

Transparency, Accountability and Ethical Violations in Financial Institutions in Nigeria

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ABSTRACT Contrary to the notion that it is only the public service that is heavily infested with corruption and inefficiency, the tide has since changed in Nigeria. The private sector of which the financial institutions constitute an integral part has been caught up in identical unethical muddle. It is against this backdrop of various ethical violations in financial institutions that this paper started off by examining the general and specific ethical standards for operators within the financial institutions. In carrying out this study, the methodology used involved content analysis and experiential reporting of basic personal eyewitness accounts. Of immense assistance to the success of this study however the data extracted from the publications of the Central Bank of Nigeria (CBN), some National Newspapers, Accounting Manuals and Texts; and legal books on business law and cases. The data derived from these sources were descriptively analysed and subjected to second order level of critical interpretation and analysis. The study found out that the banking sector in particular has become a platform for various appalling corrupt and fraudulent practices. In addition, it was discovered that the internal mechanisms in the financial institutions are not sufficient to guarantee transparent and accountable service in the conduct of official business in the sector. The study particularly discovered that most banks and finance houses were set up *ab-initio* to defraud government and unsuspecting customers in the area of foreign exchange. The study concluded that for transparency and accountability to play vital directing roles in financial institutions in Nigeria, the general macroeconomic environment must be sanitised and improved upon. Secondly, the various internal mechanisms for ensuring accountability should be reviewed and strengthened. The CBN should be consistent in their policies and roles. In addition, meaningful motivation package should be built into employees' terms of employment.

INTRODUCTION

The issue of Transparency and Accountability in Financial Institutions is one that cannot be readily glossed over. Generally, Transparency and Accountability constitute pivotal features of any respectable public official or professional practitioner. For this reason, it is important from this outset to have a clear conception of the terms within this study.

Conceptual Framework and Literature Review

What is Transparency and Accountability?

'Ethics' generally refers to those principles and codes of behaviour that guide the conduct of any profession. The term usually carries along moral values, normative judgements and moral obligations. At any rate, every profession possesses its own ethics. However, there are some commonalities in professional ethics. These ethics that are common derive from the general expectations of the public from either a public

officer or a professional practitioner. The issue of ethics usually goes along with allocation of value judgement such as good or bad; right or wrong. Every professional strives to keep to the guiding ethics of his/her profession.

Transparency: This is a moral virtue, which stresses sincerity, truthfulness and openness. Since operators in the Banking sector are trustees in a sense, they necessarily must be honest; otherwise, they will abuse the confidence and trust reposed in them by the depositors and this will ultimately lead to lack of confidence in the essence of financial institutions. A similar case of failure, which marks the activities of centralised states in Africa and which has led to the new craze for, as well as allegiance to indigenous-cum-informal institutions may also apply in this circumstance. As a matter of fact, some people in the Nigerian society nowadays have developed some disdain for the modern day financial institutions. This is however sequel to various cases of non-viability, bankruptcy, burglary, fraud, corruption unprecedented distress and such other related cases. Consequently, we have

had the sudden appearance and thriving of community banks, innumerable Credit and thrift societies, and other such informal arrangements.

Transparency is an inclusive concept that requires loyalty, faithfulness, allegiance and dependability (Hope and Chikhulo, 2000; Olowu, 1993). In this vein, operators in financial institutions should be faithful and dependable. This is so because the services of accountants, auditors, bankers, brokers and all other operators in the system depend greatly on faithfulness, dependability, trust and fairness.

Accountability: Accountability in the financial institutions is best explained through the theory of Agency. According to Adesola (2001: 61),

...the person who holds or manages a given amount of resources for the benefit of another person is an agent. As an agent, he must operate according to the mandate given to him and he must perform to the satisfaction of those who are to benefit from his achievement. The managers of a business enterprise are agents to the business owners as well as those who will benefit from the activities of the business, including the society at large. At the end of each period of operation, the managers will render accounts of stewardship for the information of those who may be interested in the operation of the business.

