

A CASE FOR THE FUSION OF ANTI-GRAFT AGENCIES IN NIGERIA

Abstract

This paper interrogates the existence of several agencies in Nigeria and makes a case for the fusion of all anti-graft agencies in Nigeria as it is in some other developed countries in the world such as Singapore and Hong Kong. The paper further highlights the advantages of such a fusion with a conclusion and recommendations.

Keywords Fusion, Anti-Graft Agencies, Nigeria

1. Introduction

The paper begins with a comparative analysis of the success of both the Singapore and Hong Kong anti-graft agencies vis-a-vis the challenges faced by the Nigerian anti-graft agencies.

2. Comparative Analysis of the Single Anti-Graft Agencies in the Examples of Singapore and Hong Kong

The now-prevail idea of moving core anti-corruption functions such as investigation and prevention into a single powerful agency first gained prominence in Singapore and Hong Kong. The both countries have attributed the need for a single anti-corruption to the centralization of information and intelligence and the reduction in coordination problems that often arise in multi-agency approaches. In lieu of the aforesaid a review of the experience of Hong Kong's Independent Commission against Corruption (ICAC) and Singapore's Corrupt Practices Investigation Bureau (CPIB) is imminent.

3. Singaporean Corrupt Practices Investigation Bureau (CPIB)

The Singaporean Corrupt Practices Investigation Bureau (CPIB) is one of the oldest ACAs in the world, having been established in 1952. The CPIB is designed to investigate and prevent corruption in the public and private sectors, to investigate allegations of corrupt practices and misconduct involving public officers, to prevent corruption by recommending changes to public service procedures that create opportunities for corruption in government agencies, and to spread anti-corruption messages through public education and community outreach programs.¹ However, the CPIB had a small staff of civilian investigators and senior seconded police officers when it was formed in October 1952 and encountered many problems during its early years because the 'anti-corruption laws were inadequate' and 'hindered the gathering of evidence against corrupt individuals.' Consequently, the CPIB was ineffective during its first eight years because it lacked staff and enforcement powers to perform its functions effectively.² Accordingly, the government initiated a comprehensive anti-corruption strategy in June 1960 by enacting the Prevention of Corruption Act (POCA) and strengthening the CPIB to reduce the opportunities for corruption and increase the penalty for corrupt behaviour if one is caught.³

Furthermore, to ensure the POCA's continued effectiveness, the government has introduced whenever necessary, amendments or new legislation to deal with unanticipated problems or to plug legal loopholes. For example, in 1966, the POCA was amended so that, according to section 37, Singapore citizens working for their government in embassies and other government agencies abroad would be prosecuted for corrupt offences committed outside Singapore and would be dealt with as if such offences had occurred within Singapore. Under the Prevention of Corruption Act, any person convicted of an offence is liable to a fine of up to \$100,000, imprisonment for up to five years, or both. Where the offence involves a government contract or bribery of a Member of Parliament, imprisonment may be extended to seven years in order to increase the POCA's deterrent effect. The Corruption (Confiscation of Benefits) Act was enacted on March 3, 1989 to

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¹ P. Meagher, 'ACAs: Rhetoric Versus Reality' (2005) Vol. 8(1) *The Journal of Policy Reform*, 69-103

² CPIB. (2010) 'Our History: Stamford Road Days (1962-1984).' Available at http://app.cpiib.gov.sg/cpiib_new/user/default.aspx?pgID=126 Last accessed 13 March 2018

³ S.T Quah, 'Combating Corruption Singapore-Style: Lessons for Other Asian Countries' (2007) *University of Maryland series in contemporary Asian studies*, 56.

enable the court issue a confiscation order against a deceased defendant⁴. The CPIB enforces the POCA by performing these three functions: (1) receiving and investigating complaints concerning corruption in the public and private sectors; (2) investigating malpractices and misconduct by public officers; and (3) examining the practices and procedures in the public service to minimize opportunities for corrupt practices⁵.

