

Conceptual Analysis of Economic and Financial Crimes in Penal Administration of Nigeria: An Appraisal

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Abstract: Economic and financial crimes became prevalent and officially recognized as serious threats to the development of Nigeria from the introduction of the structural adjustment and deregulation programs in the eighties. As a result of new emerging brands of economic and financial crimes in many systems in Nigeria, problems of precise and comprehensive definitions were created. In realization of the problems, the Government of Nigeria organized several fora and conferences for concepts and definitions of economic and financial crimes in the Nigerian context. These efforts led to the enactment of Economic and Financial Crimes (establishment ETC) Act, 2004 that defined economic and financial crimes to incorporate all facets of economic and financial crimes in Nigeria. The aim of this paper is to analyse and appraise some concepts of economic and financial crimes in the context of administration of criminal justice in Nigeria with the view of incorporating them into a definition. The research mainly adopted the doctrinal method of research that analytically surveyed statutory provisions, case laws, text books conference materials, thesis etc which served as both primary and secondary sources. It was found that though the statutory definition of economic and financial crimes in Nigeria was very wide, it was not exhaustive enough as it could accommodate more offences in that it ended with *etc.* It was recommended that the statutory definition be extended by inference to include offences such as e-mail internet related offences and offences involving postal matters.

Key words: analysis, , concept, economic crimes, financial institution, Money Laundering, penal administration

1 Introduction

Economic crime cannot be defined precisely and comprehensively because most of the emerging brands of economic crimes were unknown in many systems. The vocational legal and academic difference is also a problem to the definition of economic crimes.¹ Notwithstanding the difficulties in the comprehensive definition of economic crimes there are some clarifications. While some refer to economic crimes as fraud in its various manifestations,² others theoretically refer to it as act which violates or endangers social or super-personal economic order or economic system by breaking trust which is required in economic life and economic transactions³. This definition seems to be somewhat abstract and ambiguous and will certainly make investigation difficult. Economic crimes is merely seen as manifestation of criminal act done either solely or in an organized manner with or without associates or groups having interest to earn wealth through illegal means by carrying out illegal activities and violating the laws of the land and other regulatory statutory provisions governing the economic activities of the government and its administration.

The criminal justice administration system in Nigeria is a product of the country's colonial history which brought a different regime of criminal laws where by the Penal Code and Criminal Procedure Code applied in the Northern Nigeria while Criminal Code and Criminal Procedure

2 Objectives and Scope of the paper

The aim of this paper is to analyse and appraise some concepts of economic and financial crimes in the context of administration of criminal justice in Nigeria with the view of incorporating them into a definition. In fulfilling the objectives of the paper, the scope of study confined to statutory provisions, case laws, text books conference materials, thesis within Nigeria.

¹ *Lame I.Y., An Overview of Economic Crime Paper Presented at the First National Seminar on Economic Crime-Abuja Nigeria. August 27, 2001 P. 4*

² *Grabosky P., "The Prevention and Control of Economic Crime" in UNAFEI Annual Report for 1998 and Resource Material Series No. 55 (UNAFEI, Tokyo, 2000.*

³ *Tae-thoon L., "Economic Crime in Korea" in UNAFER, Op cit*

3 Analysis of concepts of economic and financial crimes

Economic crimes are those crimes that have damaging effect on the economic and political system of the country. The damage to the international image of the country is more worrisome than the direct financial loss. These economic crimes include corruption, embezzlement of public fund, fake currency running, smuggling, drug trafficking etc. On the other hand, financial crimes are those committed not only with the intention of getting financial benefit and they are targeted directly on funds and financial institutions. These financial crimes include advance fee fraud, currency trafficking and counterfeiting etc.

The Black's law dictionary edited by Garner⁴ identified economic crimes with non-physical crimes committed to obtain a financial gain or a professional advantage. Accordingly, economic crimes are classified in to crimes committed by businessmen as an adjunct to their regular business activities which create opportunity to commit crimes such as embezzlement, violating regulation directed at their areas of business activities. The second class is organized crime whereby illegal goods and services or goods are provided illegally. The Dictionary⁵ further explained that the word organized crime was used because the necessity of economic coordination outside the law led to the formation of criminal groups with elaboration on custom and practice

In a paper on "Adequacy of Legislation, Enforcement and Sanction in the fight against Economic Crimes in Nigeria"⁶ economic crime was referred to as a positive or negative act in violation of economic laws of a state or nation. However, In common usage, economic crime denotes such offences that are more of serious nature to economic progress of a nation. Accordingly, the violation of any duty which an individual owes to the nation and for the breach of which the law had provided that the offender shall make satisfaction to the nation is regarded as economic crimes.

