

**CENTRE FOR SOCIO-LEGAL STUDIES**



# INVESTIGATION MANUAL

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**Boosting effectiveness of Anti-Corruption Agencies  
& The use of Technology in HPCCs**

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This material is a guide for law enforcement agents who investigate high profile corruption cases. It highlights the ways to carry out an effective investigation and the importance of Technology in such activities.

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# **INVESTIGATOR'S MANUAL**

## **Chapter 1**

### **Categorization of Offences**

Having explained the difficulties with defining corruption clearly, it helps to create real life scenarios in which corruptions plays out. The aim of this categorization is to help the investigator know what elements of the offense to look out for considering that there is no official anti-corruption Act in Nigeria. Kindly note that more than one of these could play out in the process of a single transaction

- (1)Influence peddling: Public officials offer to exert influence that is otherwise not available to those outside the political sphere. This is distinguished from lobbying or advocacy in the sense that suspect is commercializing his access to government decision-making which influence he only has by virtue of that office.
- (2)Offering/receiving inappropriate favors: This is scene when a public official receives a gratuity or a commission in exchange for their services — doing what is usually expected them in that position or going beyond. The first indication that such action may have taken place behind the scenes is observing the result or evidence of such action
- (3)Bribery
  - (a)Bribery to avoid doing one's duty: This plays out when officials who work for revenue-generating agencies such as tax authorities or custom officers receive payment or favours to enable them reduce or eliminate the liability of the

payer. The payment can also be for the official to disregard evidence of misconduct or criminality or to aid illicit transactions for the purpose of money laundering. A basic example is seen when a large multi-national pays N100m to the personal account of the the Chairman of the Inland Revenue Service to reduce its outstanding tax from N90bn to N3bn. Whilst this could be arranged legally, it would not benefit the political official, will take much longer and the difference between the outstanding amount and the negotiated amount would not be so outrageous.

- (b) Bribery in support of fraud: for example, if payroll officials receive bribe to list and pay non-existing employees (casually referred to as ghost workers)
- (c) Bribery to avoid criminal liability: This is seen where law enforcement officers, public prosecutors, judges or other public officials receive bribe to facilitate the non-investigation or non-prosecution or the poor investigation and prosecution of criminal activities. In some instances, the cases are prosecuted will favor the person who pays the bribe.
- (d) Secret Commission: Usually found in public-private sector relationships where bribe is paid out of contract proceeds to the public officials who facilitated the contracting of that payer and/or created favorable terms of the contract
- (e) Private-sector bribery of bank officials or financial officers: has the ability to create economic damage exceeding bribes themselves because of the approval of loans that fail to meet the basic criteria for collateral. This means

that the loans cannot be recovered later. This was seen clearly played out in the scandal of the defunct Oceanic Bank & Intercontinental Bank.

(f) Bribery to obtain classified information: When public officials are privy to valuable confidential information, they can be targets of bribery to induce disclosure. This can also be seen in the private sector e.g. insider information being used for trading unfairly in the stock market

(4) Embezzlement, fraud and theft: Contextually, these involve the conversion or taking of property, money or other valuables by someone not entitled to them but has access by virtue of their office.

(5) Conflict of interest: Sometimes, corruption can be the abuse of the discretion of one's office for the purpose of personal gain. This could, for example be seen in the conflict of interest scenarios where a public official chooses to perform a government contract with a company that he has interest in despite the company's true abilities to execute that contract. He may suggest real estate policy changes which will directly double the value of his personally owned property. This is easily practicable in systems where personal discretion plays a huge role in political office and oversight structures are absent or inefficient.

(6) Nepotism & Favouritism: These involve abuse of office for direct self-interest or for someone else who is linked to officeholder a family member, political party member, kinsman or other association.

(7) Inappropriate political contributions: There is a thin line between legitimate donations to political parties and payments made with the aim of unduly influencing present or future political activity by party members

when they are in office. This makes the process difficult to investigate or prosecute. It is useful for contributions to be made by those who support the party and wish to see the party elected. However, donations made to ensure payback from the once in office unduly favor the interests of the donor over public interest. The investigator needs to establish, in this case, a cogent connection between the contribution and any specific act on the part of the beneficiary. This is usually only possible after the contribution has been made and the election has been won or appointment made. Donations can take the form of cash, goods or services at no cost or a low cost, low-interest loans and other intangible forms. This can be reduced by limiting the size or worth of donations or by ensuring full disclosure. The political willingness to do this another story entirely.

(8) Other activities which exploit conflicting interests: in both public and private sectors, officials and employees are often confronted with conflict of interest situations where their personal interests collide with their duty to act in public interest or the interest of their employer. In circumstances where personal interest takes the upper hand, there is a case of corruption to be investigated.

## Chapter 2

### How Technology Can Enhance the Investigation of High Profile Corruption Cases

#### 2.1 Introduction

This section will focus on the technology that can and should be employed by investigators in getting to the root of corruption especially where the parties involved are those of a high profile. Gathering credible evidence in support of the commission of a crime is fundamental in the early stages of investigation. It allows the investigator to progress by obtaining search warrants, seizure warrants, and authorization to intercept phone calls and emails.

