Whistle Blowing: Inspiring Chartered Accountants

By

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Outline

• Context
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Outline

• Encouraging whistle blowing in Nigeria: Ways Forward
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Introduction

• Corruption in Africa (nay Nigeria) is a problem of routine deviation from established standards and norms by public officials and parties with whom they interact
  • Ruzindana (1999)

• This routine deviation from established standards in Nigeria has become so institutionalised because it is neither reported nor challenged by those whose duty it is to do so with disastrous consequences:

• Worse still, is the fact that even when they are reported, due diligence are not taken to investigate them and bring culprits to book
Introduction

• Where does this leave us as a nation:
  – Nigeria is one of the most corrupt nations in the world ranking 144 out of a total of 177 in Corruption Perception Index in 2014
  – Nigeria as at September 2014, ranks 127 out of 144 in the 2014 global competitiveness index report
  – Nigeria, in the last decade, has been growing at an annual average growth rate of 6.5% leading to being the largest economy in Africa and 26th in the world, yet unemployment is still high at 23%
  – While Nigeria is producing the richest man in Africa and one of the richest women in the world, it is the third country with the highest number of poor persons with 69% in 2012 and 71% in 2014 living below poverty line
Introduction

– HDI 2013 Report ranks Nigeria 153 out of 187 countries
– Failed State Index Report of 2013 ranks Nigeria 16th as the most failed states out of 178 countries
– This is a country where public servants who were custodians of Police Pension funds connived to fleece the Fund to the tune of N32.8 billion and they were each sentenced to 2 years imprisonment with the option of 250,000 fine
– This is a country where there is documented open admittance that oil theft is at the tune of 900,000 b/d as at May, 2014 valued at N16bn per month
Introduction

• The Holy Writ got it right when it said that:
  – When a crime is not (exposed) and punished quickly, people feel it is safe to do evil (Ecc 8:11)
• This is where we have gotten to in this country- culture of impunity
• The Global Corruption Barometer Report announced that only 33% individuals have reported paying a bribe while many of the victims of bribery do not lodge formal complaints out of fear of potential harassment and reprisal in the country in 2010 (Transparency International, 2011; Nayir and Herzig, 2012).
• This Paper therefore seeks to challenge Accountants to rise up to the call of duty and to the ethos of the accounting and particularly auditing profession to report and investigate matters of financial misdemeanour to save our country from the precipice of total collapse and preserve our collective heritage
Meaning and Elements of Whistle Blowing

• Whistle-blowing is about making disclosures, by the individuals, of illegal, corrupt, fraudulent or illegitimate practices to those persons or agencies that may be able to effect an action (AJETUNMOBI, 2012).

• “the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.” (Near and Miceli, 1985)

• Elements of Whistle Blowing:
  – the whistle-blower;
  – the whistle-blowing act or complaint;
  – the party to whom the complaint is made; and,
  – the organization or persons against which the complaint is lodged.
Whistle Blowing Typology

- **Formal versus Informal**: Formal reporting is when wrongdoing is done following the standard lines of communication or a formal organizational protocol for such reporting, whereas informal whistle blowing is done by the employee personally telling close associates or someone she or he trusts about the wrongdoing using grapevine or other informal channels of communication other than the ones allowed by the organisation (Park et al. 2008: p 930).

- **Identified vs Anonymous**: Identified Whistle blowing is an employee’s reporting of wrongdoing using his or her real name, whereas in Anonymous Whistle blowing the employee gives no information about himself and might use an assumed name.

