

## The Role of Whistle Blowing Policy as an Anti-Corruption Tool in Nigeria

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### Abstract

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The menace of corruption has bedeviled Nigeria over the years. Several statutory and policy attempts have been devised to arrest this ill, with hardly a positive result. The present administration tackles corruption in Nigeria through the whistle blowing policy. Although the policy was received with mixed feelings, it recorded tremendous success at the initial stage. However, the story subsequently changed. The decline may be attributed to the number of problems the policy created more than it sought to solve. One of the major challenges associated with this policy is lack of legislation facilitating it. Similarly, the policy is more interested in recovering funds than in punishing the actors behind the act thus vitiating the punitive objective of the criminal justice system which serves as deterrence. The whistle blower seems inadequately protected. This paper seeks to examine the law and practice of whistle blowing policy in Nigeria vis-a-vis what is obtainable in some jurisdictions. It submits that the current legal practice is inadequate to strengthen the policy in Nigeria. This work finds that unless some global standards and practices are adopted, the fight against corruption in Nigeria through the whistle blowing policy may be counterproductive.

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**Keywords:** Whistle blowing, Corruption, Anti-corruption tool, Nigeria, Transparency.

### 1. Introduction

Corruption is a bane to good governance and an obstacle to the development of any nation.<sup>1</sup> Government aptly introduced the Whistle Blowing policy to compensate anybody with useful information for recovering proceeds of corruption. The policy was designed by the Federal Ministry of Finance and approved by the Federal Executive Council on 22 December 2016. Although recently launched in Nigeria, the act of exposing corruption was earlier encouraged in the case of *Fajemirokun v Commercial Bank Nig Ltd & Anor*<sup>2</sup> where the Supreme Court held among others that every citizen is duty-bound to report the commission of criminal offences. The Court of Appeal re-echoed this in *Dododo v The Economic and Financial Crimes Commission (EFCC) & Ors*<sup>3</sup> when it held that a duty is imposed on every citizen to report allegations of corruption to the anti-graft agencies.

The introduction of the whistle blowing policy by Buhari administration is a bold step in the right direction. The fight against corruption involving not only government agencies but individuals who are at 'the scene of the event' seems to yield fruitful results. However, from the global perspective, there are ruffled issues associated with the policy. The absence of statute prescribing protection to the whistle blower is a challenge. To this end, the National Assembly enacted the Whistle Blower Protection Bill 2017 (the 2017 Bill), which is yet to become law.<sup>4</sup>

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<sup>1</sup> T Lawal and O K Victor, 'Combating Corruption in Nigeria' [2012] (1)(4) *International Journal of Academic Research in Economic and Management Sciences* 1-7 at 1.

<sup>2</sup> [2009] 5 NWLR (Pt 1135) 588 SC.

<sup>3</sup> [2013] 1 NWLR (Pt 1336) 468 CA.

<sup>4</sup> The Bill which was sponsored by Hon Kayode Oladele is available at <<https://www.nassnig.org/document/download/8725>> accessed 24 July 2018.

Another problem facing the policy is whether the proposed reward payable to a whistle blower is automatic once the fund is recovered. This question arose in the Ikoyi apartment fund in Lagos State. Although the act of Ikoyi whistle blowing was done in June 2016, reward was paid in December 2017. Related to the above issues is the obscurity of the policy itself. It is not clear whether the policy is simply a political tool against party opponents or is an anti-corruption tool in Nigeria.

This paper attempts to evaluate the scope, structure as well as the strengths and weaknesses of the policy and to suggest ways it can be improved upon in line with international practices. Specifically, it evaluates among others whether the policy violates the employee's duty of loyalty to his employer, the extent to which the policy has helped in checking corruption as well as the nature of protection available to a whistle blower. In order to achieve this, the paper is divided into five parts. Part one deals with the introduction. Part two considers the general concept of whistle blowing, the origin and the types of the policy as well as related concepts. Part three treats the application of whistle blowing policy in Nigeria with the aim of determining the extent the policy has gone in checking corruption in Nigeria. The effects of the policy as well as the challenges associated with it are examined in part four, while part five concludes the paper.

## 2. The Concept and Origin of Whistle Blowing

The term 'whistle blowing' is thought to have its root in two different but related activities. First, the term follows from the practice of the police who blow whistles when attempting to apprehend a suspected criminal.<sup>5</sup> Secondly, it is thought to follow from the practice of referees during sporting events that blow their whistle to stop an action.<sup>6</sup> It can be deduced from the above that whistle blowing involves the disclosure of illegal, immoral or illegitimate practices with the aim that wrongdoing will be minimized if not totally tackled. There are basically two types of whistle blowing: internal and external whistle blowing. Internal whistle blowing encompasses the disclosure of wrongdoing to a supervisor within the organisation.<sup>7</sup> On the other hand, external whistle blowing is reporting unethical activities to outside parties believed to have the power to correct it.<sup>8</sup> It therefore presupposes that the motivation towards internal whistle blowing is dependent upon the existence of effective internal channels of complaint in the organisations. Nevertheless, internal reporting should be first resorted to before going outside the walls of an organisation. Internal whistle blowing, if successfully carried out, is capable of concealing the ugly state of the organisation to the society. Whistle blowing may also be public or private. It is public when the disclosure relates to a public company and private when the disclosure has to do with private company or an individual. In all these, the jurisprudence behind the disclosure is the protection of public interest.

According to the 2017 Bill section 3, an act of disclosure may be made where it can be shown that in relation to the performance of a public function, a public authority, a public officer, or a public sector contractor is, has been, or proposes to be involved in an improper conduct. It could also be that there is a miscarriage of justice, an act or omission that constitutes an offence under a written law or an act or omission that involves the risk of injury to the public health, prejudices public safety, or harm to the environment has been committed. A similar provision is found in Ghana,<sup>9</sup> UK,<sup>10</sup> and Zambia.<sup>11</sup> The import of these provisions is that whistle blowing must proceed from a genuine foundation which basically contemplates public interest.

### 2.1 Who is a Whistle Blower?

A whistle blower is an employee who reports their employer's wrongdoing to a government or law enforcement agency.<sup>12</sup> This definition is restrictive in that only employees may qualify as whistle blowers. The modern form of whistle blowing extends beyond the walls of an organisation to the general political settings.

<sup>5</sup> S U Ogbu, 'Whistle Blowing Policy as a Mechanism for Energizing the War against Corruption in Nigeria' [2017] (3)(4) *International Journal of International Relations, Media and Mass Communication Studies* 26-42 at 27.

<sup>6</sup> *Ibid.*

<sup>7</sup> A. Puni, C. B. Agyemang and E. S. Asamoah, "Religiosity, Job Status and Whistle-blowing: Evidence from Micro-Finance Companies", *International Journal of Business and Social Research*, Vol. 06, Issue 02 (2016) pp. 38-47 at 40.

<sup>8</sup> *Ibid.*

<sup>9</sup> The Whistle Blower Act 2006 of Ghana s 1.

<sup>10</sup> The Public Interest Disclosure Act 1998 of UK s 1.

<sup>11</sup> The Public Interest Disclosure (Protection of Whistle Blowers) Act No 4 of 2010 Act No 4 of 2010 of Zambia s 1.

<sup>12</sup> B A Garner, *Black's Law Dictionary* (9<sup>th</sup> edn, USA: West Publishing Co 2009), p.1734.

In Nigeria for instance, one of the major aims of the policy is to tackle official corruption. In this regards the employee/employer dichotomy may not exist before a whistle may be blown. A whistle blower has also been defined as a person who tells the public or someone in authority about alleged dishonest or illegal activities occurring in a government department, a public or private organisation or a company.<sup>13</sup> This definition is preferable because it dispenses with the employee/employer factor; hence it neutralizes a person who qualifies as a whistle blower.