#### 2.2 Open Source

According to the US Office of the Director of National Intelligence, Open Source information is *publicly available information that anyone can lawfully obtain by request, purchase, or observation*. With the 2011 enactment of Nigeria's FOI Act, public records & information are more accessible to the general public. Investigators can visit [foia.justice.gov.ng](http://foia.justice.gov.ng) to get more information and make requests.

With Nigeria embracing the World Wide Web since the mid-2000s, the Internet has become a primary source of information. The Internet provides access to a vast amount of significant, current information. As of 2015, [internetworldstats.com](http://internetworldstats.com) reported that 52% of Nigeria's population are internet users. Law enforcement can use this to their advantage. Services using Web 2.0 technology are becoming increasingly popular especially as social media platforms which allow individuals to create, organise, edit, comment, share content and share

their location, according to the APEC Anticorruption and Transparency Working Group (ACTWG). These include social networking sites like Facebook, Twitter, Instagram, Youtube etc. As reported by the U.S. Government Accountability Office in 2011, social media-related sites have become the most visited websites in the web. However, the quality of information is key and investigators must ensure the accuracy and reliability of the information.

This kind of information is sometimes disregarded due to the faulty assumption that people, movements and conditions that are suspicious would not be displayed publicly or that such intent, characteristics or behavior would not be made available for all to see. This is not always accurate; information is made open for many reasons including the individual's carelessness or omission, a personal need to, or the requirement of applicable laws e.g. the FOIA, Corporate Affairs Commission Search records. This till is useful to identify criminal offenders. Surprisingly, in a substantial number of cases, the subjects made incriminating statements in open sources, reports the Asia-Pacific Economic Cooperation, 2015. Whilst such statements alone will not satisfy the required burden of proof for conviction, they can clearly establish a basis for further investigation and help to understand individual rationale.

The most common use of open source information is to identify and verify a wide range of facts: personal identity, addresses, phone numbers, email addresses, photograph, property records, vehicle information, spending information, directors of a company etc.

**Diagram 1: Examples of Open Source Information**

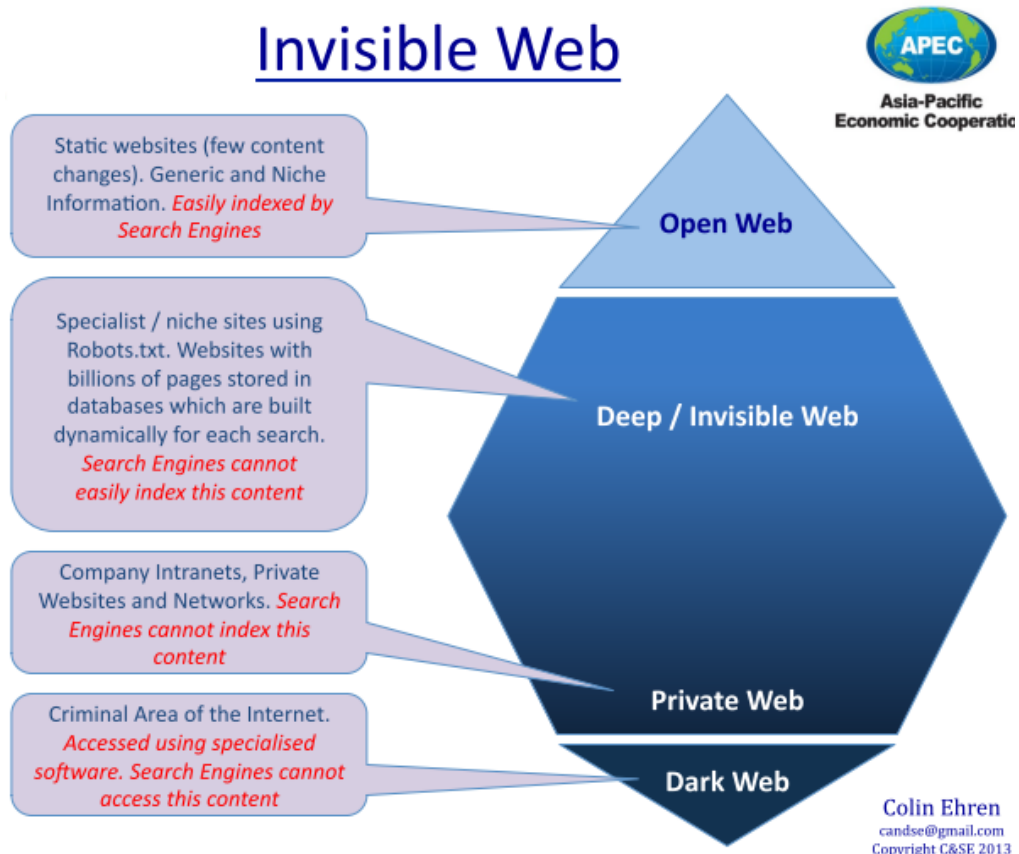
### Diagram 1: Examples of Open Source Information

