

**COMBATING CORRUPTION IN A “FAILED” STATE: THE NIGERIAN ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)**

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**ABSTRACT**

Corruption is a complex and persistent cancerous global phenomenon, which bedevils Nigeria. In Nigeria corruption in the form of misappropriation, bribery, embezzlement, nepotism, money laundering etc. by public officials have permeated the fabric of the society. Major political parties’ office seekers top the list of unfit or corrupt officials. Elected officials of high echelon and public officers use their position of authority to actively engage in corrupt activities. It is estimated that corruption accounts for 20 percent of the GDP of Nigeria. For several years Nigeria has been at the bottom of the TI CPI ranking. In 2002, the Nigerian government created the EFCC to investigate and prosecute cases of corruption and financial crimes. This paper reviews the political economy of corruption and the efforts by the Nigerian government to combat it by examining the types and forms of corruption and the various perspectives for understanding the causes of corruption. The study while recognizing the importance of the various perspectives, notes that both the institutional and rent-seeking theories offer deeper insights into the systemic corruption activities. Finally, the paper examines the activities of the EFCC and notes that it faces serious challenges, as the configurations of the Nigerian political landscape are uncertain.

Keywords: Corruption, financial crimes, tsar agency, rent seeking, globalization, electoral corruption, immunity clause, failed state

## **Introduction**

Corruption is a complex and multifaceted phenomenon, which characterize the global economy. Although a global problem the attitude of many countries, especially developed countries was to bemoan the practice of corruption in developing countries and ignore the role of foreign officials who gave bribes and public officials who laundered corrupt proceeds in foreign financial institutions (Harsch, 1997). Until recently many industrial countries (except the United States) considered bribe giving by national companies operating overseas a legitimate business practice, and therefore tax deductible (Harsch, 1997). In Nigeria, as in many African states, corruption is a malaise that inflicts the society. Corruption drains from African countries over \$140 billion per year (Ribadu, 2007a). Corruption deters investment because it is a disincentive to potential investors; it distorts public expenditure, increases the overheads of running businesses, and diverts resources from poor to rich countries.

Corruption undermines the process of globalization. Accordingly, states and many supranational governmental organizations have initiated and established broad anti-corruption regimes and advocacy programs to combat corruption. For example, the Organization of Economic Cooperation and Development the Council of Europe, the Organization of American States, the African Union (AU), the United Nations (UN), the United Nations Development Program (UNDP), the International Monetary Fund (IMF), and the World Bank have introduced conditionalities, policies, and measures to deal with corruption. For example, the Organization for Economic Cooperation and Development (OECD) was instrumental in recommending the cessation of the practice of making bribes paid by foreign businesses tax deductible and criminalizing officials involved in bribery, creating the Anti-Corruption Network Action Plan, and establishing the Convention on Combating Bribery of Foreign Public Officials); the UN created the UN Convention Against Corruption (UNCAC) with 140 signatories. The AU established the African Union Regional Anti-Corruption Convention, and the United States uses anti-corruption measure as threshold criteria for selecting countries for assistance under the Millennium Challenge Account (Brainard *et al*, 2003). Other non-governmental international organizations have also been active in the fight against corruption. For example, the German based Transparency International (TI), which has provided strong leadership not only in the areas of research and publications but in advocacy and sensitization of the public against the evils of corruption.

Various scholars and organizations have defined corruption differently. One of the widely cited definitions of corruption is that proffered by Nye (1978) in which “corruption is a behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status-gain; or violates rules against the exercise of certain types of private-regarding behavior”. The World Bank (1997) defined corruption as “the abuse of public office for private gains”. This includes, when public officials accept, solicit or extort bribes; and the private actors offer bribes to subvert or circumvent public policies for competitive advantage and profit”. Similarly, the UNDP (2004) defined corruption as the “misuse of public power, office or authority for private benefit – through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement”. Yet the TI (2002) defined corruption as “an inappropriate or illegal behavior of the public sector official (politician or public officer) by misusing the entrusted power for private gain of the person or related people. It is usually an activity that is outside of constitutional government process, which involves the sale of publicly produced goods and services by government employees for payment or bribes not sanctioned by the government”. Corruption is a form of rent-seeking enterprise or activity, which is illegal, or an unauthorized transfer of money from one person to another (or group to group), or an in-kind substitute.

There is a substantial body of literature on corruption (Klitgaard, 1988, 1991; Rose-Ackerman, 1975, 1996a, and 1996b; Shleifer and Vishny, 1993, 1998; Bardhan, 1997; Elliot, 1997; Jain (ed.), 1998, 2001a, 2001b; Aidt, 2003). There is also a corpus of country-based and sector-based studies on corruption in developing countries, which show not only the ramifications but the lively market that corruption creates especially in parts of the bureaucracy that can generate huge bribes (Wade, 1985; Kpundeh, 1995; de Dois and Ferrer, 2000; Mendoza, n.d.; Virtucio and Lalunio, n.d.; Kallon, 2003). The literature on corruption in developing countries generally suggests five strands of hypotheses as explanations for the causes of corruption, namely, rent-seeking, cultural relativity, low salary, imitation and institutional/political centralization. Early literature on corruption stressed the effects of corruption and therefore was characterized by the development of models, such as the ‘equilibrium queue model’ (Lui, 1985); and the ‘auction model’ (Becker and Maher, 1986). Some scholars argue that corruption can make positive contributions to the economic and political development of an economy. For examples, Myrdal (1968) and Leff (1970) point out the significance of corruption as a deliberate tool of administrative delay, which attracts more bribes, and a lubricant to otherwise sluggish economy. For

