned corporations. Although liberalization and deregulatory reforms are well intended they also resulted in some reckless and criminal conduct by some operators of the system. (Shehu 2005). These reform programmes also facilitated the growth of the informal sector

(Informal sector here means the unregulated finance industries and other money handling institutions such as the Designated Non-Financial Institutions as defined by Section 46 EFCC Act). There are several entry points from which the Designated Non-Financial Institution contributes to the present day economic crisis. For the purpose of this paper Money laundering as a crime, it's phenomenon, trends, intermediaries and consequences shall be discussed.

The main incentive for all the financial crimes is wealth acquisition or money making. Wealth acquisition is the life wire of financial crime and the only way by which criminals (white collar criminals) will benefit from their illegal gains is to disguise, save and invest it in apparently legitimate business activities and there are many in the society now. (Norton 1994). These apparently- legitimate businesses designated as Non-Financial Institutions' carry out business traditionally in a free market economy.

Money laundering is the process of concealing illegal wealth. It is like any social activity. In relative term, its precise definition depends on the context, the preceding activity that generated the money in question. It is difficult to conceptualize a methodologically empirical and mechanically operational definition of the concept. As difficult as this may be, however, the main components of money laundering consists of the method of transportation, e.g. commingling/wire transfer, mechanism for execution through financial or non-financial institutions such as banks, casinos, hotels, bureau de-change. The financial and non-financial institutions serve as intermediaries of transferring proceeds of ill-gotten wealth and subsequently converting it back to the system as legitimate wealth (Shehu 2006). For the purpose of this paper, attention is given to the non-financial institutions role in concealing ill-gotten wealth and subsequent conversion to

legitimate wealth especially proceeds of political corruption in a developing country like Nigeria.

The UN Convention against illicit Traffic in Narcotic Drugs and Psychotropic substances of 1988 defined money laundering as:

The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing illicit origin of the property or of assisting any person who is involved in the commission of such an offence to evade the legal "consequence of his actions... It is the concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or from an act of participation in such an offence. Art 3(b)(i-ii).

This definition is restrictive as it relates to illicit drug trafficking only. Hence the United Nations Convention Against Transnational Organized Crime (2000), strengthened this definition by providing dual criminality in the definition of money laundering. Article 6, section 1(a) (i-ii) established the offence thus:

- (i) The conversion or transfer of property, knowing that such property is a process of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.
- (ii) The concealment or disguise of the nature, source, location, disposition movement of ownership of or rights with respect to property knowing that such property is the proceeds of crime. The U.N. definitions (1988 &

2000) are integrated and adapted for the purpose of this work.

Modern day money laundering has been traced to the activities of organized crime syndicates in early 20th century. Many studies (Adewumi 1996), have connected the origin and history of modern money laundering to the activities of the organized crime syndicate led by one Meyer Lansky in the U.S.A. In the 1920/30 Lansky's syndicate used to hide the "Loot" of Governor Huey Long of Louisiana, U.S.A. through the use of slot machine houses in New Orleans, and smuggles out profit to a Swiss bank and then bring in the fund to U.S. in form of "loans." to Lansky's gang of criminals; thus allowing the proceeds of ill-gotten wealth to return into the U.S. as legitimate wealth. This is a major contribution to global financial crisis.

The major role played by Designated Non-Financial Institution in money laundering crimes is the role of an intermediary or a medium of placement of securities or commodities (Shehu 2006). By intermediaries we simply mean the avenues, trends or channels through which illegal proceeds are commingled and integrated into the formal economy, thus making it difficult to understand the true sources, origin and ownership of such wealth for it to be criminalized or detected.

Results and discussion on findings

The methods used by non-financial institutions to engage in money laundering or any financial or economic crimes are obvious through the following:

(a) Movement of Bulk Cash

Nigeria being a predominantly cash economy makes it possible for a person to load N50 - N100 million into his car boot and move about with it conveniently. It is clear that such amount may be proceeds of illicit drug or a bribe (pay off). This same money can be

invested in Nigeria or outside Nigeria as cash transactions are preferred in Nigeria above the conventional cheque payment (Shehu 2006), with this kind of money in circulation possibly from political corruption could be dispatched for various, seemingly legitimate businesses or could even be stored in a warehouse for a period of time before bringing it out for circulation.