Notably, as part of its preventive function, the CPIB is also responsible for screening candidates selected for positions in the civil service and statutory boards to ensure that only those candidates without any taint of corruption or misconduct are actually appointed.⁶ The Act also empowers the Court to order bribe receivers to pay a penalty equal to the amount of bribe received apart from punishment in the form of fines and/or imprisonment terms. Apart from criminal sanctions, the Prevention of Corruption Act also provides for recourse to civil suit for recovery of bribe monies in addition to criminal prosecution. This was tested in the court when the CPIB had prosecuted a facilities manager in a large private company for corruption. He took bribes of almost \$300,000 in return for awarding contracts. He was convicted and sentenced to 10 months' jail and ordered to pay to the State a penalty of about \$300,000, equal to the amount of bribes he had pocketed. After the prosecution was over, his company brought a civil suit against him to recover the amount of bribes he had accepted whilst employed by them. The accused appealed to the court against this, stating that since he had been ordered to pay back the penalty, he cannot be asked to pay twice, and on this second occasion through the civil suit. The Court of Appeal dismissed his appeal stating that the law expressly provided for two distinct provisions - a criminal proceeding to disgorge benefits and civil proceedings to recover the bribe monies-and therefore it is possible that there can be a double disgorgement and it can act as a further deterrence against corruption. This sends the message very clearly to corrupt offenders that they will be made to pay heavily for their corrupt activities. The CPIB has grown by nearly 19 times from its original staff of 5 personnel to its current size of 93 members. Its budget has also been increased by almost 20 times from S\$1,024,370 in 1978 to S\$20,094,000 in 2010.⁷ In terms of organizational structure, the CPIB is divided into the Operations Division and the Administration and Specialist Support Division. In July 2004, the CPIB upgraded its Computer Information System Unit with the formation of the Computer Forensic Unit to improve its investigative and evidence gathering capabilities.⁸ The CPIB has also adopted a 'total approach to enforcement' by dealing with both 'big and small cases' of corruption in both the public and private sectors, 'both giver and receiver of bribes' and 'other crimes uncovered in the course of [the] corruption investigation.'⁹

More so, the CPIB has an extensive outreach program and conducts the prevention and education talks for pre-university students, principals, and teachers, newly appointed civil servants, law enforcement agencies like the police and immigration, and the management and staff of major organizations in key industries. The CPIB's activities are not without checks as their activities are reviewed by the Anti-Corruption Advisory Committee (ACAC) and the Anti-Corruption Review Committee (ACRC), both of which are staffed by senior civil servants. Although the CPIB has been under the prime minister's jurisdiction, it has not hesitated to investigate all allegations of corruption against political leaders and senior civil servants in Singapore as the government is committed to curbing corruption. Four leaders and three senior civil servants were investigated for corruption by the CPIB.¹⁰

The CPIB's success has attracted worldwide attention and it has received many visitors from other countries. It also conducts anti-corruption training courses for civil servants at various levels in Singapore with the Civil Service College. In 2007, the CPIB conducted talks for 7,000 persons and hosted 2,000 foreign visitors.¹¹ Worthy of mention is the fact that the government of Singapore has continually expressed its political will towards the CPIB and has always received the full backing of government regarding its funding,

⁴ S.T Quah, Jon. 'Curbing Corruption: The Elusive search for a cure' (2006) Vol.66, No.6 *Public Administration Review*, 937-941

⁵ Ibid

⁶ Ibid

⁷ Republic of Singapore. (2010). The Budget for the Financial Year 2010/2011. Annex to the Expenditure Estimates. Singapore: Budget Division, Ministry of Finance.

⁸ J.S.T. Quah, 'Taiwan's Anti-Corruption Strategy: Suggestions for Reform' (2010b) *University of Maryland series in contemporary Asian studies*, 94-111

⁹ S.K. Hean. 'Corruption Enforcement' (Paper presented at the Second Seminar of the International Association of Anti-Corruption Associations, Chongqing, China, May 17-18 2008).