both Merton (1958) and Abueva (1970) corruption in the form of nepotism, spoils and graft perform requisite function to aspects of political development such as unification and stability, popular participation in public affairs, development of viable political parties and bureaucratic responsibility. Abueva (1970) further noted that in capital, hungry economies of developing countries large-scale graft, which funnels capital to struggling entrepreneurs, aids them in creating industries. Lui (1985) using the 'equilibrium queue model', pointed out that corruption minimized average time costs of waiting for services as government officials were able to reduce waiting time for customers who were able to pay bribes when government demanded uniform price for public goods which it could not price-discriminate. Similarly, using the 'auction model', Becker and Maher (1986) opined that corruption could be used as a useful practice for competitive bidding for the allocation of licenses to entrepreneurs who offer the highest bribes. Others contended that corruption could facilitate efficient allocation of resources because it was a cheap way to distribute wealth amongst politicians and agents in the private sector (Shleifer and Vishny, 1993), thus allowing the private sectors to buy their way out of some of the inefficiencies that would have otherwise been introduced by politicians. On the contrary, others such as Klitgaard (1988), Mauro (1995), Knack and Keefer (1996), Rose-Ackerman (199b), Kallon (2003), and the various studies by IMF, TI, World Bank, and UNDP show negative impacts of corruption on investment, growth of the economy and the political process.

Nigeria is not significantly dissimilar to many developing countries. However, this study focuses on Nigeria for the following many reasons. Although most of the studies on corruption focus on developing countries, there is lack of or limited studies on corruptive practices and its debilitating impact on Nigeria, and as yet no studies on the role of a tsar agency in combating corruption in Nigeria. Nigerian is the most populous country in Africa, with an estimated population of 144.7 million in 2006. The economy is heavily dependent on petroleum, which sustains corruption activities (US Senate Kerry Report, 1993). According to TI Report (2005), corruption accounts for about 20 percent of its Gross Domestic Product (GDP). It has been acknowledged in many quarters that corruption is Nigeria's worst problem, which is responsible for its woes, such as the instability in the Niger Delta, the debt overhang, barrier to democratic elections, and impediment to flow of foreign direct investment (FDI) (Ribadu, 2007b). Corruption was partly responsible for the collapse of the first and second republics. These interesting facts make the choice and significance of Nigeria apt especially as it is one of the few

countries in Africa that has taken a bold step to set up a tsar agency to investigate and prosecute perpetrators of corruption activities.

Over the years various administrations in Nigeria have articulated policies and measures designed to combat corruption. Examples include General Murtala Muhammed's crusade of confiscation of assets illegally acquired by Nigerians; Shehu Shagari's ethical revolution to combat corruption through the introduction of code of conduct for public servants, General Buhari's operation war against indiscipline, General Ibrahim Babaginda's ethical and social mobilization crusade, etc. These efforts have been largely cosmetic attempts to address a systemic problem that is deep-rooted in the fabric of the country. In its effort to fight corruption and create credibility to attract international investments, the Obasanjo government among other things established the Economic and Financial Crimes Commission (EFCC) Act 2002. The EFCC is charged with wide-ranging responsibilities within the context of preventing, detecting, investigating, and prosecuting all cases of economic and financial crimes in Nigeria.

The intent of this paper is to examine the scope and severity of corruption in Nigeria and the attempt by the government to combat corruption through the creation of the EFCC. To this end, the paper discusses the political economy of corruption by examining the various types and forms of corruption in Nigeria and the different theoretical models for explaining the causes of corruption. Finally, the paper reviews the structure, role and activities of the EFCC and its continued relevance in the political process.

### **The Political Economy of Corruption**

This section examines the types, forms, and causes of corruption in general with reference to Nigeria.

#### *Types of Corruption Activities in Nigeria*

Based on existing studies on corruption, the following types of corruption are discernable in Nigeria:

*Political:* This is the sale by government officials of government property for personal gain. It involves the use of public office by politicians both for financial gain and purposes of remaining in office. It is further facilitated by the creation of rent seeking projects.

*Bureaucratic:* This involves the use of public office for pecuniary gain. Bureaucratic corruption is common in Nigeria because the government plays crucial roles in the development process, especially intervening in the domestic economy. It is also common where there is instability in government and lack of tenure, which drive bureaucrats to engage in rent seeking opportunities for personal aggrandizement. Socio-economic conditions, such as poverty and inequality, cultural norms and practices, such as kinship loyalty not only impinge directly on public officials but also shape their behavior.

*Electoral:* Electoral corruption occurs when people, whether endowed with political clout or not, illegally try to buy influence through illegal payoffs such as illegal funding of campaigns, illegal campaign contributions, bribes, buying of votes for cash or other inducements (i.e. paying voters to vote, thereby influencing their choices), promise of contracts or other favors etc. Electoral corruption may also take coercive forms, such as paying thugs to intimidate or threaten supporters of a candidate in order to compel supporters to vote for the candidate who employed the thugs or stop them from voting entirely. Electoral corruption can lead to outright rigging of elections; expectation of reward once victory is achieved, or encouraging quid pro quo deals (Etzioni, 1988). It can include weak credible opposition politics, and the undermining of democratic values, especially where there is a conflict between the politicians' interests and those of the public.

*Corporate:* Corporate corruption occurs in the relationship between private business corporations and their vendors or clients. It can also take place within a corporation when officers use company's resources for private aggrandizement, at the expense of the shareholders (Bhargava, 2005).

