

## Islamic Appraisal of the Economic and Financial Crime Commission's Modes of Identifying Suspects

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### Abstract

*Corruption had certainly emerged as one of the main impediments to development in contemporary Nigeria. Although corruption is a worldwide phenomenon, it is the single most devastating national disaster in Nigeria today. In order to combat corruption Nigerian government has set up various bodies, including the Economic and Financial Crime Commission (EFCC). In the recent past, the stolen monies which were hidden in foreign bank accounts were more than Nigeria's budget for seven years and allegedly looted by past corrupt Government officials. It is a monster that all and sundry blame for the economic woes facing the country. It is perhaps, the only reason why nothing seems to be working correctly in the country. It is in view of the gravity of this cankerworm called corruption particularly economic and financial corruption in Nigeria that this study examines the position of Islamic Law especially as it relates to the procedures of activities of the Economic and Financial Crime Commission (EFCC) as an anti-graft agency saddled with the responsibility of fishing out financial and economic criminals for onward prosecution of such offenders by the court law. This paper examines the concordance or otherwise of the laws/procedures of EFCC with that of Islamic in the war against corruption. The researcher used survey design method where data were collected from both primary and secondary sources. The paper discovers that the procedures of operation in EFCC differs from Islam, however there are some of the laws of the commission at concord with Islamic Law. The paper, recommends application of spiritual, economic, social and political strategies through Tazkiyatun -Nafs (self purification) for the eradication of corruption in the country. Also, the anti-graft agencies should be allowed to operate on a neutral ground based on uprightness, total commitment, and a sense of responsibility, if the desired expectation is to be achieved.*

**Keywords:** Islam; Fasad; Rashwah; Examination; Corruption; EFCC; Financial Crimes.

### Introduction

Corruption has spread all over the world and Nigeria in particular, the Glorious Qur'an says:

Corruption has appeared on land and sea because of (the deed) that the hands of men have earned, that (God) may give them a taste of some of their deeds: in order that they may turn back (from Evil) (Q 30:41)

The spread of corruption has almost affected all Nigerian society, it is a matter of great concern to all and sundry. Over the years, many public servants accustomed themselves to building luxury houses in expensive areas in some major cities of the country and extravagant spending and a style of living that was morally questionable to equate with their legal sources of income. Their wives and relatives were seen shimmering with jewels and cars that in honest societies it would have immediately caught the eye of the law. It is for this reason that it is everybody's responsibility and all Muslims' duty to support the fight against corruption by the Economic and Financial Crime Commission (EFCC). It is on this principle that this paper examines the procedures of EFCC with that of Islamic in the war against corruption in Nigeria.

The establishment of Economic and Financial Crimes Commission (EFCC) in 2002 by the Federal Government of Nigeria during president Olusegun Obasanjo's administration (1999-2007) was a concerted effort to address the endemic problem of corruption that has been identified as a critical challenge in the development of the Nigerian Society. It is an established fact that corruption in Nigeria has assumed dangerous dimension with serious negative consequences on the political, social, economic and entire corporate life of the people and the nation at large. In particular, corruption is said to have constituted an obstacle to the provision of social services to the people, good governance, transparency and accountability as well as sound ethical conducts by the government and to the general citizenry. Over the years, Nigeria has been constantly rated among the most corrupt countries in the world. Transparency International carried out some studies across the globe and came up with their findings thus: In the year 1999, the country was ranked

second only to Cameroon (Patrick, 2014). 2000, Nigeria was ranked the most corrupt country among 90 countries that were surveyed including African countries. The citizenries were blacklisted and tagged as criminals around the globe. In the year 2001, the Country was ranked 2nd most corrupt nation in the world after Bangladesh. In the year 2002 also, Nigeria was ranked the 2nd most corrupt nation in the world, after surveying 102 countries. In the year 2003, Nigeria occupied the position of 2nd most corrupt country in the world after 133 countries were surveyed. The year 2004 ranking showed a little fall when compared with that of the past four years. Nigeria in 2004 was the 3rd most corrupt country in the world performing better than Bangladesh and Haiti, after 145 nations were surveyed. The record on the corruption in Nigeria really improved in the year 2005. The number of countries surveyed by the Transparency International were 158 in 2005. After the research work carried out by the Body on corruption in the world, Nigeria was ranked the world 6th most corrupt nation. In 2006, Nigeria was ranked the 18th most corrupt country in the world after surveying 163 countries. It is important to note that Haiti was the world most corrupt nation in the year 2006. In 2007, Nigeria was ranked 32nd most corrupt country after surveying 163 countries. In 2011, Nigeria became the 143rd out of 183 countries that were surveyed. It was rated the 139th out of 176 Countries surveyed in 2012 and in 2013, it was placed at the 144th position out of 177 Countries. In 2015 report, Nigeria was rated 136th out of 174 countries among others.

