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# EXAMINATION MALPRACTICE AND ACT 33 OF 1999

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## Abstract

*Examinations as generally observed provoke anxiety in students. Anxiety could either be positive or negative. The anxiety generated in students due to examination is a reflection of the effect of failure or otherwise in public examinations at the end of prescribed courses of study and this depends on how prepared such students are. In this paper, the issues of examination malpractice form the background of discussions. The paper reports the trends of examination malpractice and assesses the Act 33 of 1999 and its implications on examination malpractice. Relevant suggestions relating to implementation of the Act were made. These include strict application of the prescribed penalties on offenders by creating the enabling environment for the full implementation of the act as well as educating the various stakeholders on its essence in order to reduce such offences.*

## Introduction

A day could hardly pass without reading about the issue of morality in a newspaper or magazine or hearing news or stories of moral decadence exhibited either by the youth or adult Nigerians. Examination malpractice especially among the youths is spreading like hamattan fire. The news about this vice in our society is like that of HIV/AIDS disease that continuously kills people yet, all avenues to curb its spread continue to open doors for other vices. Why the malpractices? Why has the menace defied all known remedies? These and many other questions form the basis for carrying out this study.

Examination malpractice constitutes an offence under the Act 33 of 1999. If bodies established by government to conduct examinations in public schools at various levels contravene the provisions of the law the same way ordinary citizens do, then there is need to ask ourselves how do we institute legal actions on various forms of examination malpractice committed by our youths and adults?

Some concerned citizens have interpreted examination malpractice differently. Salami (1998) views malpractice as illegal or unethical behaviour by somebody. It means that an act is regarded as a malpractice when some of the examination rules are flouted for one reason or the other. In the definition above, one can deduce that examination malpractice

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involves a deliberate act of wrong doing contrary to official examination rules, and a design to place a candidate at an unfair advantage or disadvantage if the laws of the land are inappropriately utilized.

### **Trends in Examination Malpractice**

The first known examination malpractice in Nigeria occurred in 1914 during the years of Senior Cambridge Local Examinations Syndicate, about thirty-eight years before the establishment of the West African Examinations Council (WAEC, 1998). Aina (1997) stated that WAEC reported leakages of its papers in 1963, 1967, 1970, 1973, 1974, 1977, 1979, 1981, 1985 and between 1986-1990. However, examination malpractice existed at minimal and in simple unsophisticated forms in the earlier years but became more pervasive as from the 1970s. It must be noted that in the recent past, the incidence of malpractice was not limited to final examinations conducted by public examination bodies alone, it occurs in school assessment and this is carried over to external examinations especially the ones conducted for certificates or for admission purposes. The use of WAEC as sample here is necessary because it happened to be the first public examination body in Nigeria.

In 1977, the Justice Sogbetun Tribunal of Enquiry, set up by the Federal Government acknowledged the excessive workload of WAEC and consequently recommended that it be relieved of conducting five of its numerous examinations. Similar observations and reports upheld by subsequent panels of inquiry led to the establishment of other public examination bodies like NECO and NABTEB. The need to have uniform admission process to higher institutions of learning led to the creation of (JAMB) Joint Admissions and Matriculation Board which conducted the first (UME) Universities Matriculation Examination in 1978. In the past, few individual candidates perpetrated examination malpractice as "one man act" with simplistic methods. The current trend of examination malpractice and new cases that emerge are as a consequence of differences in the evaluation procedure and inconsistencies in application of the relevant laws regulating the educational system in Nigeria.

In 1995, the then Honourable Minister of Education, Dr. Iyochia Ayu, at the formal opening of the 42nd Annual Meeting of WAEC observed that:

*... the situation has in the last two or three years assumed a disturbing dimension, both internal and external and virtually every level, are now riddled with brazen acts of irregularity and malpractice. What is particularly worrisome is the deep involvement of individuals and groups, who traditionally would be expected to constitute the army against the vice. It is completely indefensible to find that school principals, teachers, examination officials, supervisors, invigilators, law enforcement agents, parents are deeply involved in aiding and abetting examination malpractice.*

This vice has become a common feature not only in examinations conducted by WAEC but but in other public examinations conducted by NECO, NTI, JAMB and NABTEB.

Recently, Onyechere (2004), the co ordinator of Exam Ethics Projects (EEP), a non-governmental organisation (NGO), charged the Nigeria Union of Teachers (NUT) and Teachers' Registration Council (TRC) to blacklist those who connive with students to perpetuate examination malpractices. The call came on the heels of cancellation of over 116,990 results of the University Matriculation Examination conducted by the Joint Admissions and Matriculation Board (JAMB) in 2004.