- With the provision of hierarchy, the bureaucracy in every financial institution provides for an accountable structure. Every person in the system has a place in the hierarchy, which facilitates accountable service. For instance, the manager in a unit is directly responsible and accountable to his immediate higher officer and so on and so forth. For the professional accountant, accountability is dual. First, he is accountable directly to his employer. Secondly, every step of his service requires systematic accountability. The procedure of his work entails accountability at every point. Another form of accountability that is feasible in the services of the professional accountant is – accountability through financial report/judgement. Here, the accountant is expected to be fair in his financial reporting e.g. of assets, profit etc. In a situation where the accountant is corrupt and dishonest, accountability will never be achieved.

Who is an Accountant?

In financial institutions, the position of an

accountant is very vital such that stands as the epitome of ethical reference. For this reason, the ethical standards that guide the conduct of an accountant invariably apply to auditors and all other operators in financial institutions. The Accountant is one who prepares and keeps records of financial transactions in a company, firm or institution. He also prepares final accounts at the end of the financial year.

In the Nigerian context, an Accountant is somebody who is a member of a recognised Accounting of Nigeria e.g. a member of the Institute of Chartered Accountants of Nigeria (ICAN) or Association of National Accountant of Nigeria (ANAN) because of his proficiency in the art and science of Accountancy, he prepares financial statement of an organisation and he is also capable of interpreting these financial statements for the purpose of taking optimum decision (Elumilade, 1997, 1998; Jennings, 1994)

An Accountant could also perform professional tasks on invitation by companies or government institutions in which case; he prepares or assists in preparing final accounts towards general meetings.

Ethics for Professional Accountants and Auditors in Financial Institutions in Nigeria

There are peculiar ethics apart from the general ones for professional accountants, auditors. The ethics by extension apply to all operators in the banking and financial institutions. While the general ethical codes include confidentiality, integrity, transparency, accountability, competence, loyalty, honesty, anonymity, impartiality, courtesy and respect, neutrality and such other codes, the peculiar ones for the financial institutions are listed below as follows:

- Truth;
- Fairness ;
- Professional Independence/freedom;
- Strict confidentiality; and
- Incumbent and incoming professional

Accountant relations

Truth: In the conduct of the duties of the professional accountants, truth must be his watchword. In his statement of account, there must not be deliberate irregularity of inconsistency or falsehood. The Accountant must always say the truth, express the truth and stand by the truth. This is so because, a lot depends on the final accounts, which he prepares, and it must be

noted also that he who prepares the account could influence the direction of report if he so chooses. For this reason, the professional Accountant must be cognisant of the ethics of the profession, which is truthfulness at all times.

Fairness: This is related to the above. However, the notion of fairness is a development over the notion of correctness, which was upheld before the 1948 Companies Act. It is indeed difficult to attain correctness; hence, the modification in the 1948 Act. What this implies is the toleration of some modicum of subjective assessment on the part of the professional Accountant in the preparation and reporting of his accounting transactions. In other words, the Accountant must be as objective as possible in his reporting. When this happens, we say that the statement of account is fair.

Professional Independence/Freedom: Related to the above also, is the fact that the Accountant must be free from extraneous influences that could bias or prejudice his opinion about the financial position of the institution or firm where he is working. This further requires that a professional Accountant must not take gifts anyhow; he must be careful in accepting gratifications and generally, he must abstain in self from any thing that we influence him negatively in the conduct of his professional duties.

Strict Confidentiality: Although, this has been discussed among the general public service ethics nevertheless, it is especially important to single it out for discussion again. Naturally, money matters are delicate matters and the accountant that takes custody of such information cannot afford to be careless and lackadaisical with financial information/secrets.