In order for a disclosure to qualify as an act of whistle blowing, there must be a genuine concern about a crime, miscarriage of justice, danger to health and safety of the environment. This implies that malicious, false or misleading disclosure is not within the purview of whistle blowing. For instance, EFCC arraigned Mr Buhari Fanaami and Ba-kura Abdullahi before a Federal High Court in Maiduguri for allegedly giving false information to the agency under the whistle blowing policy.<sup>14</sup> Similarly Mr Ahmed Echoda was in May 2017 arraigned before an Abuja Upper Area Court sitting at the Gudu District of Abuja for allegedly giving false information that led the Nigeria Police Force to raid the Abuja home of the Deputy Senate President, Ike Ekweremadu.<sup>15</sup>

In order to arrest the issue of malicious disclosure, the 2017 Bill section 38 makes it an offence punishable with a fine of five hundred thousand naira or three years imprisonment or both for malicious or reckless disclosure. A similar provision is found in Zambia,<sup>16</sup> India<sup>17</sup> and Ghana.<sup>18</sup> The Indian Act section 4(3) mandates a whistle blower to make a personal declaration that the information disclosed is substantially true. Where the disclosure turns out to be the contrary, the whistle blower will be liable for malicious disclosure. There is no equivalent provision in the 2017 Bill, it is suggested that Nigeria includes this in the Bill so that malicious disclosure will be taken care of.

The 2017 Bill section 4(3) provides among others that an act of disclosure can be made to the police where it relates to an offence or to the EFCC or the Auditor General where it relates to unauthorized or irregular use or mismanagement of public resources. A disclosure is also made to the National Judicial Council where it relates to a judicial officer. Where it relates to a legislator, it is made to the presiding officer of a legislative house where such a legislator belongs. There is no provision in the 2017 Bill empowering one to blow a whistle relating to a religious leader and to whom such disclosure may be made. It is presumed that the 2017 Bill has taken cognizance of the sacrosanct nature or religious heads notwithstanding the rate of corruption prevalent among some of them nowadays.

## 2.2 The Origin of Whistle Blowing

The root of whistle blowing may be traced to the Bible where there is an admonishment to take no part in the worthless deeds of evil and darkness, but instead expose them.<sup>19</sup> Although the Holy Quran never explicitly described whistle blowing, whistle blowing is perfectly ingrained in Islam's "*amr bi-l-ma'ruf wa-nahy 'an al-munkar*" (enjoining good and forbidding wrong) principle.<sup>20</sup> The Quran provides that let there be from you a nation who invite to goodness and enjoin right conduct and forbid indecency.<sup>21</sup> According to Ogbu, the use of whistle blowing is attributed to Ralph Nader, a renowned American scholar and political activist who coined the phrase in the early 1970s to avoid the use of other negative connotations such as 'informers' and 'snitches'.<sup>22</sup> The concept of whistle blowing on behalf of one's government dates back to the 7th century England, precisely to the declaration of King Wihtred of Kent in 695.<sup>23</sup>

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<sup>13</sup> Ogbu, (n5) 27.

<sup>14</sup> E Okogba, 'EFCC docks Whistle Blowers over False Information', the *Vanguard* 17 May 2017 <<https://www.vanguardngr.com/2017/05/efcc-docks-whistle-blowers-false-information>> accessed 24 July 2018.

<sup>15</sup> I Nnochiri, 'Ekweremadu: Police docks Whistle Blower for giving false Information, remanded in Prison', *Vanguard* 30 May 2017 <<https://www.vanguardngr.com/2017/05/ekweremadu-police-docks-whistle-blower-giving-false-information-remanded-prison>> accessed 13 March 2018.

<sup>16</sup> The Zambian Act s 13(3).

<sup>17</sup> The Indian Act s 15.

<sup>18</sup> The Ghanaian Act s 18.

<sup>19</sup> Ephesians 5:11, New Living Translation (NLT).

<sup>20</sup> K A Samad and H Khalid, 'Whistle Blowing as an Aspect of Amar Ma' Aruf Nahi Munkar in Institutional Governance', A Paper presented on International Conference on Aqidah, Dakwah and Syariah (IRSYAD 2015) held on 12-13 October 2015, in Kuala Lumpur, Malaysia 1-11 at 1.

<sup>21</sup> Al-Baqarah: 104, in Samad and Khalid (n19) 1.

<sup>22</sup> Ogbu, (n6) 28.

<sup>23</sup> *Ibid.*

The declaration was to the effect that if a freeman works during the Sabbath, he shall forfeit his profits, and the man who informs against him shall have half the fine and the profits of the labour.<sup>24</sup> This declaration marks the first example of a law that allows private individuals to collect a bounty for reporting a violation of their country's legislation.

Since then, legal mechanisms have been provided by both national, international and regional governments to tackle corruption through whistle blowing policy. For instance, the United Nations Convention against Corruption (UNCAC) Article 33 encourages signatory countries to take domestic measures to protect whistle blowers who report in good faith and on reasonable grounds to competent authorities.<sup>25</sup> A similar provision is found in the European Council's Criminal Law Convention on Corruption<sup>26</sup> Article 22 as well as the African Union Convention on Preventing and Combating Corruption Article 5(5).<sup>27</sup> These instruments lay foundation for whistle blowing. Hence, countries like Ghana, Zambia, India and UK among others have advanced laws protecting whistle blowers. Conversely, Nigeria recently joined other countries in order to sanitize corruption through the policy with no formal statute yet.

### 2.3 Conceptual Issues Relating to Whistle Blowing

Whistle blowing is intertwined with some concepts such as morality, freedom of expression and duty of loyalty.

#### 2.3.1 Whistle Blowing and Morality

Whistle blowing is sometimes perceived as unacceptable culture in the society, due to its effects on the reputation of an organisation as well as the risks involved in it. In spite of this negative perception, it has been seen by some as a moral based act. Ogbu described it as a moral obligation of all committed members of an organisation, community or state to expose violations or acts of corruption that are likely to undermine progress or the pursuit of common good.<sup>28</sup> Whistle blowing is seen as responding to an act of questionable morality, perceived unethical actions, and/or wrongdoing. Thus, a whistle blower, amidst the possible risks associated with speaking against illegal or immoral conducts, considers it a moral duty to expose corruption for the interest of the public. Such a person may be considered as an agent of change. This is where one may distinguish between disclosures made with public interest in mind from disclosures made with the aim of collecting monetary incentives. The interest of the public guides such a disclosure. Having a moral based constitutional foundation is one of the issues that will contribute to the effectiveness of whistle blowing.<sup>29</sup> The political leaderships of countries need to take responsibility and revisit the moral-constitutional foundations of the state by ensuring that the state and its citizens share a common interest and that the state belongs to the citizens.<sup>30</sup>

As instructive as this may sound, it may not be feasible in Nigeria because morality is relative and a multi-ethnic country will have difficulty harmonising what constitutes morality. For instance, among the Yoruba of South-Western Nigeria, it is morally wrong to greet an elder while standing hence they prostrate or bow. The rest of Nigerians do not observe this as a moral obligation. It is possible that the act of whistle blowing may be perceived by some Nigerians as an immoral act. Such persons may be influenced basically by the fact that whistle blowing damages an organization's reputation or vilifies a person if such a disclosure relates to an individual. To such persons, keeping silent is a moral act as opposed to blowing the whistle. Again, the issue of morality may have little or no influence on Nigerians with regards to shaping the citizens' orientation towards reporting culture. This is buttressed on the fact that the policy being novel in Nigeria with no law to protect whistle blowers, the citizens do not yet see the moral basis of the policy as a motivating factor to blow the whistle. Whether there is a nexus between whistle blowing and morality depends on the circumstances and the nature of the environment in question.

