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ECONOMIC CRIMES AND NATIONAL SECURITY: NIGERIAN PERSPECTIVE

By

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*I*ntrouduction

First is societal acceptance of corruption. We live in a country where thieves are made kings while good people are regarded as fools (mumu). Those who have stolen public funds are accorded high honours and are awarded traditional titles and national honours. Corruption has found conducive environment in Nigeria. Hard work is not regarded as a virtue, what is regarded is the culture of get rich quick.¹

The Seriousness of the Problem

The indubitable and greatest challenge facing Nigeria today is underdevelopment and concomitant to this is poverty among the citizenry which has resulted into threat to human and national security. The problem may be attributed to lack of good governance and/or transparent leadership both at the private and public sectors of the economy, to the effect that the vested interests of Nigerians in amenities for good life or amelioration of human condition by provision of good, decent and affordable shelter, education, water, electricity,

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1. Luke Onyekakeyah: *The Guardian*, Tuesday June 15th, 2010 p. 79.

good road network and transportation system and so forth. In short, it could be said that the Nigerian state has woefully failed in the fulfilment of its basic mandate of the provision of welfare services and security.²

At the heart of this problem are endemic economic crimes currently witnessed in recent times, so to speak, in the proportion never before imagined and experienced since the emergence of the Nigerian state in 1960. The Nigerian milieu at present seems to be replete with scams of various kinds. Ministries, Departments and Agencies (MDAs) appear to be in competition to out do one another in the unholy alliance of cheating the Nigerian people. Politicians and captains of industry have thrown overboard the moral code of engagement in politics and business, and graft has become the order of the day. Corruption/bribery, fraud, smuggling, human trafficking, stealing, money laundering, kidnapping and you name it are here with us; life in Nigeria is almost becoming nasty, brutish and short, and there is palpable state of anomie as it were, and national security is in jeopardy because of the aforementioned economic crimes as well as others not mentioned.

Thus, the capacity of the government to protect and bring development to the mass of the Nigerian people by making better their human condition is diminished. The poor and deteriorating governance coterminous with economic crimes result into the collapse of infrastructure, graft in the private and public sectors of the economy created worsening economic inequality with greed everywhere, as wealth, howsoever acquired, has become the veritable instrument of the measurement of success in the Nigerian society. Consequently, economic crimes have distorted and tarnished the image of Nigeria, and highly placed people in the private

2. See, section 14(2)(b) Constitution of the Federal Republic of Nigeria 1999.

and public sectors of the economy are being charged and prosecuted in the courts as a result of it. This chapter undertakes to examine economic crimes, but the chapter will not do a panorama examination of every economic crime, as only highlight will be made of some of them, for example, fraud, smuggling, human trafficking and kidnapping, etc.

The main focus of the chapter will be however, to specifically explore and consider the problems of economic crimes of corruption and money laundering in relation to national security in Nigeria.

The chapter argues the thesis that economic crimes in the genre of corruption and money laundering have problematized socio-economic activities in the country, bringing in its wake moral decadence, with the glorification of wealth howsoever acquired, as the ultimate measure of success in the Nigerian society. It posits that the prevalent economic crimes in the private and public sectors of the economy, diminishes the capacity of the government to provide welfare services and security, as provided in the 1999 Constitution of the Federal Republic Nigeria, and postulates that the reversal of the current level of commission of economic crimes in the country, will start with the conscious efforts by the entire citizenry at moral or value re-orientation and rejuvenation, leading to transparency in the conduct of affairs of government and the private sector of the economy, and enhancing national security.

In this light, the chapter will make an attempt at a definition of economic crime and thereafter, a consideration of the theoretical foundation of the subject, and examples of its typology in the context of Nigeria, will be undertaken. Further concern of the chapter include, a general examination of corruption and money laundering as economic crimes, and their effect on national security of Nigeria, whilst postulating ways and manner for strengthening the continuing fight against the scourge in the country, in order to have a clean

government and environment, that will engender development and enhance national security.

Thematic Clarification of Terms

In order to have a good understanding of issues to be articulated and analysed under the subject of the discourse, it is thought apposite to involve in an operational clarification of terms that are germane to the discourse. We shall therefore, take a look at the following concepts: economic crime, corruption, money laundering and national security.

Economic Crime

There are no widely accepted definitions of economic crime, but it is possible to enumerate various definitions, theories and offences included in the category of economic crimes.³

The theories of economic crime will be examined below, but suffice at this juncture to look at some attempts at definition of what is economic crime.

According to Ribadu, economic crimes are human activities that involve breaking economic laws of Nigeria or illegal and immoral acts of persons adversely affecting the economy of Nigeria that can be punished by law.⁴

A United Nations working paper categorized economic crimes as that group of offences frequently committed in conjunction with legitimate economic activities and largely by perpetrators who enjoy considerable amount of respect in the communities.⁵

3. <http://Law.jrank.org/pages/1055/economic-crimes-theory.htm> assessed 26/7/2010.

4. See Nuhu Ribadu: "Problems Associated with Enforcement of EFCC Laws Against Economic Crimes." Paper presented at the Nigerian Bar Association Annual Conference (Abuja, 23 – 27 August, 2004) p. 4.

5. See "New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenges for Future" 7th United Nations Congress on Prevention of Crime and Treatment of Offenders. A/CO/F. 121/20, 16th April, 1965.

By economic crimes or offences, one should understand what is called white collar crimes,⁶ corporate malfeasance, rationing violations, smuggling, mismanagement and abuses of economic power that may not run counter to current penal norms, but are nevertheless harmful to society and perceived as reprehensible in situations of socio-economic change, stress and crises⁷.

The jurisprudential response to the Nigeria's need for protection against economic crimes and allied offences culminated in the enactment of an statutory legislation which defines economic and financial crimes as:

the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, illegal arms deals, smuggling, human trafficking and child labour, looting and any form of corrupt practices, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse,

6. This is the term used to describe violations of the law by persons with higher status. Usually the term refers to corporate or individual crimes in connection with business or occupations regarded as a legitimate part of society. See, Titus Reid: *Crime and Criminology*, Ninth Ed (Mc Graw Hill 2000) p 248.

7. See note 5 *Supra*, *ibid*.

dumping of toxic wastes and prohibited goods
etc.⁸

Putting the foregoing definition together, it is submitted that economic crimes/or offences, in the context of Nigeria, as the name implies are thought to be criminal acts, the commission or omission of which are detrimental to the general economic development of the nation which may be punishable under the extant laws. Notwithstanding the above attempts at definition of economic crime, the following theoretical work further clarifies and explores economic crimes, namely, offender motivations, economic outcomes and economic process.⁹

Offender Motivation

This theory refers to economic crime as illegal act in which the offender's principle motivation to commit the offence is economic gain. In this aspect, economic crime is conceived as an offence in which individual or group of individuals purposively act in an illegal manner in order to gain financial returns. For example, robbery, narcotic drug trafficking or selling, tax evasion and computer crimes, etc.

However this theory proceeds from the assumption that offender motivation is always observable from the criminal act itself, but this is not always the case because motive

8. See section 46, Economic and Financial Crimes Commission (Establishment) Act 2004. There are however other legislations against economic and financial crimes in the country, for example, the Criminal Code, Cap 77, LFN 1990 (Cap 38, LFN 2004); the Penal Code, Cap. 345, LFN 1990 (Cap. P. 3, LFN 2004); the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, 1994; the Advance Fee Fraud and other Related Offences Decree 1995; Money Laundering (Provisions) Act, Cap. M18, LFN 2004, etc.