Incumbent and Incoming Professional Accountant Relations: Where an incumbent Accountant is to be replaced by a new one, the incoming Accountant must clarify with the incumbent, the accounting state of the firm as well as the reasons for his continuing with the firm. In the case of impropriety and conflicts of interest between the incumbent Accountant and the Client it is unethical for the new Accountant to take up the job. The specific ethics for professional Accountants are contain in various Accounting and Auditing Textbooks published by renowned international and local authors (Woolf, 1979; Alalade, 1987; Shittu, 1992; Olowookere, 2000; and Oremade, 1988)

Sanctions and Consequences for Ethical Violations

A number of punitive sanctions exist for flagrant violation of the ethical codes of the accounting profession. This sanctions range from withdrawal of the professional certificate to dismembership from the professional body i.e. Institute of Chartered Accountants of Nigeria (ICAN). Furthermore, lighter disciplinary actions could be taken such as reprimand or summoning to answer a query in the main office of ICAN. In extreme cases of withdrawal of professional certificate for example, source of livelihood is lost. The sanctions could also lead to social stigmatisation and estrangement from the social milieu of professionals. This could eventually lead to the truncation of psychological and social comportment of the affected individual. For these dire consequences members carefully and jealously guard their profession and the ethics thereof.

METHODOLOGY

This study relied basically on secondary sources for generating data. Where any other thing would have qualified as primary data, they are reports of personal eyewitness accounts. The secondary sources of data for the study included publications of the Central Bank of Nigeria (CBN), some National Newspapers, Accounting Manuals and Texts; and legal books on business law and cases. The data collected were electronically processed on the computers using both descriptive and non-parametric analyses. Thereafter, a section on critical evaluation enabled the investigators to subject the findings of the study to second order level of critical interpretation and analysis.

RESULTS AND DISCUSSION

Critical Appraisal of the State of Ethics in the Nigerian Financial Institutions

A good number of notable Banks in Nigeria has been distressed and consequently become financially dwarfed. Some of the banks have folded up finally while some are mere effigies of their old selves. It must however be stated that the banks under discussion got to where they are consequent to various forms of unethical

practices such as corruption, collusion, embezzlement fund-misappropriation, computer fraud, actual stealing, leaking confidential information to armed robbers, forgery, impersonation and other related vicious practices. It is informative to mention a few of such banks that have slumped under the sledgehammer of corruption and related vices. They include Amicable Bank, Allied Bank, Former National Bank, African Inter-Continental Bank and Savannah Bank to mention a few.

Between the late '80s and the first half of the '90s, we witnessed the sudden appearance of many finance houses in Nigeria. However, virtually all of them have disappeared before the end of the decade.

Cases of Contributory Negligence Facilitating Fraud: The Legal Perspective

Under the Nigerian law, negligence or carelessness is not presumed against a customer

merely because someone managed somehow to have access to his chequebook and removes a leave from it, because that could happen to even the most careful of customers; therefore it has to be strictly proved that the customer is in fact negligent. Even where negligence could be proved against the customer, it is a question of fact whether the negligence is of such degree as to enable the banker plead *estoppel* and refuse to re-credit the customer's account. What the court has succeeded in doing, from the decided cases on the subject is to find the customer guilty of contributory negligence, so that the loss is shared by the bank and customer.

Another aspect of fraud in the banking industry is the issue of *cash theft by cashier*. This is a common unethical practice in the banking sector. Where cashiers steal directly from their till. It is a fraud against the bank, but where having paid to the customer, the cashier steals from him, or causes the money to be stolen from him, the bank could not be held liable because the cashier could

Table 1: Members of staff involved frauds and forgeries

S. No.	Rank	1994		1995		1996	
		Number	%	Number	%	Number	%
1	Supervisors and Managers	211	28.6	151	24.16	218	39.49
2	Officers, Accountants and Executive Assistants	144	19.5	142	22.72	96	17.39
3	Clerks and Cashiers	220	29.9	172	27.52	145	26.27
4	Typists, Technicians and Stenographers	24	3.3	18	2.88	19	3.44
5	Messengers, Drivers, Cleaners, Security, Guards and Stewards	108	14.7	12.3	19.68	66	11.96
6	Temporary Staff	2	0.3	16	2.56	5	0.91
7	Uncategorised Staff	28	3.7	3	0.48	3	0.54
	Total	737	100.0	625	100.00	552	100.00