In terms of scope, the pattern and trend of this sophisticated vice adopted by the candidates and their agents can be deduced from the exhibits collected, which include dangerous weapons. Statistics have shown various forms of exhibit before, during and after the conduct of internal and external examinations. Studies show various types of examination malpractice during the conduct of examinations include bringing foreign materials into the exam hall; irregular activities inside or outside exam halls; collusion; impersonation; leakage or fore-knowledge; mass cheating; insult or assault on supervisors, invigilators and inspectors; new cases indicating provision made for emergent or contemporary types among others. Shonekan (1997) reported that students smuggle foreign items hidden in different parts of the body, such exhibits as handkerchief, shirts, waist slips, currency notes with copious notes and photocopies of prepared answers have been collected. Sometimes candidates bring in dangerous objects like daggers, axes, charms in part of the body to intimidate examination officers.

The strategies most prominent in the new trend of examination malpractice include involvement of parents in corrupting accredited examination officers; invasion of examination centres with 'mercenaries'; impersonation; award of scores to absentee candidates manipulation of photograph on the photo cards; substitution of scripts; printing and use of fake answer booklets; receiving gratification by the officers entrusted with the conduct of examinations; poor handling of examination materials; registering non-regular candidates as regular students in school examinations; engaging non members of staff of the designated examination centers as officials; use of handset to dictate answers to candidates; use of sophisticated communication gadgets to send answers into examination halls; and sending of fake Continuous Assessment scores by schools to examination bodies (Ojerinde, 1997, Usman, 1997, and Bunza, 1997). These strategies according to Adeniran (1997) also include refusal to submit answer sheets; sitting for examinations in wrong centres; and coming late to the examination centres. Bunza, (1997) revealed that apart from the above, multiple entries and certificate forgeries are becoming rampant. Another form of malpractice is impersonation especially in the GCE examinations. Shonekan (1997) reported cases where husbands and boy friends write examinations for their wives and girl friends respectively. In the light of the above disclosures on examination malpractices, there is need to examine the effectiveness of Act 33 of 1999 in curbing this social malaise.

### Act 33 of 1999 and Examination Malpractices

The need for solving the problem of examination malpractices and related offences led to the promulgation of Act 33 of 1999 to serve as deterrent to those who normally perpetuate this dastardly act. Section 19 of the Act defines examination as an examination conducted by a body statutorily assigned this role by government i.e. West African Examinations Council, Joint Admissions and Matriculation Board, National Teachers Institute, National Business and Technical Education Board, National Examinations Council and any other body established by the government to conduct examinations.

There are various forms of examination offences enumerated in the Act 33 and these include:

*Cheating at examinations; stealing of question papers; impersonating; disorderliness at examinations; disturbance at examinations; misconduct at examination; obstruction of supervisor in carrying out his duties during examinations; breach of duty during examinations; conspiracy to cheat; aiding and abetting examinees to cheat; and other related offences.*

The Act stipulates that for very many offences committed by a person of age of 18 years and above, a fine up to N100,000 or imprisonment of a term up to 3 years or more would be applied. However, Part II (miscellaneous schedule) provides that when the person charged for any of the listed offences above is below the age of seventeen, he/she shall be dealt with under the provisions of children and young persons act. If the accused is a school principal, invigilator, supervisor, agent, custodian or employee of an examination body, he/she will be liable to imprisonment of a term of 4 or 5 years without an option of fine, or in any other case, liable to imprisonment of a term of 4 years without option of fine. It is remarkable that any of the listed offences above could be committed by individual or a groups. A critical look at the specified offences in the Act reveals that it has not taken care of some of the new forms of examination malpractice. Onyechere (2004) during an interview revealed that these forms of examination malpractice include test preparation; administration; external assistance; smuggling of foreign materials into the examination hall; copying; substitution of scripts; improper assessment; ghost centres; marking malpractice; forgery of certificates, among others. Act 33 of 1999 defines each of the offences as follows:

**Leakage:** It involves content of the examination or any part thereof being disclosed to candidates prior to time of taking examination. It may involve staff of the examination body, test developers and test moderators.

**Test Preparation:** Test preparation can be a malpractice if the students have access to the items or questions before taking the paper. Conventional test preparation including practices on parallel type papers or on copies of old papers do not normally qualify as

malpractice. Test preparation malpractice normally involves staff members of examination authorities and school administration. If a person is an employee of an examination body e.g. item writers who engage in test preparation malpractice are liable under section 1 sub-section 3 of Act 33 of 1999.