Freedom of Information Act (Resources)	<a href="http://www.foia.justice.gov.ng">www.foia.justice.gov.ng</a>
Debt Management Office	<a href="http://www.dmo.gov.ng/publications">http://www.dmo.gov.ng/publications</a>
Infrastructure ConcessionRegulatoryCommission (regulates Public Private Partnerships)	<a href="http://www.icrc.gov.ng/foi/">http://www.icrc.gov.ng/foi/</a>
Facebook	<a href="http://www.facebook.com">www.facebook.com</a>
Twitter	<a href="http://www.twitter.com">www.twitter.com</a>
Instagram	<a href="http://www.instagram.com">www.instagram.com</a>
Public Search of registered companies	<a href="http://publicsearch.cac.gov.ng/ComSearch/">http://publicsearch.cac.gov.ng/ComSearch/</a>
Wikis	<a href="http://www.wikipedia.com">www.wikipedia.com</a>
Blogs	<a href="https://www.lindaikejisblog.com">https://www.lindaikejisblog.com</a> <a href="http://www.bellanaija.com">www.bellanaija.com</a>

Although this paper will not discuss this extensively, it is

## Diagram2: Layers of the Web

worthy of note that, what constitutes the Internet is



beyond what meets the eye. The diagram below exhibits 4 layers of the Web.

The purpose of highlighting these areas is to prove that *Open source intelligence requires a certain degree of specialization*. Experts have remarked that the effective use of the Web to gather information is a specialized area and secure search methods must be adopted in order not to compromise operations

We urge investigators of HPCCs to explore the Open Web and Private Web for the purpose of their investigation but

with assistance from cyber security expert. When saving and moving data off the web, investigators must ensure that the evidential chain is preserved, in order to use the information as a proof. Section 84 of the Evidence Act, 2011 allows evidence extracted off the Web to be admissible in Court as computer-generated evidence.

### **2.3 Government Agencies' Databases**

Most federal and many state bodies in Nigeria have websites where some of their basic information and resources are made available to the public. A simple example is the Rivers' State Judiciary website <http://rsj.rv.gov.ng/index.html>. By visiting the site, one can know what cases are going on in the Port Harcourt Division today, see news about their activities and even view the judges' bio data. This is information that does not require spending money to gather as it is readily available and accessible. A trip to the Federal Road Safety Commission Headquarters or National Identity Management Commission helps investigators to verify basic data about individuals from their registers/database. These registers, though not easily accessible to the public are allowed to law enforcement agencies directly on presenting proper identification or after obtaining necessary judicial or administrative authority. Another example is a search at the Lands Registry or the Abuja Geographic Information Systems (AGIS)

In cases where obtaining a Court order may prove difficult and delay the process, we recommend that law enforcement agencies sign MoUs with the agencies they usually work with to grant access to their investigators upon proper identification. This method was employed by the Anti-corruption Bureau of the Prime Minister's Office, Brunei Darussalam. They entered MoUs with the relevant

agencies in order to obtain company registration details, government employee database, identity card and international travel information and car owner's details. In Nigeria, this means working with the Federal Civil Service Commission, Nigerian Immigration Service, etc. Currently, CAC search for company registration details (such as Directors, share capital) takes up to 3 days; such an MoU could provide for instant (online) access for investigators with the proper clearance.

#### **2.4. Private Digital Sources of Evidence**

It was reported in 2007<sup>1</sup>, that more electronic documents were created worldwide in 2006 than all the documents printed in all the years combined since Gutenberg invented the printing press. This means that individuals are creating their own private data.

Digital evidence is simply defined as *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*<sup>2</sup>.

Private sources of digital evidence in the investigation of corruption cases include:

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<sup>1</sup>S. L. HARRINGTON, Contemporary Issues in Cyberlaw: Collaborating With a Digital Forensics Expert: Ultimate Tag-Team or Disastrous Duo? , in William Mitchell Law Review , 2011, 38, 353, quoting W. E. MOOZ, Jr., Technology Tips for Reducing EDD Review Costs , 24 Legal Tech News, no. 12, March 2007, 1

<sup>2</sup> NATIONAL INSTITUTE OF JUSTICE, Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition, U.S. Department of Justice-Office of Justice Programs, Washington, 2008, p. ix

**Diagram 3: Private Digital Sources of Evidence**

Source	Examples
Computers	Call logs, SMS sent & received, contact list; Documents and files created by user e.g. from Microsoft Word/Excel; search engine history
Mobile Devices	Social Media Platforms, Instant Messaging platforms, GPS, search engine history, photos, videos, contacts etc
Removable media & external storage	Flash drives, Hard Drives, Memory cards
Electronic Money	Mobile banking, online banking platforms
Calendars	Digital & physical; Set reminders
Emails, notes, letters	Sent and received mail; draft mail; hard copy letters, notes around the office, notes stored in computers & phones
Telephone Records	Call logs, SMS sent & received, obtained from the network provider
Accounting or Record Keeping software	Sage, Peachtree, Microsoft Excel etc.

