CENTRRE FOR SOCIO-LEGAL STUDIES

A GUIDE TO INVESTIGATING CORRUPTION

A COMPREHENSIVE GUIDE TO INVESTIGATING HIGH PROFILE CORRUPTION CASES ACCORDING TO THE ADMINISTRATION OF CRIMINAL JUSTICE ACT.

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CONDUCTING INVESTIGATIONS IN HIGH PROFILE CORRUPTION CASES

1. Understanding Corruption

Before delving into the subject matter it is expedient to first understand the term 'corruption'. There is no single definition of the term corruption that is universally acceptable and valid for all times and purposes. Corruption was broadly defined by a number of countries and international agencies as "the abuse of public office for private gain." The Black's Law Dictionary[1]on the other had defines it as "the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others, a fiduciary or official use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others...an impairment of integrity, virtue or moral principles; especially impairment of a public official's duty by bribery." While the Transparency International defined corruption as "the misuse of entrusted power for private gain" this is a simpler and more encompassing definition which covers all the aspects enunciated by the Black's Law Dictionary definition. It is therefore unnecessary to delve into semantics about whether the terms, 'corruption', 'stealing', 'thievery', 'bribery', 'graft', 'dishonesty', 'misappropriation', etc. are the same or not. Consequently, this manual adopts a pragmatic approach by identifying the levels or types of corruption rather than embarking on a fruitless voyage of giving a definition that will be valid for all times and purposes.

[1]Black's Law Dictionary, Sixth Edition.

1.1. Levels of Corruption

There are four major levels or types of corruption that will be identified briefly:

1.1.1. Petty Corruption or incidental corruption

This involves the practice that goes on a daily in human interactions when one person takes undue advantage of another for making an illicit gain. For example, a driver buys petrol for less than the money given for the purchase but keeps the change and balance to himself; a meat seller keeps part of the meat the customer has already paid for; a lecturer marks down a student who fails to pay in kind or cash for handouts. This type of corruption is hardly reported; occurs in private or public sector and found in every human society. It is a product of character deficiency.

1.1.2. Systemic Corruption

This level of corruption is integrated and essential aspect of the economic, social and political system; it is embedded in a wider situation that helps sustain it. Examples of systemic corruption are where policemen or any other law enforcement agencies extort bribes for bail or mount illegal roadblock to collect tolls; officials who fail to remit money meant for the treasury, tax collectors who give a lesser assessment in exchange for financial or other kind of favours, etc. This level of corruption takes place in both private and public sector.

1.1.3. High Profile Corruption

This level of corruption involves all the elements of systemic corruption but in addition, it involves the use of high profile political office for making an illicit gain for the office holder or others. The most common example is when political office holders inflate government contracts; award contracts to fake companies; convert government properties to

personal without authority, etc. Another example is the case of Lucky Igbinedion, former governor of Edo state, the first Nigerian ex-governor convicted of looting public funds. The EFCC charged him with 142 counts of corruption amounting to $24 million (£12m) using front companies. Lucky entered a plea bargain with the commission in 2008 and refunded a fraction of the amount he was said to have embezzled – and went home.

1.1.4. Grand Corruption

Grand corruption is the deadliest of all forms of corruption. It is similar to high profile corruption because it is perpetrated by office holders at the topmost echelons of government and society such as Presidents, Vice President, Governors, Ministers, Permanent Secretaries, head of legislative houses, Chief Justices or other heads of institutions and highly placed individuals. It usually involves abuse of office, blatant disregard for the Constitution or law, misappropriation of money or other fundamental vices with significant impact on the economy or socio-political system of the country. The combination of high profile corruption and grand corruption, sometimes is referred as 'political corruption''. It has been stated this is the greatest barrier to economy of Nigeria. This type of corruption is usually very complex and complicated. Some involve document or subjects that are very technical requiring a well-schooled investigator to unravel.

2. ANTI-CORRUPTION LEGAL INSTRUMENTS

Anti-corruption Legal instruments can be described as those mechanism and institutional frameworks that state parties are required to establish, in their effort to combat the various manifestations of corruption. There are international, regional, sub-regional as well as domestic instruments for combating corruption.

2.1. International Legal Instruments

The United Nation Convention against Corruption (UNCAC) is the leading binding universal anti-corruption instrument. In addition to the UNCAC, at the continental level, African Union Convention on Prevention on Combating Corruption (AU Convention) and at the regional level; Economic Community of West African States Protocols on the fight against corruption (the ECOWAS PROTOCOLS) was adopted. The UNCAC covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. It covers many different forms of corruption, such as bribery, trading in influence, abuse of office, and various acts of corruption in the private sector[2].

Nigeria is a signatory to the above international and regional instruments with the obligation to fight corruption. However, these conventions need to be brought into effect domestically. This can be achieved by incorporating an international piece of legislation directly into the country's legal system without a need for the country to adopt a domestic piece of legislation to give effect to the international law.

2.2. Domestic Instruments

Nigeria has enacted several laws and established many institutions to curb the menace of corruption, as prescribed by the provisions of these anti-corruption instruments especially the United Nation Convention against Corruption (UNCAC). The anti-corruption framework in Nigeria reflects the UNCAC provisions, particularly in terms of transnational organized crime and corruption within public and private sector. There are several Anti-Corruption bodies in Nigeria: the Independent Corrupt

[2] https://www.unodc.org

Practices and Other Related Offences Commission ICPC, the Economic and Financial Crimes Commission [EFCC), the Code of Conduct Bureau (CCB) and Code of Conduct Tribunal (CCT), and the Public Complaints Commission (PCC). In addition Nigeria has such other bodies as the Nigerian Extractive Industry Transparency Initiative (NEITI), Fiscal Responsibility Commission, Office of the Auditor-General for the Federation and Bureau for Public Procurement, all with mandates to prevent corruption. Recently, the Federal Government of Nigeria set up a Special Presidential Investigative Panel for the recovery of public properties (SPIP). This shows that the legal and institutional framework in Nigeria provide for a basis for preventive and checking the menace of corruption.

Some of these regulatory frameworks in the country were actually put in place prior to the development of the UNCAC. The legal regime and policy of anti-corruption can be classified into two, viz; preventive anticorruption instruments and curative anticorruption instruments. Preventive anti- corruption instruments refers to those regulations established by enabling laws, accounting standards, guidelines or other pronouncements issued by professional bodies in Nigeria, which guides the management of public funds. These includes; The Constitution of the Federal Republic of Nigeria 1999 as amended, the Finance (Control and Management) Act 1958, the Audit Ordinance 1956, the International Financial Reporting Standards adopted and implemented by the Financial Reporting Council of Nigeria(FRCN), established under the FRCN Act 2011), Auditing Standards issued by the professional bodies, Annual Appropriation Acts, Financial Memoranda, Financial instructions and Accounting circulars which constitute the bulk of the Nigerian Laws on Public Finance. The Companies and Allied Matters Act 2004, CAP. C20

LFN 2004 and the Banking and other Financial Institutions Act 1991 as amended and the Codes of Corporate Governance for companies and banks are applicable in the private sector.[3] The curative anti-corruption instruments:

- Banks and Other Financial Institutions Act 1991 as amended;
- Code of Conduct Bureau and Tribunal Act 1991;
- Recovery of Public Property (Special Provisions) Act Cap R4, Laws of the Federation of Nigeria 2004;
- ICPC Act 2000;
- EFCC Act 2004;
- Money Laundering (Prohibition) Act 2011;
- Advance Fee Fraud and Other Related Offences Act 2006;
- Nigerian Extractive Industries Transparency Initiative Act 2007;
- Fiscal Responsibility Act 2007; and
- Public Procurement Act 2007.

3. COMMENCING INVESTIGATION

3.1. Create Profile of Suspect

It is an essential element of all investigations for investigators to collect and record all basic information related to the targets of the investigation. Investigators should collect and record information that fully identifies the targets and also records any aliases used by the targets. All of the

[3]Adamu Saidu, An Empirical Evaluation of the Level of Application of Global Anti-Corruption Instruments Among State Governments in North-Eastern Nigeria, Advanced Research in Social Engineering and Development Strategies Vol. 1, (2013) Pp 88-99 available at http://www.internationalpolicybrief.org /empirical evaluation.pdf

information should be maintained in an orderly fashion within the investigators case folder for easy reference.