It is clear from the definition that for an offence to be regarded as economic crime, the violation of the law prohibiting, forbidding or commanding it must be annexed upon conviction either or in combination of some punishment. In essence economic crime is a criminal act, which either does violence or detrimental to the economic well-being, interest or advancement of the nation and are punishable by the laws of the nation.

In another paper on "The Need for Political will; The Action of Government as a Necessary Reflection of its Intention to Combat Economic Crimes," it was observed that the best way to comprehend the meaning of economic crime is to imagine the difficulty of the consequence of understanding, defining and categorizing economic crime. However economic crimes may be regarded as any unlawful act by single individual or group that causes distortion in the normal functioning of any segment of the economic sector of a country for the benefits of the perpetrators of such crimes.⁷

Financial crime has become endemic components of Nigeria's banking and financial system. Offences within the financial institutions are by and large, connected with money or profit but whatever may be the motivations and or style, financial crime is an action or conduct by which the perpetrator aspires to gain some dishonest pecuniary advantages over another.⁸

At the 2nd National Seminar on Economic Crimes⁹ financial crimes was identified with any commercial or government activity relating to or involving money or managing money, debt, credit and investment. It was then defined as conduct or malpractice or criminal act which is detrimental to the interest or development or well being of the financial sector in the economy and which are prohibited and punishable by the law of the nation.

The conclusion to be drawn from the above is that economic and financial crimes are kindred offences with an extremely thin line separating them. All economic crimes are financial crimes but not all financial crimes are economic crimes.

⁴ Garner B.A. (1992) *Black's Law Dictionary 8th Edition*, West Publishing Co. USA P. 399

⁵ *Ibid*

⁶ Onwugbutor T, "Adequacy of Legislation, Enforcement and Sanction in the fight against Economic Crimes" Paper Presented at the National Seminar on Economic Crimes, Abuja-Nigeria 2001.

⁷ Isiaka, A.A. "An analysis of the legal and institutional framework for combating corruption, economic and financial crimes : An Appraisal" Approved Ph. D. Research work Usmanu Danfodiyo University, Sokoto-Nigeria (2016) p.

⁸ *Ibid*

⁹ *Proceedings of the 2nd National Seminar on Economic Crimes, Published by Planning Committee on National Seminar on Economic Crimes, Abuja-Nigeria, 2004 p .149*

4 Manifestation of economic and financial in Nigeria

4.1 Economic Crimes

Section 46 of the Economic and Financial Crimes (Establishment etc) Act¹⁰ provides that “Economic and Financial Crimes” means:

The non-violent criminal and illicit activity committed with the objectives of earning wealth, illegally either by individual or a group or organized manner thereby violating existing legislation governing the economic activities of government and its administrators and include any form of fraud, narcotic drug trafficking, money laundering, embezzled, bribery, cooling and any form of corrupt malpractices, illegal deal, smuggling, women trafficking and child labor, illegal oil bunkering and illegal mining tax evasion, foreign exchange malpractices, including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods etc.

It seems that the striking feature of the above provision is that it incorporates most of the earlier different concepts on economic and financial crimes Furthermore the Act does not differentiate economic crimes from financial crimes. Though the Act assigns the same meaning to the two terms there are some noticeable differences between economic crimes and financial crimes.

Firstly, financial crimes are normally committed by or against financial institution like banks, insurance companies, securities firms, brokers and pension funds that have financial intermediation as main activities.¹¹ Secondly, financial crimes cover a multitude of offences ranging from fraud to money laundering and to financial malpractices¹² by individuals and financial institution. It also includes obtaining by false pretence, otherwise popularly known as ‘Advance Fee Fraud (419)’, Money Laundering etc.¹³

Thirdly, financial crimes are committed with the intention of getting financial benefit targeted directly at funds and financial instruments with the objective of making money directly and includes advance fee fraud, currency trafficking and currency counterfeiting, bribery, unauthorized credit, telex/transfer fraud, foreign exchange fraud, unauthorized withdrawals or diversion of funds from customers’ account cheque kitting and suppression of cheques.¹⁴ Financial crimes could be in the form of offer or acceptance of any benefit for doing or not doing certain things or carry out any act that is prohibited by law or morality.