9. See Note 3 (*Supra*).

behind a criminal act for example, robbery may be different, thrill seeking or racial hatred.¹⁰

Also, some crimes may have multiple motives and economic gain may be secondary goal.¹¹ Moreover, offenders in some instances are not conscious of their motives, as such they may be unable to distinguish the reasons for their actions as well as the justification or rationalization that follows them.¹²

Economic Outcomes

This theory of economic crime focuses on illegal acts that successfully provide offenders with economic returns and avoid difficulties associated with trying to infer motives.¹³ However, the theory excludes attempted crimes, hence limiting the understanding and analysis of the subject.¹⁴

Economic Process

A variation of economic outcomes approach to meaning of economic crime defines it as offence(s) for which victims incur an economic loss,¹⁵ victims here include individual groups or organizations against which the act of crime is directed. This occurs in cases in which criminal act subverts or undermines the commercial effectiveness of normative business practices and the negative consequences extends beyond those at whom the specified immediate harm was intended, for example, computer hacking and insider trading in stock¹⁶

10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. *Ibid.*

The drawback here, however, is that the definition ignores or under represents victim issues, and it is too narrow in some respects and too broad in others, for example, it excludes “victimless” crimes e.g. prostitution and use of narcotic drugs etc., and includes any offence for which victims experience a loss, e.g. assault that results in medical expenses and loss of wages.¹⁷

This approach to the meaning of economic crime contends that processes that lead to criminal behaviour are those that guide consumer in the market place.¹⁸ This approach to the meaning of economic crime informs most theoretical work on crime offered by economists.¹⁹

Corruption

Corruption may not be put into a straight jacket definition. This is because its definition may depend on what purposes or in what context the definition is needed. Corruption according to Blacks *Law Dictionary*²⁰ is “depravity, pervasion or taint, an impairment of integrity, virtue or moral principles, especially, the impairment of public official’s duties by bribery.”

The Dictionary in the second segment of its definition also says that:

corruption is the act of doing something with
an intent to give some advantage inconsistent

17. *Ibid.*

18. *ibid*

19. *Ibid.*

20. Bryan A. Garner (ed) (West Group, St. Paul Minn. 1999) p. 384. In *Biobaku v. Police* (1951) N.L R. 30, His Lordship Bairaman J. defined corruption as “the receiving of a benefit or reward or inducement to sway or deflect the receiver from the honest and impartial discharge of his duties”, also in *Caleb Ojo v. F.R.N* (2008) NWLR (Pt. 1099) 457, the court held that the word “corruption” connotes the impairment of a public officials duty by bribery.

with official duty and right of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the right of others.

For Osoba corruption is:

a form of antisocial behaviour by an individual or social group which confers unjust or fraudulent benefits on its perpetrators (which) is inconsistent with the established legal norms and prescribed moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authorities to produce fully for the material and spiritual well being of all members of society in a just and equitable manner”.²¹ The foregoing definitions of corruption are the same meanings that are alluded to it in the present discourse.

Money Laundering

Money laundering is defined according to the Financial Action Task Force (FATF)²² as:

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21. See V. T. Jike: “Political Sociology of Recourse Control In Niger Delta” in H. A. Saliu ,(ed): *Nigeria Under Democratic Rule, 1999-2003*, (Ibadan: Ibadan University 2005).p. 156.
 22. See, <http://www.fatf.gafi.org/members.en.htm>, assessed 26/7/2010. The FATF is an inter-governmental body establish by the governments of major industrialized countries which sets standards, develops and promotes policies to combat money laundering and terrorist financing. It currently has 31 member countries and governments, two international organisations, and more than 20 observers, FATF style regional bodies and also more than 15 other international organisations or bodies. The inter-governmental organisation had made forty recommendations highlighting a standardize approach to the counter measures against money laundering. *Ibid.*

the conversion or transfer of property, knowing that such property is derived from criminal offence, for the purpose of concealing, or disguising the illicit origin of the property or assisting any person who is involved in the commission of such offence or offences to evade the legal consequences of such actions, the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from a criminal offence and the acquisition, possession or use of property, knowing at that time of receipt that such property was derived from a criminal offence or act of participation in such offence.

Money laundering therefore is the procedure by which the proceeds of illegal acts are converted into legal activities so that the criminal origin of such proceeds are hidden. It is a process of washing clean, so to speak, dirty money so as to conceal its dirty origin. It is in the foregoing context that the term is used in this work.

National Security

The term national security, state security, national interest, or public security can be used when conceptualizing the interest of an individual or group of individuals against that of the government and the citizenry depending on the context and who is grappling with the subject.²³

23. Under the military rule in Nigeria, it is submitted that national security was defined narrowly as it is thought that the parochial and personal interest of the junta were intertwined with the overall interest of the state

Thus Onuoha sees national security as: “the capacity of a state to promote the pursuit and the realization of the fundamental needs and vital interests of man and society and to protect them from threats which may be economic, social, environmental, political, military or epidemiological.”²⁴ The jurisprudence of national security or state security etc. resolves itself into a consideration of competing interests of the individual, the state or community.²⁵ And the philosophy of national security is encapsulated in the maxim: (*Salus populi est suprema lex*) meaning that the safety of the nation is the supreme law.

This is so because all the rights of the individuals depend for their very existence upon the continuance of organized political society, the continuance of that society itself depends upon national security, for without national security any society is in danger of collapse or overthrow.²⁶

Recent international developments however have raised the need to see security in the broader sense as the struggle to secure the most basic necessities of life, food, fuel, medicines, shelter²⁷ and so forth. This broad human security is important for the attainment of national physical security, peace and development, because of social unrest arising from

or government and the notorious State Security (Detention of Persons) Decree 1984 was promulgated to empower the government to detain persons “engaged in acts prejudicial to state security.”

24. Freedom C. Onuoha: “The Transformation of Conflict in the Niger Delta” in H. A. Taiwo: I. O. Seniyi, R. A. Salawu and A. Usman (eds), *Nigeria Beyond 2007: Issues, Perspectives and Challenges*, (Faculty of Business and Social Sciences, University of Ilorin 2008) p. 265.
25. See Akin – Ibidapo Obe: “Human Rights and State Security, the Nigerian Experience,” in Akintunde O. Obilade (ed): *A Blue Print for Nigerian Law*, (Faculty of Law, University of Lagos 1995) p. 289.
26. B. O. Nwabueze: *Presidentialism in Commonwealth Africa*, (C. Heorst and Co. and Nwamife Publishers 1972) p. 332.
27. See Abdulsalam Abubaka at <http://www.dawodu.com> / abubaka/htm accessed 27/20/2010.

the absence of such basic human security problems and conflicts.²⁸

The primary objective of Nigerian's national security policy according to former President Olusegun Obasanjo shall be to:

strengthen the Federal Republic of Nigeria, to advance her interests and objectives, to contain instability, control crime, eliminate corruption, enhance genuine development, progress and growth, and improve the welfare and well being and the quality of life of every citizen.²⁹