### *Forms of Corruption in Nigeria*

According to Shleifer and Vishny (1993), corruption may take the form of "corruption without theft" or "corruption with theft." The former takes place when an official demands bribe but passes on the regular payment to the government. This corrupt practice occurs when an immigration officer charges a bribe in addition to the official fee for issuance of national passport, but passes the license fee on to the state treasury. The latter occurs when regular payments for goods or services are not made to the government. This corruption occurs when a customs officer lets goods enter the country without paying the

corresponding duties in exchange for bribe. Border stations in Nigeria are intersections where corruption among different government agencies is rife.

Corruption activity may also take the following forms: market imperfection, extortion, subversion, autogenic, defensive, investive, nepotistic, supportive, transactive (Alatas, 1990; Gire, 1999). Market imperfection may occur where bureaucrats are paid low wages but the commissions they hope to earn through corruption are effectively the competitively determined supply price for their services. Extortionary corruption occurs when an official, who exercises monopoly power, to pay a bribe for a service, asks a person seeking a government service. Subversive corruption occurs when a public official facilitates a person engaged in an illegal act in exchange for bribe. For example, a customs officer in return for bribe allows the importation of a banned automobile into the country. Corruption can be autogenic when it is self-generating and involves only the perpetrator. For example, a share trader who uses insider information that may influence share values in a company either buys or sells large amounts of shares before the effects arising from the information is made public. Defensive corruption occurs when someone needing critical service is compelled to give a bribe in order to prevent unpleasant consequences being imposed on his interest (Gire, 1999). For example, in the late 1990's accredited agents on behalf of the Nigerian government in the originating countries usually assessed goods imported into Nigeria for tax payment. The understanding was that once a tax figure had been assigned after assessment that would be the tax figure to be paid in Nigeria. But this was not the case. Greedy customs officials usually asked for more tax after the initial tax had been paid into the government account through appointed banks. Either one paid the additional money, which was a bribe, or forfeited the goods. The briber gave the bribe in self-defense. Investive corruption occurs when an offer of gift is without a direct link to any particular immediate favor, but where there is anticipation that the favor may be returned or required at some point in the future. Supportive corruption is actions taken to protect or strengthen the existence of corruption. For example, a corrupt government may do everything in its power to prevent the election or appointment of honest persons or government for fear that its activities might be investigated by a new regime. Transactive corruption occurs where two parties are mutual and willing participants in the corrupt activity to the advantage of both parties. For example, a corrupt firm willingly gives a kickback to a corrupt public official in order to win a contract bid. Finally, nepotistic corruption involves the offering of preferential treatment or unjustified appointment to friends, cronies or relatives of public officials, in violation of official guidelines (Gire, 1999).

### *Causes of Corruption in Nigeria*

According to the World Bank (2000), corruption occurs when the action of individual(s), groups or firms in both public and private sectors influence the formation of laws, regulation, decrees, and other government policies to their own advantage by means of illicit and non-transparent provision of private benefits to public officials. It could also occur when changing and altering the implementation of existing laws, rules, and regulations to “provide advantages to either state or non-state actors as a result of illicit and non-transparent provision of private gain to public officials. Based on existing literature on corruption, a number of perspectives on the explanations of the causes of corruption exist. However, for the purpose of this study, the following explanations would suffice: cultural relativity, low salary syndrome, imitation, institutional and rent seeking (Kallon, 2003; Gire, 1999; UNDP, 2004).

According to the cultural relativity argument, the rapacity of corruption in developing countries occurs when gift giving becomes a bribe resulting from new consciousness developed among students, military officials and others created by rapid industrialization whereby they are exposed to modern world. The cultural relativity school contends that confusion between bribes and gifts, the process of modernization, the burden of extended-family system, and the lack or absence of public domain are responsible for corruption in developing countries (Myrdal, 1968; Huntington, 1968, 1979). As de Dardan (1999) pointed out, the absence of public property in traditional African societies is responsible for African leaders’ inability to distinguish between their public functions and property from their private ones. Although this may account for some corruption in Africa, the notion that traditional African societies lacked public domain is non sequitur because there are traditional structures in African societies, e.g. village farmland, lineage farmland, village squares, village huts, communal roads etc. which are communally owned and maintained. Secondly, as Kallon (2003) noted, even if the public domain argument were credible, it is still misleading, for those involved in corruption activities in Africa are well-educated people, many of whom were trained in the western tradition, which supposedly has long tradition of public domain.

Corruption in Nigeria and other developing countries has also been explained in terms of low-salary and strong kinship ties. This perspective opines that public officials in developing countries are corrupt because their salaries are so low that they cannot make ends meet by depending solely on their meager



salaries. Furthermore, strong kinship ties characteristic of these societies place nepotistic pressure on public officials (Abueva, 1970). Accordingly, they resort to corrupt activities to make ends meet (Kpundeh, 1995; Akerlof and Yellen, 1990; Lee, 1986) and help the relatives. Although this might be plausible for the medium and low levels public officials, it does not explain why highly paid public officials in addition to other benefits accruing to their offices partake in corrupt activities. Although low salaries may not be a justification for graft, this perspective offers insight into the wide spread corruption and nepotistic activities in Nigeria.

Another explanation of the causes of corruption in developing countries is derived from the theory of imitation arising from the proclivity of a human being to copy or imitate the lifestyles of individuals believed to have accomplished important things in the society. Using Maslow's (1943, 1970) concepts of hierarchy of needs and Bandura's (1986, 1988) observational learning theory, Gire (1999) suggested that corruption is prevalent and reproduced in Nigeria because of the imitation of the lifestyle and behavior of other members of the Nigerian society who are, or have been, in positions of authority.