Source: Extracts from Bank Returns, 1995 - 1997

Table 2: Returns of commercial banks on frauds and forgery

Quarter	Year	Average No. of Banks rendering returns	Total No. fraud of cases	Total amount involved (N'M)	Actual/expected loss (N'M)	Proportion of actual/expected loss to amount involved %
1 st	1997	44	149	2,888.97	64.92	2.25
	1996	40	131	563.57	149.8	26.58
2 nd	1997	34	117	275.81	42.15	15.28
	1996	24	86	179.99	64.53	35.85
3 rd	1997	40	99	236.4	4.03	18.63
	1996	61	190	327.22	76.44	23.36
4 th	1997	36	106	189.13	73.44	38.83
	1996	45	180	472.13	80.31	16.9
Total	1996		471	3,590.31	224.54	6.25
	1995		587	1,542.91	371.08	24.07

Source: Extracts from Bank Returns, 1995-1997

not be said to be acting in the course of his employment. This principle that the bank would not be held liable for an act done outside the course of the cashier's employment was well established in the case of *Ogundana and Bank of America V. Akinwumi*. In this case, the plaintiff, now the respondent sued the defendants, now the appellants for the sum of N500 as damages for false imprisonment.

The facts were that a customer of the second defendant bank, Amadu Yaro, lost some money while on the bank's premises. The plaintiff, also a customer of the second defendant alleges that the first defendant, an employee of the second defendant, made a positive identification of the plaintiff as the thief. As a result the plaintiff was arrested by the police and kept in a police cell for two days when he was released without being prosecuted. The learned Chief Magistrate accepted the plaintiff's case and held that the claim was proved. He awarded damages, against both the defendants jointly and severally. However, on appeal to the High Court, it was held by the court that:

- 1) A bank cashier, authorized to receive money paid in by customers to the bank, is not acting within the scope of his employment, actual or incidental in accusing a customer of theft from other customers and taking steps which led to his arrest.
- 2) The learned Chief Magistrate erred on the facts before him, in holding that the first defendant was acting within the scope of his employment and should have dismissed the case against the second defendant. The appeal of the second defendant therefore succeeded, and the judgement of the Chief Magistrate was set-aside to that extent.

Banks generally detest court action in cases of fraud because of the attendant publicity, and the damaging effect it might have on the bank's security position, as to lead depositors to suspect that their money is no longer safe in the coffers of the bank.

Prosecution of Offences Arising Under S. 11A of the Banking Act 1969 or Any Provisions Related Thereto S. 18 of the Banks and Other Financial Institutions Decree 1991.

The prosecution of offences arising under S. 11A of the Banking Act, 1969 which prohibited bank officials from granting any advance loan or

credit facilities to any person unless authorized by rules or regulations of the bank, subject to the provision of S.34(1-3), and S.35 of the Act, was that any alleged offences arising under the Act, should first be reported to the Governor of Central Bank, which in exercise of the power conferred on it by the Act, could compound the offence (that is to say, condone, the liability arising under the offence, for money) and forebear prosecution. Where the CBN chose to prosecute, consent of the Attorney General in writing has to be obtained. No power, therefore is given to individual banks to prosecute offences arising under the provisions of the Banking Act, 1969 except to refer the matter to the Governor of Central Bank. Where there are proven cases of fraud and forgeries not arising under the provisions of the Banking Act, but arising in the course of banking transactions, and punishable under the Criminal Code Act, the police should be called in for full investigation and probable prosecution. In case it is suspected that there is no diligent prosecution, the bank has the right to petition for necessary transfer, or could appoint a Solicitor, not to prosecute, but to hold a watching brief of the proceedings as a friend of the court.