It is however submitted that the national security concerns of any government may shift from time to time depending on the policy of the government of the day as well as the extant laws, hence, the Fundamental Objective and Directive Principles of State Policy as provided in the 1999 Constitution of the Federal Republic of Nigeria States amongst other provisions states that: "Security and welfare of the people shall be the primary purpose of government".³⁰

Therefore national security given the foregoing analysis is used in this work to mean the preservation of the welfare of the citizenry by the provision of basic amenities like food, good health delivery scheme, good roads and transportation system, water, electricity, education, shelter and recreational facilities etc., as well as the protection of life, property and sovereignty of the country from unscrupulous elements for the amelioration of the human condition of mass of the Nigerian people

28. *Ibid.*

29. Olusegun Obasanjo: *The Grand Strategy for National Security* (Abuja: Federal Government Press 2001) pp. 2 -3.

30. See Note 2 (*supra*).

Theoretical Foundation of Economic Crimes in Nigeria

In the beginning and from time immemorial, breaking of the law or commission of crime seem to be natural to human beings. The Bible records that in the beginning, there was law and the fall of man was due to “sin”³¹ in breaching the law of God by eating of the forbidden fruit.³²

Criminal and or sinful conduct therefore has been with us biblically speaking since then. The question why people commit crime has always been asked. It is thought that an examination of some theories of crime causation may aid analyze the causes of economic crimes, and in turn its effect on national society in Nigeria. Until 18th century criminal behaviour was explained in religious terms as a product of devil’s work, so that persons who did wrong were regarded as being in devil’s possession.³³ Nonetheless, it is important to understand the leading explanation of crime causation because their understanding is thought to affect significantly the ways in which laws are enforced, guilt or innocence determined and misconduct punished.³³

According to Cesare Beccaria, a classical theorist of crime causation, crime is a rational behaviour and most people have the potential to engage in an illegal activity, so that people may choose to commit crime after weighing the benefits and consequences of their action. Beccaria posits further that it is the fear of punishment that keeps most people in check against the commission of crime and thus, the severity, certainty and speed of the criminal sanction is

31. Femi Olufokunbi: “Criminal Liability and Financial Crimes Legislation” Paper presented at NIALS Intensive Course in Legislative Drafting (Lagos: 17 July, 2006) p. 2.

32. See *The Bible*, Genesis, Chapter 2 verses 16 and 17, “But of the tree of the knowledge of good and evil thou shall not eat of it, for in the day that thou shall eatest thereof thou shall die”.

33. See, George F. Cole: *The American System of Criminal Justice* (California: Brook/Cole Publishing Co. 1992) p. 54.

33. *Ibid* p.56.

the controlling factor against the commission of crime therefore, punishment should fit the crime.³⁴

But Cesare Lombroso, leader of the positive school, rejected the classical doctrine of free will and contended that certain class of people are born criminals. He claimed that he saw in sample criminals some characteristics of physical reversion which he called *activism* or throwback to primitive type of man or reversion to pre-human creatures,³⁵ such person have asymmetrical faces, ponderous jaws and eye defects³⁶.

However, the sociological explanation to criminal behaviour holds that criminal behaviour is moulded by societal forces and as such criminals are made and not born.³⁷

Thus, social structure theory of crime ascribe criminal behaviour to the stratified nature of a society with the effect that classes in the society control different amount of wealth, status and power, and those at the lower rung of the classes tend to suffer from economic deprivation, lack of education etc, and as such amenable to committing crimes.³⁸

Accordingly, Durkheim emphasised that the structure of the society often permits a situation of anomie to the effect that social condition is created that necessitated the disappearance or weakening of rules or norms to regulate behaviour.³⁹ In this light, persons may become anomic or frustrated when the rules are unclear or when they are unable to achieve what they expect.

34. *Ibid.*

35. See Sue Titus Reid: *Crime and Criminology 9th Edition* (Mc Graw Hill 2000) p. 86, see also Cesare Lomoruso: *Crime, Its Causes and Remedies*, Trans, H.P. Horton (Boston: Little, Brown, 1911) p. 365.

36. George F. Cole, *op. cit*, note 32 (*supra*).

37. *Ibid* p. 61.

38. *Ibid.*

39. *Ibid.*

Thus, when the balance between cultural aspirations and social opportunity is lost or damaged, anti social or deviant behaviour may result.⁴⁰

Furthermore, disorganisation of the family caused by high urbanization or industrialisation brings in anti social behaviour and incidence of criminal behaviour arises.⁴¹

Echoing the contribution of the society in making of the criminal, Mayo quoting Lacassagne, posits that it is the environment that makes the criminal, to the effect that societies have the criminal they deserve and that:

social milieu is the cultural broth of criminality, the microbe is the criminal, an element without significance until the day it finds itself in the broth which causes it to grow, consequently, it is the environment that breeds the criminal".⁴² For Mayo, "if there is not a clearly defined criminal class, crime is still very much a part of the society which produces it and... very clear indication of the society in a state of disfunction. At the top of the criminal ladder, the organisation man may be ruthless and lacking in social conscience, but he may also have the qualities of *a successful entrepreneur denied other outlets in an increasing bureaucratic society*."⁴³

Differential association theory by Sutherland is quite apposite to the sociological explanation of criminal

40. *Ibid.*

41. *Ibid.*

42. See Patricia Mayo: *The Making of a Criminal*. (Weidenfeild and Nicolson: 1969) p. 6.

43. *Ibid.*

behaviour. The postulation of the theory is that criminal behaviour is learned through interactions with others with whom close association is maintained.⁴⁴ So people are said to become criminals because they encounter a large number of influences that regard a particular behaviour as normal and acceptable with those influences outnumbering the influences hostile to criminal behaviour⁴⁵, personality and conduct develop as a result of incorporation of the perspectives of the dominant culture surrounding the individual, thus, criminal behaviour is learned just as the same way any other culture is learned, as such, criminal behaviour is as a result of culture conflict, that is, conflict between a behaviour pattern and values of different culture within the society.⁴⁶

Also control theory developed by Travi Hirshi holds that social links keeps people in line with accepted norms. Thus, although all members of society have the potential to commit crime, most of the people may be restrained by their ties to such conventional institutions and individual as the family, church, school and peer groups.⁴⁷

Notwithstanding the foregoing theories, it is submitted that no single theory analysed above may be powerful enough to explain why some people commit economic crimes in the country. It is thought that an integration of all the theories, excepting the 'born criminal type' theory,⁴⁸ may be conducive to the endemic economic crimes in the country.

44. George F. Cole, *op. cit.* note 32 (*Supra*) p. 62.

45. *Ibid.*

46. *Ibid.*

47. *Ibid.*

48. This is because given what we know about persons from the private and public sectors of the economy that have been charged for economic crimes/offences, it is submitted that these suspects do not have "asymmetrical faces, ponderous jaws or eye defects in the *lombrosian* sense. They are thought to be well rounded people with normal physique or body type.

Thus, “essential variables that relate to income inequality, wealth distribution pattern, political system and other human and historical factors at micro and macro level may not be discountenanced”,⁴⁹ as the bases for criminal behaviour in Nigeria.

Economic Crimes: Typology in Nigeria

We have in the proceeding discourse clarified corruption and money laundering as genre of economic crimes in the country. Other types of economic crimes worthy of note include Fraud, Stealing, Human Trafficking, Smuggling, Kidnapping and so forth.

Let us examine them *seriatim*.