Furthermore, another theory of corruption is the UNDP's institutional theory in which corruption arises when public officials have wide-ranging authority, little accountability and perverse incentives or when their accountability responds to informal rather than formal forms or regulation (UNDP, 2004). For institutional theorist of corruption, the causes of corruption occur because of a failure of state institutions and a lack of the capacity to manage society by means of framework of social, judicial, political and economic checks and balances (UNDP, 2004) or where there is monopoly control of public officials wielding discretionary powers in the absence of accountability systems. Developing on Klitgaard's (1988) representation of corruption as:  $C$  (corruption) =  $M$  (monopoly) +  $D$  (Discretion) -  $A$  (Accountability) or  $[C= M+D-A]$ , the UNDP (2004) added integrity and transparency i.e.  $Corruption = (Monopoly + Discretion) - (Accountability + Integrity + transparency)$  or  $[C= (M+D) - (A+I+T)]$ . The institutional explanation is pertinent in understanding the widespread and depth of corruption among governors and chairpersons of states and local government areas (LGAs) in Nigeria since 2000. In Nigeria, institutional theory can be explained in terms of political centralization in which the governors and chairpersons of the states and LGAs respectively claim that the 1999 Nigerian constitution bestowed them immunity from prosecution while in office. This has resulted in abuse of power, extravagance and gross abuse of budgeting process. For example the governor of Rivers State in 2006, budgeted \$33.2

million for unspecified ‘grants, contributions and donations’; \$77 million for unspecified ‘special projects’; \$65,000 per day for transport and travel of governor’s office; and \$11.5 million for purchase of new vehicles for government (HRW, 2007). The situation in Rivers State is similar to other states where governors misappropriate public funds for their own selfish goals.

Finally, rent seeking has been used to explain the incidence of corruption in Nigeria. According to this argument, corruption results due to too much government intervention in the economy, which creates rent-seeking opportunities. Rent seeking is a redistributive activity that takes up resources. Corruption therefore results from rent-seeking when someone has a monopoly over goods or services and has discretion to decide who receives, when to receive it, and how much the receiver gets (Klitgaard, 1988, 1991). Rent seeking through corruption by public officials can hurt innovative activities, and since innovation drives economic growth, public rent seeking can distort and hamper growth even more severely than production (Shleifer and Vishny, 1998). Public rent-seeking includes, but not limited to, the following: taking bribes for issuance of license to business, permits, taxes on documents, taking bribes to obtain import licenses, taking bribes to influence bids for privatization of state owned enterprises (SOEs) or for government contracts etc. Shleifer and Vishny (1998) noted that these forms of rent seeking are more likely to hurt innovation because innovators need these government-produced services and goods. These services are inelastic to business. They, therefore, become primary targets of corruption. If therefore innovators do not have money to pay bribes to get licenses and permits, for example, they would therefore not be able to enter the market and innovate (Shleifer and Vishny, 1998).

Although these theories are important in understanding the incidences of corruption, the rent-seeking theory for the most part, appears to explain the incidence of corruption amongst public officials in strategic positions in Nigeria. The following are some of the causes of corruption in many countries including Nigeria that may emanate from rent seeking activities:

1. Where there exists a principal-agent rent seeking relationship between bureaucrats and their superiors, especially where such relationship can provoke contests for positions that entitle them to appropriate transfers.
2. The lack of transparent financial institutions in an economy can make a larger part of the population dependent on corruption. In the 1980s, the discredited Bank of Credit and Commerce

International (BCCI) aided Nigerian officials to launder money derived from corrupt activities in overseas banks (US Senate Kerry Report, 1993).

3. Where the government is involved in the buying and selling of goods and services and distribution of subsidies. Under such a situation a private firm may want to bribe a government official if the department is involved in awarding contracts so that the official may structure the bidding specification in order that the firm is the only qualified supplier, or selected as the winning contractor. For example the British Serious Fraud Office is investigating allegation that a British-based company in Nigeria has set up a slush fund of \$170 million to bribe Nigerian officials to win building contracts (*Financial Times*, August 2006). The danger is that once selected, the firm may charge inflated prices or skimp on quality (Rose-Ackerman, 1996a) because it had already bribed the government agency. The various administrations in Nigeria over the years introduced rent-seeking activities. General Ibrahim Babaginda in the 1980s and 1990s encouraged the construction of the new capital territory in Abuja, the troubled steel and aluminum, and Liberian mission (Lewis, 1996). In Nigeria, for example, bribes for government contracts are paid upfront. And once paid the contractor can charge inflated prices, skimp on quality or circumvent contract specifications. Government's involvement in the provision of subsidies and benefits can cause corruption, especially where the services are too low or limited to satisfy all that are qualified for it, or when government officials use their discretion in allocating services. For example, payment of a bribe by new university entrants has become common due to limited capacity of the institutions to absorb those who want university education.
4. Another rent-seeking cause of corruption is the privatization of SOEs, which has created incentives for firms to pay bribes to be included in the list of qualified bidders, or to restrict the number of potential bidders. According to Rose-Ackerman (1996a), firms might be willing to pay bribe for insider information on the process to obtain a low assessment of the public property to be privatized or leased, or to be favored in the selection process.
5. Corruption might be caused by the tendency by firms to avoid costs arising from the imposition of regulations, taxes, the enforcement of criminal laws, or the selective application of laws by government officials. For example, firms might pay bribe for favorable interpretation of rules or discretionary judgment, especially where the laws are ambiguous (Rose-Ackerman, 1996a). Businesses may collude with government revenue collectors to have a lower assessment or to

share the saving with them. Examples of this practice abound in many states in Nigeria where government tax assessors and collectors collude with companies to change their taxes on the payment of bribe.