- **Internal vs External**: Internal Whistle blowing is the employee’s reporting of wrongdoing to a supervisor or someone else within the organization who can correct the wrongdoing and External Whistle blowing is reporting of a wrongdoing to outside agencies believed to have the necessary power to correct the wrongdoing.
Whistle Blowing and the Work of Accountants: The Nexus

- Whistle Blowing
- Accounting Profession: Auditing
- Timely Information

- Accounting is the process of gathering, analysing, storing and retrieving of financial data for the purposes of management decision.
- Whistle Blowing is the unauthorised disclosure of information to outsiders that are expected to take remedial actions.
- The relationship between the work of an accountant and whistle blowing is the release of vital information.
Whistle Blowing and the Work of Accountants: The Nexus

- **Auditing and Whistle-Blowing**: Auditing is the process of assessing the financial statements of client organisation to ensure that it represents true and fair view of the accounts. Whistle blowing supports auditing in two ways:
  - Provide information to auditors of areas where there are possible malpractice for close scrutiny
  - Where the auditor colludes with the management to deceive the public, whistle blowing saves other stakeholders by disclosing factual information to the public and regulatory agencies

- Auditing like policing requires intelligence gathering for effectiveness which whistle blowing provides
Stages and Sequences of Whistle-Blowing

**Internal WB**
- Employee observes potential financial impropriety & makes allegation
- Employee concern successfully addressed internally
  - Employee feels retaliated against
    - Employee does nothing further
  - Employee not retaliated against
    - Press does not publish allegation

**External WB**
- Press publishes employee allegation
  - Press publishes employee allegation
    - Sample Firms
- Employee files a complaint with OSHA
  - Firm improves governance? Table 8
- Firm faces restatement or lawsuit? Tables 4 & 5

**Consequences**
- Firm’s performance suffers? Tables 3, 6 & 7
## Stages and Sequences of Whistle Blowing

<table>
<thead>
<tr>
<th>Stage</th>
<th>Key Question</th>
<th>Scenario /Action</th>
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| 1     | Is There a Potential Whistle Blowing Scenario?         | • Discovery of someone doing something that is ethically wrong  
• in an area that you have more information than others and  
• which when made public will change the course of action |
| 2     | Is the issue serious enough to merit attention?        | • This is where assessment of the consequences of the wrong doings to the organisation, client and/or the public is made. If it is serious enough then WB consideration is heightened |
| 3     | Reality Check- I am really correct?                    | • At this stage the whistle blower wants to be sure that his/her facts are correct. Crosschecking with colleagues and relevant documents may be necessary at this point |
| 4     | Becoming aware of the big picture: Are there other intervening persons that will moderate the act? | • This is where other decision levels and the strategic intent of the organisation is assessed in the light of the wrong doing |
## Stages of Whistle Blowing Cont-----

<table>
<thead>
<tr>
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<th>Have you exhausted internal opportunities to resolve the issue?</th>
<th>• This is where management attention is drawn to the problem. This can even get as far as the Audit Committee of the Board</th>
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<tbody>
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<td>5</td>
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<tr>
<td>6</td>
<td>Is it really clear that the Management is aware of the wrong doing and they do not want to do anything about it?</td>
<td>• This is time to Blow the whistle to bodies outside the organisation that can bring pressure for corrective action-media, regulators and legal authorities</td>
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<tr>
<td>7</td>
<td>Living with the result: Where do I go from here?</td>
<td>• Be prepared to face the consequences of retaliation- dead end posting, resignation and /or downright firing.</td>
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Benefits and Importance of whistle Blowing

• It leads to stoppage of unethical businesses with all the harm it poses to the society
• It proactively prevents corruption and unethical practices
• It promotes public good and saves society from all sorts of malpractice, some of which include:
  • Dumping of toxic waste
  • Dealing on fake and adulterated drugs
  • Padding an expense report
  • Violating laws about hiring and firing
  • Violating laws about workplace safety
  • Violating health laws which lead to documented illness and even death
• It facilitates the work of an auditor by making an auditor pay close attention to the facts behind the figures and unravel malpractices
Benefits and Importance of whistle blowing- statistical evidence

• ‘Who Blows the Whistle on Corporate Fraud?’ (2008), Dyck et al report that 18.3% of the corporate fraud cases in large U.S. companies between 1996 and 2004 were detected and brought forward by whistle-blowers.