Checklist for Collection of Basic Information
✓ Date of and place of birth (include aliases); Passports. ✓ Names of both parents (and new partners if divorced or separated), siblings, spouses of siblings, immediate relatives (uncles, aunts, cousins, grandparents, grandchildren). ✓ Relevant telephone numbers (business, home, mobile), e-mail address and any other Internet or social network communication contact details. In some jurisdictions, it may be possible to obtain subscriber information from the service provider. ✓ Recent photograph of all targets and associates (preferably government-issued identification). ✓ Results of a criminal record search ✓ Results of public source searches on targets and associates. Use Internet search engines, social networking sites, local media reports, and libraries. ✓ Information from other government agencies, in particular Land, vehicle, utility information Business records Court records Border crossings and customs declarations Immigration records ✓ Real estate records, including purchase agreement, mortgages, loan application, and appraisals. ✓ Information identifying banks or bank accounts.

4. INVESTIGATIVE TECHNIQUES

Determining which investigative tools to use depends on a variety of factors, including the nature of the alleged violations and the available resources. It is a normal progression to go from investigative measures that do not alert the targets that they are under investigation such as:

a. Research of public databases,

b. Collection of public information,

c. Informal interviews of potential witnesses that are not close connected with the targets, etc. – to measures that, once taken, allow the investigators to secure both evidences and proceeds of the crime.

In other words investigators should have as much information as possible to ensure that potential witnesses and, where admissible, defendants and also keep criminal proceeds from dissipating because the investigation becomes public.

Therefore, it is always better to start from the basic or simple techniques or covert techniques (e.g. surveillance, public information search, information from other government agencies, interviews, trash run) before implementing more complex techniques such as financial investigations and international cooperation before moving to overt techniques (e.g., search warrant) to avoid tipping-off the target.

4.1. Standard or Basic techniques

4.1.1. Interviewing of targets and non-targets

Interview is one of the techniques used by investigators to gather information and evidence. Statements can corroborate or clarify the information derived from documentary evidence and reveal new leads. Important sources will be any complainants; the business associates, relatives, neighbours, employees, or other associates of the targets; financial institution employees and other sources that have been in contact with the targets; as well as the targets themselves. Every interview opportunity-especially with a subject of an investigation could be the last chance available, so it is important to enter the interview

knowing what information is needed and the best ways to get it. The primary goal of an interview is to gather information that is relevant to the investigation at hand. This information can include "who, what, when, where, why, and how" of any criminal investigation and can also involve assessing the credibility of the source of the information supplied by the respondent.

Interviews should be conducted with the consent of a subject who has knowledge of the event and circumstances under investigation. **Where interviews are carried out in a friendly or cheerful atmosphere, the subject feels relaxed and at ease. It is assumed that when a subject feels no anxiety or unthreatened by the interviewer, the greater the tendency that he or she would speak more and thereby give out more information**[4].

Interrogations on the other hand are generally more tightly structured. It involves active harassment on the part of the interrogator. Interrogations are more or less accusatory. It has been observed that the interrogator usually begins an interrogation by directly accusing the target of committing the crime that is under investigation, and the entire transaction will revolve around the accusation and the probability of obtaining an induced statement is higher. In the circumstance, it is better for investigators to begin with an interview approach as a tool for gathering information then later progress to interrogation depending on the facts available to the investigator. The reason for the above is because interview is more reliable and prevents false confessions.

In the course of the interview or interrogation, it is not uncommon for the subject to be given an opportunity to produce a statement on the material gathered in the investigation, if this would expedite or assist in the trial

[4]TemitopeAjayi, Interrogation, Questioning or Interview?: Police-Suspects Interactions in Nigeria, Journal of the Linguistic Association of Nigeria Volume 17 Nos. 1 & 2 2014 (pp. 43-61) available at http://www.academix.ng/documents/papers/1463500387_1574.pdf

of the case in court. However, before taking the statement, it is prudent for the subject to be cautioned.

Even if not required by the criminal procedure rules, detailed reports of investigation should be completed to document interview results. Interview reports may be helpful in refreshing investigators and witnesses‘ recollections of events during criminal or civil formal legal proceedings. The testimonies received from the target and not target should be subjected to validation through corroborative testimonial, forensic and documentary evidence and such other legal means of obtaining evidence to overcome the presumption of innocence.

The 1999 Constitution provides some safeguards which have curtailed the recklessness of some law enforcement in obtaining evidence during investigation. These safeguards include; right to remain silent or avoid answering of questions until after consultation with a legal practitioner of his own choice[5]. The Administration of Criminal Justice Act 2015 in section 6(3) reiterated this constitutional right of a suspect.

Therefore, in the course of carrying out investigation, investigators should ensure that the rights of a suspect or any other person are not infringed on.

THE JUDGES RULE

The Judges Rules are administrative directions and do not have the force of law, as failure to observe any of the rules in the taking of a statement will not necessarily render the statement inadmissible in evidence. This is explicitly stated in section 31 of the Evidence Act 2011 to the effect that if a confession is otherwise relevant, it does not become irrelevant because the defendant was not warned that he was not bound to make such statement and that evidence of it might be given. However, it is prudent for investigators to comply with the Judges’ Rules. The Caution

[5]Section 35 (3) of the 1999 Constitution (as amended)

shall be in the following terms "you are not obliged to say anything unless you wish to do so but whatever you say may be put into writing and given in evidence"[6] Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms "do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence".

If a suspect intends to write his own statement, he should be asked to write and sign the following statement before he starts writing out his statement: "I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence".

CONFESSIONS

Investigators are not permitted by law to torture, force or use other coercive methods to extract confessional statements from suspects. A confession must be directive, positive and equivocal.

Section 15(3) of ACJA stipulates that the taking of the confessional statement must be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means. Where, the suspect already has a legal practitioner, it is best practice for such confession to be taken in the presence of his lawyer.

By section 29(1) voluntary confession is deemed to be relevant facts against the maker only. Where more than one person are charged jointly and one person makes a statement in front of the others charged, the

[6]– Rule 2 of Judges Rule.

court shall not take it as evidence against others except where the others adopts it as their statement – section 29(4).

Under section 29(2), an involuntary statement is irrelevant in a criminal proceeding where it was obtained by force, threat, promise.

CONSTITUTIONAL RIGHTS OF A SUSPECT

These are rights that are accorded to every suspect as enshrined in the Constitution of the Federal Republic of Nigeria (1999) as amended. These rights are divided into three: pre-trial rights, trial rights and post-trial rights. The one related to this manual however is pre-trial rights and shall be reviewed. Under the pre-trial rights are right to life, right to dignity, right to remain silent, right to bail, right to be informed of the nature of the offence, and right to time and facilities for defence:

RIGHT TO PRESUMPTION OF INNOCENCE

The approach adopted by some investigating agencies shows that they do not follow the established process of investigating crimes, which is moving from preliminary interview to interrogation proper, if the result of the interview shows elements of culpability on the part of the suspect. It is important for the investigators to understand that a suspect is not yet a criminal until proved, and as such, should be treated in accordance with the tenets and precepts of the 1999 constitution as far as the rights of suspects are concerned. Section 36(5) of the CFRN, 1999 states that every person charged with a criminal offence shall be presumed to be innocent until proven guilty.

Right to be informed of the alleged offence

Where a suspect is arrested by section 35(3) of the CFRN, 1999 the suspect must informed within 24 hours of the facts and grounds for his

arrest or detention (in a language he understands) and section 35(4) of the CFRN, 1999 states that a person arrested must be brought before a court of law within a reasonable time. He has the right to be notified of the cause of arrest – Unwarranted and unnecessary detentions run contrary to the ideals of the Fundamental Rights provisions in Chapter IV of the 1999 Constitution.