6. Corruption may also arise where firms and individual want to avoid the cost of delay. For example, businesses are likely to pay speed money in order to facilitate faster processing of application or documents. Individuals frisked at police check points in Nigeria are likely to pay bribe in order to avoid wasting their precious time. Similarly, individuals who apply for passports or driver's license in Nigeria are likely to pay bribe to speed up the issuing process.
7. The existence of outlawed businesses or businesses selling outlawed goods and services, drugs etc., may be prone to extortion by government law enforcement officers who can demand payment of bribe in order to overlook criminal violations.

Although the foregoing perspectives are very important in understanding the scope and severity of corruption in Nigeria, both the institutional and rent-seeking theories offer better understanding into the severity and scale of corruption, theft, embezzlement, and looting that characterize the public sector in Nigeria.

### **The Scope of Corruption in Nigeria**

Nigeria has been variously classified as a 'failed', 'failing' or 'fragile' state in which there is a consistent failure by the governments to honor the social contract entered with the people and in which kleptocratic and "lootocratic" practices including corruption, have been identified as significant debilitating indicators to its development (Obuah and Enyinda, 2004; *Foreign Policy*, 2006 and 2009, World Bank IEG, 2006). A failed state is one in which the institutions of the state and society are weak and lack the necessary capacity to manage society through various checks and balances. Nigeria operates a fiscal federalism with strong central government that controls and distributes the main resources to the federating units -- the states and local government areas (LGAs). Nigeria has 36 states and 774 LGAs, and under the current arrangement both states and LGAs receive monthly appropriations from the federal government. According to HRW (2007) this system has led to the "decentralization of corruption": a situation in which corruption has become rampant and an organized crime. Some LGAs (in Abia, Bauchi, Kaduna, Ondo, Rivers and Nasarawa states) have been accused of reckless spending and misappropriation of funds to the tune of N1.6 trillion between 1999 and 2007 (Ribadu, 2007c).

The scope of corruption in Nigeria has expanded significantly since the administrations of Generals Ibrahim Babaginda and Sani Abachi. For some scholars corruption in Nigeria has moved from prebendalism to predation in which office holders and public officials try to repay their supporters, family members, cronies, ethnic group members etc. with sums of money, contracts or jobs (Lewis, 1996). Corruption is blamed for the downfall of the first republic 1960 – 1966, and the second republic 1979 - 1983. Part of the reason for the burgeoning of corruption is the reliance of the economy on oil, which encourages rent-seeking and corruption activities. The US Senate Kerry Report (1993) noted a link between oil and corruption in Nigeria. For example the reported among other things noted that under- or over-invoicing of imports and exports was common practice, especially in the Nigerian National Petroleum Corporation (NNPC). There are also reports that about £212bn from oil money has been looted from the country's treasury by past and present leaders, and that EFCC was helping to combat an estimated £12bn which is annually stolen from state coffers (*Independent Newspaper*, 14 August 2006). In Nigeria, it is a common practice for contracts to be inflated because public officials factor in kickbacks which are usually paid upfront before the completion of the contracts. Graft continues to prevent the judiciary from functioning adequately. There is a widespread perception that judges are easily bribed or 'settled'. For example, there are long delays and frequent requests from judicial officials for small bribes to expedite cases (US Department of State, 2005). In 2005, the court Chief Registrar of the Federal Capitol Territory, Abuja was charged N37 million for fraud and money laundry (EFCC, 2005). There are numerous allegations that legislators both at the national and state levels accept bribes and favors from the executive branch to facilitate the passage of bills favorable to the executive branch.

Nigeria has been vulnerable to official venality. It has been projected by the EFCC that between 1960 and 1999 about £220 billion or \$380 billion has been plundered and squandered by public officials in Nigeria (*African Abroad*, 1999; Ribadu, 2007a; HRW, 2007). This is more than six times the amount the US provided for the reconstruction of post-World War II Europe under the Marshall Plan. During the early months of General Sani Abacha's administration, an official report indicated that an estimated \$12,200 million had been side-tracked to off-budget accounts from 1988 through 1993, when General Ibrahim Babaginda was the Head of State (Lewis, 1996). TI's Global corruption Report 2004 also published General Sani Abacha (1993–1998) among the top ten presidents that had allegedly embezzled

between \$2 – 5 billion (TI, 2004). The 2006 brouhaha between President Obasanjo and the vice president over corruption is indicative of how high corruption has permeated into the Nigeria society.

TI has consistently ranked Nigeria very low. For examples, in 2006, Nigeria was ranked 146 with 2.2 corruption perception index (CPI) score out of 163 and in 2007, it was ranked 148 with 2.2 score (TI, 2006, 2007). According to TI, low scores in the CPI is an indication that the public institutions are heavily comprised. Furthermore TI (2005) noted that in Nigeria, more than 50 percent of bribes were directly asked for, while 60 percent were offered to avoid problems with authorities; and more that 40 percent offered bribe to obtain access to a service they were entitled to. According to the Independent Advocacy Project (IAP) (2007), corruption index, the most corrupt sectors in Nigeria were the Nigerian Police Force, Power Holding Company of Nigeria, Education ministry and the Customs and Excise Department.