¹⁰ Ibid

¹¹ Supra

personnel, a mandate to freely investigate, the legal powers to do its job, and non-interference in the bureau's activities¹². However, Singapore is said to have used her legal structures to provide some limitations to political interference.¹³ Howbeit, Singapore is widely recognized as a country with zero-tolerance for corruption. The Transparency International Corruption Perceptions Index 2017 ranked Singapore as the 6th least corrupt country in the world¹⁴. This goes to show the level of success its single anti-corruption agency has attained and this system has been emulated by several states. In 2014, 148 private individuals were prosecuted and 20 public employees and 2015 witnessed a reduction to 119 private individuals and 11 public employees whilst in 2016, 100 private individuals were prosecuted in Court for offences investigated by the CPIB, and only four public employees were prosecuted in Court. Thus, the number of prosecuted public employees remained low at an average of less than 10% for the last three years (2014, 2015 and 2016) unlike Nigeria where the reverse has always been the case. And their conviction rates are 96, 97 and 100 percent in 2014, 2015 and 2016 respectively. This is indeed enough reason for Nigeria to tow same line of a single and independent Anti-corruption Agency.

4. Hong Kong's Independent Commission against Corruption (ICAC)

Hong Kong was definitely one of the most corrupt places on earth in the 1960s and early 70s. Corruption was widespread and regarded as a 'way of life'¹⁵. It existed 'from womb to tomb'. Corruption in the public sector, particularly the law enforcement agencies were well organized and syndicated, hence making a mockery of the criminal justice system. As a taxi-driver, you could even buy a monthly label from the corrupt syndicate, stick it on your taxi, and it would guarantee you from any traffic prosecution during that month! Such was the scale of open corruption in Hong Kong.¹⁶ However, Singapore's approach in fighting corruption by relying on a single Anti-Corruption Agency (ACA) known as Corrupt Practices Investigation Bureau (CPIB) was adopted by Hong Kong on 15 February 1974 after a study team of Hong Kong civil servants visited Singapore and Sri Lanka in 1968 to study their anti-corruption laws to help grapple corruption problems. This led to the establishment of the Independent Commission Against Corruption (ICAC), and within five years after its establishment all the overt and syndicated corruption was eradicated and now Hong Kong is regarded as one of the most corruption-free societies in the world¹⁷. The Hong Kong scenario demonstrates that corruption can be effectively controlled, no matter how serious and widespread the problem is.¹⁸ The Hong Kong ICAC has been the focus of much attention from countries as diverse as Australia and Botswana, for more reasons than its operational success. Its relative freedom from internal corruption, ability to attract widespread public support, apparent capacity to fit into a heterogeneous society with several strong cultural imperatives, as well as its ability to work across both the public and private sectors, have also made it a popular model.

The ICAC's powers include extensive investigative search and seizure powers, the power to restrict the disposal of property by anyone subject to an investigation, to obtain restraining orders to seize passports (with an order from a magistrate), to search bank accounts and to hold and examine business and private documents. One of the more controversial aspects of this legislation is that, for certain offences, the onus rests on the defendant to prove her/his innocence. For example, the Prevention of Bribery Ordinance reverses the traditional presumption of innocence until proven guilty. In terms of Section 10(1), the defendant is guilty of an offence unless s/he can give a satisfactory explanation of the source of additional funds or assets. There is thus no need for the ICAC to establish that bribery or corruption has occurred, or for a *prima facie* case to be established. At present, the ICAC's independence is guaranteed in the sense that it is a structure independent from the public service with the control of its own budget, powers and functions statutorily determined.

¹² L.H. Loong, Prime Minister's Office of Singapore: Speech by Prime Minister at CPIB's 60th Anniversary Celebrations, (2012). Available at <https://www.pmo.gov.sg/newsroom/speech-primeminister-lee-hsienloong-cpibs-60th-anniversary-celebrations>

¹³ J.S.T Quah, 'Singapore's Corrupt Practices Investigation Bureau: Four Suggestions for enhancing its Effectiveness' (2015b) *Asian Education and Development Studies* 4(1), pp. 76-100.

¹⁴ Available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table Last accessed 12 march 2018.

