# THE ROLE OF BANKS AND OTHER FINANCIAL INSTITUTIONS IN THE FIGHT AGAINST ECONOMIC AND FINANCIAL CRIMES IN NIGERIA*

## 1.1 INTRODUCTION

We all can recall that in the second Republic, President Shehu Shagari, introduced an "austerity bill" in the National Assembly in Lagos when it became apparent that all was not well with the economy. Indeed the bill was drawn up after late chief Awolowo's observation that Nigeria's ship was economically heading for the doldrums. Shagari's eventual ouster brought into power the rather iron-fisted Buhari's regime whose principal economic legislation was the Miscellaneous Offences Decree[1]. Indeed as regards offences involving drugs and psychotropic substances in particular, the Decree became the nucleus of other subsequent legislation - e.g the National Drug Law Enforcement Agency Act of 1989[2]. General Buhari's regime lasted less than two years when it was sacked in a so called "palace coup" and, when the dust settled, "an affable and humane" General Ibrahim Babangida emerged at the head of yet another military junta. Indeed after some few months of settling in and after taking on the title of President, General Babangida started to unveil his economic programme. It is fair to say that the main thrusts of that programme are still more or less with us today. For instance:

a. From the introduction of Structural Adjustment Programme (SAP) to this day the national currency the Naira has lost so much value that it is now often referred to as "ganyen banza" i.e. useless leaves!

b. Deregulation, Privatisation and such other western blueprints have come to dominate our socio-economic discourse since the mid/late eighties so much so that atime it sounds as if Governments are totally absolved from doing anything for their citizens.

c. Privatisation in particular is being pushed too hard today that it leaves many to wonder whether, before this decade runs out, Nigeria itself would not be rechristened "The Federal Republic of Nigeria Ltd".

It must be candidly stated that the introduction of SAP, Deregulation etc brought about a changed socio-economic dynamics in Nigeria. For one thing, dozens of banks and other financial institutions sprang up, many with dubious intentions! Can we ever forget the nice adverts of Forum and the like on the National Television? As a consequence the Government –especially the Federal Government - had to bring into their statute books many legislation to deal with, or at least give the impression of dealing with, the galloping crime rate in the country, mainly the economic/ financial type. In other words with the economy deregulated or "liberalized," a growing number of people also felt at "liberty " to do whatever they can to have a slice of the national cake since it cannot be denied that there is a causal link between criminality and the national economy.

## 2.2 PROBLEMS OF DEFINITION

Law, Economics and Finance are very technical subjects in their individual ways but one would strive to be as less technical as possible. Even at that, one cannot but feel compelled to give functional definitions of some key terms in this article. The expression "Economic Crime" is defined in section 40 of the Economic and Financial Crimes Commission Act[3] as follows:

> *The non violent criminal and illicit activity committed with the objective of earning wealth either individually or in a group- thereby violating existing legislation governing the economic activity of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting, any form of corrupt malpractice, illegal arms deal, smuggling, human trafficking and child labour, oil bunkering and illegal mining, tax evasion, foreign exchange, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods et. cetera.*

The expression "Financial Crimes" is not as exhaustively defined as above in any of our statutes but we believe for good reason since much of what may be put up as a definition will substantially cover part or parts of the definition of economic crimes under section 40 of the Economic and Financial Crimes Commissions Act 2002. The only thing to note perhaps is that "Financial crimes" are normally committed by or against "financial institutions" The expression "Financial Institutions" on the other hand can be defined as "entities whose main activity is financial intermediation- such as Banks, Insurance Companies, Securities firms, Brokers and Pension Funds.

Do we need to define "a bank" since most of us have our money there? Legally a bank can be defined as a company (public or private) incorporated under the Companies and Allied Matters Act and having a licence to carry on "a banking business" under the Banks and Other Financial Institutions Act.

## 3.3 CULPABILITY OF BANKS IN FINANCIAL/ECONOMIC CRIMES

The legal regime of yester years had difficulty in ascribing criminal liability to corporate entities. For one thing, they were not considered as capable of having the all too important requirement of mens rea. For another, they cannot, like other convicted natural persons, be sent to prison which was/is the most widely used criminal justice disposal method under our system.

However, with the emergence of corporations and corporate governance over the last decades, penal systems the world over had to have a re-think. Under our current laws corporate entities are now clearly criminally responsible and may suffer punishments ranging from stiff fines to being ordered to wind up. Thus banks as corporate entities, can commit a variety of offences through their directors' deliberately flouting legislation that govern their operations. In these situations the directors are considered as the banks themselves[4]. In addition to a company's liability, individual directors or other officers of the company are also sometimes made personally liable and, as regards their own culpability, they can be sent to prison. Some of the crimes prevalent in the banking industry include the following and, in some, the banks themselves are the victims:

(1) Cashiers and others take I.O.U.
(2) Over-invoicing of capital items
(3) Abuse of the medical care scheme.