The major importance of this vast source of information is that it is useful in investigations, tracing assets and can be used in Court. However, the investigator may need physical access to this information by obtaining the relevant devices, passwords, fingerprint, etc from the subject. In addition, obtaining this level of information requires a specialised process of collection, preservation, and analysis before its presentation for litigation. In the words of Mulukulta-Rüegg, *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.*

It is important to note, however, that these activities require the assistance of a digital forensic expert. A government with the political will to fight corruption in Nigeria must equip the Investigation departments of the anti-corruptions agencies (ACAs) with relevant tools and budget to employ or contract with experts in this discipline

The legitimacy and legality of the search and seizure of such devices is discussed in another part of this paper.

#### **2.4.1 Single types of digital evidence**

##### **2.4.1.1 Hash Values:**

Technically, a hash value is a string value (of specific length), which is the result of calculation of a Hashing Algorithm. In simpler terms, it is the fingerprints for files. The contents of a file are processed through a cryptographic algorithm and the hash value is the result that helps to identify the contents of the file.

The purpose of hash value functions in gathering digital evidence is:

- (a) to verify that the forensic image of the digital evidence has not been modified and is exactly the same as the original. If the contents are modified in any way, the value of the hash will also change significantly.
- (b) To discover hidden files on a computer; this is useful when the hash value of the original file is known
- (c) To determine whether or not, a file with a known hash value is on a particular computer

me	Date Modified	Size	Kind
0AC83266-E80E-4A5E-8B8D-3B89879A906E.webhistory	8 May 2018, 10:50	390 bytes	Safari...ory iter
0C32B2D0-E56B-4599-887F-B53FB809B04C.webhistory	9 May 2018, 04:58	329 bytes	Safari...ory iter
0E0B3A40-15B6-4F57-8156-6B41308CA10A.webhistory	1 May 2018, 03:22	328 bytes	Safari...ory iter
01E30506-F382-420F-BA60-08EA5A0FE608.webhistory	4 May 2018, 03:14	356 bytes	Safari...ory iter
1EBE00B2-02ED-442B-B8E1-A1C88CB1A7D7.webhistory	1 May 2018, 04:05	394 bytes	Safari...ory iter
2B6BD1AC-B96A-4985-8EF1-FAFD7B2779D6.webhistory	1 May 2018, 03:47	786 bytes	Safari...ory iter
3AC35259-EA22-4982-88E5-3A7664914BFD.webhistory	3 May 2018, 14:03	287 bytes	Safari...ory iter
3C7F52E2-87ED-4617-AFA3-BA552BE94773.webhistory	1 May 2018, 04:19	408 bytes	Safari...ory iter
3D719980-FE2E-4793-A4E9-80AA1F55D8C8.webhistory	1 May 2018, 04:19	547 bytes	Safari...ory iter
4A5F3C46-8520-4A9E-AD58-1966B5B0147E.webhistory	8 May 2018, 16:28	447 bytes	Safari...ory iter
4A1111AB-69B6-4864-8890-420D1FB3A90F.webhistory	4 May 2018, 03:35	523 bytes	Safari...ory iter
5AEB8A03B-EC16-4A82-9AFF-5FC2639D669D.webhistory	7 May 2018, 21:11	457 bytes	Safari...ory iter
6C6FC392-BDB3-4150-9B8E-93C388B5AE44.webhistory	4 May 2018, 03:14	336 bytes	Safari...ory iter
6FA22C15-A77D-4987-AF48-FA11D864FF5B.webhistory	4 May 2018, 03:35	472 bytes	Safari...ory iter
8C78F332-5320-4F32-8B51-064796844B8D.webhistory	4 May 2018, 03:35	523 bytes	Safari...ory iter
8DA3489F-B019-4DF2-81B9-DEB8D471C1E0.webhistory	11 May 2018, 12:37	346 bytes	Safari...ory iter
8DC6EB7E-0A89-4578-A611-4E477EC670FB.webhistory	15 May 2018, 06:35	301 bytes	Safari...ory iter
9B06D615-0D50-4A3D-91E4-4CFFBF5C82C2.webhistory	1 May 2018, 04:19	390 bytes	Safari...ory iter
43C7ECB7-8E08-4F44-AB90-DC87551814D4.webhistory	1 May 2018, 03:46	393 bytes	Safari...ory iter
43C627C0-3563-45B2-A5A3-4C1D1F2A69E0.webhistory	7 May 2018, 11:46	399 bytes	Safari...ory iter
59DB32C0-B689-4382-B6F8-3BE38F105EF3.webhistory	1 May 2018, 09:59	372 bytes	Safari...ory iter
072C30A5-82E3-4970-B47D-6E2AAD38D1CA.webhistory	9 May 2018, 04:24	410 bytes	Safari...ory iter
76D80BE6-DF35-47A6-A9C0-E56149C4290B.webhistory	9 May 2018, 04:25	300 bytes	Safari...ory iter
76D2868B-5B3C-4EEF-BCDA-6C99CB73A4EF.webhistory	1 May 2018, 03:46	470 bytes	Safari...ory iter
76DBECB4-6297-46EA-9346-1D04C070174F.webhistory	4 May 2018, 03:35	448 bytes	Safari...ory iter
78C7C966-E12F-45FF-96FF-B6745B81711D.webhistory	1 May 2018, 03:20	406 bytes	Safari...ory iter
209D3AB1-2418-471A-9C59-57A5CA7C8FA1.webhistory	1 May 2018, 03:22	351 bytes	Safari...ory iter

**Diagram 4: Metadata showing browser history**

### 2.4.1.2 Metadata

This is information that is stored about another data and is useful for investigators because it answers the following questions about files and documents e.g. who created the file? when was it created? when was it edited? What device was it originally created on?