By section 15 of the Administration of Criminal Justice Act 2015 where a suspect is arrested the officer making the arrest or the officer in charge shall take immediately, in the prescribed form, record the suspect's details. Such details are as follows:

(a) The alleged offence;
(b) The date and circumstances of his arrest;
(c) His full name, occupation and residential address; and
(d) For the purpose of identification, his height, photograph, fingerprint impressions, or such other means of his identification e.g. the suspect's Bank Verification Number (BVN).

By section 15 (2) of ACJA, the documentation of a suspect must be concluded within a reasonable time of the arrest of the suspect, not exceeding 48 hours.

Right to dignity

Section (34) provides that every individual is entitled to respect for the dignity of his person, therefore, no person shall be subjected to torture or to inhuman or degrading treatment. From the foregoing, it is obvious that a suspect is entitled to be treated with respect and sense of humane. The police as well as other law enforcement agencies have the statutory power to effect an arrest, especially on commission of an offence or upon reasonable belief that an offence is about to be committed. However, such arrest must be in compliance with the provision of the constitution. When a suspect is arrested, he must be treated with utmost respect and

dignity. Such a suspect must not be subjected to handcuffing or leg-chaining, except in a case or situation the suspect has been perceived to want to attempt to escape or where the suspect is violent, resisting arrest.

Also a suspect has the right not to be arrested by use of excessive force – thus investigators have no power to beat any person.

Right to Private Legal Advice

A suspect, who is under arrest or detention, has a right to counsel guaranteed in section 35(2) of the 1999 Constitution, while under arrest or held in custody. The section provides: The import of this provision is that a suspect is at liberty to insist on talking to a lawyer before making a statement or being subjected to any interrogation by the investigators. It is therefore illegal for an investigator to compel a suspect to talk or make any statement, against his wish before consulting a lawyer first.

Right to remain silent

Section 35 (2) of the CFRN, 1999 states that a person shall have the right to remain silent or avoid answering a question until after consultation with a legal practitioner or any other person of his own choice. A suspect (undergoing interviewing, questioning or interrogation) has the right to remain silent during the questioning or interrogation exercise, before he consults with a legal practitioner. With respect to this, the constitution provides thus: "Any person who is arrested or detained shall have the right to remain silent or avoid answering any questions until after consultation with a legal practitioner or any others of his choice in Nigeria".

Right to bail

This right comes to play where a suspect is arrested. Bail is a temporary release or freedom from custody, pending the conclusion of investigation

or determination of the case against the suspect. The right of a suspect to bail is a constitutional right guaranteed under section 35(4) and (5) of the 1999 Constitution, which provides that a suspect is entitled to be released with or without conditions, even if further proceedings may be brought against him, within a period of a day or two days of his arrest and detention, as the case may be. This right is further strengthened by the provisions of section 6(2) of the Administration of Criminal Justice Act, 2015 which empowers the law enforcement agencies to grant bail to a suspect, on his entering into a bond with or without a surety. In Eda v. Commissioner of Police (1982) 6 NCLR, 223, the court held that where the Police arrests and detains a person over an allegation or reasonable suspicion of committing an offence, and investigation of the case are on-going, it is their duty to offer bail to the suspect and/or charge him to court, within 24 hours, under the law. Every detention beyond 24 hours must be authorized by a court of law. Where a suspect is unlawfully arrested or detained he shall be entitled to compensation and public apology from the appropriate authority or person. This is provided in section 35 (6) of the CFRN, 1999.

SEARCHES:

This is an integral part of investigations. The law allows the use of search to detect and fix traces of a serious crime, including corruption offences, documents and other items that may signify evidence of preparation or commitment of such a crime[7].Section 10 of ACJA 2015 place a duty on the officer carrying out a search to make an inventory of any property recovered from a suspect. This is to promote accountability and transparency. The inventory is required to be signed by the suspect and the officer.

[7] See section 28 Police Act and sections 143-144 of Administration of Criminal Justice Act 2015.

Procedure for Search: General Rule

There are certain general rules provided which must be complied with when conducting a search as failure to adhere to them may set a criminal free or punish an innocent person during trial[8]:

- Where a search is to be conducted on any premises, the officer conducting the search must have a search warrant. Failure to obtain a warrant makes the search unlawful. An exception to this rule is where a person to be arrested is suspected to be within a particular premise such apartment or premises may be searched for purposes of having him arrested. The competent authority to issue a search warrant is a Judge, Magistrate and Justice of the Peace[9].
- A search warrant issued shall remain in force until it is executed or cancelled by the court which issued it. Section146 (2) of ACJA.
- A search warrant may be directed to one or more persons and, where directed to more than one, it may be executed by all or by one or more of them[10].
- A search warrant may be issued and executed on any day including a Sunday and public holiday at any time as provided under Section 148 of ACJA.
- A search must be performed openly in the presence of the person to whom the search warrant is directed and two witnesses, except the court or Justice of the Peace owing to the nature of the case directs otherwise.
- where a place to be searched is physically occupied by a woman who, by custom or religion does not appear in public, the person making the search shall, before entering the building, give notice

[8] section 149 Administration of Criminal Justice Act 2015
[9] See section 146(1) of Administration of Criminal Justice Act 2015
[10] 147 Administration of Criminal Justice Act 2015

the woman an opportunity that she may withdraw and shall afford her every reasonable facility for withdrawing before gaining entering the premises.

- The occupant of the place or any person on his behalf must be present at the search and must, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any. This is provided in section 10 of ACJA 2015.
- Where it is necessary to search a suspect's body, by section 9 of the ACJA the search must be made decently by a person of the same sex. In other words where a search is to be conducted on a woman, it should be done by a female officer and vice versa as stipulated under section 9(3) of ACJA. The only exception to this rule is unless the urgency of the situation makes it impracticable for the search to be carried out by a person of the same sex.

Where a search is to be conducted by a warrant execution officer, it is prudent for such an officer to be searched first to eliminate any doubt that he is in possession of certain incriminating materials will be planted in the premises to implicate the suspect. This process is not provided under any law, hence failure to search the warrant execution officer before he conducts a search does not make the search illegal. However, it is prudent to prevent what happened in the case of State v Musa Sadau (1968) NMLR 208 to repeat itself. The defendant in this case alleged that the item recovered in the course of the search was buried there by the officer who conducted the search so as to implicate him.

Materials illegally or wrongly obtained in the course of executing a search warrant are admissible in evidence irrespective of how such evidence is obtained. This was the decision of the Supreme Court *Sadau*

v. the State[11]. The appellant in this case was alleged to have involved in a racket by which government licenses and similar form were printed at the Government press without authority and sold for money illegally. The police armed with a search warrant searched the house of the appellant while he was away and recovered some incriminating materials, which were tendered in evidence during trial.

The appellant contended that the incriminating materials were planted in his house by the police officers who conducted the search. He argued that the search was illegal to the extent of its non-compliance with the provisions of the law (section 78(1) of the Criminal Procedure Code of Northern Nigeria) and consequently the incriminating material should be rendered inadmissible. The Supreme Court rejected the argument and held that the evidence derived from the illegal search was admissible. The court held that illegally obtained piece of evidence is admissible so long it has direct relevance to the case.

Section 15 of the Evidence Act 2011 has further strengthen the above rule by providing for circumstances which the court should consider before admitting piece of evidence obtained illegally or wrongfully. These are:

- The probative value of the evidence;
- The nature of the evidence in the proceedings; the nature of the relevant offence, cause of action of the defense and the nature of the subject-matter of the proceeding,
- The gravity of the impropriety or contravention;
- Whether the impropriety or contravention was deliberate or reckless;

[11](1968) NML 208

- Whether any other proceeding has been or is likely to be taken in relation to the impropriety or contravention; and
- The difficulty, if any, of obtaining the evidence without propriety or contravention of law.

Section 37 of the Constitution of the Federal Republic of Nigeria 1999 guarantees the right to privacy, this is why whenever a constitutional right of a citizen is to be derogated from, maximum care must be taken to ensure that derogation is for good cause and every provision relating to such derogation must be complied with. Search warrants not properly obtained are generally illegal; therefore, investigators should ensure that only the authorities empowered to issue warrants are approached.

