

**BACKGROUND TO THE
IMPLEMENTATION OF WHISTLEBLOWING POLICY
IN NIGERIA**

Presentation by:

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at

the 2021 North West Zonal Whistleblowers
Conference

From
13th -15th December, 2021

@

Coronation Hall, Government House, Kano.

PROTOCOL

It gives me great pleasure to be here today, to be part of this zonal whistleblowers' conference. This event provides a critical opportunity for stakeholders to review the implementation of the Federal Government's Whistleblowing Policy and accompanying successes and challenges. I want to appreciate the organizers for the invitation and for putting together this program. I shall be speaking on the Background to the implementation of the Whistleblowing policy in Nigeria, with focus on why the policy was initiated, and the recorded successes and achievements since its inception. I will also evaluate the challenges to the effective implementation, especially beyond the federal level while proffering solutions both for the short term and the future.

1.0 BACKGROUND

For everyone here today, we can all agree that fighting corruption is a global phenomenon that cuts across all social classes, races, culture,

society, and gender. Therefore, it was with this in mind that the Federal Government, for the purposes of curtailing corruption, financial malpractice, and mismanagement of public funds as well as to encourage compliance with the various financial regulations, established as a special project, through the Federal Ministry of Finance, Budget and National Planning (FMFBNP), the whistleblowing policy in December, 2016. At inception, the goal of the policy was to serve as a medium for individuals with authentic information regarding violation(s) of financial regulations, fraud, diversion and theft, financial malpractice, mismanagement of public funds and assets, to report such.

Let me also state that we had conducted a survey via one of our then continuous audit exercises, which revealed that people were comfortable reporting bad behaviors in public offices to a more relatable committee with a structure that ensures their identity is kept safe and they do not suffer any reprisal attacks. This was one of the reasons why the whistleblowing policy was domiciled at inception at the FMFBNP. We also had members from all legally established anti-corruption and security agencies in Nigeria, these include, EFCC, ICPC, Nigeria Police Force, Office of the Attorney-General of the Federation, and the

Department of State Services (DSS).

2.0 INTRODUCTION

Definition of Terms

Corruption depicts any form of dishonest conduct by any person delegated with a position of authority. It includes embezzlement, bribery, and other unwholesome practices. Illustratively, corruption is when a government official or political officeholder utilizes his or her office for personal benefits. In the words of Stephen Morris “corruption remains the dishonest usage of unrestricted power for personal gain” (Kolo, 2017).

It is with this in mind, that there is a critical need for policies and programs that ensure the fight against corruption.

Whistleblowing

Overtime, whistleblowing as a phenomenon has been a debatable and delicate issue because it involves revealing or exposing unethical secrets conducts, behaviours, actions or inactions that a given individual, organization, government institution or company is involved in. Whistleblowing as a term is perceived to depict two different and

unrelated implications: first, it refers to the exercise of a police officer blowing his whistle to nab an alleged criminal; secondly, it is understood to follow the normal exercise of referees during sporting occasions who blow their whistle to stop a given action (Miceli & Near, 1992).

The primary argument and assumption here in both cases is that the whistleblower comprehends something that he or she believes to be unethical or illegal and that wants to crave the indulgence of the authorities so that corrective measures could be taken. Therefore, we can say whistleblowing is drawing the attention of relevant authorities about an observed anomaly in a particular place and time (Hoffman & McNutty, 2010).

According to Asian Institute of Management (AIM) (2006) cited in Oyebade (2016), whistleblowing is seen as the exposure of a wrongful act that needs to be terminated to safeguard public interest. This is the procedure by which people advance misgivings at work. Ogunkeye (2016) explained it as the discovery by an individual, usually an employee in a public or private institution made to the public, of illegality, corruption, mismanagement, or other wrongdoings.

Distinguished ladies and gentlemen, let me remind you all that the

whistleblowing policy is important because, since Nigeria's independence in 1960, there has never been any policy set up by the government at any level which solely offers protection for whistleblowers and provide opportunities and platforms to persons with reliable evidence about violation, improper activities, and misconduct, to come forward and expose such activities. As such, the whistleblowing policy was initiated by the President Buhari Administration to encourage the fight against corruption and financial crimes; increase level of public readiness in public organizations; improve accountability and transparency in the management of public funds; advance ease of doing business indicators and Nigeria's government ranking and recover public resources which can be used to fund Nigeria's infrastructural growth and development.