Metadata is usually found in electronic documents, pictures, webpages, browsers & file systems

### 2.4.1.3 Emails

Email is fast becoming one of the richest sources of evidence available to investigators. This is due to the following:

- (a) email users often use it informally and for work;
- (b) users believe that emails can easily be deleted

(c) Emails can easily be copied or forwarded by the investigator

(d) Majority of email systems require a 2-step deletion process to permanently delete<sup>3</sup>. *Emails can be stored in multiple and different places, depending on the type of account, providing multiple opportunities for investigators to recover email even when they have been somehow deleted.*<sup>4</sup>

Information that can be retrieved from an email includes – email contents, sender’s identification and location, receiver’s identification. Emails may be found on personal devices like computers, phones, tablets & iPads. e.g. the subject may have requested bank statements sent to their email address; or there may be correspondence between suspects or money launderers via email etc.

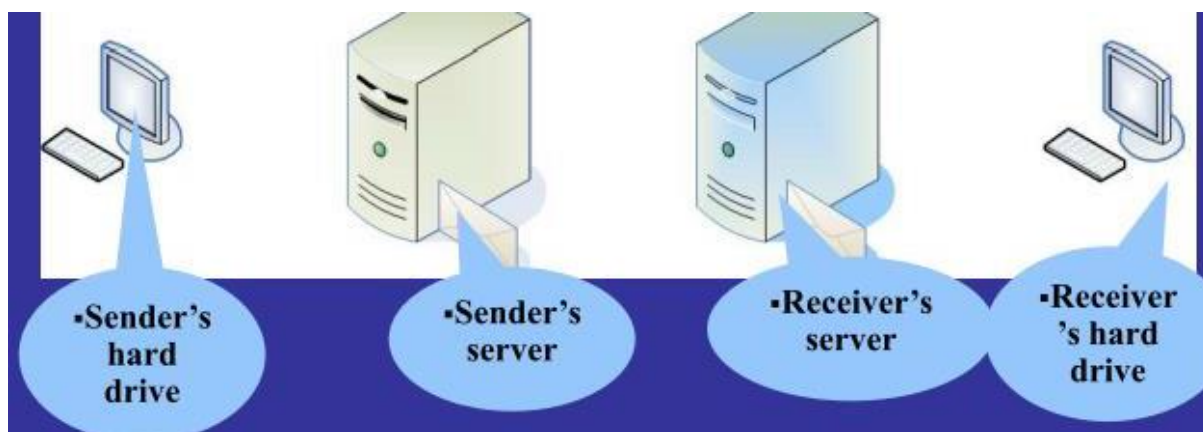
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<sup>3</sup> J. E. FELDMAN, The Basics of Computer Forensics , p. 20, in The Practical Litigator , March 2001, 17

<sup>4</sup> DANIEL – DANIEL, Digital Forensics for Legal Professionals , p. 240 ff.

Emails are difficult to delete because most emails have 4 copies in different places. The The United States presentation at the APEC Anti-Corruption and Transparency Working Group (ACTWG), Capacity Building Workshops on Designing Best Models on Prosecuting Corruption and Money Laundering Cases Using Financial Flow Tracking Techniques and Investigative Intelligence for Effective Conviction and Asset Recovery to Promote Regional Economic Integration, Santiago, Chile, 11-13

**Diagram5: 4 copies of emails in different locations**



June 2013 projected the image in Diagram 5 below:

#### 2.4.1.4 Mobile Phones & Cellular Systems

The usage of mobile phones by suspects, gives investigators access to:

- (a) data stored on the cell phone such as text messages, contact list, call logs, pictures and other documents.
- (b) call log information which reveals: date and time a call was made or received; the number that called or received the call, whether it was a voice call, data call, or SMS
- (c) Cell phone location: this might not be the exact position but reveals the general area which corresponds to the radius of coverage of the cell tower (mast) that was connected to the phone at that time e.g. if X says that he

was in Bauchi at the date of the money transfer, his cell phone can reveal that he was actually in Asokoro and made a call to Y from there.

## **Chapter 3**

### **The Importance of an Effective Investigation in the Prosecution of High Profile Corruption Cases**

#### **3.1 Introduction**

Anti-corruption agencies (ACAs), have been established to support national anti-corruption efforts, and to investigate and – depending on their mandate – also to prosecute criminal offences in corruption matters e.g. the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic & Financial Crimes Commission (EFCC) etc. The ACAs therefore assume a crucial role in combating corruption at the very interface of administrative and criminal law.

Research has identified four factors necessary to boost the effectiveness of ACAs. These include, the measure of political, financial and operational independence of the agency, the adherence to the rule of law and the existence of an understandable and practicable legal framework, adequate financial and human resources, as well as a widespread positive anti-corruption climate within the political environment and the general public.