Because of this apparent limitation, it is impracticable for the banks management to assume private prosecution of fraud and forgeries arising in banking transactions, though the police have not proved up to the task. Some of the problems facing the banks, on matters relating to handing of frauds and forgeries, apart from prosecution, are as follows:

- i. Should the bank continue to pay a member of staff who is under criminal prosecution, for fraud and forgeries against the bank, or its customers until the case is concluded, and he is found guilty or acquitted?
- ii. Should the bank pay legal fees or arrange a defence counsel for staff allegedly involved in frauds and forgeries?

In answer to the first question, the modern approach is to bring the member of staff before the disciplinary committee established for discipline of staff generally on charges of either negligence, gross negligence or abuse of office, which will deal summarily with the case, applying administrative law and procedure. This has no bearing with the criminal charges in court, as such administrative tribunal is not competent to try criminal matters. If the staff concerned is found

guilty, he will be dismissed; and that in effect will relieve the employer from having to continue to pay him while the criminal charge is still hanging on; which unhappily may continue for one year or more, having regard to the hopelessly slow process of prosecution of cases by the police. In order to ensure impartiality, the disciplinary committee should be composed of members of the management, and the union representatives, and the decision of the committee should be unanimous. Reference to a committee of this kind before applying stern disciplinary action may be unnecessary where there are *prima facie*, conclusive evidence to prove the allegation of fraud, in which case the staff may be summarily dismissed, and thereafter handed over to the police for criminal investigation and prosecution.

The Role of the Central Bank in Crushing Financial Crimes

Financial Crime, as it is known today in Nigeria, has many faces. Peculiar vocabularies showcase the aberrant pseudo-business, cum financial activities, of some unscrupulous people. They include: Advance Fee Fraud a.k.a 419 in local terms or white collar crime in international language; financial scam; sharp practices; fraudulent activities, etc. In a nut-shell, financial crime has to do with business activities built advertently on grand deceit and aimed at the selfish economic or financial interest of the fraudsters (*Nigerian Tribune*: Wednesday 16th July 2003: p.10).

The break-through in information technology has even afforded the scammers to widen their scope of operations. They employ the use of telephones, Internet, E-mail; etc. they also impersonate top government officials, military and police officers, forge documents, letter heads of government ministries, parastatals, the Central Bank of Nigeria (CBN) etc, to perfect the deceit of their potential preys. However, things have started to take a new shape. The storm of the Economic and Financial Crimes Commission (EFCC) set up last year to tackle the menace, has hit the hitherto peaceful ocean of financial crime in Nigeria. Towing the line of Dora Akunyili's NAFDAC revolution in the foods and drugs sector, the Nuhu Ribadu-led EFCC has carried the battle to the door-steps of the seemingly untouchable suspected scammers. Some of them are now in custody and are facing charges of

economic crimes in the law court while those who are foreigners, like the Vaswani Brothers, have been deported (*Ibid.*).

On the other hand, to tackle the problem of fraud and unethical practices in the financial institutions, the Central Bank of Nigeria (CBN) has established the Financial Sector Surveillance Committee. The surveillance function of the CBN is largely vested in the Financial Sector Surveillance Committee (FSSC), which has the ultimate objective of ensuring financial sector soundness and stability.

The FSSC also monitors the sector to avoid its being used as a conduit for laundering money or perpetrating other fraudulence activities. The committee was established in March 2002 as an offshoot of the Monetary Policy Committee (MPC) with the intention of giving proper focus to financial sector surveillance and monetary management. The CBN had, since 1990, taken steps to strengthen the financial sector through various regulatory, prudential and contingency measures, aimed at ensuring the soundness and stability of the sector, as well as enhancing the institutional framework and transmission mechanism of monetary policy.