Thus, this has created negative image on Nigeria and Nigerians both at home and abroad. Nigerian citizens were blacklisted and tagged as criminals around the globe. In fact, Interpol reported that Bank frauds involving Nigeria's represented 42% of all fraud cases worldwide because many of the cases were said to have originated from Nigeria (Akintunde, 1994). It was the sordid situation like these that compelled the Olusegun Obasanjo government (1999-2007) to establish and give birth to EFCC to combat the menace (Patrick, 2014). Besides, several cases of high profile corruption have been documented and reported in public and corporations, ministries, parastatals and other public and private sectors which draw the attention of several scholars, religious leaders, developmental workers, activist, international organizations, political leaders and the general public on the problem of corruption and its attendant effects on the society and the overriding need to confront the menace.

It is against this background that the democratic government of the president Olusegun Obasanjo responded by initiating a Bill for an act to repeal the Financial Crime Commission (establishment) Act 2002 which calumniated in the Economic and Financial Crime Commission Act 2004, enacted by the National Assembly of the Federal Republic of Nigeria. As an anti-corruption agency duly established by the Federal Government, the commission has been provided with full power, functions or responsibility, staff composition, offences, operational modalities and other specifications as contained in its (establishment) Act, 2004.

The problem of corruption attracted the attention of scholars, activists, international Organizations, and the general public for a very long time. Even though the problem is not new in Nigeria, it has reached an unprecedented proportion in recent years (Abdulkareem, 2014). It cuts across nations, cultures, races and Organizations. Corruption is undoubtedly one of the greatest challenges of our time, a challenge that is not only leading to impoverishment and loss of lives, but also threatening the stability of societies. It has been argued by social scientists that one of the major obstacles against development of poor countries is corruption.

Corruption is a global challenge which cuts across all systems and regimes. It does not dispose itself to any coloration in the forms of religious denominations, political system, age or gender. Corruption is found in political, social, religious and economic systems. Every country suffers one form of Corruption or the other (Lipset and Gabriel, 2000). The Glorious Qur'an affirms the world wide phenomenal dimension of Corruption in the (Q30:41) earlier quoted. In Nigeria, there are two major laws enacted in a bid to fight corruption. These are Independent Corrupt Practices Commission (ICPC) Act 2000 and the Economic and Financial Crimes Commission (Establishment) Act 2004. Section 2 of the ICPC Act defines corruption to include, bribery, fraud and other related offences

while the EFCC has powers to investigate and prosecute offences such as advance fee fraud, money laundering, counterfeiting, illegal funds transfers, futures and market fraud, fraudulent encashment of negotiable instruments, fraudulent diversion of funds, computer fraud, contract scam, forgery of financial instruments and issuance of dud cheque (2004).

From the Islamic law perspective however, corruption is defined as a spiritual or moral impurity or deviation from an ideal. According to Islamic teaching, any action of mankind that flout justice or rule of law whether at home, place of work, learning institutions, social or political gathering are acts of corruption (Shehu, 2012). Allah says in the Qur'an

Verily, Allah enjoins *Al-Adl* (i.e. justice and worshipping none but Allah Alone - Islamic Monotheism) and *Al-Ihsan* [i.e. to be patient in performing your duties to Allah, totally for Allah's sake and in accordance with the *Sunnah* (legal ways) of the Prophet SAW in a perfect manner], and giving (help) to kith and kin (i.e. all that Allah has ordered you to give them e.g., wealth, visiting, looking after them, or any other kind of help, etc.): and forbids *Al-Fahsha'* (i.e. all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right, etc.), and *Al-Munkar* (i.e. all that is prohibited by Islamic law: polytheism of every kind, disbelief and every kind of evil deeds, etc.), and *Al-Baghy* (i.e. all kinds of oppression), He admonishes you, that you may take heed (Q16:90).