It is trite that where an investigator in the course of carrying out his duties decides to execute a warrant in a manner inconsistent with laid down procedure or otherwise obtain evidence illegally, he may be held liable in a civil action as was decided in the English case of *Elias v Passmore*[12], where police officers legally entered a man's premises to arrest him. Whilst there, the police officers seized items, some of which were unlawfully. It was held that the officers were liable for trespass in respect of the unlawfully seized items.

4.1.2. The use of informants: These are individuals who are often not willing to testify but who provide information or assistance to the authorities about crimes being plotted or already committed in return for a promise that his identity will be kept confidential. Usually, they are motivated to collaborate in exchange for money or lenient treatment regarding charges pending against them. In order to obtain better information from them, it is sometimes necessary to authorise

[12] (1934) 2 KB 164

them to participate in forms of non-violent criminal behaviour that would otherwise be illegal. For this reason it is recommended that their activities be closely monitored to prevent the informant from using his association with law enforcement to shield him from his own unauthorized criminal activities.

4.1.3. Physical Surveillance: this type of technique is used to gain general background and intelligence on individuals/businesses, habits and relationships of suspects. It may also include electronic surveillance, through the use of visual surveillance in public places with the use of photography, video recording, optical and radio devices. Surveillance of targets can often identify where financial and related records might be stored and lead to the discovery of assets. In addition, surveillance can help corroborate financial data and identify other targets and associates.

4.1.4. Trash runs: This involves searching the target‘s discarded trash for evidence. Evidence obtained through this technique can lead to assets which are maintained, as well as help develop probable cause for more coercive measures and evidence for use at trial. Targets frequently discard evidence, including financial records and correspondence that may be valuable to a financial investigation. Though this method may not be popular in Nigeria but it is a vital tool used by investigators in the United States of America, United Kingdom as well as some of the western countries.

4.1.5. Information from Public Sources

Information on assets or companies held by targets or, their families and associates, and associated businesses can be gotten from public sources and other government agencies. Some information can be accessed on

the Internet using search engines and social networking sites as well as financial institutions.[13]

4.2. Special Investigative Techniques

Most investigations of corruption cases tend to rely heavily on standard investigative techniques; good practice shows that more focus should be given to the use of special investigative techniques, financial investigations and international cooperation for the successful investigation and prosecution of complex and cross-border corruption crimes. Special Investigative Techniques are techniques applied by competent investigating authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aimed at gathering information in such a way as not to alert the target. These techniques are highly intrusive, hence great caution and consideration should be exercised when using them. Special investigative techniques is very effective, however, there are risk involved which must be adequately addressed. Thus, it is necessary for investigators to be properly trained in using these techniques, to ensure that clear policy and procedural guidelines are established and followed, and that proper operational oversight is conducted at the managerial level.

4.2.1. Undercover Operations: this technique can be used to infiltrate targets in order to uncover evidence and information about assets. In asset recovery cases, this might include the controlled delivery of funds through an undercover agent. However, such operations are complicated legally and procedurally, risky, and resource-intensive.

[13] World Bank Group, Handbook for Practitioners on Asset Recovery under available at http://pubdocs.worldbank.org/en/220301427730119930/AML-Module-4.pdf

4.2.2. Lawful Interception of communications: this tool also has to do with the seizure of information from private communication channels, such as telephone, fax, e-mail, mail, socio-media, public or private networks. These tools are employed for the purpose of crime prevention and investigation of a criminal case. Examples of lawful interception of communications. It involves the use of sound recording devices, including bugging of private or public premises in order to obtain information in respect of a target regarding an investigation without the knowledge of the target.

4.2.3. Wiretapping of telephone and electronic eavesdropping: These are both surveillance tool swith significant roles in criminal investigations. Wiretapping involves the use of covert means to intercept, monitor, and record telephone conversations of individuals. Electronic eavesdropping may involve the placement of a "bug" inside private premises to secretly record conversations. Both wiretapping and electronic eavesdropping enables law enforcement agencies to record conversations and monitor activities without revealing the listening devices. Law enforcement officials have utilized these clandestine techniques for various investigative purposes, particularly in the contexts of organised crimes.

- For electronic surveillance, bugging/wiretapping and other means of intercepting private communications to qualify as lawful, such must be carried out in accordance with the relevant laws of the country by following the due process upon receiving the proper authorisation from competent authorities in order to ensure that the right to privacy among other fundamental rights recognized and protected by the 1999 Constitution are not invaded. However, the

right to privacy is not an absolute, because section 45 of the same constitution provides for circumstances that permit derogations from those rights.

- Section 45 provides that "Nothing in section 37…shall invalidate any law that is reasonably justifiable in a democratic society:

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons".

The above provision is a clear and unambiguous derogation from the rights guaranteed by the sections stated therein. Nevertheless, in spite of the derogation, the right of privacy is guaranteed in section 37 of the Constitution is sacred.

In view of the above, where any of these techniques (i.e. electronic surveillance, bugging/wiretapping and interception of communications) are employed for investigation purposes, investigators must ensure to come within the exemptions provided under the constitution and complies with any other relevant law. For instance under the Terrorism Prevention Act (TPA) 2013 law enforcement agencies have power to apply for order of court to compel service provider to intercept special communication. This is achieved through the judicial process. The TPA empowers a judge upon an ex parte application to grant an order to intercept communication. The order allows for such intrusive measures such as requiring the service provider to intercept and retain a specified communication, authorise relevant law enforcement agency to enter any premises to install devices and execute covert operations. Section 29(1) TPA.

Similarly, section 40 of the Cybercrimes Act 2015 provides that a service provider is required to comply with judge's order to intercept, collect, record, permit or assist competent authorities with the collection or recording of content data associated with specified communication transmitted by means of a computer system and generally to assist with the identification, apprehension and prosecution of the offender where there are reasonable grounds to suspect that the content of any electronic communication is reasonably required for the purpose of a criminal investigation or proceedings.

It is not in all circumstances that lawful interception will be lawful. In this regard, where lawful interception is undertaken for the reasons other than those permitted by law, such lawful interference will not be and cannot be lawful or where it is deployed for private purposes by investigators. Such action will be illegal hence; such investigator cannot hide under the provision of section 45 of the 1999 Constitution[14].

5. International Cooperation with investigative purposes

International cooperation is highly important for successful investigations and, in particular, for financial investigations. International cooperation can be informal or formal. While formal cooperation is channeled through Mutual Legal Assistance requests or other formal requests to foreign countries through a designated central authority. Informal cooperation is usually referred as the mechanisms for obtaining intelligence for investigative purposes; formal channels of international cooperation refer to the procurement of information with evidentiary purposes. Both the ICPC and EFCC Acts have c provisions on

[14] Richmond Ekhosuehi, Interception of Communications and the Right to Privacy: Legality or Otherwise, ThisDay Newspaper April 17, 2018.

confiscation and seizure of proceeds of corruption deposited in foreign countries.

5.1. Mutual legal assistance (mla)

This tool plays an important role in the investigation and successful prosecution of corruption-related offences. As more and more cases involve cross-border issues including the transfer of the proceeds of corruption crimes, the need for assistance to be provided between different national law enforcement authorities has never been greater. Mutual legal assistance is a process through which states seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases[15].

5.1.2. Legal basis for mutual legal assistance:

The United Nations Convention Against Corruption (UNCAC)[16], encourages members to afford one another the widest measures of MLA in the investigation, prosecution and judicial proceedings in respect of corruption matters and other criminal matters.

The principal law in Nigeria on the subject is the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act, Cap M24 Laws of the Federation of Nigeria, 2004.

The forms of assistance that may be granted to other countries under the Act are listed in section 2(3) of the Act. These include:

- Identifying and locating criminal offenders;
- The service of relevant documents;

[15] United Nations Handbook on Practical Anti-Corruption Measures For Prosecutors and Investigators (2004) available at http://www.unodc.org/pdf/crime/corruption/Handbook.pdf

[16] Articles 51-57 UNCAC.