• A 2007 survey by KPMG, indicates that out of 360 instances of fraud in organizations in Europe, the Middle East, and Africa, anonymous tipping by whistle-blowers was the main source of detection.
Risks Associated with Whistle-Blowing

• **Individual whistle Blower**: The personal risk and cost of whistle blowing according to Curtis (2006) includes:
  
  “form of refusal of pay increases, unfair performance reviews, lack of peer support (e.g. ostracism), transfers to undesirable posts or jobs, and possible firing.”

  – **Denial of incentives and unfair performance appraisal**: Most whistle-blowers often get biased appraisal report and denial of performance incentive

  – **Transfer to career dead ends**: In most cases, whistle blowers get posted to less desirable work stations far away from the mainstream activities where they will see less and barely nothing to report(whistle blow) on
Risks Associated with Whistle-Blowing

--cont

- Ostracism: This is rejection by colleagues and/or those in authority with disastrous consequences:
  - David Kelly, a biological weapons inspector for the British Government, disclosed information that Iraq did not have weapons of mass destruction (Philp, 2007). The British Government publicly dismissed his claims and he committed suicide soon after.
  - Another example is the case of Dr. Jeffrey Wigand, a researcher at Brown and Williamson Tobacco Corporation, who in the 1990s disclosed that the US tobacco authorities were not honest about the lethality and addictiveness of tobacco, as they manipulated nicotine levels to keep smokers hooked to cigarettes (Miceli, 2004). Wigand suffered significant emotional stress including a lawsuit for breach of confidentiality, loss of income and personal threats as a result of the incident.

- Loss of job: To some organisations there is no need keeping a whistle-blower in their employ so they will frustrate him/her out of the organization.

- Threat to life: In societies with less effective security agencies, threat to life and possible assassination may befall a whistle blower (Dele Giwa)
Risks Associated with Whistle-Blowing--cont

• **Loss of income and time in case of litigation.** There is always the likelihood of refusal and denials of the act of wrongdoing on the part of the culprit that will naturally dovetail to litigation with the attendant unanticipated costs to the whistle-blower.

• **To the Accounting Firm:**
  – Potential loss of clients and by extension, business
  – Loss of reputation and in extreme cases, closure. i.e Arthur Anderson

• **Result & Consequences:** It is these personal and organisational costs that deter potential whistle blowers from doing it especially in societies such as ours where there is little or no legal and institutional protection and safety net for such a person
Hesitation to Blow the whistle: The ethical dilemma of the Whistle Blower

• A whistle blower is confronted by conflict of interest between loyalty and obedience to the “oath of secrecy and confidentiality” pledged to the employer or the audit professional code to protect the interest of the client and protecting public interest.

• Lennane (2012) calls it conflict between immediate authority (client and employer) and higher authority – concepts such as ‘truth’, ‘justice’, ‘public interest’ and God.

• Auditors are watchdogs to the society and not a part of it and as such should protect public interest over an above individual and sectional interest (Cullen, 1978; Porter, 1992)

• Unfortunately most professional auditors acquiesce to personal interest over public interest.
Personal and Contextual Factors that Influence Whistle Blowing

Personal Factors
- Personal Attitude
- Perceived behavioural control
- Commitment to independence
- Personal responsibility for reporting
- Personal cost of reporting

Contextual Factors
- Perceived organisation support
- Team based Norms and variable
- The effect /consequences to organisations
Personal and Contextual Factors that Influence Whistle Blowing

- **Personal Factors:** These are what Alleyne et al (2013) call ‘Antecedents’ comprising:
  - **Personal Attitude:** This is an individual’s assessment of the extent of approval or disapproval of a specific behaviour. This is mainly anchored on one’s belief of the behavioural consequences and evaluation of that consequences
  - **Perceived Behavioural Control (Self Efficacy):** This is the perception of how easy or difficult it would be to perform a specific behaviour. In theory of planned behaviour the greater the perceived behavioural control the higher the chances or likelihood of blowing the whistle.
Personal and Contextual Factors that Influence Whistle Blowing

- **Independence Commitment:** This is simply the intensity of an accountant’s belief in the accounting professional ethos of *Auditor independence*—described as the likelihood that an auditor will highlight any breaches and misstatements in the financial statements when discovered (DeAngelo, 1981), should be observed.