(4) Collusion with robbers (like the Wahum robbery incident in Lagos in the 1970s)

(5) Hiking repairs bills on assets - e.g. on cars A/cs etc.

(6) Fake boarding of serviceable items – e.g relatively good car or A/C being sold to a corrupt official at very low prices.

(7) Cheque kiting- i.e. the practice of allowing a depositor to get a credit/loan from a bank against his uncleared cheques. This amounts to giving him a credit facility, which is very slippery at best since there is no collateral.

(8) Banks' management staff may engage in outright theft of banks property. Perhaps the most well known case is that of Federal Republic of Nigeria V.S. Bello Abubakar.[5] where accused, the MD/CEO of Gamji bank, diverted money meant for the training of his staff to his own private account at Lloyds Bank London- among other illegal diversions of funds. He was convicted and sentenced to three years imprisonment by the Appellate Tribunal even though Gamji Bank itself "did not fail"

(9) Banks most senior management staff may also, for their monetary benefit violate, on a massive scale, the provisions of the BOFIA and other rules of banking practice to the extend that their banks themselves fail with depositors losing their deposits. One of the most famous cases in this category is the Federal Government of Nigeria v. Ifeqwu & Ors.[6] where three companies owned by a non-executive director but "bosom friend" of the Alpha Merchant Bank's Managing Director /CEO got foreign-exchange from the bank without first depositing the Naira equivalent of the foreign currency, in effect enjoying a credit facility without any security contrary to BOFIA and FBA. That and other misdeeds committed by the bank's management were so monumental that the bank itself collapsed with millions of depositors' money going down the drains.

Other financial institutions where crimes are committed also include brokerage houses, pension houses, insurance companies and over the counter dealers such as the various bureaus de change dotted across the country. For instance a *bureau de change* may be a perfect place to engage in all kinds of sharp practices e.g passing of counterfeit money as genuine money and even money laundering [7].

To combat those possibilities, the Money Laundering Act requires all financial institutions to clearly identify their customers and to draw up a list, in chronological order, of all transactions that exceed the value of N 500,000 (for individual) or N2,000, 000 (for corporate body) and forward same to the Central Bank. For the over the counter transactions involving the bureaus, section 3 of the Act fixes the limit at 100,000 dollars. However-

(a) It is felt that the 100, 000 dollars limit for the bureaus is rather on the high side. It is submitted that the limit should be lowered to about 10,000 dollars.

(b) It is also not clear from our circumstances in Nigeria whether the terms "casinos", "Bureaus de change" *et. cetera* really include those the Lagosians would refer to as "Malams" in Bristol Hotel or Tinubu square. Have our statutes really taken care of those outfits where indeed one can change millions of naira into whatever currency desired? It could be asked, are the rules governing over- the-counter transactions (e.g. compiling names and making report to the CBN) applicable to these "Malams" also? Some certainly give the impression that they are not governed by any law at all!

Finally, financial institutions that run foul of the Money Laundering Act are liable to suffer stiff penalties under sections 15,16, and 17 of the Act. The latter relates to liability of directors, managers e.t.c.

## 4.4 FRAUD IN THE INSURANCE INDUSTRY

This writer can say, that no matter what anybody says, the Insurance Industry is, to many people, the most prone to financial abuses and outright criminality. Fresh from the University with a law degree in 1971 the writer had a personal taste of what a motor vehicle insurance was and how potent (impotent) it could be in meeting up clients' losses in case of accident. Many years later, though beaten once, one fell into another trap with an Education Endowment Scheme from yet another insurance company. After months of delays and countless calls to their office, only a fraction of what had been paid them over four or five years was repaid the rest withheld, they said, for administrative costs! Indeed one had thought of the opposite- i.e since my money over the years could have been re-invested with interest by my insurers, it was I that ought to have received something higher than what I had paid in. All the same I was happy that we finally parted ways, I believe, forever!

The National Insurance Act 2003 governs the Insurance Industry in Nigeria. The National Insurance Commission oversees insurance industry in Nigeria. Apart from one's personal experiences as was highlighted above, there are many examples of other frauds that Insurance Companies may be engaged in and these may include.

(a) Floating high sounding but false insurance schemes. (E.g In the banking Industry we normally hear of "new products" not all of them well intentioned).