¹⁵ http://www.kwok-manwai.com/articles/Comprehensive_Effective.html Last accessed 12 march 2018

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *ibid*

Additionally, Hong Kong's ICAC adopts a three-pronged approach: deterrence, prevention and education. As a result, the Commission consists of three separate departments : the Operations Department to investigate corruption and to prosecute the offenders: the Corruption Prevention Department to examine the systems and procedures in the public sector, to identify the corruption opportunities and to make recommendations to plug the loopholes; and the Community Relations Department to educate the public against the evil of corruption and to enlist their support and partnership in fighting corruption. Yet, there exists checks and balances to oversee the activities of the aforementioned departments which are the Operations Review Committee, Corruption Prevention Advisory Committee and Citizens Advisory Committee on Community Relations. There is also an Internal Complaints Committee on Corruption, which looks into ICAC actions. The fight against corruption by the ICAC has attained immeasurable success and could be highlighted *inter alia* as follows: It eradicated all the overt type of corruption in the Government. Corruption now exists as a highly secretive crime, and often involves only satisfied parties. Citizens rarely suffer from extortion by government officials. Amongst the first in the world to effectively enforce protection against private sector corruption, providing an excellent business environment for Hong Kong and a level playing field for all investors. Changed the public's attitude to no longer tolerate corruption as a way of life, and support the fight against corruption by not only reporting corruption willingly, but also be prepared to identify themselves in the reports. Before the ICAC was set up, most corruption reports were anonymous. Now more than 75% of the reports come from non-anonymous sources. Notably, the success of the ICAC is evident in its level of convictions; in 2016 191 prosecutions were completed with 141 successful convictions whilst in 2017 the number of complete prosecution reduced to 176 with 140 successful convictions.¹⁹ Finally, the success of the ICAC in Hong Kong is recognized world over and is evident in world surveys on corruption. To this vein Transparency International Corruption Perceptions Index 2017 ranked Hong Kong as the 2nd least corrupt country in Asia and 14th least corrupt country in the world.²⁰

5. Minute Convictions Recorded by the Independent ICPC AND EFCC

Unlike the immense success by Singapore's CPIB and Hong Kong's ICAC, Nigeria's ICPC was reported to have secured merely 11 convictions out of 70 corruption related cases it filed emanating from a total of 1,569 petitions in 2016.²¹ The EFCC on the other hand made known the fact that 43 high profile corruption cases involving at least 16 ex governors have lingered in court since 2007 till the date the said report was made (2016).²² The acting chairman of EFCC Ibrahim Magu was reported to have said 'if there is no synergy among the anti-graft agencies, little or no success can be achieved'.²³ However, these writers are of the opinion that an amalgamation of the various anti-corruption agencies would be more efficient than a synergy between them which would be a difficult one to come by.

6. Inadequate Funding

Over the years the funds allocated by the federal government for the fight against corruption has always been inadequate. In 2016 the sum of N18.8 billion was released to EFCC for the fight against corruption and was reduced to N17 billion in 2017.²⁴ Although this amount remains inadequate yet are mismanaged by the agency. From its N17billion allocation the commission budgeted only N4.5bn for salaries and wages whilst it spent N212m on fuel and lubricants, N50m to purchase generators, N33m for their maintenance, N455m for new vehicles, N1.1bn to furnish its head office²⁵, and the list of frivolous spending continues²⁶. And little or nothing is left at the end of the day to tackle corruption. The ICPC on the other hand received also inadequate fund of N5.9bn and spent N48m on rent, N119m for vehicles, N18m on refreshment and N48m

¹⁹ Available at <http://www.icac.org.hk/en/rc/figure/prosecute/index.html> Last accessed 13 March 2018

²⁰ Available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table Last accessed 12 march 2018

²¹ Available at <https://www.premiumtimesng.com/news/top-news/223425-icpc-filed-70-cases-secured-11-convictions-1-569-petitions-2016.html> Last accessed 14 march 2018

²² Available at <http://www.thescoopng.com/2016/10/02/efcc-corruption-cases/> Last accessed 14 march 2018

²³ Available at <https://www.vanguardngr.com/2017/06/efcc-secures-340-convictions-6-months-magu/> Last accessed 13 march 2018

²⁴ Available at <https://www.premiumtimesng.com/news/more-news/224086-proposed-budget-efcc-2017-inadequate-magu.html> Last accessed 14 march 2018

²⁵ Available at <https://www.vanguardngr.com/2017/01/2017-justice-ministry-efcc-others-spend-n924m-new-cars/> Last accessed 14 march, 2018

²⁶ *ibid*

to buy power generating sets²⁷. Again little or nothing was kept to prosecute cases in court, whereas, Singapore's CPIB received an allocation of \$40m (N15bn) for approximately 7million against Nigeria's N17bn for a population of approximately 186 million. Hong Kong's ICAC on the other hand received an allocation of \$139m (N50bn) for a population of 8million. These data shows that the amount allocated to fight corruption in Nigeria is little or nothing considering her population.