2.1 The Nexus between Whistle Blowing and Corruption

To put it simply, the relationship that exists between whistleblowing and corruption is more like a dirt cleansing exercise where whistleblowing has been employed as a tool to sanitize the system. Corruption is seen as a platform where whistleblowing explores and exploits to first reveal and purge the overall system.

2.2 Overview of the Structure of the Whistleblowing policy in Nigeria

The Whistleblowing Policy was introduced in 2016 as a way of encouraging patriotic citizens report every form of violation of government financial policies, laws, regulations, including criminal acts such as mismanagement or misappropriation of public funds and assets, fraud, collecting / soliciting bribes, corruption, diversion of revenues, unapproved payments, splitting of contracts, procurement fraud, kickbacks and over-invoicing among several others in good faith.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provided the needed legal foundation and context for whistleblowing while other laws and regulations prescribed the details of this collective duty expected of everybody. Private Citizens, Civil Servants, CSOs including government institutions are expected by law to report crimes to the relevant law enforcement agency with or without any expectation of compensation. Some of the laws which provided foundation for the Whistleblowing policy are:

- i. Constitution of the Federal Republic of Nigeria, 1999 (as amended)**

Section 24(1) (e) provides:

“It shall be the duty of every citizen to” -

“..render ASSISTANCE to appropriate and lawful agencies
in the maintenance of law and order”.

ii. **Penal Code Act, CAP. 53, LFN (Abuja)**

Section 138 provides:

“Whoever, being legally bound to give a notice or to furnish information on a subject to a public officer as such, intentionally omits to give that notice or to furnish that information in the manner and at the time required by law, shall be punished.”...

iii. **Money Laundering (Prohibition) Act, 2011**

Section 10: Mandatory Disclosure by Financial Institution.

Section 10 (1): “Notwithstanding anything to the contrary in any other law or regulation, a Financial Institution or Designated Non-Financial Institution shall report to the Commission in writing within 7 and 30 days respectively any single transaction, lodgment, or transfer of funds more than N1million in respect of individuals and N10million in respect of Corporate Organizations.

iv. **Public Procurement Act, 2007,**

Section 19(b)(ii): NGOs working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations.

v. Executive Order 6 of 2018

According to the President, the order was issued to "restrict dealings in suspicious assets subject to investigation or inquiry bordering on corruption in order to preserve such assets from dissipation and to deprive alleged criminals of the proceeds of their illicit activities which can otherwise be employed to allure, pervert and/or intimidate the investigative and judicial processes".

This executive order reinstates the Federal Government 's commitment to fighting corruption in the country. You will recall that the current government came into power on the promise of fighting corruption, improving the security situation and recovery and growth of the economy that has been in the state of devastation then. This has seen the government introduce policies like the Enforcement of Treasury Single Account (TSA), Presidential

Initiative on Continuous Audit (PICA), Bank Verification Number Policy, Whistleblowing Policy, and Open Government Treasury Policy, Asset Tracing Policy, Efficiency Unit amongst other initiatives to stem the tide of corruption.

It is important to highlight the fact that these laws are not exhaustive, there are many existing legal frameworks that encourage the provision of information by the public regarding bad behaviors and incidences, but none guarantees the needed protection for whistleblowers.

Distinguished ladies and gentlemen, the whistleblowing policy in Nigeria addresses issues of public concerns in relation to fraud, corruption, the collection of or the soliciting of bribe, breach of financial regulation or information on stolen public funds etc. The policy does not apply to personal complaints or grievance against particular persons. It does not apply to private contract, complaints or ethical misconduct or issues that are largely administrative. Such issues or complaints are being dealt with under existing administrative procedures and through appropriate court processes where such is prescribed. The whistleblower policy is about the voluntary disclosure of information on corruption and financial crimes with a view to assisting the government trace, track, recover,

repatriate, and remit to the treasury of government all looted/stolen funds to utilize same to fund infrastructural development and grow the economy and to also protect the lives and identities of whistleblowers.