**Administration:** Examination malpractice at the administrative level involves an individual who is not registered as a candidate but takes the place of one that is registered. Usually it involves collusion with school principals and examination supervisors. Frequently it involves university students or teachers taking the test for monetary reward or as favor for a friends and acquaintances. Sometimes, young employees are coerced to take examinations for some other registered candidates. This has to do with impersonation under section 3 of Act 33 of 1999, which makes offenders liable to some penalty.

**External Assistance:** External assistance involves individuals who are not registered examination candidates but who give unauthorized assistance to registered candidates. This form of malpractice involves invigilators dictating answers, writing answers on the chalkboard, circulating sheets of worked out answers during the course of the examination, or acting as carriers of unauthorised materials into the examination centre. In some instances, external helpers have used pagers and phones to broadcast answers. This offence is a conspiracy that is liable under section 10 of Act 33 of 1999 and on conviction to the same punishment as prescribed for that offence under the act. Sections 5 (2), under 6 (2) list similar offences committed as disturbances hall and unruly conduct at examinations.

**Smuggling Of Foreign Materials:** This is perhaps the most common form of malpractice. It relates to the bringing of unauthorized materials (e.g. notebooks) into the exam hall Usually, only the candidates are involved but they are sometimes aided. Those involved are liable (section 1(a-d) of the Act.

**Copying:** - This is the reproduction of another candidates work with or without their permission. It usually involves only the candidate but can be facilitated by inadequate spacing between desks and poor test supervision. Those involved are liable in (section 1(a-d) of the Act.

**Intimidation:** - Examination officials and supervisors are physically threatened and intimidated to allow examination malpractices. This form of examination malpractice usually involves people seeking support for candidates. Candidates have also placed weapons in clear view of supervisors to intimidate them. This threat has always taken the form of bringing thugs to surround the examination halls or school premises. Those caught are liable under section 5 (1a&b) which states that:

*a person who, at or near an examination hall or any place appointed for an examination (a) has in his/her possession any offensive weapon or any other material on any other person; or (b) acts or incites any other person to act in a disorderly manner, for the purpose of disrupting the conduct of an examination or of harming, intimidating, assaulting, or obstructing any person involved in the conduct of the examination, commits an offence.*

**Substitution of Scripts:** - This is replacing answer sheets handed out during the course of the examination with one written outside the designated centre before, during or after the examination. This usually involves supervisors, invigilators and sometimes teachers working outside the examination halls. This offence as stated in Section 12 of the Act is categorized under offences by bodies corporate, is deemed to have been committed when:

*...on the instigation or with the connivance of; or be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he/she as well as the body corporate, where practicable shall be deemed to have committed that offence and shall be prosecuted and accordingly punished"*

**Improper Assignment:** - Deliberate placing of candidates in a centre under the supervision of corrupt officials. This is where causes are established by corrupt examination officials where examination are taken with the help or the support of helpers and without supervision. This is punishable under section 9 of the Act with a fine not exceeding N50,000.00 or imprisonment for a term not exceeding 3 years or both due to breach of duty.

**Ghost Centres:** - Fictitious examination centres established by corrupt examination officials where candidates can complete the examination with the support of helpers and without supervision; this is like an external assistance, thus an offender under the Act. It is also regarded as act of conspiracy under Section 10 of the Act.

**Marking Malpractices:** - Deliberate alteration of marks designed to inflate or deflate a candidates original mark. This can be initiated by examination officials or candidates making contact with the examination or markers making contact with the candidates. Any person *who forges or fraudulently or without lawful order, alters or in any other way tampers with*, the scores of a candidate as contained on a result slip has committed an offence called marking malpractice.

**Deliberate Enhancement of Initial Award and/or Certificate:** In the past, it was confined to examination officials, but in more recent years, printers and candidates with high-level skills in technology perpetrate this malpractice. The Act states that any person *who forges; or fraudulently or without lawful order, alters or in any other way tampers with*, the scores of a candidate as contained on a result slip or certificate duly awarded by an examination body, commits an offence. Section 8 stipulates the offence punishable under subsection (1) is liable on conviction. Of recent, WAEC published the serial numbers of certificates that had no pictures embossed on them or got missing at its head office (certificate racket!). However, in spite of the definition of these forms of malpractices and the subsequent prescription of penalties appropriately, little is known to have been done to enforce them beyond measures taken internally by examination bodies to check malpractices like withholding and outright cancellation of results.