- **Personal Responsibility for Reporting:** These are factors (such as moral sense of right or wrong or demands of the office (role) or social responsibility) that make it obligatory for an accountant to report wrong doing. The higher an accountant sees whistle blowing as his personal responsibility, the more likelihood that he will indulge in it.

- **Personal Cost of Reporting:** This is the individual accountant’s assessment of the risk of reporting. This is inversely or negatively related to whistle blowing.
Contextual Factors that affect whistle blowing

- **Perceived Organisational Support (POS):** This is the employees’ perceptions of “the extent to which the organisation values their contributions and cares about their well-being.” (Eisenberger, Fasolo, & Davis-LaMastro, 1990, p.51).
  - The more the individual accountant feels that the organisation will support his/her intentions to report wrong doing the higher the chances that he/she will blow the whistle.

- **Team based Norm or Variable:** This is defined as “legitimate, socially shared standards against which the appropriateness of behaviour can be evaluated” (Chatman & Flynn, 2001, p. 956). Auditing is more of group and team activity and studies suggest that group decisions are superior to and sometimes colour individual decisions.
  - Why did no one within the audit firm of Arthur Andersen blow the whistle on the audit partner’s collusion with Enron’s management and subsequent decision to obstruct justice by shredding documents?
Contextual Factors that affect whistle blowing

- **Individual, firm and societal effects:** Whistle blowing has positive and negative consequences to society, the individual whistle-blower and his/her audit firm. Positive societal effects could include the reduction of the cost to society, resulting from loss of shareholders’ confidence and undermining of the capital markets, reduction of loss of jobs as a result of a closure similar to Enron, and also ensuring potential tax revenues to the government. Whistle blowing will flourish where the blower believes that it will lead to positive consequences to the firm, individuals and the society at large.
Country-Specific Factors that Influence Whistle Blowing

- **Absence of legislative and legal protection for whistle blowers.** The Whistle Blowers Protection Bill of 2011 to the best of my knowledge is yet to be passed and our judiciary is still far from being the last hope of the common man (when he blows the whistle).

- Nigeria, like most African nations, has polarised socio-economic environment characterised by unequal distribution of power and income. Such paternalistic system discourages subordinates from questioning authority (Park, 2003), and by extension discourages whistle blowing.

- Nepotism and ethnic cleavages which makes for covering the back of ‘your tribal man’ hinders whistle blowing. This is usually more in public service than in private sector.

- Absence of incentive for whistle-blowers: Most whistle blowers often get rejected by most persons in the society including their colleagues and even their family members. Sometimes the hunter turns out to be the hunted which discourages whistle-blowing.
Global legislation and policies in support of Whistle blowing

- **UK**: UK Public Interest Disclosure Act 1998 (PIDA) sections 2(1) and 3(1A) grant protection to individuals who make certain disclosures in good faith and in the public interest.

- **USA**: US Sarbanes-Oxley Act of 2002 (section 806) grants protection to employees of publicly traded companies against retaliation in fraud cases.

- **France**: France, Act nr. 2007- 1598 of 13 November 2007 (article 9) prohibits any discrimination against those who report or bring a witness report to an employer or to the authorities about corruption.

- **South Africa**: Section 3 of the Protected Disclosures Act, 2000, protects employees against any occupational detriment on account of making disclosure to the authorities or individuals.

- **Australia**: Australian Capital Territory Public Interest Disclosures Act, the New South Wales Protected Disclosures Act of 1994.
Global Legislation and Policies in Support of Whistle Blowing --Cont

• **Canada:** Public Servants Disclosure Protection Act of 2005.

• **Ghana:** Whistleblower Act (Act 720) of 2006.