Corruption covers a wide range of illegal practices which undermine fear of Allah, morality, decency, social justice, good governance, rule of law, harmony, peace, progress and development. Islamic law therefore, looks at corruption from moral and ethical angle and strongly offers a universally comprehensible blueprint for human behavior which revolves around social justice, equitable distribution of wealth, provision of necessities of life and the protection of the weak against economic exploitation by the strong (Mamoun, 2009).

#### **Administration of Criminal Justice in Islamic Law**

The body of law that deal with wrongs which are punishable with the object of deterrence is known as criminal law. Islamic criminal law recognizes three categories of these wrongs. They are: *hudud* (plural of *hadd*, a "limit" set by Allah), the contravention of which leads to a prescribed and mandatory penalty. The second, *ta'zir* (chastisement), comprises those crimes not included among the *hudud* because their punishment is discretionary. *Ta'zir* implies the correction or rehabilitation of the culprit; hence, punishment is left to the judge and might vary depending upon who inflicts it and upon whom it is inflicted. The third category, *qisas* (retribution), is concerned with crimes against the person such as homicide, infliction of wounds, and battery. Punishment by retribution is set by law, but the victim or his next of kin may waive such retribution by accepting blood money or financial compensation (*diyah*) or by forgoing the right altogether. Because of this waiver, it has been suggested that this crime is in the nature of a private injury, more akin to a tort than to a crime involving a public interest or concern (Uthman, 2014).

Corruption and bribery are serious crimes considered by Islamic law to be simultaneously religious and criminal offenses due to the serious harm they caused to the community. Therefore, they are punished by *Ta'zir*. It is obvious that bribery is a mischief (*fasad*) which threatens social order. Usman viewed that classifying corruption under *Ta'zir* therefore does not mean it is considered less serious than other criminal offenses. It is simply that *Ta'zir* encompasses all offenses, including corruption, for which *Shari'ah* does not prescribe a specific penalty. The punishment of corruption and bribery is left to the discretionary power delegated to judges (Araf, 2018).

In Islamic criminal procedure, all financial crimes including bribery must be proved by the following modes of evidence:

1. Bribery's Criminal Evidence Modes
  - (a) Testimony of Witnesses (*Shahadah al-Shuhud*)
  - (b) Confessions and Oaths (*Al-I'trafat wa Al-Aiman*)
  - (c) Legal Presumptions (*Al-Qara'in Al-Qanun*) (Araf 40)

All Muslim scholars, classical and modern, seek ways to tackle corruption. More broadly, the vast Islamic intellectual heritage suggests that education, law and administrative reforms are the three key pillars in the Islamic fight against corruption. These can only be achieved through punishment of the perpetrator to serve as deterrence and in addition improve their standard of education and reform them through spiritual self purification (*Tazkiyatun-Nafs*).

### **How to identify corrupt officials by EFCC**

The Economic and Financial Crime Commission EFCC in accordance with the Act which established it, has the mandate to invite, interrogate and institute legal action against any person or group of persons at the law court. The following are the means of identify corrupt officials by the EFCC:

1. Through petition.
2. Through report/complaint.
3. When one is living above his/her income (inference).
4. Through whistle blowing.
5. Through Intelligent report.

i. EFCC as a commission identifies corrupt officials through petition duly signed by an individual or group of persons from ministries, parastatal or company indicting an official or citizen. When this report is received the commission will start investigation some time for six months or one year and when the petition is found genuine the commission usually invites the accused person for interrogation. When it is proved beyond reasonable doubt the commission will arraign the accused to court for judgments. For example, on 08, September 2018 EFCC received a Petition from Bako Waziri Kyari which linked President Muhammadu Buhari's Aide, Abba Kyari, to Contract Scam and the commission says it has since started work.