(b) Faked arson and staged accidents- This may involve dubious outsiders collaborating with the big bosses of the insurance outfit to dupe their companies of large sums of money.

(c) Collecting money as premiums from the customers for the various policies (Individuals or corporate) but vanishing into thin air when the time comes.

Indeed the non-settlement of claims and evasion of their responsibility are the most ugly features of the Nigerian Insurance Industry today.

## 5.5 WAYS TO COMBAT CRIMES BY BANKS /OTHER FINANCIAL INSTITUTIONS

There are many instruments that can be used to fight economic and financial crimes. These include-

(a) Legislation: Apart from the traditional criminal legislation i.e. the Criminal Code and the Penal Code, we now have a multitude of legislation that aimed at fighting economic/financial crimes. The main ones are the Corruption and other Related Offences Act, the Money Laundering Act, the Failed Banks Acts, The Banks and other Financial Institutions Act. The Advance Fee Fraud and Other Fraud Related Offence Act, the National Drug Law Enforcement Agency Act and the more recent Economic and Financial Crime Commission Act. Furthermore, the traditional Law Enforcement Agencies such as the police are also handy.

Looking at the number of legislation and the various courts to which accused persons are taken, one may be excused for saying that perhaps the situation is a little untidy and cloudy. It would seem that Nigeria was so shocked after the 1980s by the enormity of the problem that it thought of little else than churning out laws. Indeed, some of the legislation and the courts structure seem to suggest a lot of duplication. For instance under the anti-corruption Act it is the states' court that have jurisdiction to try offenders, yet "bribery" is one of the economic crimes defined in the EFCC Act which may be also triable by the Federal High Court. For the NDLEA, the Money Laundering and the Failed Bank Acts it is the Federal High Court that has jurisdiction to try offenders. One may ask whether that is not too much of a burden on the court. Again the EFCC Act in section 6(2) says "the Commission is charged with the responsibility of enforcing the provisions of the Money Laundering Act 1995, the Advance Fee Fraud and other Fraud Related Offences Act 1995, the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act 1994, the BOFIA, the Miscellaneous Offences Act and any other law or regulation relating to economic and financial crimes." In other words the EFCC has been saddled with a responsibility that is very enormous. Does it have the financial and manpower resources to carry out these responsibilities? The Hope, of course, is that the Federal Government must do every thing in its power to make it possible for the EFCC to effectively discharge its onerous responsibilities. That is if the Government is indeed serious in fighting economic and financial crimes as it says it is.

(b) Modern training to detect the sophisticated present day crimes in the banking sector is a must if we hope to curb the rising wave of crime in that sector. This need is particularly important to fight crimes that are associated with modern day gadgets such as the computer.

(c) Likewise our police force must be modernized to be abreast with the unconventional crimes that confront our society today. Our law enforcement agencies must collaborate with others around the world and, for the police in particular, the Interpol based in France could be much utilized. Further, especially as regards crimes involving drugs the NDLEA must tap the resources of those who had been battling with the problem for along time e.g the USA. In the commonwealth countries there is a legislation titled 'Mutual Assistance in Criminal Matters among the Commonwealth Act', which has eased extradition and jurisdictional problems that may arise where criminals cross borders after perpetrating their heinous activities in particular countries.

(d) The need for the regulatory authorities such as the Central bank and the NDIC to sit up and do their jobs diligently cannot be over emphasized. If there are people in those outfits who are corrupt, then they should be fished out and dismissed. For instance how come that a bank that is neck deep in deficit in its deposit with the Central Bank be allowed to continue operating as though nothing is amiss? These are some of the questions people are now asking in the Bank of the North saga.

(e) Banks and other financial Institution must strive to employ and retain only people with unquestionable integrity. Detailed background checks must be made to weed out those whose characters are questionable. Again people who work in banks and other financial institutions must not adopt ostentatious life styles which are incompatible with their calling. That is even if their lifestyles can be explained i.e fall within their legitimate incomes. A one time secretary of the Treasury in the U.S. Mr. High McCulloch, had once observed:

> "If an officer of a bank lives beyond his income, dismiss him even if his excess of expenditure can be explained consistently with his integrity, still dismiss him. Extravagance, if not a crime, very naturally leads to a crime.