- Examination of witnesses;
- Search and seizure of assets;
- Obtaining evidence;
- Facilitating the personal appearance of witnesses before administrative panel, court, tribunal or such similar proceedings;
- Effecting a temporal transfer of a person in custody to enable him appear as a witness;
- Securing the production of official or judicial records; and
- Tracing, seizing and forfeiting the proceeds of criminal activities.

In addition to the above, the legal basis for filing MLA requests is contained in bilateral treaties on MLA, which are concluded between Nigeria and other countries. Nigeria signed such bi-lateral treaties with several countries. These countries include: the United Kingdom, the United States of America, South Africa, the United Arab Emirate, Italy, etc.

5.1.3. How to obtain mutual legal assistance

Section 3(1) of the Mutual Assistance in Criminal Matters Act provides that a request for assistance shall be channeled through the designated Central Authority. The practice in Nigeria is to channel any request for assistance in respect of criminal through the office of the Attorney-General of the Federation (AGF). The AGF is the Central Authority channel for the transmission of requests and need not be the one to execute the request. Whether or not the AGF would execute a request directly or remit same to an appropriate law enforcement agency depends on the nature of the request. Where, for instance the request relates to the

conduct of investigation in matters relating to corruption or economic crimes, the AFG may direct same to the ICPC, the EFCC[17] or any other competent authority and where the matter relates to the apprehension of a suspect drug offender, the request will be channeled to the National Drug Law Enforcement Agency (NDLEA) for execution.

It is important to note that when an agency to which a request has been referred has implemented the request using such measures as are permissible under the relevant law; the reply should also be channeled through the Central Authority of the requesting country. The Central Authority has the power to request for additional information where necessary. Where a request is not channeled through the Central Authority, any information obtained through such request may be rendered inadmissible in evidence in the requesting country by section 3 of the Act. Although a request for assistance may be initiated by any competent authority, the primary responsibility for transmitting and receiving such request under the Act is that of the Central authority.

5.2. Controlled delivery:

This is an effective investigative technique involving the transportation of contraband, currency, or monetary instruments to suspected violators under the control of law enforcement officers. Cross-border controlled deliveries can be performed in cooperation with customs and other foreign competent authorities, or on the basis of international agreements. Controlled deliveries are conducted to:

- Disrupt and dismantle criminal organizations engaged in smuggling contraband, currency, or monetary instruments across borders.

[17] Prof. Y. Akinseye-George, O. Fapounda, Prof. D. Adekunle& N. Angeil, Mutual Legal Assistance in Criminal Matters Nigerian & British Rules Rules and Practice (ed) (2007).

- Broaden the scope of an investigation, identify additional and higher level violators, and obtain further evidence.
- Establish evidentiary proof that the suspects were knowingly in possession of contraband or currency.
- Identify the violator‘s assets for consideration in asset forfeiture proceedings.

5.3. Cross-border observation:

This investigative technique allows keeping a person who is located in a foreign country under observation, with the authorisation of the competent authorities of such foreign country. It may be used to keep under observation a person to which extradition may apply, or a third person who will probably lead to the offender. By section 40 of the ICPC Act the Commission is empowered to seek for a prohibitive order from the court to prevent any person from dealing with property which is the subject matter of an offence under the Act but which is held or deposited outside Nigeria. The effect of such an order will be to freeze the said assets. Section 50(3) of the Act empowers the Commission to engage the services of INTERPOL or similar local and international institutions to trace and detect cross border crimes[18].

[18] Mohammed Albakariyu Kabir, Anti-Corruption Conventions in Nigeria: Legal and Administrative Challenges, World Academy of Science, Engineering and Technology International Journal of Law and Political Sciences Vol:9, No:4, 2015, available at https://waset.org/publications/10001042/anti-corruption-conventions-in-nigeria-legal-and-administrative-challenges

5.4. Asset Tracing and Recovery[19]

Asset tracing involves tracking hidden assets through financial investigation. It is an essential step forming the basis of recovery of asset efforts. A country in which funds are kept will not repatriate the assets to the country of origin unless it is shown that the funds are the proceeds of an illegal activity. Tracing corruptly-acquired assets has become an up-hill task, as large sums of money may be transferred electronically to a foreign country at the click of a button. The offender, in a bid to avoid being identified with the corruptly-acquired assets, launders the assets to disguise their illegal origin. For safe enjoyment of the proceeds of corruption, offenders employ a plethora of methods to create a distance between themselves and the assets.

Asset recovery practitioners have identified two ways by which evidence can be gathered-

Firstly, law enforcement officials in the country where the act of corruption took place can open an investigation using all available legal authorities.

Secondly, a private law firm can be retained to file a suit in the jurisdiction where the assets are found in order to freeze such proceeds of corruption and their eventual repatriation to the country of origin.

5.4.1. Goals of investigation

Since the jurisdiction in which the funds are located will require that there exist a link between the assets and an illegal activity, investigation aims, firstly, at connecting the asset to the illegal activity. This often is achieved through the collation and presentation of direct or

[19] OkubuleBukolaOpedayo, Civil Recovery Of Corruptly-Acquired Assets: A Legal Roadmap For Nigeria, Research Paper submitted in partial fulfillment of the degree of Master of Laws: Transnational Criminal Justice and Crime Prevention, Faculty of Law, University of Western Cape, South Africa, (2010) available at https://etd.uwc.ac.za/bitstream/handle/11394/2558/Opedayo_LLM_2010.pdf?sequence=1&isAllowed=y

circumstantial evidence. Secondly, investigation seeks to provide sufficient evidence to prosecute the corrupt official on criminal charges of corruption and money laundering. Finally, the evidence will enable the country of origin to trace and identify assets that have been stolen or misappropriated.

5.4.2. Investigation in the country of origin

Upon assumption of power, a new government, desirous of recovering funds diverted by corrupt leaders of the predecessor regime, may embark upon an investigation. The new government may gain access to records of transactions which will disclose the monies that have been diverted or misappropriated and the methods used to achieve the diversion. Such records may include:

i. Records of the country's central bank;
ii. Records of other local banks to which the central bank can gain access;
iii. Government-awarded contracts in which corruption may have played a role; and
iv. Evidence from officials lower in the hierarchy who may have assisted the leaders.

For instance, Gen. Abdulsalam Abubakar set up a Special Investigation Panel (SIP) to conduct investigations into the acts of corruption that were associated to the late former military Head of State organisation, Gen. Sani Abacha. The report of the SIP reflected evidence gathered from the Central Bank of Nigeria. The report also described the methods used to launder monies from the Central Bank to foreign accounts held by offshore front companies belonging to the Abacha criminal organisation.

5.5. Mutual Legal Assistance (MLA) in tracing Corruptly-acquired assets

As foreign countries are often the destinations of ill-gotten gains, transnational co-operation is required in the tracing of corruptly-acquired assets. Police-to-police enquiries which constitute mutual administrative assistance may be initiated to trace assets suspected of being in other jurisdictions. This will help a state to determine whether mutual legal assistance would be required to further the investigation.

5.6. Extradition

The United Nations Convention Against Corruption (UNCAC), under its article 44(9), specifically calls on signatory countries - among which Nigeria - to expedite extradition proceedings. Nigeria is a signatory to several extradition treaties with other countries. Examples of such countries are the United State of America, United Kingdom, United Arab Emirates, South Africa and Liberia. The major laws that regulate extradition in Nigeria include:

- The Constitution of the Federal Republic of Nigeria, 1999 (as amended): vests jurisdiction over extradition matters on the Federal High Court.
- The Extradition Act, Cap E 25, Laws of the Federation, 2010: this is the principal legislation for extradition matters.
- The Immigration Act, Cap 11, Laws of the Federation, 2010: this makes provision for the procedure for the transfer of the fugitive criminal to the requesting country.
- Administration of Criminal Justice Act, 2015: this makes provision for the procedure for search and arrest of the fugitives.

- The Evidence Act, Cap E14, Laws of the Federation, 2010: this makes provision for the mode of documentation and tendering of evidence regarding extradition.