Fraud

Fraud is generic term and embraces all multi various means which human ingenuity can devise, which are resorted to by one individual to get an advantage over another by false representation. No definite and invariable rule can be laid down as general proposition for defining fraud as it includes surprise, trickery, cunning and unfair ways by which another is cheated. The only boundaries defining it are those which limit human knavery.⁵⁰

49. For instance, the current Presidential system of constitutional democracy in the country has made it possible for the Legislative Houses at the State and Federal levels to approve whopping sums of money for members for furniture and constituency projects etc. thereby making them to live in stupendous wealth while the mass of the people have no improvement in welfare at all. This type of opulent living by political leaders may conduce to environment of crime.

50. See, W. Steve Albretch, Canan C. Abretch and Chad O. Abretch: *Fraud Examination*, 2nd edition, (Canada: Thompson South Western, 2006) p. 7.

The media is constantly awash with news about fraud presently in Nigeria with the banking sector seemingly on the lead as far as perpetration of fraud is concerned in the country, as the spate of fraud and attempted fraud in the industry was in recent time said to have challenged the risk control measures ordered by the Central Bank of Nigeria.⁵¹ Fraudulent activities in the banks in Nigeria include, presentation of forged cheques, granting of unauthorised loans, posting of fictitious credit, fraudulent transfer, round tripping, that is, the sale of foreign exchange on international currency obtained from the Central Bank of Nigeria by banks at the parallel market.⁵²

Some of the banks have been investigated and some of the staff of affected banks has been charged before the court in the country for sundry offences bothering on fraud and fraud related crime.⁵³ There is also in Nigeria, Advance Fee Fraud which may be termed economic or financial crime of money laundering. The crime is targeted at victims who are mainly foreigners who reside outside Nigeria. The fraud requires the victim to assist a Nigerian for an alleged contract to be executed in Nigeria whereby the foreigner is requested to pay an advanced fee to facilitate the execution of the contract which contract in actual fact is non-existent.

Stealing⁵⁴

The offence of theft is the intentional taking of another person's property with a view of depriving the owner of it. It is submitted that the offence is the commonest economic crime in the country as it is thought to be committed by all classes of people. For example, persons under the private and public service employments may steal items meant for their

51. *The Punch Monday*, February 2, 2009 p. 7.

52. *Ibid.*

53. *Ibid.*

efficient operation at duty. Items that may be taken away include, but not limited to stationeries, furniture, computers, fans and even cash.

Human Trafficking

Human trafficking is the illegal trade in human beings for the purposes of commercial sexual exploitation or forced labour.”⁵⁵ The Trafficking Protocol⁵⁶ defines human trafficking as:

the recruitment, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of (above) vulnerability, of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation set forth shall be irrelevant where any of the means set forth (above) have been used.⁵⁷

55. See http://en.wikipedia.org/wiki/Human_trafficking, accessed 2/8/2010.

56. This is the Protocol to prevent, suppress and punish trafficking in persons, especially women and children pursuant to the United Nations Convention Against Transnational Organized Crime. The Protocol came into force on 25 December 2003. see note 55 (*supra*).

57. *Ibid.*

The challenge of the menace of human trafficking in Nigeria has resulted into the enactment of legislation,⁵⁸ and suspected human traffickers are being prosecuted and money as well as property proved to have been got from the illicit trade seized on the order of the court.⁵⁹

Smuggling

Smuggling is the crime of importing or exporting illegal article or articles on which duties have not been paid.⁶⁰ The incidence of smuggling into the country has not only made conducting business difficult⁶¹ for genuine businessmen, it also denies the government revenue that would have been

58. See, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. The Act created the National Agency for the Prohibition of Trafficking in Persons and other Related matters (NAPTIP). See also Article 5, Protocol to Prevent Trafficking of Persons which came into being pursuant to United Nations Convention Against Organized Crime which enjoins state parties to criminalize practices and conducts that subject human beings to any form of exploitation.

59. Thus, the Federal High Court sitting in Sokoto State of Nigeria on 8th December, 2009 ordered the confiscation and transfer of monies seized from two traffickers to wit: Gladys Joy Okonta (f) and Jonah Asarinwan (m) to the Victims of Trafficking Trust Fund established under the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended. In another case decided by a Lagos High Court, a convicted trafficker, Elele Biloko (m) was sentenced to two years imprisonment and the court also ordered that the building used as a brothel where under aged girls were kept as prostitutes be confiscated and proceeds realized from the sale be given to the Victims of Trafficking Trust Fund, for the rehabilitation of the victims. See [http:// www.haptip.gov.ng/accessed/2/8/2010](http://www.haptip.gov.ng/accessed/2/8/2010).

60. See *Black Law Dictionary op. cit.* note 19 (*Supra*) p. 1394.

61. This is in the sense that genuine businessmen may not be able to sell at competitive price with smugglers because they pay duties/levies that may be factored into their price to the final consumer/purchaser, while smugglers may not pay government duties/levies at all.

generated through proper payment of duties and levies at the ports or the borders which it is thought to be the likely places through where smuggled goods are brought into the country. According to Gbadamosi,⁶² “smugglers have almost driven the importers into extinction because they evade duties and taxes and sell at cheaper prices”. The effect of this is that government loose money, and as such, its capacity to provide welfare services to the citizenry continues to be diminished. On the other hand, smuggling of goods into the country poses serious challenge to the business activities of the private sector of the economy generally, in that, manufacturers of goods may also not be able to compete with smugglers, and when this happens, they may sell at a loss and this may affect their ability to stay in business and provide employment to those citizens of the country that may need it.

Kidnapping

Kidnapping is the crime of seizing and taking away a person by force or fraud, often with a demand for ransom.⁶³ The law in Nigeria provides that any person who unlawfully imprisons another person, and takes he/she out of Nigeria without his/her consent, or unlawfully imprisons any person within Nigeria in such a manner as to prevent him/her from applying to a court for release or from disclosing to any other person the place where he/she is imprisoned, or in such a manner as to prevent any person entitled to have access to him/her from discovering the place where he/she is

62. President of Rice Importers and Distributors, Association of Nigeria (RIDAN), see <http://www.businessdayonline.com/index> accessed 2/8/2010.

63. See *Black's Law Dictionary op. cit.* note 19 (*Supra*) p. 874.

imprisoned, is guilty of a felony, and is liable to imprisonment for ten years.⁶⁴

There are two reasons offered why kidnapping has become a kind of scourge in the country currently, the first reason is political and has to do with the neglect of Niger-Delta oil region of Nigeria where the youths have resorted to militancy and kidnapping as a means of making themselves heard against the government that has failed to provide amenities for the welfare of the people.⁶⁵

The second reason for the prevalent kidnapping in the country is lack of employment for the youths, mostly in the eastern part of the country because of lack of industries.⁶⁶ Kidnapping poses threat to general security especially in the south-eastern part of the country as businesses are said to be winding up and operators are relocating to more safe areas in other parts of the country.⁶⁷ Thus, there is need to stop or at least curtail the incidence of kidnapping in the country generally, but suffice at this juncture to examine the nature and effect of corruption and money laundering in the country.