<sup>24</sup> Ibid.

<sup>25</sup> The United Nations Convention against Corruption,

<[https://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](https://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf)> accessed 6 March 2018.

<sup>26</sup> European Criminal Law Convention on Corruption <<https://rm.coe.int/168007f3f5>> accessed 6 March 2018.

<sup>27</sup> African Union Convention on Preventing and Combating Corruption <[https://au.int/sites/default/files/treaties/7786-treaty\\_-\\_african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_e.pdf](https://au.int/sites/default/files/treaties/7786-treaty_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf)> accessed 6 March 2018.

<sup>28</sup> Ogbu, (n6) 28.

<sup>29</sup> D Schultz and K Harutyunyan, 'Combating Corruption: The Development of Whistle Blowing Laws in United States, Europe and Armenia' [2015] (1) *Journal of International Comparative Jurisprudence* 87-97 at 96.

<sup>30</sup> Ibid.

### 2.3.2 Whistle Blowing and Freedom of Expression

Apart from the relationship that exists between whistle blowing and morality, the culture of reporting illegal acts may be justified on the basis of freedom of expression. The freedom of expression is one of the fundamental human rights enshrined in the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).<sup>31</sup> Thus, it is the constitutional right of every person to express themselves including freedom to hold opinions and to receive and impart ideas and information without interference. It follows that a whistle blower is entitled to express themselves by exposing acts of corruption while the competent authority is entitled to receive same and act upon it with the aim of checking corruption. The disclosure of information as a fundamental right is also justified under Freedom of Information Act, 2011 which provides that nothing in the Nigerian Criminal Code or Official Secret Act shall prejudicially affect any public officer, who without authorization, discloses to any person, information which they reasonably believe to show mismanagement, gross waste of funds, fraud, and abuse of authority; or a substantial and specific danger to public health or safety.<sup>32</sup> The right to freedom of expression and information is also recognised in Ghana,<sup>33</sup> India,<sup>34</sup> and Zambia.<sup>35</sup>

### 2.3.3 Whistle Blowing and the Duty of Trust and Confidence

Again, the whistle blowing policy has compatibility issue with the implied duty of trust and confidence that exists between an employee and employer by virtue of the contract of employment. Generally, the obligations of an employee are derived from the express terms in the contract of employment; implied terms, including the duty of good faith and fidelity; and equity, which imposes fiduciary obligations.<sup>36</sup> The duty of good faith and fidelity is implied by the common law as opposed to the equitable doctrine of fiduciary. An employee's relationship with an employer is founded on a contract of employment hence the duty of confidence is implied in the contract.

In the course of carrying out their responsibilities, an employee is expected to act in good faith towards their employer/organisation. Any act that may be detrimental to the employer is to be avoided. The essence of this duty is to enhance a healthy relationship between the employee and the employer. In this way, the employee has a legal duty to be loyal. The organisation expects the employee to perform this duty in four ways. First, an employee must obey reasonable instructions of the employer. Second, they are expected to conform to the values and norms of the organisation. Third, they are supposed to protect and promote the reputation of the organisation, and finally, the employees have to maintain confidentiality.<sup>37</sup> It can be drawn from above that an employee is under an implied obligation to carry out only reasonable instructions of his employer. In other words, an employee may object to perform instructions from the employer if such instructions are unreasonable. However, it is not clear whether the duty to object to unreasonable instructions extends to disclosure of illegal dealings. That is, should an employee in observing these duties overlook wrongdoing (corruption) in the organisation? This question is paramount because most times a proposed or actual act(s) of an organisation may threaten public interest. In this dilemma is it proper for an employee to allow the interest of the employer/organisation to override that of the public. Except in some circumstances, employees are not under any obligation to question or investigate corruption. However, in order to protect the interest of the public, an employee should not keep silent when there are acts of corruption within an organisation as this does not violate his duty of loyalty. It is an exception to the duty of trust, loyalty and confidence that there is no confidence as to the disclosure of iniquity, especially where the disclosure is in public interest, and any purported exclusion of this exception by a contract of employment would be void.<sup>38</sup> Thus:

It is a daunting task to oppose a culture which embraces 'the unstated rule that dirty linen should not be washed in public'. It is a culture of 'blind and unquestioning secrecy'. The opposing interests of fidelity of the employee to the employer and the public interest in the campaign against corruption must be balanced.

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<sup>31</sup> S 39(1).

<sup>32</sup> Freedom of Information Act 2011 s 27(2).

<sup>33</sup> See Ghana's Constitution of 1992 with amendment through 1996, Art. 21(a) & (f).

<sup>34</sup> Constitution of India 1949, substituted by the Constitution (42<sup>nd</sup> Amendment) Act 1076. Art. 19(1).

<sup>35</sup> Constitution of Zambia 1996, Art. 20.

<sup>36</sup> D Lewis and I Carr, 'Combating Corruption through Employment Law and Whistleblower Protection' [2010] (39) *Industrial Law Journal* 1-30 at 12.

<sup>37</sup> T Uys, 'Rational Loyalty and Whistle Blowing: The South African Context' [2009] (56) (6) *Current Sociology* 904-921 at 907.

<sup>38</sup> *Gartside v Outram* [1857] 26 Ch 113.

The challenge is to ensure that the 'duty of fidelity does not become an empty concept, but that a conspiracy of silence is not encouraged.<sup>39</sup>

Notwithstanding the fact that whistle blowing creates a negative impression about an organisation, public interest demands that corruption be exposed. The duty of loyalty should not render an employee handicapped from speaking against corruption. Some jurisdictions make express provisions prohibiting any term of contract that discourages an employee from blowing the whistle. The Ghanaian Whistleblower Act 2006 section 19(1) provides that any provision in a contract of employment or other agreement between an employer and employee is void if it seeks to prevent the employee from making a protected disclosure or has the effect of discouraging an employee from making a disclosure. A similar provision is found in the Public Interest Disclosure (Protection of Whistleblower) Act 2010 of Zambia section 4 and the Public Interest Disclosure Act 1998 of UK section 43J. There is no equivalent provision in Nigeria either in the 2017 Bill or the Labour Act 2007 which regulates the relationship between employer and employee. It is suggested that such provision be effected in the 2017 Bill before it is passed into an Act.

### 3. Application of Whistle Blowing Policy in Nigeria

Before the formal adoption of whistle blowing policy by the present administration, the Central Bank of Nigeria (CBN) in 2012 issued a guideline for whistle blowing for banks and other financial institutions.<sup>40</sup> In spite of this, there are rare cases of whistle blowing in the banking industry. Adeyemo attributes this to corporate culture.<sup>41</sup> However, a notable case of whistle blowing in the banking industry is that of the former CBN governor Sanusi Lamido. Mr Lamido blew the whistle and alleged that the sum of US \$20b was missing from the Nigerian National Petroleum Corporation (NNPC). He was later suspended by President Goodluck Jonathan on grounds of fraud, financial recklessness and fiscal misconduct. Lamido's suspension attracted criticisms basically on the provisions of section 8(1) of the Central Bank of Nigeria Act 2007 which provides for the procedure of appointing a CBN governor, but fail to provide for the process of suspending him. However, the presidency justified the suspension on the grounds that it was not an outright dismissal but temporal suspension pending the investigation of the alleged claims. With this case in mind, it is obvious why whistle blowing policy was, and is still rare in the banking sector. If Sanusi's report could attract suspension, one wonders what would be the fate of a stakeholder or an employee of a bank that speak out against illegal practices in banks.