It could be argued that economic crimes would suffice regarding offences relating to dishonesty and deliberate deception to gain advantage. This position was given judicial approval by a superior court in Nigerian. Thus, in the case of *Federal Republic of Nigeria v Ikpem*¹⁵ the accused was charged for offences of stealing, forgery and uttering under Criminal Code of Lagos State of Nigeria. The court held, “These offences in my view relate to dishonest, deliberate deception to gain advantage and would come under the purview of economic crimes under the Criminal Code “

It would be deduced from the decision in the above case the any offence having as its *mens rea*, *dishonest intention and deliberate deception would tantamount economic and financial crimes*

4.2 Financial Institution

Prominence is accorded financial institution regarding manifestation of economic and financial crimes because most of the offences on economic and financial crimes are perpetrated through financial institutions. Thus, there arise the necessity to know the meaning of financial institution in relation to economic and financial crimes in Nigeria

Finances Institution to mean:

Banks, body, association or group of persons whether Corporate or incorporate which carries on the business of investments and securities, a discount house, insurance institutions, debt

¹⁰ *Economic and Financial crimes [establishment etc] Act, 2004 Op cit*

¹¹ *Ribadu, N. “ Obstacles to Effective Prosecution of Corrupt Practices and Financial Crimes cases in Nigeria”: paper presented at the 1st Stakeholder Summit on Corrupt Practices and Financial Crimes in Nigeria- Kaduna- Nigeria. November 23rd – 25th 2004. Ibid*

¹² *Financial Malpractices includes offences committed by financial activities like round tripping, grant of unsecured loans or overdraft facilities, reckless activities which cause collapse of banks etc.*

¹³ *Agabi, G.N., “Nigeria’s Restitution: Kanu’s thoughts on Nigeria’s Future” in The Comment August 3, 2001 pp. 10-11.*

¹⁴ *Soludo C.C. (2005) Op. cit pp 2-3*

¹⁵ *(2005) 2 QCCR 155 @190*

factorization and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing equipment leasing, debt administration fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank or other appropriate regulatory authorities may, from time to time, designate.¹⁶

The Corrupt Practices and Other Related Offences Act provides that Financial Crimes mean, "anybody or institution which carries on any banking or financial transaction whether lawfully or unlawfully as defined in the Bank and Other Financial Institution Act"¹⁷
Financial Institution is defined in the Money Laundering Act to include

Any individual, body, association or group of persons Whether Corporate or unincorporated which carries on the business of investment and securities, a discount house finance company, money brokerage whose principal object includes factoring project financing equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management insurance institutions, debt factorization and conversion firms, dealer, clearing and settlement companies, legal practitioners, hotels, casinos, bureau de change, supermarkets and such other businesses as the Central Bank or appropriate regulatory authorities may, from time to time, designate.¹⁸

The meaning of Financial Institution under Economic and Financial Crimes Act is similar to the provision under the Money Laundering Act but the provision of the Money Laundering Act seems to incorporate more activities and transactions.

Financial Institution includes a business, organization or other entity that manages money, credit or capital such as a bank, credit union, savings and loan association, securities brokers or dealers, pawn broker or investment company.¹⁹ Financial Institution is also defined to mean "Business organization that lends and borrow money and it includes bank"²⁰

4.3 Money Laundering

Money laundering is a derivative crime which is the process or attempt to conceal the origin and ownership of wealth. It is often stated that money laundering is a new phenomenon in Nigeria but concealing wealth is as old as the society though the modern methods used to conceal illegal wealth is probably new²¹. The Nigerian Money Laundering Act²² did not define Money Laundering but provide an offence with similar wordings like the definition of money laundering under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substance of 1988²³. Section 14(1)²⁴ provides:

Any person who converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substance or any other crimes or illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act to evade the illegal consequences of his actions

¹⁶ *S. 46, Economic and Financial Crimes Commission (Establishment ETC) Act Op.cit*

¹⁷ *S. 2 Corrupt Practices and Other Related Offences Act, 2004. Op.cit*

¹⁸ *Section 25 money Laundering Act, Cap. M.18 Laws of the Federal Republic of Nigeria. 2004*

¹⁹ *Garner B.A. (1992) Black's Law Dictionary 8th Edition, West Publishing Co. USA P. 663*

²⁰ *Longman Dictionary of Cotemporary English [new edition] Pearson Education Limited. Edinburgh, England. 2003 p .695*

²¹ *Shehu A.Y. Money Laundering in Nigeria in: Economic and Financial Crimes in Nigeria: Policy Issues and Option op cit. p. 215*

²² *Money Laundering (Prohibition) Act. Cap M. 18 Laws of the Federation of Nigeria, 2004*

²³ *Op. cit*

²⁴ *Op. cit*

The convention defined the offence strictly predicted upon the production, manufacture, extraction, preparation, offering and distribution of narcotic drugs and psychotropic substance²⁵ but it appears it is restricted to offences related to illicit drugs trafficking only. Hence, in 2000 the United Nations Convention against Transnational Organized Crime (2000) strengthened the definition by providing that money laundering is:

The conversion or transfer of property, knowing that such property is a proceed of crime, for the purpose of concealing or disguising the illicit origin of the property or helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action...The concealment or disguise of the true nature, source, location, disposition, movement or ownership of the rights with respect to property, knowing that such property is the proceed of crime²⁶

Money laundering has been assigned meanings by different scholars and international organization that are involved in action to combat like phenomenon. It is however easier to describe money laundering than defining it. The precise meaning depends on the context of the proceeding activity that generated the money in question as well as the jurisdiction from which it originated or is destined to²⁷.