• **Japan:** Whistleblower Protection Act of 2004.

• **Korea:** Act on the Protection of Public Interest Whistleblowers, 2011

• **New Zealand:** Protected Disclosures Act of 2000

• **Romania:** Whistleblower Protection Act (Law 571) of 2004.
  —‘Whistle-blower Protection Bill, 2011 has not been passed. ???
Criteria for Assessing the Effectiveness of Whistle Blowing

- **Public Interest Test:** Is the whistle-blower acting in the public interest?
- **Good Faith Test:** Is the whistle-blower acting in good faith?
- **Benefit of Doubt Test:** Has the whistle-blower exhausted internal channels before external sources?
- **Impact Test:** Does the whistle-blowing prejudice the ability of the whistle-blower to do their job?
  - undermine the ability of the office to perform its functions
- **Proportionality Test:** Were the actions of the whistle-blower proportionate to the public interest at stake?
  - release only of necessary information
  - release of information in appropriate public forum
Quote for Thought

- There are no easy answers but there are simple answers. We must have the courage to do what we know is morally right

» Ronald Reagan
Encouraging whistle blowing in Nigeria: Ways Forward

- **Whistle Blowing Hotlines**: Organisations that are serious should dedicate lines that can be used to blow the lead on malpractice. These lines should be such that the anonymity of the blower is protected;

- **Internet Platforms**: In this internet and information age, there is need to use dedicated platforms for whistle blowers to do anonymous unidentified but crucial whistle blowing. This is very important. There are basically two sites known for doing this: **Wikileaks** and **Adleaks**. Potential whistle blowers can use these platforms for virtual and internet whistle blowing where the risk of other forms of whistle blowing is very adverse.
Way Forward: On-line platform for Whistle Blowing

- **Passing of the Whistle Blower Protection bill of 2011**: There is need to pass this bill to give a legal teeth to whistle blowing protection in Nigeria. For this bill to be effective it should contain the following ingredients:
  - “Anti-retaliation”, focusing on creating and protecting individual rights, especially employment rights;
  - “Institutional” or structural approach focussing on making whistle blowing one of the responsibilities of staff in organisations;
  - A “public” or media-based approach focussing on recognising the value of free speech and open government; and
  - “Reward” or bounty approach (focused on incentivising, by compensating, whistleblowers and the private legal market to make whistle-blowing work) Dworkin and Brown (2013)

- **Motivating Whistle-blowers Through Incentives**: Whistle blowers should be encouraged through incentives.
Ways forward: Benchmarking Countries that use Incentives to Encourage Whistle-blowing

- **Use of Incentives to Encourage Reporting**

- **In the United States**, the False Claims Act allows individuals to sue on behalf of the government in order to recover lost or misspent money, and can receive up to 30 percent of the amount recovered. The Dodd-Frank Act also authorises the SEC to pay rewards to individuals who provide the Commission with original information that leads to successful SEC enforcement actions (and certain related actions). Rewards may range from 10 percent to 30 percent of the funds recovered.

- **Korean law** also provides monetary rewards for whistleblowers who disclose acts of corruption. The Anti-Corruption and Civil Rights Commission may provide whistleblowers with rewards of up to USD 2 million if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies. The ACRC may also grant or recommend awards if the whistle blowing has served the public interest. Indonesian law also makes provision for the granting of “tokens of appreciation” to whistleblowers who have assisted efforts to prevent and combat corruption.