A bank can be a fertile place for financial crimes as well as whistle blowing. Perceiving the rate of money laundering and other forms of illegal acts in banks and other financial institutions, the Nigerian Money Laundering (Prohibition) Act, 2011 was promulgated to combat transactions in illegal proceeds. This piece of legislation was subsequently amended by Money Laundering (Prohibition) (Amendment) Act 2012. The Amendment Act 2012 section 9 mandates all financial institutions to develop programmes to combat the laundering of the proceeds of a crime or illegal acts. The Amendment Act 2012 section 3 empowers financial institutions to undertake due diligent measures when establishing business relationships, carrying out occasional transactions above the applicable designated threshold prescribed by relevant regulations, or where there is suspicion of money laundering or terrorist financing. Under the Amendment Act also, a transaction is deemed suspicious where it involves a frequency which is unjustifiable or unreasonable, is surrounded by conditions of unusual or unjustifiable complexity, appears to have no economic justification or lawful objective or in the opinion of the financial institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business transaction.<sup>42</sup> A financial institution upon discovery of suspicious transaction shall draw up a written report containing all relevant information on those matters, take appropriate action to prevent money laundering of the proceeds of crime or illegal act and send a copy of the report and action to EFCC.<sup>43</sup> This Act provides a foundation for whistle blowing in banks, but it is rarely observed.

<sup>39</sup> K Bouloy, 'The Public Interest Disclosure Act 1998: Nothing More than a "Cardboard Shield"' [2012] (1)(1) *Manchester Student Law Review* 1-18 at 3.

<sup>40</sup> Code of Corporate Governance for Banks and Discount House in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry, initially issued in 2012, but later revised in 2014  
<[https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20\(3\).pdf](https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20(3).pdf)> accessed 26 July 2018.

<sup>41</sup> F Adeyemo, 'Whistle Blowing: The Position of Nigerian Legislation in Banking' [2015] (41) *Journal of Law, Policy and Globalisation* 143-146 at 144.

<sup>42</sup> The Amendment Act 2012 s 4(1).

<sup>43</sup> The Amendment Act, 2012 s 4(2)(a)-(c).

Pursuant to formal activation of whistle blowing policy in Nigeria, few cases of corruption have been reported in the banking sector. Prominent among them is the recovery of US \$136, 676,600.51 from a fictitious account in a commercial bank.<sup>44</sup> The news of this fraudulent act got to the office of the Attorney-General of the Federation and when the government moved in, the bearer of the fake account could not explain the source of the cash. Another instance is that of Justice Rita Ofili-Ajumogobia who opened a corporate account with Diamond Bank PLC with a fake address.<sup>45</sup> A witness (a staff of the bank) told the Court that all other requirements for opening an account were satisfied except the address and the bank waived this because Justice Ajumogobia was their customer.<sup>46</sup> In spite of the CBN Guidelines on whistle blowing and the recent introduction of whistle blowing policy, the banking sector experience cases of breach of security protocols particularly by famous or highly respected customers. This act is as departure from standard practice.<sup>47</sup> One thing, it is said leads to another. When this breach of protocols is condoned by appropriate authorities, the possibility of accommodating illegal practices in banks may not be denied. The introduction of Bank Verification Number (BVN) has cautioned corrupt Nigerians about keeping money in the bank; they now hide money in their buildings.

### 3.1 Whistle Blowing in the Judiciary

Apart from the banking industry, the whistle has also been blown in the Nigerian judiciary. The officers of Department of State Security (DSS) in October 2016 invaded, searched the homes of some judicial officers and arrested them on allegations of corruption. What makes this action unprecedented is that it has broken the myth of the sacrosanct authority of the judge in Nigerian affairs.<sup>48</sup> On the other hand, the legality or otherwise of this act generated controversies among stakeholders.<sup>49</sup> Some of the judges caught in the web of corruption include Justices Nwali Sylvester Ngwuta and John Inyang Okoro of the Supreme Court. Others are Justices Mohammed Yunusa, Hyeladzira Nganjiwa and Ibrahim Auta of the Federal High Court. Some of the affected judicial officers were suspended by the National Judicial Council. Also, Nganjiwa, Ngwuta Justice Adeniyi Ademola of the Federal High Court and Justice Rita Ofili-Ajumogobia were prosecuted. The recent case of the then Chief Justice of Nigeria, Justice Walter Onnoghen is also worth mentioning.

In *Justice Hyeladzira Nganjiwa v Federal Republic of Nigeria*,<sup>50</sup> the appellant, was by a 14 count information charged for offences ranging from unlawful enrichment by a public officer to making false information contrary to the Criminal Law of Lagos State 2011 section 82(a) and the EFCC Act 2004 section 39(2)(a). The appellant raised a preliminary objection challenging the jurisdiction of the trial Court on the ground that conditions precedent to the filing of information had not been fulfilled. The trial Court dismissed the preliminary objection and ruled against the appellant who appealed. The issue on appeal was the propriety or otherwise of prosecuting a judicial officer by the EFCC without first exhausting the disciplinary procedure of the National Judicial Council (NJC) as provided in the CFRN 1999 as amended. The Court of Appeal, Lagos division considered the CFRN 1999 as amended sections 153(1), 158(1) and paragraph 21(b) of Part 1 of the Third Schedule which deal with the establishment, and the disciplinary powers of NJC over judicial officers and held that, as a serving judge, the appellant is under the management, control and disciplinary jurisdiction of the National Judicial Council and that whenever there is any allegation of misconduct by a judge, recourse to the NJC is a condition precedent as clearly set out by the Constitution.

<sup>44</sup> Y Alli, 'Exposed: \$151m, N8b in Fictitious Accounts', *The Nation* 13 February 2017 <<http://thenationonlineng.net/eposed-151m-n8b-fictitious-bank-accounts/>> accessed 19 March 2018.

<sup>45</sup> A Abdulah, 'How Ajumogobia opened Bank Account with Fake Address — Witness', *Vanguard* 10 January 2017 <<https://www.vanguardngr.com/2017/01/ajumogobia-opened-bank-account-fake-address-witness>> accessed 19 March 2018.

<sup>46</sup> Justice Ajumogobia and Mr Godwin Obla SAN were arraigned by EFCC on 28 November 2016 on 30-count charges bordering on perversion of the course of justice, graft, unlawful enrichment among others.

<sup>47</sup> Adeyemo, (n41) 145.

<sup>48</sup> O Nwakanma, 'The DSS Arrest of Judges', *Vanguard* October 16 2016 <<https://www.vanguard.com/2016/10/dss-arrest-judges>> accessed 25 March 2018.

<sup>49</sup> M E Etudaiye, 'A Critique of the Unanticipated Powers of the State Security Service in Nigeria and the Validity of their Source' [2017] (3)(1) *Kampala International University Journal of Social Sciences* 209-219.

<sup>50</sup> [2017] LPELR -43391 (CA).

Similarly, in *Federal Republic of Nigeria v Sylvester Ngunuta*,<sup>51</sup> the defendant was arraigned before Justice John Tsoho of the Federal High Court, Abuja on 13 count charges bordering on corruption and false declaration of assets.

The defendant filed a motion on notice challenging the jurisdiction of the court inter alia that by virtue of the CFRN 1999 as amended section 158(1) and paragraph 21(b) of Part 1 of Third schedule and the Court of Appeal's decision in *Nganjima v FRN*,<sup>52</sup> the action was incompetent, premature, is a gross violation of the Constitutional provisions and liable to be dismissed. On his part, the respondent posited that a judicial officer can be arrested and prosecuted directly without recourse to NJC for offences committed outside the scope of the performance of his official function and as such the action brought should be entertained. In his rulings the trial judge held that haven failed to fulfill the condition precedent for action against the applicant, the action was a nullity. The applicant was therefore discharged and acquitted.