Corruption and Money Laundering in Nigeria: An Over View

The problem of corruption as captured in the epigraph and alluded to by many commentators on the subject has always been with us. It is no less a person than Nwabueze quoting Ayandele, who traced the malaise as having found root in governance at the dawn of independence of African states from their colonial masters. He comments:

64. See section 364 Criminal Code applicable to the southern part of Nigeria and section 8 of the Penal Code applicable to the Northern part of Nigeria respectively. (*Emphasis on masculine and feminine gender supplied*).

65. *SaturdaySun* July 11, 2010 p. 7.

66. *Ibid.*

67. *Ibid.*

... later day ruling elite who altogether careless or disdainful of the interests of the masses, were enabled to achieve their dream of stepping into privileged positions hitherto the white man's exclusive preserve. Thus the ambition and the desire to exploit the people by means of official corruption in all its variegated forms became implanted in the mentality and psyche of the African ruling class. Corruption manifests a want of patriotism and a sense of service to the people.⁶⁸

The seminal thinker continues:

The effect of this on civil servants is that service as a hard working civil servant has come to be viewed as unrewarding to him, it now seems foolish to remain a poor, dutiful and honest civil servant when his political bosses are busy openly amassing wealth unabashed by any code of conduct.⁶⁹

Not done yet, he says further that:

Elitism in Africa has enthroned money as the accepted measure of success, as a criterion of honour or worthiness, as the determinant of social values, indeed as every object of existence. All relationship in the society... practically everything, has come to be

68. *The Guardian*, Tuesday, January 26, 2010. p. 81.

69. *Ibid.*

measured in terms of money and money related values.⁷⁰

He then opines that happenings in African States are just like in the Plato's *The Republic* whereby "in proportion as riches and rich men are honoured in the state" whilst "virtue and the virtuous are dishonoured."

The foregoing observations are very apt to the situation in Nigeria except to add that the present level of corruption seems to be in the proportion never before experienced, and corruption in Nigeria goes beyond the public sector as it equally pervades the private sector of the economy as the analysis below will show. It need also be stated that corruption thrives in Nigeria not because of non existence of laws⁷¹ against it, but because of the lack of political will on the part of government to enforce the laws or involve in transparent leadership by example.

Nature of Corruption

Although corruption in Nigeria is done stealthy and anecdotal, its symptoms and character are however clear, as it involves in addition to our earlier definition, simply, abuse of public and private sector offices for personal gain:

Accordingly, Oyebode postulates that the symptom of corruption in Nigeria ranges from bribery, abuse of office and influence peddling to nepotism, squander mania and unjust enrichment.⁷² Also the political

70. *Ibid*

71. For example sections 98 – 99, 114 – 116, 404 – 406 of the Criminal Code, all have provisions against corrupt practices.

72. See Akin Oyebode: "An Overview of Corruption in Nigeria", in I. A. Ayua and D. A. Guobadia: *Political Reform and Economic Recovery in Nigeria* (Lagos: NIALS 2001) p. 603.

bureau in 1987 identified manifestations of corruption in the body politic of Nigeria in the following ways:

inflation of government contracts in return for kickbacks, fraud and falsification of accounts in the public service, examination malpractices in our educational institutions including universities, the taking of bribe and pervasion of justice among the police, the judiciary and other organs for administering justice, the various heinous crimes against the state in the business and industrial sectors of the economy, in collusion with multinational companies, such as, over invoicing of goods, foreign exchange swindling, hoarding and smuggling.⁷³

In the light of the foregoing identified areas of manifestations of corruption in the country, it will be expedient to examine the segment of society and/or personalities in the recent time involved.

Corruption: Public Sector in Perspective

Economic and Financial Crime Commission (EFCC)⁷⁴ has recently arrested and prosecuted several public officers for abuse of office and corruption. Such public officers include

73. *Ibid.*

74. The Commission is established pursuant to section 1 (1) of EFCC Act 2004 and charged with the responsibility of the enforcement of all Economic and Financial Crime Laws, etc.

Governors, the Inspector-General of Police, Legislators and Ministers.⁷⁵

Thus, former Governors Orji Uzor Kalu, Rev. Jolly Nyame, Alhaji Saminu Turaki and Ayodele Fayose are undergoing prosecution for corruptions⁷⁶, while Chief Bode George, former Chairman, Nigerian Ports Authority, Aminu Dabo, M. D. Abioye, Zaria Maidaribe, Aminu Tafida and Sule Aliu were tried and found guilty and sentenced to prison over charges of disobeying lawful order and inflated contracts at the Nigerian Ports Authority, by Justice Olubunmi Oyewale of the Ikeja High Court.⁷⁷ In the same vein, former Governors Diepreye Alamiesiegha of Bayelsa State and Lucky Igbinedion of Edo State pleaded guilty through a process of “plea bargain” to corrupt practices and economic crimes at the Federal High Court in Lagos and Enugu, respectively.⁷⁸

Furthermore, former Inspector General of Police, Mr. Tafa Balogun was prosecuted on 70 count charge of money laundering pursuant to section 14(1) of the Money Laundering Act 2004. He was convicted and jailed for six months, whilst the former Senate President, Chief Adolfus Wagbara, was indicted by the Senate for allegedly accepting bribe of N55 Million from Professor Fabian Osuji, the former Minister of Education in order to increase the latter’s Ministry’s budget.⁷⁹

75. Francisca E. Nlerum: “Arrest, Detention and Trial of Public Officers: The Nigerian Experience”, in Epiphany Azinge and Bolaji Owasanoye (ed.): *Rule of Law and Good Governance* (Abuja: NIALS Press 2009) p. 149.

76. *Ibid.*

77. *Ibid.*

78. *The Punch*, February 9, 2009. It is worthy of note that the process of “Plea bargain” as a deal offered by the prosecutor as an incentive for the defendant to plead guilty has been roundly criticized by advocates of substantial justice, as it allowed the suspects to pay a fine instead of going to jail to serve as deterrent to others.

79. Francisca E. Nlerum Note 75 *supra* at p. 150.

As we write, the Newspapers are awash with headlines detailing alleged corrupt activities of public officers, a few examples will suffice. One Albert J. Stanley, an official of Halliburton – a United States based Oil Services Company was alleged to have given about \$180 million to the former Managing Director of Nigeria Petroleum Corporation (N.N.P.C.) and other top officials of Federal Government of Nigeria to secure contract for their subsidiary company called Kellogg Brown and Root (KBR) in Nigeria.⁸⁰

Meanwhile, in a classic case of corruption, Justice Olusola Williams of Lagos High Court on June 21 2010, convicted the former Chairman and Chief Executive officer of the National Drug Law Enforcement Agency (NDLEA) Mr. Bello Lafiaji and his erstwhile Special Assistant, Usman Amali for conspiracy and abuse of office for releasing one alleged drug suspect and diverting 164,300 Euros allegedly seized from the drug suspect.⁸¹ Yet in another development, the EFCC was said to have received petition against the current leadership of the House of Representatives from some members of the House over allegation of inflation of contract to the tune of N9 billion for the purchase of cars for the principle officers and other members of the House⁸². The list could go on and on.

Also corruption takes place at the political leadership selection levels where the process is manipulated or rigged in order to produce certain predetermined results.⁸³ Electoral

80. *The Nation*, Wednesday August 4 2010 p. 4, The Attorney General of the Federation (AGF), Mr. Mohammed Bello Adoke (SAN) has written to the Inspector General of Police, Mr. Ogbonna Onovo who is the Chairman of the Special Investigation Panel (SIP) on the case, to send the lists of all statements of the witnesses to his office in preparation for trial, *Ibid*.