  — **Source**: *United States False Claims Act and Korean Act on the Protection of Public Interest Whistleblowers.*
Specific Cases of whistle blowing
Intervention in organizations

Enron-Arthur Anderson Saga:

• In just 15 years, Enron grew from nowhere to become America's seventh largest company, employing 21,000 staff in more than 40 countries.
• The stock prices peaked at $90 per share in 2000
• However, the firm's success turned out to have involved an elaborate scam. Enron lied about its profits overstating it by almost $600 million over five years. and stands accused of a range of shady dealings, including concealing debts so that they did not show up in the company's accounts.
• As the depth of the deception unfolded, investors and creditors retreated, forcing the firm into bankruptcy, and share prices crashed from $90 to 67 cents in just few months
• Enron colluded with Arthur Anderson the auditing firm to conceal the shady deals and even shred the relevant documents when the SEC announced the commencement of its investigation
Enron- Anderson Saga cont---

• The whistle for this investigation was blown by MS Sherron S. Watson, Enron Vice President for Corporate Development who warned through a six-page memo to Enron’s Chairman Kay Lay of the danger that Enron was about to face. She got demoted as a result and she left her job.

• Consequences:
  – Enron's death through bankruptcy with the attendant loss of jobs and income
  – Huge loss of confidence in stock market prices and operations
  – Withdrawal of Arthur Anderson’ License as an auditing firm with dent to the accounting profession and loss of jobs and income

• All these would been prevented if the Auditors in AA had taken due diligence to do their jobs well.
Specific Cases of whistle blowing
Intervention in Corporate Nigeria

- **CADBURY Nigeria PLC**
- **Nature of Fraud:** “Overstatements of its Accounts” between 2003 to 2006 to the tune of **N13bn- N15bn.** The brain behind the falsification was the management team headed by Bunmi Oni to meet bloated targets
- **Who Blew the Whistle?** It is the general opinion that it was anonymous whistle blower that started it all when the Cadbury Schweppes UK upped its stake from 46% to 50% which caused them to embark on due diligence and employ the services of independent Auditor-Price Water Coopers (PWC) to confirm the fraud
- **Reactions:**
  - Mr Bunmi Oni, The Managing Director, and Mr Ayo Akadiri, the Finance Director, were relieved of their employment by the Board.
  - the Council of the Nigeria Stock Exchange barred the duo from running any publicly quoted company for life
Cadbury Plc Scandal Cont--

• Issues:
  – The consequential loss of investor confidence, share value and denial of dividends, most people believe that just sacking the MD and Finance Director is not an adequate punishment for the crime.
  – Another area that elicited concern was that nothing happened to the auditors or the audit firm that has been looking at the account of Cadbury PLC within the period of the overstatement Messrs- Akintola Williams Deloit
When whistle Blowing Goes Awry---CBN
Governor Sanusi and NNPC Saga

• **The Issue:** The accusation was that the management of NNPC did not remit $48bn to the coffers of the federal government

  – It came down to $20bn
  – It later moved down to $12bn
  – And finally rested on $10bn

  – This was explained as money spent on
    • Kerosene subsidy
    • FIRS first line charge
    • Expenses
When Whistle Blowing Goes Awry--- CBN
Governor Sanusi and NNPC Saga--Cont

• **Analysis:** This whistle blowing has a lot issues with it including the bad faith dimension:
  – NNPC does the crude oil marketing but the monies are kept with the CBN
  – Expenses are made by NNPC with the approval by the Ministry of Finance and released by the CBN
  – Periodic reconciliations are done by the three MDAs
  – As at the time of whistle blowing the reconciliation of facts were not fully done
  – The whistle was blown at the time the Presidency was under attack through open letter- showing bad faith
  – Evidently, the internal means of resolving the matter were not fully exhausted
  – The whistle blower was the person who should know better
When Whistle Blowing Goes Awry--- CBN Governor Sanusi and NNPC Saga--Cont

• **Conclusion:** This was one whistle blowing that went awry and advertently or inadvertently misled the public by someone who should have known better

• By the virtue of nature of the office of CBN Governor, the tendency for the unsuspecting public to believe the information without check is very high and that was what happened
Concluding Thoughts/Remarks

• A man (nation, people) dies when he (they) keep(s) silent in the face of tyranny or injustice

  – Wole Soyinka

• We should all rise and blow whistles to save our nation from sliding into the abyss of corruption and decay
Concluding Remarks

• The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.

• Martin Luther King, Jr.
References

• University of Toronto and The University of Chicago
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References ---Cont