Another judicial officer that was not spared by the anti-graft war is late Justice Innocent Azubike Umezulike, the former Chief Judge of Enugu State. Umezulike was suspended by the NJC over an allegation that he accepted ₦10,000,000.00 donation from a litigant. This disclosure was made by an Enugu based legal practitioner, Mr Peter N Eze. Umezulike was subsequently arraigned by EFCC before a Port Harcourt High Court for corruption and false declaration of assets.<sup>53</sup>

In the *Federal Republic of Nigeria v Justice Onnogben Nkanu Walter*<sup>54</sup>, the defendant, the Chief Justice of Nigeria was charged before the Code of Conduct Tribunal Abuja for false declaration of assets among others. His application to strike out and or dismiss the charge against him on grounds that he is a judicial officer, Justice of the Supreme Court as well as the Chief Justice of Nigeria was dismissed. He was subsequently tried and suspended as the Chief Justice of Nigeria.

The analysis of whistle blowing in the judiciary shows the political will of the Buhari administration to tackle corruption. In spite of the reactions by some people that the arrest, detention and prosecution of judges are unusual in a democratic state like Nigeria, others are of the view that though highly respected and regarded as an embodiment of justice, a judge sits in rank with other public officers in both the states and the federal government. A judge is not above the law.<sup>55</sup> However, using the DSS to arrest and investigate judges is not legally proper. The DSS is meant to detect and prevent crimes not to investigate and arrest persons alleged to have committed acts of corruption. By virtue of the CFRN 1999 as amended section 158(1), in exercising the power of appointment or discipline, the NJC is not under the direction or control of any other authority or person. It follows that the NJC is the first and competent body to investigate and discipline judicial officers alleged to have involved in acts of corruption before the intervention of any other body or authority like the DSS. This is also recognised in the 2017 Bill section 4(3)(h), which is to the effect that a disclosure relating to a judicial officer is made to the NJC. The DSS investigation and arrest of judicial officers was therefore a right action with wrong approach.

Whistle blowers have not spared the legislature either. A member of the House of Representatives (the lower house of the Nigerian National Assembly) Hon Abdulmumin Jibrin blew the whistle that the House padded the 2016 Appropriation Bill (budget).<sup>56</sup> Padding the budget takes place when legislators resolve to rewrite the budget by introducing new items outside the estimates prepared and presented to them by the president.<sup>57</sup> Jibrin disclosed that the aggregate expenditure as contained in the budget details as passed was higher than that in the Appropriation Bill by about ₦481 billion. The CFRN 1999 as amended section 81(1) vests the president with exclusive powers to prepare and present budget to the National Assembly for approval. Upon receipt of the budget by the legislators, they may make reasonable corrections. The National Assembly is however not clothed with any legal right to add or insert anything that was not included in the Appropriation Bill by the executive. Neither are the lawmakers competent to add any amount in an Appropriation Bill that does not contemplate public interest.

<sup>51</sup> Unreported, charge No: FHC/ABJ/CR/232/2017.

<sup>52</sup> Ibid.

<sup>53</sup> See *FRN v Innocent Umezulike*, charge No FHC/PH/40C/2017.

<sup>54</sup> Charge No:CCT/ABJ/0/19

<sup>55</sup> K O Udude and O I Igwe, 'Judges, Political Jurisprudence and Upperworld Crime' [2017] (7)(1) *International Journal of Social Sciences and Humanities Review* 238-240 at 240.

<sup>56</sup> A T Agugom and C P Ehiogu, 'Budget Padding: The Nigerian Experience' [2016] (2)(12) *International Journal of Advanced Academic Research, Social & Management Sciences* 41-56 at 41.

<sup>57</sup> Ibid 43.



While the issue of budget padding saga was in its tempest, the speaker of the House of Representatives, Yakubu Dogara asserted that budget padding is not a crime under the Nigerian law. This statement received public reactions.<sup>58</sup> Jibrin's idea of blowing the whistle is to do a clean-up, flush out corruption and corrupt members of National Assembly so that in 2019, only corrupt-free people who want to serve will be elected. Conversely, some members of the House of Representatives were not on the same agenda with him. In the light of this, the House made counter allegations that Mr Jibrin single handedly changed the budget estimate by adding ₦250 billion.

He was also accused of deliberate plot to blackmail the president during the budget process by inserting funds for the so-called Muhammadu Buhari Film Village in his (Jibrin) Kano constituency without the consent of the President. To this end, his removal was justified by the Chairman House Committee on Media and Public Affairs, Abdurazak Namdas on the basis of acts of misconducts, incompetence, total disregard for his colleagues and abuse of the budgetary process, immaturity and lack of capacity to handle the affairs of his office. The whistle has also been blown in respect of allegedly ownerless funds. One of the remarkable cases of whistle blowing policy in Nigeria is that of a young man who blew the whistle that led to the recovery of funds at Flat 7B Osborne Towers, Ikoyi, Lagos State on 7 April 2017.<sup>59</sup> The money which was in foreign and domestic currencies was valued at ₦13,000,000,000.00 at that time. Immediately after the news of the recovery of the funds, Governor Nyesom Wike of Rivers State alleged that the money belonged to the Rivers State Government.<sup>60</sup> Governor Wike added that investigations by his administration revealed that the money was the proceeds from the sale of gas turbines by the immediate past governor of the State, Rotimi Amaechi.<sup>61</sup> Amaechi on his part debunked the claim by Governor Wike whom he described as being frivolous and baseless.<sup>62</sup>

While the real owner of the recovered funds deepened, the National Intelligence Agency (NIA) laid claims that the recovered funds belonged to them.<sup>63</sup> In another development, there were wide speculations that the money belonged to the former NNPC Managing Director, Mrs Esther Nnamdi Ogbue. This allegation was based on the fact that the apartment that housed the recovered sum belonged to her. Ogbue on her part denied ownership of the money.<sup>64</sup> In the same vein, it was equally alleged that the money belonged to the former chairman of the People's Democratic Party (PDP), Adamu Mu'azu on the ground that the entire building was linked to him. In order to shoulder himself out of the ownership saga, Mu'azu explained that he built the house but had since sold out all the apartments in the building.<sup>65</sup> In the midst of this, a Federal High Court sitting in Lagos ordered temporary forfeiture of the Ikoyi fund in April 2017.<sup>66</sup> As of the time of writing, there is no available information showing the genuine owner of the recovered Ikoyi funds.

### 3.2 Whistle Blowing Policy and the Current State of Corruption in Nigeria

When the whistle blowing policy was officially set in motion, there was assumption by many that it will check corruption in Nigeria.

<sup>58</sup> Adekunle, 'Budget Padding is a Crime of Corruption, SERAP tells Dogara', *Vanguard* 7 August 2016 <<https://www.vanguardngr.com/2016/08/budget-padding-crime-corruption-serap-tells-dogara>> accessed 28 March 2018.

<sup>59</sup> E Okogba, 'Courts orders Forfeiture of Ikoyigate Apartment, \$43m cash', *Vanguard* 9 November 2017 <<https://www.vanguardngr.com/2017/11/court-orders-forfeiture-ikoyigate-apartment-43-m-cash>> accessed 30 March 2018.