5.6.1. Application of the Extradition Act

By virtue of 1(1) and 2(1) of the Extradition Act, the Act applies only in respect of countries that have treaty or "extradition agreement" with Nigeria and Commonwealth countries. It is the treaty that enumerates what offences the two countries consider extraditable. In effect, it is only the offences enumerated in those treaties that could warrant extradition. Application for extradition by virtue of Section 6 of the Extradition Act is made by a diplomatic representative or consular officer of that country which is applying to the Attorney-General of Nigeria in writing also including with the application a duly authenticated warrant of arrest or certificate of conviction issued in that country. The Attorney–General will thus signify to a Magistrate to issue a warrant for the arrest of the fugitive criminal. However, it is not every time an application for extradition is made that it is granted, for instance the United Kingdom refused to grant an extradition application to have James Ibori return to serve the rest of his prison sentence in Nigeria. Nigeria can also, deny any of such applications on certain grounds[20].

There are very few reported cases on extradition in Nigeria; nonetheless, there have been several instances of extradition in Nigeria some of which have been unsuccessful. The recent case of extradition in Nigeria is the attempt to extradite Senator Buruji Kashamu to the United State of America over drug related charges. The matter is still pending at the Federal High Court at the development of this manual.

[20] AdedunmadeOnibokun, Procedure for Extradition (2017) available at http://www.legalnaija.com/2016/01/procudre-for-extradition-in-nigeria.html

James Onanefe Ibori, former governor of Delta state, was sentenced to thirteen years imprisonment by a London Judge for looting public funds in Nigeria and laundering the said funds through financial institutions in the UK. Earlier, Mr. Ibori's wife, sister and mistress have been convicted of money-laundering in the UK and are serving various terms in prisons. His solicitor, Gohil, was also jailed for 10 years for helping him syphon the stolen funds. In 2007, a UK court froze assets allegedly belonging to him worth $35m after he failed to justify buying the property with his annual salary as Delta state governor of less than $25,000[21].

Example of Joshua Dariye's case in tracing and recovering Assets in the United Kingdom[22]
Investigators in the United Kingdom became aware of allegations of corruption and misappropriation of assets by former Plateau State Governor in Nigeria Joshua Dariye and suspected assets could be located in the United Kingdom. Through various investigative techniques, they were eventually able to trace the assets and determine the link with the assets and the offence. 1. Investigative Technique: Public record searches for information on Dariye in United Kingdom (e.g., property, vehicle, and corporate registries). Sought intelligence from other governmental agencies on Dariye, including financial intelligence unit. Result: No link to Dariye found. 2. Investigative Technique: Identified family and associates of Dariye and checked for nexus to the United Kingdom. Result: Discovered the children of Dariye were attending private school in the United Kingdom. 3. Investigative Technique: Inquiries to bank (permitted authority of

[21] https://www.premiumtimesng.com/news/4682-ibori-gets-13-years-in-jail.html
[22] World Bank Group, Handbook for Practitioners on Asset Recovery under available at http://pubdocs.worldbank.org/en/220301427730119930/AML-Module-4.pdf

financial investigators).

Result: Discovered that Dariye operated a Barclaycard account and that the account was being paid off each month through the bank account of Joyce Oyebanjo.

Result: Investigations reveal that Oyebanjo was effectively Dariye's banker in the UK. She paid other fees and utilities on behalf of Dariye, including fees paid to a private school for his two children.

4. Investigative Technique: Production order to obtain access to the school files.

   Result: Investigators confirmed that school fees were paid by Joyce Oyebanjo.

5. Investigative Technique: Search of publically available information, other governmental agencies for information on Oyebanjo. Also production order on bank accounts of Oyebanjo.

   Result: Oyebanjo, employed as a housing officer in the United Kingdom, is found to have 15 bank accounts with funds totaling roughly £1.5 million, and £2 million worth of real property. Further, Oyebanjo is managing one of Dariye's properties in Regents Park Plaza, a property purchased in the name of "Joseph Dagwan" and paid for by the Plateau State Ecological Fund through various companies.

6. Investigative Technique: Credit reference checks revealed bank accounts operated by the suspects. Assets were then traced from the bank account to other bank accounts, property, and vehicles. Production and search orders were used to obtain additional information and trace assets.

   Result: It was discovered that Dariye had one bank account registered to a particular address in London. Examination of Dariye's and Oyebanjo's bank accounts revealed large electronic credits from various banks in Nigeria.

7. Investigative Technique: Production order to obtain the conveyance solicitors file for the London address.

   Result: File revealed that property had been purchased using a false name and paid for from a Nigerian company's London-based bank account.

8. Investigative Technique: Mutual legal assistance letter of request was sent

to Nigeria to determine the origins of the funds received. Result: It was established that an Ecological Grant obtained by Dariye had been diverted and concealed into his own company bank account with the assistance of bank staff. The funds were diverted to a company and associated bank account in Nigeria (set up by Dariye) and subsequently transferred to London for his use. The Nigerian company that purchased the London Property was also linked to the Ecological Grand theft as they received £100 million of the stolen funds. The company had paid £400,000 for the London property after Dariye had authorized a Plateau Government contract for the installation of £37 million worth of television equipment in the Plateau State.

This example illustrates that it is imperative for investigators to "know their subjects" and to identify all close relatives, business associates, and other persons that could possibly assist a suspect in stealing funds and moving them into foreign jurisdictions.

6. DIGITAL EVIDENCE

With the advent of technological development and the consequent evolution of paperless transaction our everyday transaction are now conducted on electronic platforms. As a result anything done on the computer, phone or the internet usually leaves traces or digital footprints which can serve as evidence in legal proceedings. Electronic evidence can therefore aid the investigation and solving of crimes by law enforcement agents. Most of the things we used to do manually are now done on the computers, computer-like devices, or with the aid of computers and computer networks (such as the internet). For instance, using a credit or debit card, the customer can use an Automated Teller Machine (ATM) to obtain access to their account, and to withdraw

money anywhere in the world. With an internet-enabled cellphone, the customer can authorise the transfer of money to anybody anywhere in the world at any time, as well as making purchases using the same internet-enabled cellphone[23]. Digital evidence is information and data of value to an investigation that is stored on, received, or transmitted by an electronic device. This evidence is acquired when data or electronic devices are seized and secured for examination.

Perhaps it is necessary to refer to the story of Reno Omokri[24], Special Adviser on New Media to the former President Goodluck Jonathan which demonstrates in a little way the utility of electronic evidence. It was the information behind the data that exposed Mr Omokri, when he tried to undermine the former Central Bank of Nigeria Governor, Sanusi Lamido Sanusi. Reno Omokri using the pseudonym 'Wendell Simlin' and the e-mail address, wendellsimlin@yahoo.com, sent an email on Wednesday, February 26, 2014 to several media organisations and bloggers. The e-mail sought to create a credible and logical chain of events between the suspension of the former Governor of the Central Bank of Nigeria (CBN), Mallam Sanusi Lamido Sanusi, and the recent upsurge in terror attacks in the northeast of Nigeria. The objective of the article was to paint the former CBN governor as a major financier of Boko Haram and a veteran terrorist.

Since Sanusi's last place of work was the First Bank of Nigeria Plc before becoming the CBN governor, the author cleverly tried to link him to Alhaji Umaru Abdul-Mutallab, who was chairman when Sanusi was the CEO of the bank. It would be recalled that Alhaji Abdul-Mutallab is the father of Umar Farouk Abdul-Mutallab popularly referred to as the

[23] Timothy Tion, 'Electronic Evidence in Nigeria' Digital Evidence and Electronic Signature Law Review, 11(2014)76, available at http://sas-space.sas.ac.uk/5717/1/2126-3117-1-SM.pdf
[24] Ibid

‘Underwear Bomber’ who was convicted of attempting to detonate plastic explosives hidden in his underwear while on board a Northwest Airlines Flight en route from Amsterdam to Detroit, Michigan, United States on Christmas in Day in 2009. Wendell Simlin, therefore tried to portray Alhaji Abdul-Mutallab as a terrorist, hoping that the elder Abdul-Mutallab’s previous relationship with Sanusi would make his argument more credible. However, upon examination of the metadata of the document attached by Simlin in the e-mail, the name, ‘Reno Omokri’ showed in the place of ‘Author’, while ‘Hewlett Packard’ showed up as the computer used to prepare the document. A check of the IP address from which the e-mail was sent indicated that it was sent from the Kubwa area in Abuja by Galaxy Backbone, the Internet Service Provider which provides Internet hosting services for the Federal Government of Nigeria.