81. *The Guardian*, Tuesday 22, 2010 p. 1.

82. *Ibid*. Prince Vincent Ogbulafor and one other, were arraigned on June, 21, 2010, on alleged ₦104 million Naira contract scan allegedly committed during his tenure as Minister of Special Duty in 2001. *Ibid*.

83. See Oyeboade: *op. cit*, note 72 (*Supra*) p. 608.

corrupt practices include the wilful withholding of ballot papers, lack of proper sequenced ballot papers, unlawful behaviour of party agents, stuffing of ballot boxes, forgery and falsification of election results, under age voting and ballot box snatching.⁸⁴ Thus according to Braithwaite:

... Political corruption rewards corruptibility in politics and exacerbate the social selection into public office of those who are most adeptly corrupt. To the extent that politics and government administration become more corrupt then to that extent will men and women of high principle find entry into politics repugnant?⁸⁵

In view of the foregoing, the politician in leadership position in Nigeria for example “having ascended power by corrupt means... becomes immersed in a cesspool of corruption witnessed by distribution of patronages to faithful, award of contracts to party members and financiers, very often at highly inflated costs,”⁸⁶ and involve also “in the exercise of political influence over other arms of government and numerous other arbitrary acts which belie accountability, fiscal transparency and other cannons of good governance.”⁸⁷ The above may be termed corruption at a grand level at the public sector, which brings to mind also corruption in the public sector at the petty level.

84. M. A. Ayode: “The Legal frame work for E-voting in Nigeria,” (2009) *Ambrose Ali University Law Journal Vol. 1* p. 1.

85. John Braithwaite: “Transnational Corporations and Corruption: Towards some International Solutions” (1997) 7 *Int’l Journal of Sociology of Law*, p. 126.

86. Oyeboode note 72 (*Supra*), p. 609.

87. *Ibid.*

This is a situation whereby low income earners in order to make ends meet resort to anti-social behaviour by making things difficult for those who have one thing or the other to do through them at their respective duty posts in order to earn some gratifications against the laid down rules of their places of work.

Thus, clerical staff at motor licensing offices, tax offices, passport issuing offices and the police at checkpoints may want their palms greased before performing their respective official duties.

Corruption in the Private Sector of the Economy

Aside from the large and petty corruption that pervades the public sector of the economy, the private sector is not left out in the malaise. This is because just like in the public sector, employees in the organised private sector of economy may be entrusted with discretionary powers of leadership and/or the decision making which may affect the interests of other parties positively or negatively. For example, private organisation may have business relationship with suppliers of items and this may create opportunity for an employee to line pockets with bribe in order to make the business relationship “easy” for the supplier. In other words, such a supplier may have to settle some concerned employees of the organisation to whom supply is to be made. Consequently, business consultants, lawyers and Doctors in practice as well as other professionals have to “settle” or “co-operate” with persons at the helm of affairs in some private organisations in the country in order to get any business from them.

Other aspects of corrupt activities at the private sector include but not limited to 419 scam are⁸⁸ white collar

88. This is other wise called Advance Fee Fraud. It is targeted at foreigners who reside outside Nigeria by fraudsters in the country requesting the foreigner to assist a non existent Nigerian public servant or contractor to execute or complete a non existent contract. It need be added that the term

crimes,⁸⁹ fraud,⁹⁰ smuggling, drug peddling, theft and kidnapping as well as selling of substandard and outright fake products by unscrupulous traders all over the country to the gullible public because of corrupt enrichment or illicit gain notwithstanding the efforts of regulatory authorities.⁹¹

Money Laundering

Criminal activities are committed for personal gains of the criminal, and when such activities are economic crime related, the gain of the illicit activity is usually concealed. This is where money laundering comes into the picture.

Thus, all monies that may be realised from the economic crimes that have been examined in the preceding discourse will have to be “laundered” in order for the criminal to use it legitimately. In this way the criminal involved sets the procedure by which the proceeds of illegal acts are converted into apparently legal activities, thus concealing their criminal

is also used to describe local fraudsters who dupe people through false pretenses. Section 419 of Criminal Code is usually the section under which suspected offenders are normally charged hence the name “419”.

89. See note 6 *supra*.

90. Of Economic Crimes: Typology in Nigeria “Fraud.” Also the Central Bank of Nigeria on August 14, 2009, removed Mr. Akingbola, the former Managing Director and Chief Executive, Intercontinental Bank Plc and four other bank Chiefs in Nigeria as a result of alleged mismanagement of over ₦700 billion belonging to their respective banks and their shareholders. See, *The Nation*, August 4 2010. Furthermore, fraudulent investment schemes have also plagued the financial sector of the Nigerian economy as Central Bank of Nigeria reported through its Inter Agency Committee on Illegal Funds Managers that depositors lost about 106.9 billion to “Wonder Banks”. About 440 illegal funds operators were reported as having fleeced 560,882 customers nation wide through dubious deposit investment schemes. See *Sunday Punch*, July 11, 2010 p. 10.

91. For example, Standard Organization of Nigeria (S.O.N.) established by the Standard Organization of Nigeria Act, Cap. 412 LFN and National Agency for Drug, Food Administration and Control (NAFDAC) established by Decree No. 15 of 1993.

origin.⁹² This is usually done through three systems and stages of laundering known as placement, layering and integration.⁹³

Money laundering scheme may not be complete or successful unless the paper documentation is destroyed or the inflow of illegally accrued money cannot be easily discovered. The objective here is to hide the origin of the illegal funds and also to put some trench of currency into other assets or ‘fronts’ through over statement of reported revenues, over statement of reported expenses and balance sheet laundering.⁹⁴

Money laundering is considered to be the world third largest business and it is estimated that between \$500 billion and \$1.5 billion gets laundered annually across national and international borders.⁹⁵

The Nigerian Legal Frame Work

92. A. N. Ohanyere: *Money Laundering and Financial Crimes in Nigeria* (Ikeja: Arthill publishers 2003) p. 1.

93. *Ibid* p. 3. Placement is the process of presenting money to the bank, and may also include movement of large sums of money out of a country. It equally includes conversion of currency to commodities and making physical deposits in the bank. But, layering tries to conceal the origin of funds through different types of transaction while, integration is that stage whereby the illegal money has been fully “laundered” or mixed with legitimate money, the criminal now feels confident enough to use the money in setting up a legitimate businesses, for example, restaurants, supermarket and so forth *ibid*.

94. Benjamini Chuka Osioma: “Money Laundering in Nigeria: An Accounting Response” (January – April 2009) *Nigerian Journal of Economic and Financial Crimes* Vol. 1, No. 2 p. 41. Overstatement of statement of revenue occurs when the money launderer records more income on the books than is actually generated by the business. Whilst overstatement of expenses occur when payments for supplies never made, professional service never rendered and wages of ghost employees are reported. Balance sheet laundering involves deposit in cash and writing cheques in excess of reported revenue and expenses.

95. *Ibid*.

The enactment of statutes to checkmate the challenge of money laundering in Nigeria started with the promulgation of the following decrees by way of government response to curb the menace of economic crimes generally. The three major legislations are, the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended), the Money Laundering Decree No. 3 1995 and the Advanced Fee Fraud and other Related offences Decree.