The most worrisome aspect is that corruption is deepening and taking new dimensions, especially among the states in Nigeria. The September 2006 report of the EFCC indicated that corruption among states has reached a tragic stage where some state governors were stealing, looting state treasuries and fronting members of their families and relatives with state money to establish their own private businesses. For example, the governor of Abia state, Orji Kalu, was alleged by the EFCC to have siphoned government funds to the tune of N35 billion using his wife, mother, daughter, and brothers as fronts to establish a business empire which included Slok Airline, Slok Pharmaceuticals, and newspaper house (*The Nigerian Guardian*, 2006; *Vanguard*, 2006; *THISDAY*, 2006).

### **The Economic and Financial Crimes Commission (EFCC)**

In 2002, the Nigerian Government created a corruption tsar agency with the mission “to curb the menace of corruption that constitutes the cog in the wheel of progress; protect national and foreign investment in the country, imbue the spirit of hard work in the citizenry and discourage ill gotten wealth; identify illegally acquired wealth and confiscate it; build an upright workforce in both public and private sectors of the economy and; contribute to the global war against financial crimes” (EFCC, 2007b). The creation of the EFCC marked a significant shift from the rhetorical talks about fighting corruption to actually doing something and fighting corruption. Past efforts by previous governments to provide the legal frameworks to combat corruption included, but was not limited to, the creation of the National Drug

Law Enforcement Agency in 1989; the Money Laundering Act of 1995; the Advanced Fee Fraud and Related Offences Act 1995; the Banks and other Financial Institutions Act 1991; the Miscellaneous Offences Act 1985; and the Foreign Exchange Miscellaneous Offences Act 1995. Noble and desirable these efforts were, either they were strangled due to inadequate enabling laws and regulations or neglected for apparent lack of commitment on the part of stakeholders to fight corruption in high places (Ribadu, 2004a).

Furthermore, at the global level, by the late 1990s there was increased pressure on developing countries by governments of industrialized countries and international organizations to combat and reduce corruption, which had become widespread and was a bane to economic development. It was against this backdrop of failed efforts and international pressure that President Olusegu Obasanjo adopted a multi-pronged approach to fight corruption in order to redeem Nigeria's image by creating the following agencies: the Anti-Corruption Commission, the Due Process Office in the Presidency, the Corrupt Practices and Related Offences Act 2000, and the EFCC 2003.

#### *The Purpose, Powers, and Structure of the EFCC*

The Establishment Act of 2002 (as amended in the EFCC Establishment, Etc Act, 2003), bestows on the EFCC the broadest and most current laws against financial and economic crimes and terrorism in Nigeria. As a financial intelligent unit the EFCC is mandated to coordinate the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes, and terrorism (EFCC, 2004). Especially under its broad economic and financial crime and terrorism mandate, the EFCC is charged with preventing, investigating, prosecuting and penalizing financial and economic crimes such as illegal bunkering, terrorism, capital market fraud, cyber crime, advance fee fraud (419 or obtaining through different fraudulent schemes), banking fraud and economic governance fraud (transparency and accountability). The EFCC has extensive special and police powers including the power to: investigate persons and/or properties of persons suspected of breaching the provision of the Establishment of 2002; and enforce money Laundering Act 1995; the Advance-Fee Fraud and Other Fraud-related Offices Act 1995; the Failed Banks and Financial Malpractices in Banks Act 1994; the Banks and Other Financial Institutions Act 1991; the Miscellaneous Offences Act; and any other law or regulation relating to economic and financial crimes in Nigeria (EFCC, 2004).

The EFCC has enabling powers under the Establishment Etc Act 2003 and 2004 to deal with terrorism and terrorist offences including: (a) willful provision or collection of money from anyone, directly or indirectly, to perpetrate an act of terrorism; (b) committing or attempting to commit, participate, or facilitate the commission of a terrorist act; and (c) making funds, financial assets, or economic resources available for use by any person or persons to commit or attempt to commit, facilitate, or participate in the commission of a terrorist act (EFCC, 2004).

### *The Structure*

The EFCC is an independent agency headed by an executive chairman under the direction of a board. The chairman is supported by five directors: financial crimes and intelligence, advance-fee fraud and other economic crimes, enforcement and general operations, prosecution and legal counsel, organization and support, and training school. The executive chairman is the chief executive and accounting officer of the Commission. The agency receives support from the presidency, the legislature and the judiciary branches of government. The agency also cooperates with like organizations from other foreign countries to uncover corruption and money laundering activities involving Nigerians. In terms of its structure and organization, the EFCC is committed to containing economic and financial crimes, generating and disseminating effective economic and financial crimes intelligence to assist law enforcement, and inculcating prudent and sincere dealing amongst Nigerians via transparent value system and preventive measure (EFCC, 2004). The organizational structure reflects the major broad activity areas of the commission, namely, economic and financial crimes intelligence, investigation and enforcement, prosecution, crime prevention through mass communication and advocacy, and proactive and reactive execution of anti-terrorism operations. To this end, the Commission has a versatile organizational structure made up of five operation units – investigation, legal and prosecution, research, administration, and training. The head Office of the Commission is based in Abjua with regional offices in Lagos, Enugu and Port Harcourt.