Significant digital sources of evidence in the investigation of corruption cases are shown in the picture below:

By sections 34(1) (b), 84 and 285 of the Evidence Act 2011, computer generated evidence is admissible in Nigeria unlike in the past where courts have held electronic generated evidence to be inadmissible as decided in the trial of former Minister of Aviation, Fani Kayode[25], on money-laundering charges where the trial court rejected a computer-print-out of the defendant's statement of account as evidence.

Before the amendment of the Evidence Act, the admissibility of electronic evidence in court proceedings had been controversial due to the absence of specific provisions in the previous Act, even in light of

[25]FRN v Fani-Kayode *(2010) 14 NWLR (Pt. 1214) 481*

Supreme Court decision in *Esso WA v Oyegbola* (1969) NMLR 194 in which it held that computer printouts were admissible.

Now that the controversy regarding admissibility of electronic generated is settled, there is need for specialized training for investigators in order to gather, preserve and analyze evidence in a manner that is acceptable to a court. A typically IT personnel lack the specialised training required. For example, simply by turning on a suspect computer, many files are altered and evidence can be corrupted. A Digital Forensic Specialist or Computer Forensic Specialist will use specialized tools, software and hardware to detect and record information that would be undetectable to an untrained person. In certain circumstances, deleted files can be recovered using specialized tools and techniques.

Additionally, as much of the day-to-day communication and financial transactions are conducted over the Internet, real time monitoring of bank accounts, e-mail traffic and the interception and processing of other forms of on-line data become essential for conducting a proper investigation, complementing traditional investigative and surveillance techniques.[26]

6.1. Best practices for handling digital evidence[27]

In dealing with digital evidence, law enforcement agencies must ensure that adequate procedures are in place, since every activity of the law enforcement personnel exposes the evidence to the risk of accidental modification. That‘s the reason why, in ensuring that evidence will be accepted in a court of law as being authentic and an accurate

[26] Asia-Pacific Economic Cooperation (APEC), Best Practices in Investigating and Prosecuting Corruption Using Financial Flow Tracking Techniques and Financial Intelligence A Handbook APEC Anticorruption and Transparency Working Group (ACTWG) September (2015) P 61

[27] Ibid

representation of the original evidence, the moments of collection and preservation of evidence are extremely critical.

Modification of evidence can have a devastating effect on the entire case, and therefore digital evidence needs to be protected and preserved all along the process collection, acquisition, analysis and presentation.

- The process of collecting, securing, and transporting digital evidence should not change the evidence;
- Digital evidence should be examined only by those trained specifically for that purpose;
- Everything done during the seizure, transportation, and storage of digital evidence should be fully documented, preserved, and available for review.

6.1.1. Collection of Evidence

The following should be completed to collect digital evidence:

- Photograph item showing any visible information on the screen.
- Do NOT scroll through screens to read stored messages/pictures etc.
- If close to lab, take to lab still switched on.
- If being stored or some distance from lab, switch off
- Collect any passwords etc. found at scene.

6.1.2. Packaging

The items should be packaged to avoid damaging the other evidence types or the working of the item. Generally, the items are best packaged in:

- Paper Bags or Boxes

- Sealed with Tape
- Exhibit Label in Place Lab Evidence
- The laboratory will examine the items using specialist pieces of equipment that can extract all the information from the memory including deleted or hidden data[28].

They will produce a report showing all this evidence but should be duly advised on the details of the case so they can specifically look out for relevant details in what they find.

7. WITNESSES

7.1. Witness Protection

Witnesses are crucial in criminal trials, and their testimony is central to building cases that can be prosecuted effectively. Without effective law and systems to protect witnesses who face being threatened, intimidated, injured or murdered, justice system will be at serious risk.

A witness is a person with evidence that is vital to an investigation and trial. A witness testimony is particularly crucial for complex crimes such as terrorism, money laundering, corruption and other organized crimes. Given their covert nature, these crimes are often harder to detect report and investigate. Cases where the suspect(s) are powerful, wealthy and influential – or those with a history of violence – can pose serious challenges relating to witnesses. These suspects in most cases have resources and influence to threaten or harm witnesses and their relations, and interfere with investigation and judicial processes. Therefore, investigators as well as prosecutors must assess the risk that a potential witness has and provide protection accordingly.

[28] Nigerian Police Force Crime Scene Investigator Handbook German Cooperation (GIZ) Pp127-132

Where such protection is not provided, most witness are reluctant to testify, this could lead to unsuccessful prosecution of high cases of organized crimes, public corruption and other economic financial crimes. This is why witness protection is crucial.

Witness protection refers to mechanisms in or outside courts that ensure witnesses' safety and prevents interference so that their testimony can be secured. These measures are such that can be applied at any stage of criminal proceedings, to ensure the safety of witnesses to gain their cooperation in providing testimony. This includes concealing the identity of witnesses through the use of image and voice distortion, video-conferencing and pseudonyms while giving testimony, anonymous testimony and payment of witness expenses. Other measures relate to the physical protection of witnesses or members of their families. This may include their temporary or permanent relocation, changing their identity, and – in extreme circumstances – cosmetic surgery to alter their physical appearance[29].

Witness protection has been mainstreamed into the international criminal proceedings. For instance, the United Nation United Nations Office on Drugs and Crime in its efforts to ensure witness protection called upon states to take measures to protect victims and witnesses from threat, intimidation, corruption or bodily injury. Some west countries already have institutionalized witness protection measures. In Africa, out of the 54 African countries, only three have institutionalised witness protection programmes[30]. South Africa, Kenya and Rwanda all have established programmes, but each experiences its own challenges. Nigeria has a draft witness protection bill awaiting enactment, although some of the

[29] United Nations Office on Drugs and Crime: Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime,Vienna UNITED NATIONS, New York2008

[30]Jemima Njeri,Witness protection: "The missing cornerstone" in criminal justice systems in Africa , ISS Pretoria.(2016)

measures have been incorporated into the criminal procedural laws. But there is yet a national policy and guideline for administering witness protection measures in Nigeria.

The case of two whistle blowers – security guards who tipped off officials of the Economic and Financial Crimes Commission (EFCC) on the more than $50m found in an apartment at Osborne towers, Ikoyi, Lagos State gave rise to the circumstances surrounding the discovery of the money.

Osborne Towers Ikoyi. Photo: Sahara Reporters Media

In the course of investigation, it was discovered that the money was linked to a former Director-General of the Nigerian Intelligence Agency (NIA), Ayodele Oke who claimed that the $43 million, ₦23.2 million and £27,800 (N13 billion) cash found in the apartment belongs to the NIA, and that it had been approved by the former President Goodluck Jonathan for certain "covert" activities.

The dollars found in Osborne apartment Ikoyi house. A whistle blower exposed the money.

One of the whistleblowers responsible for the discovery informed media reporters that since he started working on the property as a guard, a woman brought huge bags of money to Apartment 7B of the at Osborne towers, Ikoyi, Lagos. That particular property was known to the guards as Apartment "Dash-Dash" because in the records there were two dashes where the name of the owner ought to be. The whistle blower recalled that on two occasions, he helped the woman, who was always curiously dressed in a haggardly way, to carry the money to "Dash-Dash". The woman, on the first occasion, gave him N10, 000 as a gift, and on the second, N500. The woman in question who was seen trafficking the money was identified as the wife of the former DG of NIA. The whistleblowers are currently in hiding for fear of their lives[31]. This is one out of the several massive corruption cases that goes undetected by the law enforcement agencies. The EFCC has obtained an order for forfeiture of the money to the Federal Government but the persons connected to the case are been

[31] https://www.pmnewsnigeria.com/2017/04/18/whistle-blower-opens-n13b-cash-found-ikoyi-apartment/

investigated by the EFCC and the whistleblowers have been paid after much forth and back on the issue of the payment of the reward by the Federal Government in line with the Whistleblowers' policy.