<sup>60</sup> Y Adebowale and E Chinwe, 'Ikoyi \$43m Haul: Rivers State Government Claims Ownership', *This Day* 15 April 2017 <<https://www.thisdaylive.com/index.php/2017/04/15/ikoyi-43m-haul-rivers-state-government-claims-ownership>> accessed 30 March 2018.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> Adekunle, 'Recovered: \$43m, £27,000, N23M: NIA moves to officially reclaim Ikoyi Cash' *Vanguard* 17 April 2018 <<https://www.vanguardngr.com/2017/04/recovered-43m-27000-n23m-nia-moves-officially-reclaim-ikoyi-cash>> accessed 29 March 2018.

<sup>64</sup> Adekunle, 'Nnamdi-Ogbue denies Ownership of Money', *Vanguard* 13 April 2017 <<https://www.vanguardngr.com/2017/04/nnamdi-ogbue-denies-ownership-money>> accessed 30 March 2018.

<sup>65</sup> S Ogunidipe, 'What I know about Ikoyi House where EFCC found over N13 Billion – Former PDP Chairman', *Premium Times* 14 April 2017 <<https://www.premiumtimesng.com/news/headlines/228778-i-know-ikoyi-house-efcc-found-n13-billion-former-pdp-chairman.html>> accessed 29 March 2018.

<sup>66</sup> Adekunle, 'Court Orders Forfeiture of Lagos cash Haul', *Vanguard* 14 April 2017 <<https://www.vanguardngr.com/2017/04/court-orders-forfeiture-of-lagos-cash-haul>> accessed 30 March 2018.

The recovery of funds as indicated above as well as the arrest and investigation of judicial officers cemented the hope of many Nigerians that government is sincere in his fight against corruption. However, after sometime, it appeared as if the introduction of the policy may be likened to morning dew that cannot withstand the hot rays of the sun. A number of reasons may be responsible for the inability of the policy to attain the desired objectives. The whistle blowing policy is more interested in recovering funds than in prosecuting those involved in the act of looting. In other words, the policy has adopted plea bargaining in its fight against corruption. Plea bargaining is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges.<sup>67</sup>

Although there were controversies as to whether plea bargaining is part of the Nigerian Criminal Justice system,<sup>68</sup> this confusion has been led to rest as the Nigerian Administration of Criminal Justice Act (ACJA) 2015 section 270 expressly permits plea bargaining in the Nigerian Criminal Justice System. When the EFCC arrested persons involved in US \$2.1 billion arms deal with the former National Security Adviser, Sambo Dasuki, some of them offered plea bargain to the prosecutor. These include the former Secretary of PDP, Olisa Metuh, ex-Chiefs of Air Staff, Air Marshals Adeshola Amosu and Mohammed Dikko Umar.<sup>69</sup> A recent act of plea bargain is that of a former Minister of State, Federal Capital Territory (FCT), Oloye Jumoke Akinjide who was docked on a 24-count charge of alleged N650 million frauds which was said to be part of US \$115 million allegedly doled out by Mrs Alison Madueke to influence the outcome of the 2015 presidential election.<sup>70</sup>

While plea bargaining has been described as a short cut to a fair and speedy trial that it helps the prosecutors and the Courts in the effective administration of justice,<sup>71</sup> this paper is of the view that it is not a proper tool for tackling corruption in Nigeria. This is because; corruption (especially official corruption) has resisted many remedies in Nigeria over the years. The employment of plea bargaining may defeat the purpose of the policy in that it prevents the operation of deterrence as one of the tenets of criminal justice system. Plea bargaining is the institutionalisation of corruption.<sup>72</sup> Corruption cannot be fought, unless it is detected, reported and *punished*, or addressed.<sup>73</sup> If the 'culprit' is not allowed to pay the due price for his wrongdoing, (which is to be punished by relevant laws), it may encourage others to board the vehicle of corruption on the understanding that they will return the money and go free even if caught in the process.

The 2017 Bill section 5 provides that a person may make a protected disclosure whether or not the person is able to identify a particular person to whom the disclosure relates. A similar provision is found in the Zambian Act section 11(2)(b). The implication is that the essence of blowing a whistle is geared towards recovering looted funds, thus ignoring prosecuting the actor behind. This manifested in the case of Ikoyi funds in Lagos state where after so many baseless claims and pointing of fingers on persons, the actual looter could not be identified. One wonders why the whistle blower was able to disclose the hidden funds but was unable to identify the person(s) that kept it. Non-disclosure of the culprit may be justified on the basis that it is not the responsibility of a whistle blower to investigate the person behind the act of corruption as the EFCC is vested with that duty. The whistle blower disclosing the culprit will facilitate the investigation process and possible prosecution by the EFCC. In the light of this, the Ghanaian Act section 4(2)(c) is preferable for providing that the disclosure shall contain as far as practicable the person alleged to have committed, who is committing, or is about to commit the impropriety.

<sup>67</sup> C O Ike, 'Plea Bargaining — A Judicial Tool for Courts and Prisons Decongestion' [2012] (4) *Law and Policy Review* 125-136 at 126.

<sup>68</sup> Plea bargaining is prohibited under the Nigerian Criminal Code s 127 as well as the National Drug Law Enforcement Agency (NDLEA) Act s 14. On the other hand, the Nigerian Customs and Excise Management Act s 186 and EFCC Act s 14(2) condoned plea bargaining respectively.

<sup>69</sup> Y Alli, 'Metuh, Amosu, Umar beg EFCC: Let's Refund our Loot' *The Nation* 20 July 2016  
<<http://thenationonlineng.net/metuh-amosu-umar-beg-efcc-lets-refund-loot/>> accessed 11 April 2018.

<sup>70</sup> O Soyele, 'N650m Fraud: Akinjide, others opt for Plea Bargain', *Leadership* 7 February 2018  
<<https://leadership.ng/2018/02/07/n650m-fraud-akinjide-others-opt-plea-bargain>> accessed 12 April 2018.

<sup>71</sup> Ike (n66) 136.

<sup>72</sup> A W Abdulah, 'Plea Bargaining is a Cheat on the People', *Vanguard* October 12 2007 37, in Ike (n66) 133.

<sup>73</sup> M C Onuegbulam, 'Whistle Blowing Policy and the Fight against Corruption in Nigeria: Implications for Criminal Justice and Due Process' [2017] (8)(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 174-179 at 178.

Another obstacle to this policy is the meddlesomeness of economic and political forces. Most of whistle blowing cases are related to top politicians either in the past or present administration but there is no record of investigation or conviction of any of them. For instance, the minister of power, works and housing, Babatunde Fashola and the minister of transport, Rotimi Amaechi among other APC members have been accused of corruption but they have not been investigated and prosecuted. Official corruption is one of the most complex crimes to fight. In order for the fight to be effective, there must be non-selective approach by the legislature, the judiciary, the executive as well as the entire citizens.<sup>74</sup> Otherwise it will be difficult for the aim of this policy to be actualized in Nigeria.

#### 4. The Effects and Challenges of Whistle Blowing Policy

Whistle blowing generally seeks among others to expose corruption. However, to blow the whistle is not an easy task. It needs courage, moral evaluation and one has to put the interest of the public first.<sup>75</sup> Effective implementation of the whistle blowing policy leads to increased accountability and transparency in the management of public funds, and more funds would be recovered that could be deployed in financing Nigeria's infrastructural deficit.<sup>76</sup> Where the policy is successful, there will be transparency and accountability. For this to be feasible, the citizens should be willing to expose corruption, the law enforcement agency should be sincere in prosecuting those involved in alleged corruption. Credible reports of the recovered funds and its application are paramount.