However, between 1999 to date, government has taken the following legislative measures by enacting also these statutes: the EFCC Act 2002, Money Laundering Amendment Act 2002, Money Laundering Prohibition Act 2003, Money Laundering Prohibition Act 2004, EFCC Act 2004, Advanced Fee Fraud and other Related Offence (Amendment) Act 2005 and Advanced Fee Fraud and other Related Offences Act 2006.⁹⁶

For our purpose, we will highlight the main provisions of Money Laundering Act No. 10 of 2004, being the main statute that provides specifically for money laundering issues. The Act in its Decree⁹⁷ form provides for the requirement of proof that the laundered money be a proceed of a narcotic drug trade, thus making the case of the prosecution an uphill task in cases of laundering that is not connected with narcotic drug trade as the law was tilted initially towards curbing narcotic drugs trade, but the decree has being amended resulting into the current law now targeted at all manner of money laundering and no more restricted to money laundering connected with the drug trade only.⁹⁸

96. Bolaji Owasanoye: "A Legal Perspective to Economic Crimes and Fraud" paper presented at Round Table on The Role of Forensic Investigative Accounting: Challenges for the Banking Industry, 19th July 2010 NIALS Lagos.

97. Decree No. 2 of 1995 (LFN 1999).

98. Section 3 Money Laundering Act No. 10 2004.

The money Laundering Act No. 10 of 2004, in order to curb the menace of money laundering, imposed some obligations on the operators of business in the financial sector of the Nigeria economy. These obligations are know-your-customer rule and restriction of cash payments,⁹⁹ report of international transactions,¹⁰⁰ report of import and export of cash,¹⁰¹ filing of weekly returns or suspected foul transactions¹⁰² to EFCC, registration of customers of financial institutions, powers to prevent laundering of proceeds of crime or illegal act,¹⁰³ surveillance powers over accounts of customers of financial institutions and report of breaches to the EFCC and latter to clear transaction before they are concluded¹⁰⁴ and so forth.

Notwithstanding the clear intendments of the law to curb money laundering and other activities related to it, some of the provisions in the statute need be given a rethink as it may be difficult for operators and stakeholders in the financial system to practically carry out these provisions. For example, restriction of cash payments to N500,000 and N2million for individuals and corporations respectively except through a financial institution means that banks and financial institutions should inform the regulatory authority about any cash withdrawal above the statutory limit, but the relevance of the provision is arguable because of the ‘cash and carry’ nature of the Nigerian economy which may be due to but not limited to absence of trust and integrity, poor performance of the electronic banking system and the fact that, cash transaction are a ‘must’ for example, when buying building

99. Section 1 *ibid*, but it is arguable whether it possible for banks to investigate high net worth customers including those that may turn out to be crooks before advising on know- your-customer rule

100. Section 2 *ibid*.

101. Section 2(3) *ibid*.

102 .Section 3(5) I – ii *ibid*.

103 .Section 6(2)(b) *ibid*.

104 .Section 6(3 – 6) *ibid*.

materials like cement and sand etc. The provision that banks and financial institution should ask probing questions in respect of a particular transaction if it happens that the transaction has no economic justification or lawful objective and to seek information as to the origin, destination and identity of the beneficiary of the funds may be difficult to observe in practical terms as this may entail these institutions losing customers.

Furthermore, it appears that there is a conflict between sections 5 and 10. Section 5 imposes obligation on non designated financial institutions to report transactions above \$5000 or its equivalent without stipulating whether the provision is restricted to foreign transactions only. Also section 10 requires financial institutions and non designated financial institutions to report transactions above N1 million or its equivalent for an individual or N5 million or its equivalent for corporations, but did not state the equivalent currency. More so, some professionals like Accountants and Lawyers are supposed to report their clients who may pay fees above the statutory amount. One therefore wonders how the concerned persons will be able to practically observe these provisions.

Causes of Economic Crimes of Corruption and Money Laundering

We have noted that under the social theory of crime causation in the discourse, the stratified nature of a society may lead some members of that society to suffer economic deprivations. Consequently, the main cause of corruption and money laundering in Nigeria can be said to be rooted in the social background of the citizenry arising from poverty and underdevelopment.

Thus, the basic amenities for decent living are lacking. In view of this, people tend to be obliged to provide the basic amenities for themselves in order to enjoy some comfort, and

to achieve these ends which may ordinarily be above their means, the ordinary, honest person may resort to corrupt practices in order to make ends meet in view of the failure of the government to provide the basic amenities of welfare and security.

Connected to the foregoing is abnormal income inequality among the entire citizenry, insecurity of tenure at the different places of work, lack of social security system, cultural expectation of the people that a family member in public office is expected to assist poorer relations, political leadership struggles, get-rich-quick-syndrome or wrong value orientation that measures success in the society in monetary terms, weak legal system that drags cases of economic crimes on as long as possible whilst meting out punishments to convicted violators of economic laws not commensurate with the gravity of the offence committed as well as ethnic sentiments.¹⁰⁵

Effect of Economic Crimes on National Security

We have alluded to the fact that economic crimes are human activities that involve breaking of the economic laws of the country or illegal acts of persons adversely affecting the economy that can be punished by law¹⁰⁶. These activities like corrupt practices, money laundering, advanced fee fraud, illegal currency manipulation, improper foreign exchange dealings, banking fraud, stealing, smuggling, kidnapping, human and drug trafficking etc, almost always have

105. Nigerians many a time give economic crimes committed by top members of the society ethnic colouration and interpretation, and as such would want suspected violators of economic crimes to be treated with kid gloves. This is so because it is wrongly perceived by some Nigerians that whosoever is appointed into public office has the opportunity to partake in the looting and/or sharing of the national cake or wealth of the country on behalf of his ethnic group.

106. Nuhu Ribadu *op cit*, note 4 (*supra*) p. 4.

debilitating effect on the economy generally and the national security in particular.

In the first place, economic crimes in the mode of corruption, for example, makes it necessary for the personal interest of the citizen to override the public interest in the allocation of public resources by public servants thereby undermining the capacity of the government in resource allocation and service delivery, and in turn bringing frustration, deprivation and disillusionment^{10,7}, among the citizenry and making the polity unstable and prone to all manner of violent conflicts.

This is because economic crimes reduce the amount of money at the disposal of the government to provide basic amenities like water, electricity, good roads and transportation system, education, health delivery system and so forth.

Furthermore, apart from the denial of revenue to the government to fulfill its social contract with the people, economic crimes also result into unemployment,¹⁰⁹ weakening of rules or norms to regulate behaviour,¹⁰⁸ learning of criminal behavior through interaction with others with whom close association is maintained,¹¹⁰ as well as whittling down direct foreign investment.

107. Freedom C. Onuoha: "Corruption and National Security, The Three Gap Theory and the Nigerian Experience"(2009) *Nigerian Journal of Economic & Financial Crimes*, Vol.1.No.2. p 8.

109. For example, the economic crimes of counterfeiting of drugs and smuggling have made manufacturers and investors in the country not to make good return on their investment because their products cannot compete favorably with the fake, smuggled goods which are usually cheaper. Low sales by genuine manufacturers result into close down of business leading to loss of job and decay of facilities and infrastructure, misery, want and agony and increases the crime rate in the general population. See note 62 *supra*.