Also, in Islamic criminal law offences are reported and verified before any legal action is taken. In the Glorious Qur'an Allah says:

O you who believe! If a rebellious evil person comes to you with a news, verify it, lest you harm people in ignorance, and afterwards you become regretful to what you have done. And know that, among you there is the Messenger of Allah (SAW). If he were to obey you (i.e. follow your opinions and desires) in much of the matter, you would surely be in trouble, but Allah has endeared the Faith to you and has beautified it in your hearts, and has made disbelief, wickedness and disobedience (to Allah and His Messenger SAW) hateful to you. These! They are the rightly guided ones, O you who believe! Avoid much suspicions, indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is the One Who accepts repentance, Most Merciful. O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (believer) who has At-Taqwa [i.e. one of the Muttaqun (pious see V.2:2). Verily, Allah is All-Knowing, All-Aware (Q49-6-13).

From the above Qur'anic verses, it is clear that verifying any given information is a necessary requirement for ascertaining the authenticity or otherwise of any report or petition. Islamic criminal law, admit one's fault when it becomes clear that he/she gets involved in any unlawful act not necessary through petition by other citizens. Islam encourages its adherents to work hard for the benefit of this life and life to come, it discourages them from going after or looking at another person's faults or mistakes. It was narrated that 'Umar ibn Al-Khattab (RA) the *Amirul-Mu'minin* once climbed a fence of one of the houses that was

alleged that people have been drinking alcohol and found some people drinking wine, when he interrogated them they replied that by drinking wine they committed a sin and by climbing their fence he committed three sins, namely, entering their house without permission, not entering their house from the door, and spying on them? which are all sins. The Prophet of Islam Muhammad (SAW) issued a stern warning against passing on all that one hears:

Narrated by al-Mughirah ibn Shu‘bah (RA) said: The Prophet (SAW) says:

Allah has forbidden you to disobey your mothers, to bury your daughters to not pay the rights of others and to beg from others. And He alive, dislikes gossip for you, asking too many questions, and wasting money. (Bukhari, 2231).

The above verse and *Hadith* of the Prophet (SAW) indicated that one is not expected to write or report one whose source is undisclosed to him, until when it was proved beyond reasonable doubt.

ii. The second means of identifying corrupt person by EFCC is by report/complaint. The EFCC as a commission sometimes got information through somebody who has been cheated by another. In this case Islam has allowed people to lodge their complaint either as an individual, state, local government, ministry, commission, parastatal to seek for redress where it is wronged. The noble Qur’an, has condemned cheating and the people who do it, and warned them of bad consequences.

Similarly, Prophet (SAW) cautioned Muslims against cheating and issued a warning to the one who does this.

Narrated Abu Hurayrah: The Messenger of Allah (SAW) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatable (corn): What is this? Messenger of Allah, these have been drenched by rainfall. He (the Prophet) remarked: Why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower) (Muslim 1: 0183)

We need desperately to instill this message in our hearts so that we might stir the conscience and be aware that Allah is watching all that we do, without the need for any human supervisor.

iii. The Economic and Financial Crime commission investigates people who are living above their income. In Islamic criminal law there is an established rule that: suspicious must be considered. living beyond one's income is suspicious. such act could be reported to appropriate body. For example, the case of non-married pregnant girl, to Malikiyah school of thought it is a valid proof to report her to *alkali* (judge).

The Prophet (SAW) said:

*Do not search the deficiencies of believers and do not follow their faults; because he who follows his brother's faults, his own faults will be sought by Allah; and he whose faults are sought by Allah will be disgraced, even if he keeps indoors.*

‘Ali ibn Abi Talib (RA) said:

*Justify your brother's action in the best way unless you know otherwise; and do not suspect your brother for what he says while you can interpret it as good.*

The above *ahadith* of the Prophet (SAW) indicate that suspicion of one another is not permitted in Islam.

iv. Whistle blowing is the fourth method of identifying corrupt officials by EFCC. A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct

within an organization that is either private or public (Wim, 2006). The information of alleged wrongdoing can be classified in many ways: violation of company policy/rules, law, regulation, or threat to public interest/national security, as well as fraud, and corruption (Janet, 1985). Those who become whistleblowers can choose to bring information or allegations to surface either internally or externally. Internally, a whistleblower can bring his/her accusations to the attention of other people within the accused organization such as an immediate supervisor. Externally, a whistleblower can bring allegations to light by contacting a third party outside of an accused organization such as the media, government, law enforcement, or those who are concerned. Whistleblowers, however, take the risk of facing stiff reprisal and retaliation from those who are accused or alleged of wrongdoing. Mr. Ibrahim Magu the acting chairman of EFCC stated that the commission has recovered about N17billion for the Federal Government through the whistle-blowing policy introduced in December 2017.