##### 4.1 Positive Effects

Whistle blowers are heroes. They are agents of change as they oppose corruption by exposing it. They uphold transparency and credibility hence they do not accommodate illegal dealings. This fact will only be appreciated by those that place premium on public interest over organizational or individual interest. Thus, where reporting culture is a common practice, whistle blowers are held in high esteem as ambassadors of change. Another benefit the policy bestows on the whistle blower is the financial incentive. A successful whistle blower receives monetary compensation from the Government. If the act or culture of raising concern against illegalities affecting the people can attract reward, then it should be embraced. As a tip of an iceberg, the Nigerian Federal Government through the ministry of finance paid the sum of ₦421,000,000.00 to the Ikoyi whistle blower in December 2017.<sup>77</sup> In another development, the Federal Government paid a set of 14 whistle blowers the sum of ₦439,276,000.00 for providing tips on tax evaders.<sup>78</sup> Whistle blowing may thus serve as a means of income to the blower.

##### 4.2 Negative Effects

Whistle blowing may also have negative impact on the blower or an organisation. On the whistle blowers, they suffer in various ways including ostracism, harassment, punishment, punitive transfers, discrimination, reprimands and dismissal. This is common where there are no legal instruments protecting those exposing acts of corruption. These negative reactions may emanate from an employer or fellow employees who feel the whistle blower is an enemy to the organisation. Thus:

Organisations typically regard whistle blowing as a form of betrayal. They believe that whistle blowing is a deviant act that threatens the profitability of the organisation and tarnishes its reputation. They therefore tend to deal with whistle blowers as traitors by punishing those who engage in this kind of activity.<sup>79</sup> In Nigeria, some whistle blowers experienced this form of retaliation. Mr Aaron Kaase, a public officer with the Nigeria's Police Service Commission (PSC) blew a whistle on 22 May 2015 to the Independent Corrupt Practices and other Offences Commission (ICPC) involving the Chairman and Nigeria's former Inspector General of Police, Mr Mike Okiro.

<sup>74</sup> I I Ojibara, 'A Governing Party in Disarray: Executive-Legislative Relations under APC Government' *Global Journal of Human-Social Science: Political Science* [2017] (17)(1) 40-50 at 40.

<sup>75</sup> Z Maheran, 'Antecedent Factors of Whistle Blowing in Organisations' [2015] (28) *Procedia Economics and Finance* 230-234 at 231.

<sup>76</sup> S L Adetula and M D Amupitan, 'Whistle Blowing as a tool for Combating the Menace of Fraud, Forgery and Corruption in Nigeria' [2018] (4)(3) *International Journal of Advanced Academic Research, Social & Management Sciences* 31-49 at 33.

<sup>77</sup> C Kumolu, 'Ikoyi Cash: Whistle Blower gets N421M, Jets out of Nigeria' *Vanguard* 14 December 2017 <<https://www.vanguardngr.com/2017/12/ikoyi-cash-whistleblower-gets-n421m-jets-nigeria/>> accessed 13 May 2018.

<sup>78</sup> C G Ameh, 'Nigerian Government pays 14 Whistle Blowers N439m' *Daily Post* 11 May 2018 <<http://dailypost.ng/2018/05/11/nigerian-government-pays-14-whistle-blowers-n439m>> accessed 13 May 2018.

<sup>79</sup> Uys, (n37) 905.

The alleged fraudulent dealing by Mr Okiro was to the tune of N275 million. Following Kaase's allegation against Okiro, the PSC on 27 May 2015 suspended him (Kaase) indefinitely without pay. He was also denied accruing promotions and entitlements.

His suspension persisted without pay until 7 March 2018 when he was reinstated.<sup>80</sup> Another instance was that of members of Senior Staff Association of Nigerian Universities (SSANU) at the Federal University of Agriculture, Abeokuta (FUNAAB), in Ogun State in 2016. The workers made the allegations of massive corruption and abuse of office against the Governing Council, the Vice-Chancellor and some University staff by writing to the EFCC and ICPC in July and August 2016.<sup>81</sup> The act which later triggered off crisis within the University led to clampdown on the workers, their suspension and later dismissal. However, after various petitions, letters and calls by the National Body of SSANU, Nigeria Labour Congress (NLC) and other concerned individuals and groups, they were eventually reinstated by the university authority in December 2016.<sup>82</sup>

Jurisdictions with formal statutes have provisions protecting whistle blowers from victimization on grounds of disclosure. The Zambian Act section 42 protects whistle blowers from reprisal. The Act also empowers a person to approach a court for remedies where he can establish that he has been subjected to reprisals.<sup>83</sup> A similar provision is found under the Indian Act section 11 and the Ghanaian Act sections 12-15. Under the Ghanaian Act, a person subjected to victimization can file a complaint to the Commission on Human Rights and Administrative Justice and the order of such Commission has the same effect as the judgment of the High Court.<sup>84</sup> Under the UK Act section 47B clothes the whistle blower with the right not to suffer detriment on grounds of protected disclosure. The right not to be subjected to occupational detriment as well as to approach a court for redress is also provided for under the South African Act sections 3 and 4.<sup>85</sup> In *Solidarity Obo Ross v South African Police Service & Ors*,<sup>86</sup> decided under the South African Act, the applicant, Col Ross was removed from his position as the head of Internal Audit Crime Intelligence Division of the South African Police Service as a result of disclosure he made regarding fraud and corruption that has been committed in his work place. The Court ordered for his reinstatement.

By virtue of the 2017 Bill section 23, a whistle blower does not incur civil or criminal liability as a result of making a protected disclosure. It is also an offence punishable with a fine of five hundred thousand Naira or three years' imprisonment or both for taking or threatening to take detrimental action against a whistle blower.<sup>87</sup> A person who attempts to commit a detrimental act, or who incites another person to take a detrimental act commits an offence and is liable on conviction to a fine of five hundred thousand naira or a term of imprisonment for three years or both.<sup>88</sup> By the 2017 Bill section 25, a tort action<sup>89</sup> may be taken against a person who takes or threatens to take a detrimental act against a whistle blower and such action may be taken against a perpetrator of an act of such victimization or an employer of the perpetrator. However, an employer may be exculpated if he can show that he did not knowingly involve in the act of victimization, or did not know and could not reasonably be expected to have known about the act of victimization and could not by exercise of reasonable care have prevented the act of victimization.<sup>89</sup>

### 4.3 Challenges Associated with the Policy

Beside the effects of the policy, a whistle blower is confronted with a lot of challenges peculiar to the Nigerian policy due to lack an enabling law.

<sup>80</sup> O Oladeinde, 'Whistle Blower's Reinstatement: CSNAC Hails Judiciary, demands Okiro's Prosecution' *Premium Times* 18 March 2018 <<https://www.premiumtimesng.com/news/more-news/262226-whistleblowers-reinstatement-csnac-hails-judiciary-demands-okiros-prosecution.html>> accessed 14 May 2018.

<sup>81</sup> K O Dauda, 'Whistle Blowing Policy as an Anti-Corruption Strategy: Problems and Prospects in Nigeria' [2017] (1)(1) *Lapai International Journal of Administration* 389- 404 at 398.

<sup>82</sup> *Ibid.*

<sup>83</sup> The Zambian Act s 49.

<sup>84</sup> The Ghanaian Act s 14(5).

<sup>85</sup> The Protected Disclosure Act No 26 of 2000 South Africa ss 3 and 4.

<sup>86</sup> (JS 1043/12), [2014] ZALCJHB 131.

<sup>87</sup> The 2017 Bill s 24(1).

<sup>88</sup> *Ibid* s 24(2).

<sup>89</sup> The 2017 Bill s 25 (3) (a)-(c).