108. See note 32 (*supra*).

110. See note 44 (*Supra*).

All these result into human and national security challenges as the government capacity to provide welfare and security is greatly diminished.

Strengthening the Fight against Economic Crimes

It is submitted that the starting point to strengthening the fight against economic crimes in order to enhance national security is to reevaluate the strategies so far adopted against the scourge in order to move positively forward.

Consequently, government as a matter of policy should embark on the programme of general moral or value re-orientation of the entire citizenry. Thus, there is need to reinvigorate the formal high traditional moral standard of conduct or behaviour by members of the society, whether in the families, kindreds, villages and towns, and in this way, the moral tone in the Nigerian society will change for the better, thereby reversing the quest for primitive accumulation of wealth, crass materialism or get-rich-quick syndrome now prevalent in the society. This will in turn lead to transparent and ethical management of government resources leading to clean government.

Government must also emphasis the centrality of the law as both powerful normative system and effective tool of social order in the quest for socio-economic development,¹¹¹ in other words, the laws put in place against economic crimes should be reappraised to find out whether, according to Trubek, these laws serve as positive instruments of change, by offering incentives for people and institutions that are modern and promote growth and disincentives for those who resist change and cling to traditional values.¹¹² This is

111. Mashood Baderin: *Law And Development in Africa: Towards A New Approach*, 2010 Diaspora's Scholars Lecture (NIALS: 2010) p. 4.

112. D.M. Trubek: "Law and Development in the Twenty- first century" (2009) *Law and the New Developmental State (LANDS) Research Papers*, pp 1-2, cited in Mashood Baderin: note111(*Supra*) at p.5.

because law may be a barrier to economic development, thus the wrong kind of legal rules and practices could reduce incentive for investment and increase the cost of innovation.¹¹³

In this light, for example, the allegation that the anti-corruption fight is biased and selective in its treatment of public officers¹¹⁴ who are alleged to be corrupt should be looked into. According to Folarin, the selective investigations and prosecutions by the ICPC¹¹⁵ and EFCC, particularly in handling cases of corruption involving politicians and those in the private sector that condemn federal government policies makes for politicization of the crusade against corruption.¹¹⁶

Also some of the provisions in the extant laws against economic crimes in the country need be reviewed to make the institutions charged with fighting economic crimes more effective. For example, s. 27 of the ICPC Act reduces the power of the commission by making it possible for the Commission to prosecute by proxy and not directly. The law empowers the Commission to enquire into petition orally made or written to an officer of the Commission who refers the matter to Investigation Department and to other related bodies for prosecution, if a *prima-facie* case is established. However, the section allows a private person to report a corrupt act to an appropriate authority, this segment of the

113. *Ibid.*

114. Franciesca E. Nlerum *op cit*, not 75 (*Supra*) at p. 69.

115. The Independent Corrupt Practices and Financial Crime Commission (ICPC) and Economic and Financial Crime Commission (EFCC) were established in 2000 and 2002 respectively to investigate, apprehend and prosecute individuals, groups and institutions found culpable or corrupt, unearth fraud and recover public money looted by unscrupulous citizens.

116. Sheriff Folarin: The Anti-Corruption War in Nigeria: A critical Appraisal of the Role of the ICPC and EFCC (2009) *Nigerian Journal of Economic & Financial Crimes* Vol. 1 no.2 p. 26.

117. See 1999 Constitution of the Federal Republic of Nigeria.

provision is also thought to be needed in the EFCC Act, which does not have any equivalent provision of the sort here-in discussed.

Also there should be change in some of the constitutional provisions and the way it is applied, for example, the use of presumption of innocence as provided in section 33(5) of the Constitution¹¹⁷ to the effect that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty should be reversed.

Thus, an alleged violator of any economic crime laws in the country should be called upon to show evidence of how for example, he/she acquired stupendous wealth if investigations show that he/she lives above what ordinarily should be his/her income or has acquired assets well above his/her income. In the same way, section 308 of the 1999 Constitution of the Federal Republic of Nigeria which confers immunity on the President, Vice President, Governors and Deputy Governors to the effect that no civil or criminal proceedings can be brought against these public officers while in their respective offices, should be expunged, so as to make these people liable for economic crimes that may be committed by them while in office.

The removal of the immunity clause, it is submitted, will be in tandem with the provision of the 1999 Constitution of the Federal Republic of Nigeria to the effect that the Nigeria State shall abolish all corrupt practices and abuse of power.”¹¹⁸ Yet, the requirement that law enforcement agents bring a person arrested for a criminal offence before a court of law within 24 hours¹¹⁹ makes it difficult for economic crimes investigations, which are more complicated in nature to be completed within such a short time, and as such, law enforcement agents may hurriedly investigate economic

118. Constitution of the Federal Republic of Nigeria 1999.

119. See section 17 Criminal Procedure Act, cap 41 LFN 2004.

crimes in order to beat the timeline thereby leaving loopholes which may be explored by counsel to set free violators of economic laws.

Further proactive ways of strengthening the fight against economic crimes whilst enhancing national security, will include but not limited to, passage of Freedom of Information Bill into an Act of the National Assembly. This will enhance openness, transparency and good governance as it will guarantee the right of an access to information to the citizenry; there is need to put in place Witness Protection Law, for the protection of victims, witnesses and whistle blowers of economic crimes and predicate offences; attitudinal and behavioral changes among national authorities where most of the stolen money and other assets from Nigeria are located,¹²⁰ improvement in conditions of service of public and private employees in the country, provision of employment to the youths of Nigeria; continual sensitization of the entire citizenry about the reasons for the enactment of the extant economic laws in the country, ensuring seamless collaboration among agencies involved in arrest and prosecution of alleged or suspected economic law violators as well as enthronement of credible elections will go a long way to making sure that the crusade against economic crimes and the enhancement of national security is successful.

Conclusion

We have attempted to analyze perspectives in economic crimes in Nigeria *vis-à-vis* national security. In this connection, it has been shown that the prevalent economic crimes in the country in the genre of corruption and money laundering etc, have been in the polity right from

120. See Michael Aondoakaa (Former Attorney General of Nigeria) Speech Delivered at the Second Session of the Conference of State Parties to the United Nations' Convention Against Corruption, Bali Nusa Dua, Indonesia, January 28 – February 1, 2008.

independence of Nigeria in 1960, but presently these scourges are in form and magnitude never before witnessed in the country, and have diminished the capacity of the Federal Government of Nigeria to provide welfare services and security which is stated in section 14(2) (b) of the 1999 Constitution of Nigeria as “the primary purpose of government.” It has been identified that poverty, under development, lack of social security, insecurity of tenure at different places of work, wrong value orientation or get-rich-quick syndrome and ethnic sentiments etc, are the major factors contributing to economic crimes in the country and endangering national security.

Consequently, “Legal guarantee and enforcement of the right to work, social security, education and other economic, social and cultural rights, as well as civil and political rights by the state to the populace will go a long way in enhancing human and socio-political development in ways that discourage anti-social behaviour that may undermine economic growth”.¹²¹

If the foregoing and other suggestions articulated in this chapter are carried out, the challenge associated with the breaking of economic laws of Nigeria will be addressed, making it possible to reduce the intensity with which economic crimes are committed in the country thereby enhancing national security.

121. Mashood Baderin *op cit*, note 111 (*Supra*) at p. 29.