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### Post Act Era: Some Findings

Odesola (2004) reports that 65% of students admitted for professional courses such as medicine, pharmacy, engineering and architecture were aided through examination malpractice. This effectively made it impossible for normally brilliant students to be admitted on merit, hence the continued decline in the performance of the admitted students. Soyombo (2004) also reported that some forms of malpractice are beyond the control of the students. For example, while paying for WAEC or NECO, some school authorities require candidates to pay additional amount of money for assistance during examinations. Some parents are informed in advance to co-operate so that their children can make their papers at one sitting. The school teachers are employed to provide answers to candidates during examinations and the results are near hundred percent success. This is an offence often undetected and so unpunished. This form of examination malpractice had encouraged movement of students from urban to rural areas in search of success at all costs. Ochoga (2002) stated that the migration is a business galore for the proprietors/principals who exclusively live by the dictum *you can only get what you want by allowing others to get what they want*. This symbiotic arrangement, according to Ochoga, is consummated between proprietors and urban-rural migrants intending to write examinations. Students under strict confidence give their proprietors "public relations" or "settlements" to be extended to the unscrupulous examination supervisors to secure the required "assistance" during examinations.

Some officials of examining bodies who are more interested in how much they can make through this scandal concentrate on the sumptuous meals prepared for them while fraud is perpetrated in the examination halls. For UME some officials collect their "settlements" in advance and employ their teachers to be used to perpetrate malpractices in their respective centers. Another point worthy of mention is the culture of "powerful forces" stepping in to plead on behalf of cheats for assistance to the latter. Report by Guardian (2004), states that examination bodies like JAMB, WAEC, NECO, etc. have applied various measures under the law of the land to minimize cheating or deal with erring candidates and officers but suggests that a lot still need to be done internally to checkmate some unscrupulous persons who still change the scores of some candidates. Similar reports of measures taken and constraints in applying the law of the land by WAEC were also given by Badekale (2001).

It must be noted that any of the listed forms of malpractice could lead students or agents to bring foreign materials to examination halls, and would cause such irregular activities in and outside examination hall like collusion, impersonation, insult/assault and mass cheating. As part of special device to perpetrate malpractice, Olubusuyi (2004) observed how thriving the business is when he states that *at special centres and schools in remote areas, the perpetrators pay the contractual obligations beginning from N15,000.00 and above*. Recent WAEC report shows the increase on yearly basis of cases of irregularities in examinations. Uwadiae (2003) reported that there are cases involving 817,273 in May/June and 697,736 in Nov/Dec. 1999 while 1,215,832 were involved in May/June and 1,094,919 in Nov./Dec. 2002.

### Checking for Examination Malpractices

Reasons for malpractices have been investigated and reported by some concerned individuals. Some of the reasons that have been advanced for examination malpractices among other are high stakes of examinations; teacher and school status; personal factors; quota system; inadequate school facilities and teacher inadequacy; inadequacies in government regulations; location of examination centers; low teacher salary and inadequacy in public examination preparation.

Experience has shown that most malpractices probably go undetected. Supervisors, and examination board officials provide much of the assistance for malpractices. Assistance is also provided by candidates who witness malpractices and from others disillusioned by the failure of bribed officials to deliver the expected level of support. However, Uwadiae (2003) observed that the various devices put in place to stem the ugly tide appear not to be achieving the desired result. Despite the sanctions by various examining bodies, the situation is still on the increase. What must be done, therefore, to put an end to this ugly situation?

**Prior to examination:** The following measures should be tried in order to stem this ugly tide of examination malpractices in the Nigerian education system:

1. Ensure that only properly registered candidates sit for examinations.
2. Ensure that candidates submit clear photographs at the time of registration that must be checked against the candidates' persons during the examination.
3. Request thumbprints on registration forms and on scripts during examinations which should be confirmed and found valid before the marking exercise.
4. Strict enforcement of not allowing a student in the examination hall as stated in Section 12 of the Act after the 30 minutes grace granted to late comers.

**During the examination:**

1. There should be more frequent unannounced visits to examination centers by officials of examining bodies.
2. Supervisors of proven integrity who are not from the areas of their jurisdiction should be used for the various examinations.
3. Security personnel should be given all the necessary mandate to enforce the rules and regulations.
4. Prohibit the use of electronic devices such as cellular phones and pagers.
5. Public examination bodies should apply the relevant laws with regards to penalties and promptly as stated in Act 33 of 1999.