A major dividend that follows a successful case of whistle blowing is the monetary incentives. It is the culture of the policy in most jurisdictions to reward a whistle blower who makes a protected disclosure. According to the Nigerian whistle blowing policy, a whistle blower whose act directly leads to the refund of the looted fund is entitled to 2.5 to 5 percent of the recovered fund.<sup>90</sup> In order to qualify for the reward, the Whistle Blower must provide the Government with information it does not already have and could not otherwise obtain from any other publicly available source to the Government. The actual recovery must also be on account of the information provided by the whistleblower. A whistle blower is only entitled to financial reward if his disclosure is successful. Even though a whistle blower provides information that directly leads to recovery of the looted treasure, such a person may not be entitled to reward if the Government already had prior information from another source. In this case, such a whistle blower labours in vain.

Another obscure issue associated with compensation is the imprecise nature of the policy language. The policy provides that a whistle blower may receive 2.5 to 5 percent of the recovered funds. There is no guideline in determining the quantum of reward thereby leaving the Federal Government with the wide discretion of determining what amounts to adequate reward for the whistle blower. This confusion manifested in the Ikoyi whistle blower. It is on record that the amount recovered from Ikoyi apartment was estimated to be ₦13Billion. The Federal Government's initial offer of ₦325Million as reward was rejected by the Whistle Blower who insisted that he was entitled to 5 percent of the total recovered fund which was ₦860Million.<sup>91</sup> Subsequently, the whistle blower was paid ₦421Million. Although, the amount paid by the ministry of finance was close to half of what the Whistle Blower was claiming, he nevertheless collected it.

The 2017 Bill is silent on the quantum and procedure for payment of financial reward to whistle blowers. Payment of compensation is therefore a mere government policy without statutory canopy. In this regards, the proposed reward may be likened to a love letter by government to a prospective whistle blower that may not be enforceable. This is predicated on the Court of Appeal's decision in *Wilkie v Federal Republic of Nigeria & Ors*,<sup>92</sup> where it was stated that a policy statement or guideline by the Federal Government does not give rise to a contractual relationship between the Government and a third party, and its non-implementation does not entitle the third party to a legal redress against the Government.

In order to ensure that whistle blowers are given adequate protection, the Ghanaian Act section 24 provides that a whistle blower whose disclosure results in the recovery of an amount of money shall be rewarded from the fund with ten percent of the amount of money recovered. This section is precise hence it has taken care of the anticipated challenges beclouding Nigeria. It is suggested that a similar provision be included in the 2017 Bill to clear this confusion.

Whistle blowing laws can only work in a democratic society which supports transparency, disclosure and accountability. There must be freedom of expression, press and information as well as regards and protection for fundamental human rights of the citizens. Nigeria being a democratic nation, one assumes that it will be a fertile ground for this policy. Whistle blowing has become a veritable tool for combating corruption in countries such as USA, UK, India, South Africa, Ghana, Kenya, and Zambia among others who have enacted statutes to protect whistle blowers. Nigeria should take a cue. After the introduction of the policy in Nigeria in 2016, there has been public outcry that a piece of legislation be enacted to facilitate the policy. In response to this, the 2017 Bill was enacted, which seeks to encourage and facilitate whistle blowers, to regulate the receiving, investigating and otherwise dealing with disclosures by whistle blowers, and to protect whistle blowers from reprisals and other adverse actions. The Bill does not make adequate protection for the whistle blower. For instance, by virtue of section 25 a detrimental act against a whistle blower gives rise to tort action. The Bill does not provide a court where such tort action may be taken to. Also, section 24 provides for an offence where there is an act of victimization by an employer.

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<sup>90</sup> This is only provided for under the policy issued by the Federal Ministry of Finance and the 2017 Bill is silent on the quantum of reward of the whistle blower.

<sup>91</sup> E Akinkuotu and I Onuba, 'Ikoyi Whistle Blower Rejects FG's ₦325M, EFCC' *Punch*, 26 November 2017 <<http://punchng.com/ikoyi-whistle-blower-rejects-fgs-n325m-efcc-delays-payment>> accessed 19 May 2018.

<sup>92</sup> [2017] LPELR 42137 (CA).

Although the National Industrial Court is vested with the jurisdiction to entertain disputes between employees and employers,<sup>93</sup> a whistle blower may not be an employee but a member of the public. In this case any detrimental act may necessitate an action. It is suggested that the Bill should specify the Court with the jurisdiction to try offences under it. This is done under the *Zambian Act* section 49(1).

All the offences created under the 2017 Bill are punishable with five hundred thousand naira or a term of three years' imprisonment or both.<sup>94</sup> This implies that all the offences are of uniform gravity. Similarly, there is no provision in the Bill that deals with the quantum of reward, the manner and the procedure of collecting same by the whistle blower. With the attitude of the National Assembly as reflected in the Bill, one may assume that there is lack of political will on the part of accommodating the policy which is why the 2017 Bill is not in tune with international best standards. It is also not clear why the Bill is still lying dormant before the National Assembly without being improved upon for subsequent passage. Perhaps, the National Assembly has not attended to the Bill for the fear that they may be exposing themselves to prosecution for corrupt practices.<sup>95</sup>

## 5. Conclusion

Any nation that upholds transparency and accountability would not fold her hands while corruption persists. Whistle blowing is one of the international best measures used in tackling corruption. Its introduction in Nigeria must be commended. By examination of the policy, this paper finds that notwithstanding the fact that it involves disclosure of illegal acts by persons mostly employees in an organisation whistle blowing policy is not in antagonism with the common law duty of loyalty that exists between an employee and his employer. This paper also finds that whistle blowing policy has not achieved its desire of tackling corruption in Nigeria. This is majorly due to lack of accommodation by the Nigerian society. On the question of whether the whistle blower is adequately protected, this paper finds out that lack of formal legislation prescribing protections to those that expose corruption shows that the protection of a whistle blower is not guaranteed.

In the light of the above, it is recommended that public awareness be embarked upon in order to educate the people on the needs for exposing and correcting corruption. The whistle blower should also be given adequate protection for this is paramount to the success of this policy. Specifically, there should be comprehensive provisions prescribing the remedies available to a whistle blower when they are victimised. Payment of compensation should also be given statutory guideline with particular attention to the quantum of reward and the time frame upon which such payment can be made.

While Nigeria anticipate the passage of the 2017 Bill into an Act, it is pertinent that the government exercise judicious use of the policy in prosecuting offenders including people in the ruling party, otherwise this may be interpreted as going fishing by the government. All the agencies responsible for the implementation of this policy should be fair, objective and sincere in their responsibilities. The implementation of the policy without a vengeful intent will entrench the rule of law. Finally, the adoption of plea bargaining by the policy should be discouraged in that it is capable of encouraging corruption. Just like any other crime, punishment is the right pill for the ill of corruption and this should be treated as such. To this end, any person found to have actually involved in looting of public treasures or any act or omission capable of affecting the interest of the public should be prosecuted and punished appropriately. It is immaterial whether the person involved has voluntarily returned the stolen funds.

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<sup>93</sup> The CFRN 1999 as amended s 254C (1) (a).

<sup>94</sup> The Bill ss 24, 27, 28 and 38.

<sup>95</sup> F Falana, "The Role of Whistle Blowers in the Fight against Corruption in Nigeria" a keynote address delivered at a one day National Stakeholders Summit on Whistle Blowing and the Fight against Corruption in Nigeria, organised by the African Centre for Media & Information Literacy and Partners in Abuja on 14 November 2017 <<http://corruptionanonymous.org/the-role-of-whistle-blowers-in-the-fight-against-corruption-in-nigeria>> accessed 30 May 2018.

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