### *Activities of EFCC Since Creation*

The EFCC is a legal, prosecutory and investigative agency created by the Nigerian government to combat corruption. Within its short existence, it has at least made a significant start by challenging Nigerians to send any information on any government officials to it so that it can commence



investigation. Nigerians have responded and those efforts are paying dividend. Following its establishment, the EFCC swung into action by launching the “Operation Redemption” intended ‘to get all economic and financial criminals out of business and behind bars’ (Ribadu, 2003). Since then, the EFCC has been involved in a number of investigations, arrests and detention resulting in indictments, return and recovering of stolen money and imprisonments. The agency has been responsible for a number of high profile investigations such as those involving the former inspector general of Nigeria Police, Mr. Tafa Balogun who stole more than \$121 million and was jailed for six months, fined \$30,000, and property worth \$150 million seized (BBC News, 2005) and the arrest of Hon. Morris Ibekwe (Imo State) for allegedly obtaining under false pretences, the sum of \$300,000 from a German national and head of the Munch System Organization Company (EFCC, 2003). Others include the former governor of Lagos state, Major General Mohammed Buba Marwa, the former Chairman of the Nigeria Ports Authority Mr. Bode George, Alhaji Bashir Dalhatu, the bribery scandal and fraud involving National Assembly Committee members and the Minister for Education over budget, the former governor of Bayelsa state, Chief Depreye Alamiyeseigha, and the investigation of all state governors and local government officials as of December 2006. The 2006 indictment of the serving Vice President, Atiku Abubakar for abuse of office, fraud and embezzlement by both the EFCC and Administrative Panel of Inquiry is indicative of how deep and pervasive corruption has permeated the Nigerian society. The list is in-exhaustive.

So far the EFCC has received 4,200 petitions on illegal corruption, investigated or investigating 1,200 cases and has 406 cases in the courts (*Vanguard Newspaper* 2006). After months of investigation of the petitions and allegations of corruption against 31 out of 36 states in Nigeria, the EFCC decided to indict 15 governors and gave a clean bill to only six state governors (*THISDAY*, 2006; *Vanguard*, 2006; *The Guardian*, 2006). The EFCC’s indictments, arrests and reports on corruption involving high profile public officials are indicative of the distance high level public officials in Nigeria are willing to go to exploit, loot, steal, misappropriate and launder public money for personal aggrandizement instead of improving the wellbeing of the people. Prior to the 2007 elections, the EFCC prepared a list of potential office seekers deemed corrupt and therefore unfit to contest any elected offices. This list was submitted to the political parties and the Independent National Electoral Commission (INEC). An analysis of the list of unfit politician with respect to spread among the major political parties showed that Peoples Democratic Party (PDP) had the highest number of unfit political office seekers of 53 followed by All

Nigeria Peoples Party (ANPP) with 39, Action Congress (AC) with 28, Peoples Progressive Alliance (PPA) with 10, Democratic Peoples Party (DPP) with 5, and Alliance for Democracy (AD) with 1. With respect to spread among the states, Zamfara had 18, followed by Adamawa with 16, Taraba with 15, Abia with 12 and Bauchi with 10. (Analysis was based on information from [www.nigeria-friends.com/forum/display\\_printer\\_threads.asa?ForumID&TopicID](http://www.nigeria-friends.com/forum/display_printer_threads.asa?ForumID&TopicID), [www.lists.mayfirst.org/pipermail/friends/2007-February/001541.html](http://www.lists.mayfirst.org/pipermail/friends/2007-February/001541.html), [www.efccnigeria.org/index.php?option=comcontent&task=view&id=1233&Itemid=2](http://www.efccnigeria.org/index.php?option=comcontent&task=view&id=1233&Itemid=2).)

The EFCC in its short existence has made the following remarkable achievements in the fight against corruption:

- Recovered money and assets derived from crime worth over \$700 million, and £3 million from British government between May 2003 and June 2004 (EFCC, 2007b), and in its first five years (2003 – 2005) recovered over \$500 billion (Thomas, 2008).
- Put over 500 suspects in custody, and prosecuted one of the world's biggest fraud cases involving Nigerian fraudsters Mrs. Amaka Anajemba, Mr. Emmanuel Nwude and Mr. Nzeribe Okoli who duped a Brazilian banker Mr. Nelson Sakaguchi about \$242 million.
- Made restitution to victims of 419 frauds. For example in October 2005, the EFCC refunded the sum of \$4.48 million to an 86 years old Hong Kong woman, Juliana Ching: money that was recovered from 419 scam investigation (Ribadu, 2005).
- Increased the revenue profile of Nigeria by about 20 per cent due to its activities in the Federal Inland Revenue Service and the Seaports.
- Recovered revenue of over N20 billion from government, and billions of Naira to government in respect of failed contracts.
- Reduced crude oil bunkering activities in the Niger Delta region through prosecution of persons involved and confiscation of ships (Ribadu, 2004a).

In its 2006 report to the Senate, the EFCC reported of progress resulting from its activities in the following areas:

- Recovered N100 billion assets from ex-governors (*THISDAY*, 2007), and N55 million bribes in 2005 from committee members of the National Assembly given as PR to lobby for increase in education budget ([www.utexas.edu/conferences/africa/ads/527.html](http://www.utexas.edu/conferences/africa/ads/527.html)).

- Recovered N200 billion from fraudulent bank officials, and \$700 million from corrupt public officers who allegedly looted public funds (EFCC, 2007a)
- Confiscated over 40 oil tankers engaged in crude oil bunkering
- Recovered \$750 million from 419 gangs, and N50 billion worth of assets from the impeached governor of Bayelsa state, Chief Alamiyeseigha
- Recovered over N85 billion by the Due Process Office (*Vanguard Newspaper*, 2006; [www.efccnigeria.org](http://www.efccnigeria.org)).
- Succeeded in securing the return of N50 million from the British Metropolitan Police Proceeds of Corruption Unit following the successful confiscation hearing of a mistress of former governor of Plateau state, Chief Joshua Dariye (EFCC, 2007b).