This method may be accepted by Islam if situated within the horizon of business ethics with the objective of promoting truth and saving the society from being harmed. These conventional motives of whistle blowing may be similar with the Islamic general motives which is encode on ethics. It is very important to know that Islam is a religion that teaches good ethics. One may consider whistle blowing mandatory duty on a Muslim if he/she looks at it from the point of enjoining goodness and forbidding wrongdoing (*al-amr bi-ma'ruf*). Whistle blowing according to Nasir is one of the three stages of *Iman*, faith as narrated from Abi Saiydidl Khudri (R.A): The Prophet (SAW) said:

I heard the Messenger of Allah (saw) say, "Whoso- ever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart and that is the weakest degree of faith (Muslim).

From the above *Hadith* we can deduce that reporting any illegal activity to the appropriate body may be regarded as Whistle blowing. Nasir's citation was considered as instances of whistle blowing in the Islamic history where he said: One day when Caliph 'Umar (R.A), was delivering sermon of *Juma'at* Friday prayer in the mosque wearing two wrappers, was challenged by someone as to where he got the second wrapper from, because the questioner was aware of the source of the wrappers, and the number allotted to each person. 'Umar, then, called his son, 'Abdullah (R.A), to explain to the public. There he ('Abdullah) explained that it was his own share he sacrificed, due to the inadequacy of one wrapper for the rather tall 'Umar. Also, during the Caliphate of Umar, while passing by a house, heard whispering from within. A mother was telling her daughter that the amount of milk fetched by her, for sale that day was very little. And when they were young according to the mother when selling milk always mixed it with water and that led to considerable profit. She advised her daughter to do the same. But the daughter replied, "You adulterated milk, when you were not a Muslim. Now that we are Muslims, we cannot adulterate milk. Have you forgotten the Caliph's order? He warns that the milk should not be adulterated." The mother said, "but the Caliph has forgotten us. We are so poor, what else should we do but adulterate the milk in order to have a large profit?" The daughter said "Such a profit would not be lawful, and as a Muslim, I would not do anything which is *qush* (Corruption) and whereby other Muslims are deceived."

The mother said, "But there is neither the Caliph nor any of his officers here to see what we do. Daughter you are still a child. Go to bed now and tomorrow I myself will mix the milk with water for you." The girl refused to fall in with the plan of her mother. She said, "Caliph may or may not be here, but his order must be obeyed. My conscience is my Caliph. You may escape the notice of the Caliph and his officers, but how can we escape the notice of Allah and our own conscience?" Thereupon the mother remained quiet. The lamp was extinguished and the mother and the daughter went to sleep. The next day, Caliph Umar sent a man to purchase milk from the girl. The milk was unadulterated. The girl kept her resolve (Al-maward 1996).

v. The fifth way which EFCC identified corrupt officials is through Intelligent report. Some time the intelligent unit of the commission use to the commission with the list of suspected corrupt people for invitation and investigation. The paper discovers methods that are used by EFCC to apprehend corrupt official which are all justified by Islamic criminal law.

### Conclusions

The Economic and Financial Crimes Commission (EFCC) as a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud (419) money laundering, counterfeiting, illegal charges transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card frauds, counteract scam etc (EFCC act 4). It was established in 2003, partially in response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 countries non-cooperative in the international community's efforts to fight money laundering. The agency has its head office in Abuja. It has addressed financial corruption by prosecuting and convicting a number of high-profile corrupt individuals, ranging from Nigeria's former chief law enforcement officer to several bank chief executives. The paper discovered that all the procedures of operation in EFCC to identify corrupt officials can be justified in Islamic Law.

### Recommendations

The paper recommends application of economic, social and political strategies through criminal justice and fair play, reformation spiritual through *Tazkiyatun -Nafs* (spiritual self purification) and by ensuring that accused persons are punished for the offences committed in order to minimize corruption to the barest level in the country. Also, the anti-graft agencies should be allowed to operate on a neutral ground based on uprightness, total commitment, and a sense of responsibility, if the desired result is to be achieved.

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