#### **3.2 Difficulties in Investigating Corruption**

Corruption is oftentimes regarded as one of the most difficult crimes to investigate. There is usually no scene of the crime, no DNA or fingerprints, no eyewitnesses and no disgruntled party. Because of its covert nature, there are usually only two witnesses — 2 satisfied parties. The implication of this, remarks

Kwok Man-Wai<sup>5</sup>, is the unwillingness of either party to reveal the facts.

In addition, he notes that in the instances where there are eyewitnesses, they would usually be beneficiaries of the corrupt transaction, thereby tainting their credibility. It is important to note that it is a herculean task to break this chain of satisfaction that links the relevant parties. Most corruption offences are consensual and are motivated by mutual interest. As a result, law enforcement institutions face serious difficulties in collecting reliable evidence. Confessions and testimonies are rare occurrences. Furthermore, investigation of corruption is particularly challenging for high profile persons such as ministers, senators, ex- governors and ex-presidents. This is because such individuals are very powerful, and have become enriched by the system thus making them ruthless in protecting the code of silence through intimidation, violence and sometimes even the murder of potential witnesses. In January 2017, The Tribune reported an alleged attempt to murder one of the witnesses the prosecution intended to call during the investigation of Justice Ademola& others<sup>6</sup>.

These challenges do not, however, make it impossible to investigate corruption. What is required is effective investigation.

### **3.3 The Assignment of Effective Investigation**

Every lawful activity carried out by an investigator in order to determine what offense has been committed, who committed the offence, the location and time of commission, the motive behind and how the crime was committed for the purpose of prosecuting the offender, is referred to as a criminal

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<sup>5</sup>Man-Wai, T. at The Eleventh International Training Course on the Criminal Justice Response to Corruption Visiting Experts' Papers.

<sup>6</sup> Available online at <http://www.tribuneonline.com/witness-alleges-death-threat-court-orders-protection-defendants-justice-ademola-others-trial/>

investigation. Therefore, an investigation must embody, according to Momodu<sup>7</sup>,

- (a) a discovery of what offence has been committed (from the available evidence);
- (b) an identification of the offender; and
- (c) a collection of adequate evidence to prove the guilt of the offender before a court.

Kiyono explains that anti-corruption adopts a 3-pronged approach of prevention, enforcement and education. Although all 3 measures are important, enforcement (the detection, prosecution and punishment of corruption) is the most powerful weapon to combat corruption<sup>8</sup>. In addition, enforcement has great preventive and educational effects so it encompasses the other two aspects.

The Guide to Combating Corruption & Fraud in Development Projects<sup>9</sup> recommends that every investigator develops and follows a “theory of the case” when investigating complex corruption. The Case Theory Approach involves these steps:

1. Analyze the available data in order to establish an hypothesis; the approach is predicated on an informed assumption based on the readily available evidence i.e. what the investigator thinks may have happened.
2. Test the hypothesis against the facts that are readily available
3. Fill in the gaps: the hypothesis is used to generate an investigation plan to test the veracity of the assumption
4. Refine & amend the hypothesis until it fits a set of reasonable conclusions

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<sup>7</sup>Momodu, B. (2013) Law, Rules & Procedure of Criminal Investigations in Nigeria. Evergreen Overseas Publications LTD, Nigeria.

<sup>8</sup>Kiyono, K. Best Practices for Investigating Corruption @ The United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders. Available online at [http://www.development-research.org/images/pdf/working\\_papers/wp-209.pdf](http://www.development-research.org/images/pdf/working_papers/wp-209.pdf)

<sup>9</sup>Guide to Combating Corruption & Fraud in Development Projects: The 10 steps of a Complex Fraud and Corruption Investigation.

Below is a simple example:

Scenario 1: Example of a Case Theory

*Investigator Ahmed receives a brief that the Minister of Entertainment and Enjoyment awarded a contract of ₦915M for social media platform for Nigerian Youths in 2015. The contract has been awarded to an unknown company, XYZ Nigeria LTD. He invites and interviews several witnesses. They all deny knowledge. He receives a court order to check the contract files, and see nothing. He also interviews the Minister who, unsurprisingly denies any wrongdoing. Inspector A does not know what next to do. His superintendent is threatening to send him on compulsory leave if nothing comes out of the investigation after expending the agency's resources.*

*Investigator Bello in another ACA receives the same brief. He adopts the Case Theory Approach by:*

*(a)analyzing the available information — the details of the allegations: Minister of Entertainment & Enjoyment + social media platform + N915M*

*(b)Creating a simple hypothesis of what he thinks may have happened e.g. Maybe the Minister has interest in XYZ Nig. LTD.; no social media platform costs ₦915M; XYZ Nig. LTD is yet to execute the contract since 2015*

*(c)Making assumptions to prove or disprove the hypothesis e.g. If the Minister has interest in XYZ, he can award such a contract; If the Minister has interest in XYZ, he would not have to account to the ministry for failure to execute the contract; If the Minister has interest in XYZ, he would have made monetary gains from the awarding of the contract; if XYZ is unknown by Corporate Affairs Commission (CAC), it will not have a corporate bank account which could not be flagged by EFCC when the sum of ₦915M was paid.*

*All that is left for Investigator Bello to do is to fill in the gaps i.e. look for evidence to confirm or refute his assumptions in C above. He can start with a [google.com](https://www.google.com) search of XYZ LTD, is followed by a CAC search etc.*

Therefore, having a case theory helps the investigator to know where to start and to follow a system. It helps the investigator to establish an investigative plan: if A happened, then B must have benefited, and C must have been promoted. If the hypothesis is proved wrong after testing it against the facts available, the investigator can change his hypothesis now knowing that the first set of facts did not occur and pursue another set of facts. Therefore, it helps the investigator to narrow down the facts.