Longman Dictionary of Contemporary English described Money Laundering as putting money that has been obtained illegally into legal business or bank accounts in different countries so that it is difficult for people to discover where it came from.²⁸ The Black's Law Dictionary describe Money Laundering as the act of transferring illegally obtained money through legitimate people or account so that its original source cannot be traced²⁹

Money laundering is described by Osinbajo and Oyinlola³⁰ as essentially the processing of funds derived from illegal or legitimate sources through legal financial character with a view to legitimizing and concealing or disguising the source of such funds. Money laundering is also described by Sanusi as the process of disguising as legitimate money, proceeds of criminal activities, by concealing their true origin and ownership and introducing them into the stream of legitimate commerce and finance, so that the funds can be used by criminals for further activities³¹.

The process of bringing illicit proceeds into official or legal money circulation so as to conceal the origin of the money and the processing of funds derived from illegitimate sources through legal financial channel with a view to legitimating and concealing or disguising the source of such funds is money laundering³². The process by which money sourced from illicit activities are brought into formal economy and used for legitimate purposes or transferred monetary proceeds from those illegal activities into funds with an apparently legal source is money laundering.³³ Money laundering is the various processes or methods by which profits from criminal activities are disguised as legitimate funds, by concealing their time, origin and ownership, to give the picture that they emanate from legitimate source(s) and thereby permit the criminals further use of the money³⁴. The act of transferring illegally obtained money through legitimate people or account so that its original source cannot be traced is money laundering.³⁵

²⁵ **Article 3 (a) (i-v)** United Nations Convention against Transnational Organized Crime (2000)

²⁶ **Article 6, Section 1 (a) (i-ii)** United Nations Convention Against Transnational Organized Crime (2000)

²⁷ **Soludo C.C. Banking and Other Financial Services Sector Reforms and The Crusade Against Money Laundering and Financial crimes in Nigeria: What Roles For Chief Executive Officers and Top Management paper presented at the One-Interactive Dialogue Forum on Current Issues in Banking and Other Financial Services operations, Money Laundering and Financial Crimes in Nigeria organized by the Senate of The Federal Republic of Nigeria. Abuja- Nigeria. August 30, 2005**

²⁸ **Longman Dictionary of Contemporary English. Pearson education Limited, Edinburgh- England{3rd Edition} p. 1239**

²⁹ **Garner B.A. (1992) Black's Law Dictionary 8th Edition, West Publishing Co. Texas, USA P. 1026**

³⁰ **Perspectives on Corruption and other Economic Crimes in Nigeria (eds) Osinbajo and Oyinkasola, Federal Ministry of Justice, Law Review Series (1991) Lagos-Nigeria p. 58.**

³¹ **Sanusi J.O. "Strategies For Eliminating Corporate Fraud in the Nigerian Economy": Paper presented on Corruption, Economic and Financial Crimes organized by Africa Diaspora Initiatives at Hamdala Hotel, Kaduna. December 2, 2003 p. 4**

³² **Olukoyinsola, A and Ososami, S. "Nigeria on the Tract of a Spectra-Destabilization of Developing and Transitional Economic" in Journal of Money Laundering Control (IALS) London 1998 p. 345**

³³ **Lame I.Y. An Overview of Economic Crime Paper Presented at the First National Seminar on Economic Crime-Abuja Nigeria. August 27, 2001 pp. 15-16**

³⁴ **Soludo C.C. Banking and Other Financial Services Sector Reforms and The Crusade Against Money Laundering and Financial crimes in Nigeria: What Roles For Chief Executive Officers and Top Management**

It is the view of this paper that all the above definitions have lots in common except for minor use of words. Thus, the different definitions and description are unanimous as to the meaning of money laundering.

4.4 Advance Fee Fraud

The offence is regulated by the Advanced Fee Fraud and other Related Offences Act³⁶ which has not specifically defined advance fee fraud but provide for the circumstances amounting to advance fee fraud Section 1 of the Act³⁷ provides that notwithstanding, anything contained in any other enactment or law, any person who by false pretence, and with intent to defraud.