2.3 Structure of the Whistleblowing Policy Implementation Committee

At inception, the whistleblower implementation committee was domiciled at the Presidential Initiative on Continuous Audit (PICA). This unit was meant to serve as the secretariat for the implementation committee. Other members of the committee included the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), Nigeria Police, Presidential Advisory Committee Against Corruption (PACAC), Department of State Services (DSS), Nigeria Financial Intelligence Unit (NFIU), Federal Ministry of Justice, Federal Ministry of Finance, Budget, and Economic Planning among others.

3.0 CURRENT STATUS OF THE WHISTLEBLOWING POLICY IMPLEMENTATION

3.1 Successes and achievements

It is quite evident that whistleblowing policy from inception till date has played and is still playing a significant and active role in the detection

and cleansing of the system of corrupt practices. The policy has been identified for its roles of resulting in enforcement of checks and balances, crime exposure, crime reduction, crime reporting, fund recovery, fund retrieval and persecution, image maintenance, image redemption, increased crime fight, increased governance, and accountability, increased public awareness, information retrieval, new direction, rapid growth and support, and reduction of money laundering.

Distinguished ladies and gentlemen, let me state again categorically that, the Whistleblowing policy have been helpful in uncovering corruption in both the public and private sectors since its introduction in December 2016. For instance, within 6 months of operation, the Federal Government was able to recover billions of naira looted from the public coffers through the information (also referred to as tips) from whistleblowers.

Furthermore, whistleblowing policy have been instrumental in the fight against corruption and other unlawful conduct in both the private and public arena as it promotes a culture of openness and transparency. The policy has fundamentally become linked to ensuring transparency and political accountability in relation to the use, disbursement, and

management of public and private resources. The Whistleblowing policy was expected to be of intrinsic value to both public and private organisations themselves. It was meant to encourage excellent organizational governance and act as an efficient internal risk management instrument.

The amount of money recovered in the last four years of the policy is a remarkable achievement in the fight against corruption in Nigeria. The recovery in a short period appears to be possible because criminals do stash proceeds of corruption in cash in their homes, farms, forests, and cemetery. For example, in April 2017, following a tip from a whistleblower, EFCC recovered US\$43.45 million in cash from an apartment in Lagos, Nigeria. As at June 2019, the Honourable Minister of Finance, Budget and National Planning disclosed that N605 billion had been saved through the policy with N540 billion saved in 2018 alone. In 2020, \$174 million was significantly recovered from a multinational oil company operating in Nigeria. All these above were possible because of the implementation of the whistleblowing policy in Nigeria.

3.2 Issues and Challenges

However, whistleblowing policy has encountered serious challenges in

the fight against corruption. Some of the identified challenges of whistleblowing policy spans across absence of protection for whistleblowers, absence of robust and meaningful legislation that ensure continuity and that creates the necessary structure and organization, public discouragement, fear of intimidation and victimization, insufficient legal knowledge, poor media reportage and lack of implementation beyond the Federal Government level.

Without an appropriate Act meant to protect whistleblowers, the risk of being found outweighs the advantage of speaking out. This is a major challenge since intending whistleblowers are not offered any form of protection and may be subject to litigation. Although the policy provides for protection against reprisals and victimization, the protection is limited to employees in the public sector. The protection does not extend to private sector employees such as banks and other financial and designated non-financial businesses and professions (DNFBPs) through which criminals launder their proceeds of corruption and other economic crimes.