(b) Advantage of transitional economy

Nigeria has been at the cross road of transaction and yet to catch up with the buzzword of globalization. Nigeria is still in the process of integration into the " world capitalist economy. Criminal organizations especially money launders often prefer weak controlled environment or non-existing at all, where corruption is prevalent and pervasive and the polity unstable. The Financial Institutions in Nigeria are trying, to gain balance in the regulatory arena and more is yet to be done to actualize a compliance with laid down, regulation. The non-financial institutions are freelance business men and women with little limitation. The increase by the major financial centres to combat economic and financial crimes in the financial institutions has provided incentives for criminals to shift to emerging markets or transitional economies using the non-financial institutions. This fear had long been expressed in respect of the current privatization programme in Nigeria (Sanusi 2000).

(c) Use of trade and trade free zones

Bilateral trade and trade free zones apart from using a common currency provides opportunities for criminals to mask the true origins of their proceeds. These proceeds from whatever origin could be used to purchase luxury goods and massively export or import such goods as the case may be,

within the freedom of an economic community or free trade zone. In Nigeria, a suspected money launderer, accused of wire transfer fraud, was extradited from Nigeria to face money laundering charges in the U.S.A. (Thursday November 15th 2000). He was reported to have purchased expensive automobiles with proceeds of fraud from the U.S. and shipped them to Nigeria. Such criminals could lower the prices of goods in a competitive market not because they want to create a level playing ground, but because they are interested in creating a permanent network for diluting' illegal wealth into the legitimate economy.

(d) Cash Business Operations

Operation of cash businesses like the restaurants, hotels, food delivery services, casinos promises to be an apparently legitimate business with a high turnover and limited risk. Such businesses are used as "safe houses" or meeting points for criminals to disguise the origin of ill gotten wealth. In Nigeria many of such businesses abound in most parts of the country and could be used as a cover to launder money either from political corruption, embezzlement or even proceeds from illegal drug deals. The use of cash businesses for laundering criminal proceeds has been well documented (Evans 2000).

(e) Precious metals/Jewelry Business
(Proceeds of corruption and other financial crimes are easily moved and disguised in the manner of jewelry dealing in many parts of the globe. Even though the risk of these businesses is relatively high, given the level of insecurity in Nigeria, it is obvious market operation that many jewelry shops spring up over night with assorted jewelries especially gold worth millions of naira. In operation "Goldmine' U.S. law enforcement officers uncovered the activities of one speed Jeyeros (popularly known as Speed jewelers), a Panamanian Gold and Jewelry business man that laundered the narcotic proceeds of many

Colombian drug dealers. In this operation, 1.6 tons of finished gold jewelry, and 2.3 tons of finished silver jewelry were seized. (Shehu 2006). If such an operation is carried in Nigeria, shocking revelations will be heard about owners of these seemingly legitimate gold shops littered all over our market economy.

(f) The use of Specialist

In Nigeria as in many countries, experts such as accountants, auditors, funds managers, and brokers could be hired to handle the masking or commingling illegal proceeds into the financial system. Sometimes other professionals like lawyers/ estate mangers, or travel agents may be used to accomplish the same process (Shehu 2006). Some of these professionals whom have given themselves out as "delinquent white collar professionals" operate legitimately in the international financial arena. The use of specialist is one of the most successful intermediaries of financial crimes because of the immunity they enjoy, cost effectiveness and the advantage of anonymity. This anonymity is provided because most of the transactions are paperless. (Shehu 2006).

As International regulatory regimes are increasingly becoming more strict on the banking and financial institutions, criminals have resorted to other non banking/non-financial institutions for financial and economic crimes. The commonest non-financial institutions used for financial and economic crimes include the intermediaries discussed which are basically designated non-financial institutions. (Shehu 2003). The main instruments include cheques, and other guarantees. Unfortunately, some of these intermediaries have not been included among institutions expected to render suspicious transaction reports in some jurisdiction Nigeria inclusive. (See FATF).

Effect of Economic Crisis on the Nigerian Economy

The current economic recession is doing harm to many countries, but to Nigeria the crisis is an acid test. If Nigeria utilizes this opportunity properly, it may benefit from it by exploring its potentials and leap to greater heights. As oil price dwindles, government must shift attention to other areas of the economy and become a producing and exporting country. This will in the long run reinvigorate the country's non-oil sector which has a lot of economic viability currently wasting away.