Specifically, the bank has designed measures to enhance the capital base of banks and promote a more professional approach to bank lending and provisioning for non-performing facilities. It adopted and enforced the risk-weighted system of capital adequacy ratio recommended by the Basle Committee, as well as introduced a set of prudential guidelines and mandatory uniform accounting standards for all licensed banks. With the adoption of universal banking in Nigeria in 2001, the need to consolidate and strengthen the regulatory and supervisory framework of the CBN has become more compelling than ever before.

The general focus of the FSSC is to ensure good corporate governance in financial institutions, which contributes to a sound banking and financial system. Corporate governance is about building credibility, ensuring transparency and accountability as well as maintaining an effective channel of information disclosure that would foster good corporate performance. It is in this regard that, at the instance of the CBN, the Bankers' Committee established the *Code of Ethics and professionalism for the banking and financial industry* to instil discipline and professionalism in the industry. The scope of the

committee's function includes spot checks on, and special examination of, banks in order to check negative trends in the industry and unprofessional conduct by the operators, ranging from insider abuse, falsification of books of accounts, foreign exchange malpractices and contravention of the prudential guidelines to non-disclosure of information and non-documentation of relevant transactions. The bank has imposed appropriate sanctions on errant institutions, including fines and the suspension of foreign exchange dealership licenses.

Only in 2001, the CBN established the other Financial Institutions Department to strengthen surveillance of non-banks, while its director is a member of the Committee. Furthermore, the committee designed and enforces the Contingency Framework for systemic Bank Distress, which provides early warning signals on the health of deposit money banks and stipulates the measures to be adopted in dealing with individual bank problems so as to avert systemic distress. In fact, two technically insolvent banks were liquidated between 2002 and 2003, on the recommendation of the committee.

The CBN has enhanced its internal structure as well as equipped staff in sensitive operational areas with the relevant tools for identifying and tracking illegal activities in order to check the wave of financial crime. For example, the bank established the international Financial Transaction Surveillance Office (IFTSO) in its Foreign Operations Department, with responsibility for combating advance fee fraud at the global level. Also, the Surveillance Unit of the Monitoring and Enforcement Group of the Bank Examination Department was assigned with the primary responsibility of ensuring that banks, *bureaux de change* and non-bank financial institutions complied with the provisions of the Money Laundering Act. The bank has enhanced its surveillance of the financial system to ensure strict observance of the recommendations of the Financial Action Task Force (FATF) by banks and other financial institutions in Nigeria. Banks are also required to appoint high-ranking officer as Chief Compliance Officers (CCOs) at their head offices and Compliance Officers (COs) in each of their branches to complement such efforts, while reported cases of advance fee fraud are properly investigated. It is noteworthy that, following its oversight activities, the bank has been able to track fake websites used by fraudsters and, with

the collaboration of the police, contacted Internet service providers hosting such website to close them (*Daily Champion* Friday August 1st 2003, p.33).

CONCLUSIONS AND RECOMMENDATIONS

It has become conspicuously evident that the financial institutions are in no way obviated of corrupt and fraudulent practices after all. Abundant facts in the study attest to this claim. The banking sector in particular has become a terrain for various appalling corrupt and fraudulent practices. In addition, the study noted that the internal mechanisms in the financial institutions are not sufficient to guarantee transparent and accountable service in the conduct of official business in the sector. Most banks and finance houses were set up *ab-initio* to defraud government and unsuspecting customers in the area of foreign exchange. In other words, there are abundant evidences to support the claim that so many financial institutions were set up not only to defraud government and unsuspecting customers but to use shady businesses like round-tripping and window-dressing of their financial statements as cover-ups.

These forms of corrupt practices are manifested in the area of foreign exchange transaction. Before the introduction of the Dutch system in the foreign exchange transaction, most of the new generation banks that were purposely established to defraud government through illegal utilisation of foreign exchange started collapsing because the foundation of their shady 'deal' has been destroyed. In the same vein, some unsuspecting customers have lost their life savings and working capital into several distressed banks as a result of 'window-dressing of their profit statements and their assets' base, which gave the customers false impression of healthy bank transactions.

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