However, investigators must note that the Case Theory approach is simply an investigative tool to generate a hypothesis that can organise and direct an investigation, based on the information available at the time. It should not be treated as evidence itself. The Guide also recommends that investigators should not be too committed to any particular theory and be ready to amend or abandon it as necessary.

In addition, some of the surveys carried out by our Centre show that a disturbing number of investigators believe that confessional statements are a prerequisite to the success of an investigation. It must be understood by all investigators that confessional statements are voluntary. As a matter of fact, they must only complement the investigation that has been carried out prior to obtaining the statement. *Section 17(1) of the ACJA 2015* clearly provides that: **Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.** The implication of this is that the investigator must be prepared to investigate the case with the assumption that no confessional statement will be made. This allows for a thorough, and effective investigation.

### **3.4 Prerequisites for an Effective Investigation Agency**

In addition to the tedious responsibilities saddled on an effective investigator, the government plays a key role in establishing the infrastructure to facilitate the effective investigation of high profile corruption cases. A government who claims to have the political will to eliminate corruption must prioritize the needs of its ACAs. These include:

#### **(a) Independence**

Due to the political sensitivity and possible embarrassment to the government, investigation can only be considered effective if it is truly independent from undue interference. This is largely dependent on the government's political will and the extent of power granted to the ACAs through legislation. Including the traditional police power to search and arrest, the Agency must be empowered to take additional steps such as checking bank accounts, intercepting telephone calls, demanding that suspects declare their assets, require that suspects answer questions under oath, restrain property suspected to be proceeds of corruption, seize suspects' travel documents to prevent escape from the jurisdiction. However, this must be supported by an effective checks and balance system. Hong Kong's Independent Commission Against Corruption which is globally recognized as a successful model in fighting corruption has adopted this system. Hong Kong was successfully transformed from a corrupt region under a colonial government to one of the relatively, most corruption-free places in the world, explains Man-wai.

#### **(b) Adequate Financial & Human Resources**

Investigating corruption is undoubtedly time-consuming and capital intensive. This is particularly so when the parties involved are those of high social status. Cases like these usually require expertise especially in the areas of gathering evidence, knowledge of operative criminology practices, and commercial, financial, economic activities. Expensive, highly intrusive measures may need to be adopted such as telephone tapping, electronic surveillance, granting witnesses anonymity,

engagement of undercover agents and sometimes, the simulated giving and accepting of bribes. The use of digital technology is also required in many of such cases and this does not come cheap. These methods, adopted in Slovenia, for example, are some of the non-traditional, costly measures that are necessary for this level of high profile corruption<sup>10</sup>.

#### (c) Compatible legislation

Defense lawyers of suspected offenders often exploit the lacunae and the obsolescence of the existing laws in their favour. This necessitated the introduction of the Administration of Criminal Justice Act (ACJA) 2015. Prior to this, the Evidence Act, 2011 had to be enacted to allow the tendering of electronic documents as evidence, amongst other things. These demonstrate the need for the law to continually evolve to meet the times in order to prevent exploitation in high profile corruption cases.

Moreover, in addition to the laws establishing its ACAs, Nigeria is in dire need of an all-encompassing anti-corruption Act that explicitly identifies the corrupt acts that are criminally liable. We recommend that the offenses listed under Chapter 1 be prohibited in the Act. Kenya has adopted this method in its Anti-Corruption and Economic Crimes Act where sections 2, 39-44, 46 and 47A lay out the general parameters of what constitutes corruption. The Act must also establish liability for both individuals and corporate entities. India also has a Prevention of Corruption Act.

#### (d) International Mutual Assistance see above.

#### (e) Effective Complaints System

It is important that ACAs are backed up with an effective complaints system. The platform must welcome quality complaints from members of the public and government

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<sup>10</sup>Penko, B. (2006) Issues of Concern Related to Investigating and Prosecuting Serious Economic Crime and Grand Corruption.

officials. Malicious or frivolous complaints should be discouraged. Assurance of the anonymity of their identity, or protection, when needed, must be provided to complainants. To avoid compromise, it might be safer for complainants to interface with a portal or with a hotline. Incentives may also be provided to complainants when the tip generates a lead. A good example is Nigeria's Federal Ministry of Finance Whistle Blowing Policy<sup>11</sup>.