The lack of a legal framework to give backing to the policy and guarantee compensation to whistleblowers has been a major issue since

the inception of the policy in 2016. For instance, some of the funds recovered through whistleblowing were stolen from state governments by officials (either incumbent or former). While State Governments are generally happy to receive the money recovered from the Federal Government, they resist paying compensation to the whistleblowers. However, since there is no law allowing Federal Government to deduct from the money recovered or from the allocation of States at the federation account, FMFBNP cannot just make deductions and risk litigation with the affected State Government. Thus, whistleblowers turn to FMFBNP for compensation and sometimes with the threat of litigation. Furthermore, the lack of a defined source of funding for the committee responsible for the operationalization of the policy (PICA) is a severe challenge to the implementation of the policy. In some cases, lack of fund slows down activities of PICA. Thirdly, inter-agency bureaucracies serve as bottlenecks in investigating tips submitted by whistleblowers. Also, Ministries, Departments and Agencies (MDAs) sometimes refuse to respond to queries regarding tips. For instance, in one case, it took the PICA Secretariat 3 months to get a response from an MDA whether some bank accounts were exempted from the Treasury Single Account

(TSA) or not. Within the period of the delay, the funds could have been dissipated or moved. Fifth, there is lack of adequate awareness of the whistleblowing policy among the public, especially Civil Society Organisations (CSOs).

4.0 RECOMMENDATIONS

- i. The National Assembly should quickly pass the Whistle Blower's Protection Bill into law because it is long overdue. If this is done, it will go a long way to encourage whistleblowers to boldly blow the whistle when the need arises. It will also reinforce the belief that whistle blower's safety is guaranteed from any harm, intimidation, and victimization.
- ii. The prospective whistleblower and Federal Ministry of Finance should always ascertain that the information released and received is very valid and authentic.
- iii. The National Judicial Commission should ascertain that there is a high-level maintenance of uncorrupted, independent, and uncompromising judiciary to avoid compromise of reported cases.
- iv. Education, enlightenment, and mobilization of Nigerians on

embracing whistleblowing as an effective tool for fighting corruption and the provisions of the Freedom of Information Act, 2011.

- v. States should be encouraged to domesticate the policy. Presently, the Whistleblowing policy is a Federal Government initiative. There is need for States and Local Governments as well as private sector buy-in to ensure total acceptance and full coverage of the policy. Our experience so far indicates many claims were made from states and concerned state funds or properties, so implementing the policy across states would enhance its spread and ensure better partnership with state governments in the anti-corruption fight.
- vi. Creation of a Whistleblower agency to provide the much-needed fresh impetus to aggressively tackle the myriads of violations and infractions that shall be unearthed and reported once the policy goes nationwide and across all tiers of government. Setting up of a strategic agency as is common in other countries to handle Whistleblower activities and all other compliance issues is very much needed.

- vii. The Whistleblower unit raised a 10-man delegation which visited the United Kingdom in 2018, to under-study the Whistleblowing Policy and Implementation framework. The review of the recommendations of this visit would also lead to a more effective implementation of the policy in the future.
- viii. Creation of special courts and counsels in handling corruption cases
- ix. Sanctions should also be applicable to false, and disclosures done in bad faith.
- x. Also, to enable a more effective implementation across the country, it is recommended that the whistleblowing policy should be extended to all tiers of government and the organized private sector such as banks, Oil companies, telecoms, maritime and the aviation sectors.

5.0 CONCLUSION

Globally, the field of whistleblowing is still in its infancy. Only few countries have attempted to adopt laws that have general application. Fewer have made serious effort to address cultural issues that will allow them to internalize whistleblowing as a positive means of improving

organizations and governments. In many places, the laws are limited in scope and provide few protections. Many governments and organizations seem hostile to disclosures, and whistleblowers around the world, regularly face fear of reprisal, job loss and the worse.

There are some positive signs as far as the implementation of the whistleblowing policy in Nigeria is concerned. It is, however, important that we borrow some strategies from countries where whistleblowing policies have been more established. Some, of these countries include USA, UK, etc Canada have had tremendous improvement toward internal attitudes disclosures. The corporate sector seems to be more open to whistleblowing than government bodies. There is now considerable international pressure for countries to adopt standard laws and practices on whistleblowing, but if these laws are adopted in a vacuum, it is unlikely that they will succeed.

More research needs to be done on the effectiveness of the existing legislation and policies to better determine what works, how workers and the general society feel towards whistleblowing laws, and what measures can be taken to improve the culture of openness, from the national to the sub-national levels.

I wish to appreciate the efforts of the organizers of this conference once again.

Thank you all for your rapt attention.

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