- a. obtains, from any person in Nigeria or in any other country for himself or any other person; or
- b. induces any other person in Nigeria or in any other country to deliver to any person, any property whether or not the property obtained or its delivered is induced through the medium of a contract induced by false pretence is guilty of an offence

False Pretence and intent to defraud seems to be element of Advance Fee Fraud. The Act has defined false pretence to mean

A representation, whether deliberate or otherwise made by words, in writing or by conduct of a matter of fact or of fact or law, either past or present which representation is false in fact or law, and which the person making it knows to be false or does not believe it to be true.³⁸

The Act has not specifically defined Advance Fee Fraud but some literatures attempt to assign meanings to the phrase. One of the literatures described Advance Fee Fraud as a phrase used to describe a variety of offences generally involving some fraudulent activities relating to the financing of all alleged large scale projects, investments, or currency payment of monies in advance of any agreed course of action by intending financiers or investors. It further referred to Advance Fee Fraud as a fraudulent process to entice a victim with a bogus 'business' proposal with a promise to transfer large sums of money, usually in foreign exchange or currencies, perpetrated to be part of the proceeds of certain contracts, to the addressee's bank account to be shared in some proportion between the parties.³⁹ The position of this author had been a precedent for the meaning assigned to advanced fee fraud in Nigeria.

In Advance Fee Fraud the fraudsters sometimes invite the victim to Nigeria, accord them a red-carpet reception and the fraudsters pose as high-ranking government officials in the presidency, Central Bank of Nigeria, Nigerian National Petroleum Corporation, or any other sensitive government agency. Usually, the fraudsters invent bogus government committees purported to have cleared the payments and also engineer fakes publications in the newspaper evidencing purported approvals to transfer non-existing funds. To consummate the transaction, the victim would be required to pay "advance fee" for such purposes as processing, licensing, registration etc. The receipt of these advance fees is the real motive of the scam.

Advance Fee Fraud is perpetuated through a deliberate distortion and misrepresentation of facts, with the aim of deriving some financial benefits from unsuspecting and many at times greedy and gullible victims⁴⁰

5 Conclusions

The combined views on economic and financial crimes is incorporated in the definition under Economic and Financial Crimes Commission (establishment etc) Act, 2004. In short, economic and financial

paper presented at the One-Interactive Dialogue Forum on Current Issues in Banking and Other Financial Services operations, Money Laundering and Financial Crimes in Nigeria organized by the Senate of The Federal Republic of Nigeria. Abuja- Nigeria. August 30, 2005 p. 6

³⁵ Garnser B.A. *Op. cit* p. 1027

³⁶ *Advance Fee Fraud and other Fraud Related Offences Act, cap. A 6 laws of the Federal republic of Nigeria, 2004 {as amended 2006}*

³⁷ *Ibid*

³⁸ *S. 26 Ibid and similar to S. 2 of corrupt practices and other related offences Act, Cap C. 31 Laws of the Federation of Nigeria, 2004*

³⁹ *Shehu, A.Y. Economics and Financial Crimes in Nigeria .policy issues and options: National open University of Nigeria Lagos ,Nigeria [.2006] p. 122*

⁴⁰ *Lame I.Y. An Overview of Economic Crime Paper Presented at the First National Seminar on Economic Crime-Abuja Nigeria. August 27, 2001 pp. 15-16*

involves non- violence crimes and illicit activities committed with the objective of earning wealth illegally. The crimes could be committed by individuals or groups but must involve a breach of laws on economic or financial crimes.

It is almost generally agreed that financial crimes is an offence committed with the intention of getting financial benefits and it is targeted directly at financial and commercial institutions with the main objective to make money directly. Financial crimes include advance fee fraud, bribery etc. It was found that economic and financial crimes are mainly committed through financial institutions which include person or body or organization dealing in monetary or financial transactions It was also found that it is easier to describe money laundering than to define it because precise definition depends on the context of the proceeding activity that generated the money in question as well as the jurisdiction from which it originated or is destined.

It was also found that advance fee fraud is the crime perpetrated through deliberate distortion and misrepresentation of facts with the aim of deriving some financial benefits from unsuspecting victims.

Conclusively, it is the view of the researcher that the various views above reveal same meanings of the words clarified and also adopts their different views as summarized.

It was found that though the statutory definition of economic and financial crimes in Nigeria was very wide, it was not exhaustive enough as it could accommodate more offences in that it ended with *etc.* It was recommended that the statutory definition be extended by inference to include offences such as e-mail internet related offences and offences relating to Postal matters.

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