(f) A complimentary Prosecution Agency/Ministry of Justice  
It is a waste for the efforts of an effective investigation to be met with ineffective prosecution. Hence, we urge the government to equip its prosecuting agencies with the requisite human and financial resources to adequately litigate the high profile corruption cases. Incentives should also be provided to the prosecutors to avoid compromise.

### **3.5 Conclusion**

The bedrock of any successful prosecution is the investigation of substance of the case. This places a heavy burden on the investigators to lay the proper foundation for litigation by effectively gathering and analysing the information to establish the true facts of the case. For this to become a reality, the government of the day must also provide the ACAs with the necessary resources to effectively carry out investigation.

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<sup>11</sup> Federal Ministry of Finance - Whistle Blowing Policy  
<http://whistle.finance.gov.ng/catalogs/masterpage/MOFWhistle/assets/FMF%20WHISTLEBLOWING%20FREQUENTLY%20ASKED%20QUESTIONS.pdf>

## Chapter 4

### Investigation & the Law

#### 4.1 Human Rights

The general requirement for the treatment of suspects is laid out in *section 8 of the Administration of Criminal Justice Act (ACJA) 2015*. A suspect shall:

- (a) be accorded humane treatment, having regard to his right to the dignity of his person; and
- (b) not be subjected to any form of torture, cruel, inhumane or degrading treatment.

This is in adherence to the constitutional rights guaranteed under the Constitution of the Federal Republic of Nigeria (1999) as amended.

The legitimate use of force or restraint is sometimes necessary but the use of force is prohibited against any person except for the following purposes of:

- (a) Self-defence; or
- (b) defence of others against the imminent threat of death or injury; or
- (c) To prevent the commission of an offense
- (d) To arrest a person presenting the danger of the commission of an offence; or
- (e) To prevent an escape.

See section 5 of the Administration of Criminal Justice Act (ACJA) 2015.

Investigators are advised to abstain from the use of force as much as is possible. One major disadvantage with the use of force is that it opens a window for the subject to file for Fundamental Rights under the Fundamental Enforcement Procedure Rules (FREP) 2009. This undoubtedly delays the investigation and trial of the case and may lead to the notorious trial-within-trial. Although unsupported by any national legislation, the process of trial-within-trial for the

purpose of determining whether or not a confessional statement was obtained voluntarily has been known to double or even triple the average time spent trying cases.

In the event that an arrest must be carried out while investigation is ongoing, investigators must strictly adhere to S.294 of the ACJA (2015) which expressly states detention time limits.

#### **4.2 Admissibility**

One of the greatest luxuries granted to investigators in the process of gathering evidence for the prosecution of HPCCs is the provision of the law in section 14 and 15 of the Evidence Act 2011:

##### *14. Evidence obtained*

- a) improperly or in contravention of a law; or*
- b) in consequence of an impropriety or of a contravention of a law;*

*shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.*

##### *15. For the purposes of section 14, the matters that the court shall take into account include-*

- a) the probative value of the evidence;*
- b) the importance of the evidence in the proceeding;*
- c) the nature of the relevant offence cause of action or defence and the nature of the subject-matter of the proceeding;*
- d) the gravity of the impropriety or contravention;*
- e) whether the impropriety or contravention was deliberate or reckless.*
- f) whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and*

*g) the difficulty. if any, of obtaining the evidence without impropriety or contravention of law.*

In other words, absolute discretion is given to the Courts to decide whether or not to admit evidence obtained illegally or improperly based on the criteria in section 15. Available case law supports this principle. Ogunbiyi JCA (as he then was) in *Aregbesola v. Oyinlola (2011) All FWLR (Pt.570)* further justified the admissibility of illegally obtained evidence by relying on the dicta of eminent Nigerian jurists like Eso, Obaseki and Aniagolu JJSC to wit:

*"In the case of Sadau&Anor v State where the apex court relied on the case of Kuruma, Son of Kamiu v The Queen, at page 203 the Privy Council described the position of the law as follows:-*

*"In their Lordships opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is admissible the court is not concerned with how the evidence was obtained."*

While some human rights activists<sup>12</sup> have questioned the propriety of this law, it remains the status quo. Investigators must note that this does not give them a free pass to do as they please considering that the Courts are empowered to throw out evidence that offends section 15 of the Evidence Act. In addition, this provision does not apply to obtaining confessional statements which are clearly voluntary. Section 29(2) of the Evidence Act ensures that, viz:

*29 (2) If in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant it is represented to the court that the confession was or may have been obtained -  
(a) by oppression of the person who made it, or*

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<sup>12</sup>Peters, I. (2017) Why is Illegally Obtained Evidence Still Admissible in Nigeria in 2017?; DNL Legal And Style; available online at <https://www.dnllegalandstyle.com/illegally-obtained-evidence-still-admissible-nigerian-courts-2017/>

*(b) in consequence of anything said or done which was likely in the circumstances existing at the time. to render unreliable any confession which might be made by him in such that the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.*

### **Conclusion**

While being given the liberty to do all that is necessary in order to obtain evidence, investigators must be careful to remain within reasonable legal limits so as to avoid the evidence being thrown out by the Court. In addition, regard must be had for the basic principles of human rights as set out under the Constitution and further expanded in the Administration of Criminal Justice Act 2015.

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