7. Conclusion and Recommendations

Considering the immense success recorded in Singapore and Hong Kong, in their fight against corruption, by the use of a single anti-corruption agency, and also the scarce resources to adequately fund the multifarious anti-corruption agencies existent in Nigeria, the minute convictions secured by both the EFCC and ICPC, as well as the existence of these agencies with very little experienced staffers, it is the writer's opinion that the various agencies be amalgamated as it would ensure the availability of staffers, more convictions and adequate funding for an efficient anti-corruption campaign in Nigeria. Clearly, Nigeria has over the years been rated as one of the most corrupt countries in the world, as several studies have shown that corruption had become a norm in Nigeria. In lieu of this, president Olusegun Obasanjo sought reforms to ensure that corruption is reduced to the barest minimum, hence the establishment of both the ICPC and EFCC as anti-corruption agencies. However, after several years of their existence these institutions have failed to make as much impact as anticipated, thus, failing to justify their existence. Despite the efforts of the anti-graft agencies to investigate, arrest and prosecute corrupt elements within the government and civil society, corruption is yet to be abated, nor are there signs suggesting that Nigeria's corrupt politicians, public office holders and private individuals are going to be deterred. Rather, several challenges have surfaced which undercut the impact of these institutions. Notable among them, is the multiplicity of functions, fight for superiority, insufficient funding and manpower, legal loopholes in their establishing laws, and the minute convictions secured in their fight against corruption.

Considering the success attained in both Singapore and Hong Kong in their fight against corruption by the establishment of a single and independent anti-corruption agency, This writer is therefore of the opinion, that such model be adopted in Nigeria as it will resolve coordination challenges, centralize all necessary information, trained personnel and intelligence on corruption, reduce discrepancies between the budgets and resource wastages (rather than allocate funds for several anti-corruption agencies, an amalgamation would ensure maximum usage of such funds by a single anti-corruption agency), enhance decision-making process, as well as eliminating existing overlaps between the functions of anti-corruption agencies. Furthermore, an all-encompassing law vesting the responsibility of fighting corruption on a single anti-corruption agency be enacted. Also, the proposed Act should vest powers to prosecute corruption in both public and private sectors on the single anti-corruption agency. Also, sections like 61 of ICPC Act which provides that the consent of the Attorney General be sought before prosecuting a matter be repealed, in order to reduce the bureaucracy in prosecution. Also the new law should provide for training programs for the agency's personnel to ensure they acquire latest skills required to fight corruption. As an oversight, the new agency should be responsible for screening candidates selected for positions in the civil service, statutory boards and political appointments to ensure that only those candidates without a corruption record are actually appointed. The Act should also empower the Court to order bribe receivers to pay a penalty equal to the amount of bribe received apart from punishment in the form of fines and/or imprisonment terms. Also, the imprisonment terms for convicted corrupt offences should be increased so as to deter others. It is also worth recommending that a separate account be created for the established agency and the monies to be allocated should not be subject to the National Assembly As a form of checks and balance, a committee like the advisory council in Singapore should be established, in order to check, as well as streamline the activities of the proposed agency, so as to prevent an abuse of their functions. It is pertinent to state that if the fight against corruption must prevail then the immunity clauses on public officers as provided for in the 1999 constitution be repealed as it aids corruption in so many ways. Finally the need for separate courts saddled with the responsibility of hearing only corruption related matters cannot be overemphasized; this is so as to ensure corrupt persons are made to face their penalties as fast as possible, as it will also deter those of same corrupt thoughts.

²⁷ *ibid*