In cooperation and collaboration with other state global actors such as the Federal Bureau of Investigation (FBI), the UK's Office of Fair Trading (OFT) and Metropolitan Police; international actors such as the World Bank, IMF, Egmont, Microsoft etc, the EFCC is not only significantly contributing in the fight against corruption but in salvaging the hitherto negative image of Nigeria in the international arena. Nigeria's image has been synonymous with corruption. EFCC is working hard to change this image. For example, in May 2007, Nigeria became a member of the internationally acclaimed Egmont Group of Financial Intelligence Units (FIUs). The Egmont Group, which has over 106 members, with headquarters in Toronto, Canada, is an international network of FIUs that was formed in 1995 to promote the exchange of financial intelligence information and enhance global cooperation in the fight against money laundering and terrorist financing (Nwajah, 2007).

### *Challenges Facing the EFCC*

The EFCC faces some major challenges in its fight against corruption. These include but not limited to the following:

Claim of immunity from arrest and prosecution by president, vice president and governors and their deputies. Many state governors and their legal defense lawyers in Nigeria have interpreted the provisions in subsection 308(1) and 308(2) immunity clause of the 1999 Constitution to give them absolute immunity from criminal prosecution while in office. As a result of this institutional and legalistic argument, it has been difficult to prosecute these governors including the vice president and

the president while in office. This claim of immunity is absurd because it is not the intention of the framers of the constitution to allow these elected officials to steal and launder the nation's wealth. Even though governors claim to have immunity under subsection 308(1), they can be prosecuted under civil law as provided by subsection 308(2) or nominality clause.

Another challenge that faces the EFCC is the significant delays, frustration and waste of resources in the current prosecution regime. According to Ribadu (2004b) it has become an "art": for defense attorneys to ensure that financial crime cases do not go on and substantive cases are never tried on their merits. Defense attorneys in delay and prolong cases by a tactic of applying for stay on proceeding. Where such application is not granted, the defense attorneys accuse the judges of bias and therefore grounds for application to transfer their cases to other judges (Ribadu, 2004b). Similar to the above challenge is the problem of congestion and slow pace of court proceeding caused by insufficient number of courts and judges and antiquated manual recording system.

Furthermore, the nature of financial crimes, which have become cyber poses jurisdictional challenge and increases the costs of investigation and prosecution. Digital revolution has collapsed traditional physical boundaries and therefore altered the territorial jurisdiction for of prosecution cyber crimes. Associated with jurisdictional challenge is the challenged posed by the increasing costs of prosecuting these cases, which run into millions of naira (Ribadu, 2004b). Finally, the EFCC faces the challenge of the inadequacy of the existing procedural laws in Nigeria, which questions the evidential status, and admissibility of computer and electronically generated documentation (Ribadu, 2004b). In fact the Nigerian legal procedural system has not kept pace with evidential value of information generated from cyber revolution.

## **Conclusion**

It has been the purpose of this paper to examine the political economy of corruption in Nigeria. Corruption in all its ramifications is severe and has permeated the Nigerian society. The prevalence and preponderance of corruption activities in Nigeria dates back to the early independence period but it has since the 1980s burgeoned to unprecedented proportion. Corruption occurs primarily when there is a failure of established institutions and the lack of capacity by these institutions to manage frameworks of social, judicial, political and economic checks and balances. In trying to understand the ramifications

and severity of corruption in Nigeria, the paper noted that although a clinical understanding of the political economy of corruption in Nigeria requires an application of all the models on the explanation of the causes of corruption, both the institutional and rent-seeking theories offer deeper insights into the systemic nature of corruption.

The paper further noted that rent seeking activities which cause corruption in Nigeria range from relationship between bureaucrats and their superiors which provoke contests for positions, the lack of transparency in financial institutions, the significant involvement of the government in the economy in the provision of goods and services, the privatization phenomenon which characterized the 1980s and 1990s, and the proclivity by private firms to avoid costs arising from imposition of regulations. The web of relations established by rent-seeking activities coupled with centralization of power among the various federating units, in part explains corruption among the top echelon of the public officials. In Nigeria, major political parties continue to top the list of unfit or corrupt office seekers while elected officials, political appointees, the police, the customs and other public servants use their offices and positions to participate in corrupt activities.

The EFCC was created against the backdrop of failed previous frameworks to combat corruption, and the need to repair Nigeria's image to attract foreign investment. The EFCC as an investigative and prosecutory agency has made some inroads in the fight against corruption among public officers. The paper further noted the serious challenges faced by the nascent tsar agency. These challenges will continue into the coming years, especially, post-2007 general elections. Although the EFCC has continued to investigate allegations of financial and economic crimes against former state governors and other public officials of the Obasanjo era, the next few years will be a litmus test on the war against corruption. The challenges will be: whether EFCC will continue to enjoy the support of a new presidency and national legislature in the campaign against corruption; whether the EFCC will succumb to the allegation (by a minority) that it picks only a few, especially those with serious political ambition, as scapegoats and abandon its strategies; and whether the EFCC will be able to expand its adversarial investigative strategies to include the private sector and, more importantly, those who served in the previous military administrations of General Ibrahim Babaginda and General Sani Abacha: a period that witnessed the massive looting of the country's wealth by its leaders. These and others are the challenges that face the EFCC, and its future will depend on the political configurations that emerge post-2007.

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