It is a notorious fact that the Nigerian economy is largely import dependent with one major source of revenue i.e. oil. The economy is fully integrated in the global economic system and therefore will be adversely affected if appropriate measures are not swiftly taken. Currently the scale, depth, breath and impact of the current global economic crisis are yet to be fully dimensioned. (Babalola 2009). Be it as it may the economic crisis is gradually heating up in Nigeria. Due to lower oil prices, Nigeria's favourable external environment has deteriorated sharply that pressure is already mounting on all government projections for programmes in 2020.

It is difficult to predict with certainty any event. It appears that the injections of funds, mergers and acquisitions have restored a measure of stability to the banking system. Nevertheless, dependence on federation account can no longer sustain all the tiers of government. What is more worrisome is that the ratio of recurrent expenditure to capital expenditure is 70:30 and when inflow declines by 35-45%, the consequences are better imagined (Babalola 2009).

It is not possible to realize all the electoral promises by state government unless they begin to generate their revenue internally. It is not out of place to generate at least 15% of their revenue.

The worst hit sectors are the banks and other financial institutions whose investments are in securities like shares. The

drastic economic crisis in the stock market was a ridiculous tide. Massive investment in the stock market some few years ago made so many people pseudo-millionaires. But today the lamentation of the stock brokers and investors calls for concern and the need to salvage the situation by some fiscal stimulus. (Adeola 2009)

As for the banking sector liquidity will be greatly impacted. The public sector is the largest provider of fund in the financial system. The reduction of revenue in the public sector will definitely trickle down to the private sector. To survive the hard times ahead reduced spending and hard work is the only alternative. Banks will be extremely careful in extending facilities for viable ventures and what this means is that there is going to be a slow down in the economy both from the perspective of-growth as well as the perspective of profitability and return on investment (Adeola 2009).

There are multitude of legislation aimed at fighting economic and financial crimes such as Money Laundering Act, Corruption and other Related offences Act, failed Banks Act, The Banks and other financial institutions Act, Advance Fee Fraud and other Fraud Related offences Act, The National Drug Law Enforcement Agency Act, and Economic and Financial Crime Commission Act (Chukkol 2004).

A careful examination of these legislation suggest that apart from the Economic and Financial Crimes Commission Act, none of the legislation took cognisance of designated non-financial institutions. Even the Economic and Financial Crimes Commission Act only gave a passive definition of the designated non-financial institutions. However, the activities of these non-financial institutions in respect to economic and financial crimes are more devastating than the offences committed by Banks and other Financial Institutions.

Recommended Measures of Tackling Economic and Financial Crimes

Given the unprecedented scale of the current financial crises (an offspring of financial crimes) focus on economic and financial crimes is more relevant than ever. Because the link between declining economic conditions and crime has been well publicized, there is a need to adapt new anti-financial crime strategies which include:

- a. The designated non-financial institutions should as a matter of urgency be made to operate under the surveillance of Banks and other financial institutions Act.
- b. There should be an infrastructure to co-ordinate public/private sector intelligence sharing to tackle economic and financial crimes perpetrated by the operator of these non-financial institutions.
- c. The unconventional crimes that confront our society today are usually committed via-electronic commerce (e-commerce) with no artificial barriers as international boundary lines no longer have much significance to our every day life. Socio-economic and political affairs are also conducted as if distant land and far ends of the world have become neighbors (Ozekhome 2005).
Therefore, the need for Nigerian law enforcement agencies to collaborate with the international police organization (Interpol) cannot be over emphasized.
- d. Current conditions present us with a unique opportunity to prepare for the future by tackling weak practices now and to clear up the debris of the past to make the society hostile to criminals, by imposing capital punishment on white collar criminals

rather than the fancy plea bargain advocacy.

- e. It is generally recognized that wholesale change is required at a global level to address the current issues in the financial markets. In the same vein wholesale attitudinal change is necessary to tackle economic and financial crimes in Nigeria. An attitudinal change away from the view of material possession/acquisition whether by fair or foul means, "get rich" syndrome once in political or executive office, moral decadence of the society and above all corrupt leadership.

Conclusion

The global economic crisis has led to sharp contraction in aggregate output and employment. Nigeria is profoundly experiencing the bitter pills of economic crisis as it grapples with contracting global demands, declining exports, volatile international oil prices, restricted access to capital flow and by extension declining revenue accruing to the federation account as a result of Money Laundering and Other White Collar Crimes.

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