**Immediately after the examination:**

1. Presence of unauthorized materials among the candidates' scripts should be recorded and the candidates penalized accordingly.
2. Presence of neatly written materials unrelated to examination questions in the middle of hurriedly written materials should be detected by the markers and reported to

3. Answers written on papers other than the one provided should be discountenanced.
4. Well-written answers with only few errors should be properly examined to find out if they do not arise from malpractices and if they are, those involved should be found out and punished appropriately.
5. Well-written answers with few errors along side hurriedly written answers with many grammatical and syntactical errors should be pointers to acts of examination malpractices.
6. Identical mistakes and peculiarities in scripts of candidates sitting close to each other show involvement in examination malpractice and then appropriate section of the Act applied accordingly.
7. Identical, but statistically unlikely patterns or response in correct and incorrect answers of candidates sitting close to each other in multiple-choice examinations are pointers to malpractices and should be so treated as stipulated in the Act.

**Marking of examination scripts:** After results and certificates may have been issued

1. Any evidence that persons other than the candidates have used certificates should be investigated and dealt with in accordance with the Act.
2. Inability of the person seeking a copy of a certificate some years after the examination to provide personal information that had been recorded on the registration form should result in the forfeiture of the certificate.
3. For JAMB examinations, the higher institutions of learning should conduct another qualifying examination to checkmate the fraudsters.

#### **Hinderances to the application of the law**

1. In many instances, examination authorities have little legal or political backing to punish offenders irrespective of their class or status.
2. Where the necessary legislation is in place, police and judicial authorities may either be corrupt or are unwilling to enforce the law.
3. The political will to enforce the law is not present.
4. Politicians who help appoint officials for examination authorities may seek "favors on behalf of constituents". They are unlikely to support tough measures to promote the integrity of the examination system.

#### **Conclusion and Recommendations**

From the above, it could be concluded that the problem is not the inadequacy of the provision of the Act. Rather, it is lack of proper implementation of these provisions. It was discovered during the course of this study that the major penalties meted out to examination fraudsters were mainly internal and they were withholding and cancellation of results, but there were few cases of the application of the provisions of the law to erring candidates and other collaborators.

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Penalties to discourage malpractices have been features of public examination system in the sixteenth and seventeenth century in China. Such penalties included death penalty, confiscation of property and exiles for corrupt examination officials. The provision of death sentence here is an indication that examination malpractices are not new globally. Therefore, if similar measures particularly as enunciated in the Act on this malaise are implemented religiously, the vice could be reduced to the barest minimum.

It is certain, therefore, if properly applied, the law could serve as deterrent to prospective examination fraudsters, be they parents, students, examination officials, invigilators, principals and teachers. The following measures, some of which have been applied elsewhere, may serve as solutions to examinations malpractices if properly applied in Nigeria:

1. Slightly higher salaries for examination officials than personnel in comparable levels in the government as is done in Uganda.
2. Each person who sets questions should be made to set only one of many.
3. Use of more secure printers outside of the country, as is the case in Kenya and Zimbabwe.
4. Entrust the typing of the entire examination to one typist or company as it is done in Ethiopia.
5. Hold key officials, e.g. items writers and printers incommunicado until after the examinations have been administered (as done in Sri Lanka and in the Philippines)
6. Withhold part of payment to printer to see if leakage can be attributed to that source as done in the Philippines.
7. Take out an insurance policy to cover the cost and other implications of leaked papers.
8. Provide secure packaging (sealed envelopes within metal or wooden boxes for storage of papers)
9. Enlist the support of other government agencies to facilitate delivery and collection of materials.
10. Insist that all packages of sealed envelopes be opened and sealed in front of candidates.
11. Recruit supervisory staff from a school other than that in which the examination is being held.
12. Ensure that candidates sitting close to each other are presented with different versions of multiple-choice papers as practiced by JAMB.
13. Prevent unauthorized access to the examination centres prior to and through exam season.
14. Give magisterial powers (including the right to arrest) to examination board officials.
15. Conduct frequent and unannounced visits to centres.
16. Remove candidates' names from scripts and replace with identification numbers. In some cases, other numbers replace original identification numbers i.e. (fictitious roll numbers) and a record of the matching numbers is stored on computer file as Lahore Board in Pakistan. At the end of the marking process the original and substitute numbers are matched.

17. Reduce human access (and the possibility of interference with marking and / or data entry) by using technology in the form of optical scanners and computers. Other forms of technology, especially pager, and cellular phones pose new threats to examination integrity.
18. Increase transparency in the administration of the public examination system.
19. Publish evidence of wrongdoing and application of legal sanctions for any malpractice.
20. Encourage political and civil leaders to speak out in favor of creating a public examination system that is administered by adequately qualified people and according to accepted rules, that is devoid of external interference and that has the confidence of the public.
21. National and international examination boards and organizations should share information on new threats to examination security and on procedures for counteracting examination malpractice.

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