In the above case, perhaps the one of the motivating factor may be the Whistleblowers' Policy of the Federal Government of Nigeria which is to support the fight against financial crimes and corruption, by increasing exposure of financial crimes and rewarding whistle-blowers[32]. In order to promote such exposure, whistle-blowers are encouraged and offered protection from harassment or intimidation by their bosses or employers. The hope is that more looted funds will be recovered through the encouragement of voluntary information about corrupt practices. Among the selling points of the policy are the possibilities of-

(a) Increased accountability and transparency in the management of public funds, and

(b) More funds would be recovered that could be deployed in financing Nigeria's infrastructural deficit.

The violations under the policy include, Violation of Government's financial regulations e.g. failure to comply with the Financial Regulations Act, Public Procurement Act and other extant laws. It specifically covers these cases:

- Mismanagement or misappropriation of public funds and assets (e.g. properties and vehicles).
- Information on stolen public funds.
- Information on concealed public funds.

[32]TheWhistle-blower may get between 2.5 per cent (minimum) and five per cent (maximum) of the recovered loot, provided that there is a voluntary return of stolen or concealed public funds or assets on the account of the information provided.

- Financial malpractice or fraud.
- Theft.
- Collecting / soliciting bribes.
- Corruption.
- Diversion of revenues.
- Underreporting of revenues.
- Conversion of funds for personal use.
- Fraudulent and unapproved payments.
- Splitting of contracts.
- Procurement fraud (kickbacks and over-invoicing etc.)

However, the Whistleblower's programme does not apply to personal grievances concerning private contracts and it is not backed by any law yet, it is against this background that some observers have expressed some concerns regarding the fate of the policy[33].

Other substantive legislations, such as the Economic and Financial Crimes Commission (EFCC) Act[34], Independent and Corrupt Practices Commission (ICPC)[35] as well the Advance Fees Fraud Act has provision for protection of witnesses and informants but it is not sufficient as there was no comprehensive measures to ensure the safety of the witnesses.

Currently, Nigeria has incorporated some of the witness protection measures in the Administration of Criminal Justice Act, 2015 (ACJA) as well as other states that have domesticated the ACJA. Thus, apart from the payment of witness expenses[36], the ACJA allows for other

[33] https://www.proshareng.com/news/FRAUDS%20%20SCANDALS/Whistle-Blowing-Policy--Guidance---FAQ--Federal-Government-of-Nigeria--FMF-/33720
[34] Section 39 EFCC Act
[35] Section 48 ICPC Act
[36] Section 254 Administration of Criminal Justice Act 2015

measures[37] such as non-disclosure of witness identity, receive evidence by video link, permit the witness to be screened or masked, receive written deposition of expert evidence and any other measures that the court considers appropriate in the circumstance to support and protect witnesses during trial in serious organized including crimes relating to economic and financial cases.

Despite these laws, there have been some reports of intimidation and disappearances of vital witnesses especially in high profile corruption cases. For example in a trial involving a former state Governor from the Southern States of Nigeria, one of the prosecutor's key witnesses was reported to have disappeared during trial before he could testify. In another case, involving a former state governor, the key witness collapsed in court. This is only to mention a few examples.

7.2. Recommendation for improving Witnesses Participation

To ensure improve witness participation during investigation or trial, it is essential that each law enforcement agency including investigator and prosecutor to engage this measure at the earliest time possible. To this end, the following are recommended[38]:

7.2.1 Creation of a national programme on witness protection: the federal and state governments should as a matter of priority work towards the creation of a national programme on witness protection aimed at ensuring the safety of life and property of witnesses and their loved ones. The Attorney-Generals, law enforcement agencies, legislature, judicial authorities and other stakeholder in the administration of justice should provide support for the process of establishing a viable witness

[37] Section 232 Administration of Criminal Justice Act 2015

[38] Draft National Policy on Witness Protection and Draft Practice Guidelines on Witness Protection of Nigeria, (2008).

protection programme in the country. The public should be sensitized and made aware of the availability of witness protection measures in order to encourage them to come forward and provide useful assistance to law enforcement agencies.

7.2.2 Establishment of witness protection units: each law enforcement agencies should have a standardized unit to enhance witness protection whereby vulnerable witnesses are protected financially and physically and funds should be specifically made for the operation of such a unit.

7.2.3 Provision of witness protection: where an investigator sees a risk for witnesses to be intimidated by a suspect or his associates, the relevant agency must take appropriate measures to prevent any form of intimidation, coercion, or bodily injury of witnesses or his relation by ensuring the utilization of protection of witnesses.

7.2.4 Witness protection Guidelines: there is need for the development of a standardized Guideline to administer witness protection. This guideline can be developed with the support of civil society organization and development partners.

7.2.5 Fair treatment to witnesses: witnesses and such other persons should not be detained in cell during the period of investigation as if he were a suspect; rather they should be treated with fairness and given an explanation of the investigation process. Witnesses should be informed on the detailed of the protective measures available to him and any related person.

7.2.6 Non-disclosure of identity of protected witness: investigating officers shall not disclose the identity of protected witnesses or informants. This measure should be engaged at the earliest time possible where necessary.

7.2.7 Need for witness protection at all stage of proceedings: efforts should be made to protect witnesses at every stage of the criminal process beginning with investigation, during conduct of trials and after until such

protection is no longer required. The termination of protection should be done in such a manner as would not jeopardize the interest of the witness concerned.

7.2.8 Provision of ad-hoc security protection: where there is risk of threat to the lives of witnesses; safe house, hotel or such other alternative accommodation should be provided for such witnesses by the agency. Where necessary body guards or armed security escort should be provided. Where a witness is not put in a safe house or such other alternative accommodation, the relevant agency should at intervals, conduct visits to the witness and his family to ascertain the level of risk or threat to their lives.

7.2.9 Sanction for unauthorized disclosure of identity of witness: Where there has been an unauthorized disclosure of the identity of a witness, or other person assisting in an investigation caused by a staff member of the investigation team, available disciplinary measures should be pursued.

7.2.10 Protection against intimidation from the employer of witnesses: where a witness is an employee, the relevant law enforcement agency should request the employer of the witness not to subject the witness to any intimidation, harassment, discrimination or punishment in relation to the subject matter in which he is a witness. Where a witness is not under any employment, the investigator or prosecutor should apply to the Attorney-General where the witness resides for such witness not be subjected to any form of intimidation, prosecution or harassment as result of assisting in an investigation or trial.

7.2.11 Provision of waiting room for witnesses: during a trial, it is essential that a separate waiting room with adequate facilities for comfort and convenience to avoid unnecessary contact the defendant(s) or his associates or agents should be provided to this class of witness. The law enforcement agency should shield these witnesses from undue

media publicity during trial and where necessary, a witness shall remain under protection throughout the duration of a trial and may be relocated as deemed appropriate.

7.2.12 Payment of witness expenses: where a witness has incurred costs and expenses in the course of assisting in an investigation, such witness should be paid in order to defray such cost and expenses.

7.2.13 Inter-agency cooperation: There is need for inter-agency cooperation and collaboration in the implementation of the witness measures.

7.2.14 International cooperation: there may also be need for mutual legal assistance where the potential witness is not domiciled within Nigeria. Therefore, bilateral and multilateral instruments, national authorities should cooperate with international tribunals and sub-regional bodies and other authorities in the provision of mutual legal assistance towards witness protection.

7.2.15 Enabling legislation: all stakeholders should work towards the passage of a national legislation as well as state legislation on witness protection. Although, in relation to the making of Evidence law is on the exclusive legislative list reserved for the National Assembly, however, matters pertaining to witness protection is a concurrent matter on which both the federal and state governments could legislate under the constitution.

7.2.16 Due regard to international standards: the Federal Government should ensure that all measures taken at the national and state levels by law enforcement agencies is due regard to international standard for the protection of witnesses. Particularly, one of the measures that have implored in Nigeria is the resettlement of a witness to different location and change of identity.

7.2.17