## 6.6 DIFFICULTIES IN FIGHTING ECONOMIC AND FINANCIAL CRIMES

With much legislation in our statute books can one say the fight to stamp out economic crimes (bribery inclusive) is winnable? I am not very optimistic in the short term for the following reasons:

1. Ours is a very materialistic society where money and other worldly possessions are given a prime of place. Many Nigerians do not ask questions and demand answers from those that "had made it" by fair or foul means and where amassing of wealth is everything, everybody is striving hard to join the privileged few.
2. Closely related to the above is the way our society is organized. To get into Politics and exercise political power to change things will depend solely on the size of your purse. Even at that there is no guarantee that even those with bubbling ideas will not be afflicted by the "get rich" syndrome once they assume political office.
3. Moral decadence of society- It would seem that when white collar and other economic crimes are involved, even God would seem to be kept at bay. Otherwise since most Nigerians belong to one

religion or the other, why should religion not be used to fight economic and financial crimes? The way religion is practised in Nigeria today, however, will beyond doubt show that religion or morality has little braking influence in our quest to acquire wealth "any how"!

4. Corrupt Leadership – We all can recall the last military regime's record in managing the economy. Strangely, it was that same government that promulgated the Failed Bank Decree. From what went on it would now seem that for crimes that involved is top echelons, that regime turned a blind eye. For instance in a paper delivered at British-Nigeria Law week in 2001 at Abuja Mr. Toby Graham had reported a suspicious dealing at the Citibank, London where a junior official at the bank was quoted as making the following remarks:

> "I just do not feel right about this deal. It has typical characteristics of a 419. A women's group in Nigeria apparently has 210 million dollars to spend on vaccines and is prepared to pay 55 million dollars upfront against a guarantee issued by Citibank ... Sounds like a run to you?".

It can be recalled, of course, that the organizations involved in the importation of "vaccines" were the so called FSP and the FEAP one of whose real objective was to serve as vehicles for amassing wealth abroad by the erstwhile rulers.

Again during the Babangida's "learning process" we had the case of <u>Chief of General Staff v. Bennard Odulana</u>[8] where a junior customs officer had reported a colonel being involved in smuggling of goods from Benin but the officer got an instant dismissal for that revelation. Mr. Odulana who was the then Secretary General of the Customs Workers Union took up the case but also got instantly dismissed and his union subsequently banned. We can also recall that just before "stepping aside," Babangida signed a Decree[9] returning most of the properties earlier confiscated to the Federal government by erstwhile corrupt political office holders to them. Perhaps that was a parting gift? One may say that under the current democratic dispensation, things may not be as gloomy as they were during the military era, but one is not too sure if we are indeed out of the woods yet.

5. Unfortunately some aspects of our criminal justice system may be unwittingly helping criminals in our society. For instance our adversarial system of criminal justice, which treats everyone innocent

until proven guilty, may work to the detriment of a financial organisation, or indeed of any organization. It is submitted that a system which treats everybody as a crook until they prove otherwise is more likely to protect and safeguard the interest of an organisation especially a financial organisation. It is instructive to note that, that stance is not unheard of having regard to the concept of "unjust enrichment" under the Recovery of Public Property Act.

6. Despicable roles of professionals- Quite often a 'criminal' walks home as a free man or even avoids arrest, thanks to the professional 'competence' of our citizens. For the legal profession we have the injunctions and the endless adjournments. Added to these is the euphemism called "Technicality "epitomized best in the case of Federal Republic of Nigeria v. C.I. Anyaebunam[10]. The accused was the M.D of Group Merchant Bank, a bank incorporated under the old Banking Act. On being charged under the Failed Banks Act the accused, himself a lawyer, though this counsel argued that the Group Merchant Bank was not "a bank" since it was incorporated under the erstwhile Banking Act and the current banking legislation i.e BOFIA did not contain " a saving clause" in any of its provisions.

Furthermore, accused submitted that the Group Merchant Bank had obtained a licence to embark on a banking business earlier than its certificate of incorporation, thus becoming a bank before it become a company- a situation that would have violated the provisions of the Banks and other financial Institutions Act. The Tribunal however "brushed aside" these submissions as to be capable of defeating the ends of justice if they were to be upheld. It is instructive to note that even the Supreme Court has now accepted the principle that procedural and other technicalities should never be allowed to prevent courts form doing substantive justice in cases that come before them.

For the Accountancy profession we can recall the Enron saga in the United States and the role played by a famous audit firm – Arthur Anderson. In Nigeria one can wonder where were all the audit reports for the many banks that failed? Indeed it was once said that audit reports are anything but objective and are indeed tailored to satisfy the management that engage the audit firms. It is submitted that all audit firms that churn out unreliable reports should henceforth be held accountable with stiff penalties also visited on them.

## 7.7 CONCLUSION

It is our prayer that the wave of criminality in our financial institutions and in the society at large will be minimized so that our economy which is by no means buoyant today – may not collapse totally.

## END NOTES AND REFERENCES

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