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An Examination of the Best Practices on the Independence of the Anti-Corruption Agencies in Hong Kong and Singapore: Lessons for Nigeria

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Abstract:

Anti-Corruption Agencies are great weapons in the fight against corruption. However in some countries, Anti-corruption agencies perform below expectation and as such leave much to be desired while in some other countries they perform with credible results. This paper looks at the Anti-Corruption Agencies in Honk-Kong and Singapore to discuss some of the practices that contributed to their success having drawn the yard stick set by The South African Constitutional Court on the Independence of Anti-corruption agencies. The paper then looks at the Nigerian experiences and uncovers the major drawbacks of its Anti-Corruption Agencies and what lessons Nigeria learn from.

Keywords: Corruption, anti-corruption agencies

1. Introduction

History has cited corruption as a problem encountered by most countries in the world. Many countries within their historical context have been battling with problems of ever-changing and evolving corruption from its simple and complex form to petty and grand. This is evidenced in various tribunals or committees of enquiry set up by different countries at different times in different countries to investigate and penalize the perpetrators. Corruption is a global phenomenon which has beguiled even the most developed countries in the world. The United Nations Convention on Anti-Corruption (UNCAC) of 2000, in Articles 5, 6, and 36 has enjoined all State Parties to it to make policies and legislations to combat corruption and to also establish Agencies that will serve as organs that will fight corruption in the States, the Jakarta Principles sets out standards for anti-corruption bodies' independence and efficacy. These agencies should be independent, provided with necessary resources and protected from influences by being armed with trained personnel. Since then, many Member Countries, including Nigeria, have established specialized Anti-Corruption Agencies (ACAs) with varying mandates. Some of these countries have a good level of success recorded, and some, like Nigeria, have recorded success stories that leave much to be desired.

One of the factors that determine the success of the ACA is the level of independence it has in performing its mandates. However, the level of independence that an ACA has also depends upon a number of factors, without which the value of the independence of the ACA is not worth more than the paper it is couched on. This paper aims to examine the independence of the ACAs in Nigeria based on the international best practices around the world and propose lessons that Nigeria can learn from.

2. Historical Evolution of Anti-Corruption Agencies

As earlier demonstrated, the struggle against corruption is not new. Countries around the world have faced the scourge of corruption, which has undermined economic development and even the distribution of social amenities and threatened human security. The history of the fight against corruption has occurred in 3 phases, which have seen the development of policies and frameworks and, later, the establishment of separate institutions targeted specifically to fight corruption: the ACAs.

The first phase is from the 19th century. The main drive during this period came from within the countries themselves. These countries have faced troubling issues of corruption as a social vice which was hampering economic growth. For instance, in Singapore, the organized crime of carting away Opium between police, locals and importers revealed a can of worms in the police sector, whose officers were highly corrupt¹. Other examples abound in the USA and South Wales. The 2nd phase came about in the 20th Century after the Cold War with many countries' urge for democracy. This phase saw a need for reform in public service and administration and, hence, a growing popularity for ACAs. In the early 90s, the United Nations and Western Development Agencies made recommendations that led to the enactment of rules and policies that brought about prevention techniques in public service and administration. The 3rd phase was the most impactful phase as it saw a lot of pressure mounted by the international organizations. At this point, the definition and understanding of corruption has broadened and was now not only seen as a mere criminal act but a serious issue that

¹ Quah "Defying institutional Failure: Learning from the Experiences of Anti-Corruption Agencies."

has multiple dimensions and detrimental impacts on states². This resulted in the formulation of the framework for the anti-corruption policy, and eventually, the United Nations Convention against Corruption was adopted in 2000. This Convention made it compulsory for every member country that has signed the convention to establish an Anti-Corruption Agency³.

The history of Nigeria cannot be divorced from corruption. The two have been joined in an unholy matrimony from the time the country earned its independence. The history of Nigeria is studded with tribunals and committees of enquiry looking into various acts of corruption from different regimes, both military and civilian. Some of the reports of investigation were forwarded to the then Government, and actions were taken, while some were futile exercises. Some of the culprits of corruption in public service were imprisoned, but eventually, the later Governments granted them state pardons. The result was that those culprits were seen to have been reinstated back to their offices; some had their seized assets returned to them when corruption reached its peak in the 80⁴s. Corruption that has sipped into party politics, civil service, military and even private sector got flooded in the 90s. Nigeria has become home to grand and petty corruption. Transparency International listed Nigeria as the 188th most corrupt country in the world.

By 2000, the stage was set for Nigeria to join the world at the international level to fight corruption. By 1999, it signed the UNCAC. In the year 2000, the Independent Corrupt Practices and Other Related Offences were enacted⁵. This Law established the Independent Corrupt Practices Commission (ICPC), which is mandated to fight corruption. The Act grants the ICPC Considerable powers for the investigation, arrest and prosecution of suspected persons.

Again, in 2004, the Economic and Financial Crime Commission (EFCC) was established. The EFCC is a Law Enforcement agency that investigates an inter-agency by nature comprising a twenty-two-member board drawn from all Nigerian Law Enforcement Agencies and regulators. These two Agencies have become the main ACAs in Nigeria⁶. Other anti-corruption

3. Anti-Corruption Agencies and Independence

Laws and policies are instrumental in the fight against corruption. These laws and policies are responsible for creating and establishing the National Integrity System (NIS) and the ACAs. The NIS comprises a body of organizations that have, among other mandates, also the mandate of preventing, resisting, and combatting corruption. These include the police, the office of the Auditor General, the Office of Accountant General, the office of the Attorney General, etc. All of these have mandates in their everyday affairs to detect and deal with corruption issues as they arise⁷. The ACA as an 'Integrity warriors⁸' is supposed to spearhead the fight against corruption in the state.

Anti-corruption agencies, according to De Sousa, are publicly funded bodies of durable nature whose specific mission is to fight corruption and associated crime and to reduce the opportunity structures favorable to its occurrence through preventive and repressive strategies.⁹

Anti-corruption agencies have also been defined as independent institutions located at arm's length from executive government institutions whose main function is to coordinate all activities geared towards the implementation of a country's anti-corruption strategy and to provide feedback for the redesign and improvement of that strategy¹⁰. An earlier definition of an Anti-Corruption Agency was advanced by one of the first OECD reports as a permanent agency whose primary function is to provide centralized leadership in one or more of the core Anti-Corruption activities, including policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation and prosecution¹¹.

From these definitions, certain features of an ACA can be deduced that pertain to the design and where the ACA should be placed within the government system, i.e., its location. Both the design and the location of the ACA in the structure of the government system give an idea about the functions of the ACA and its level of independence. Independence of ACA means the least political interference in the appointment of authorities, implementation of functions and decision-making, and financial ability to stand and not limp, referring to the inability of the government to constrict the ACAs' budget¹². Hence, the independence of ACAs ideally should be political, financial and operational in nature¹³.

From the above definitions stated, some of the key features of an ACA are suggestive that:

- They are permanent or durable
- Distant from the executive

² Ibid

³ Art 6 UNCAC

⁴ Micheal M.O "Political leadership in Nigeria since 1960: a socio-Economic Analysis" in Journal of Nigeria Studies vol.1 no.2 2012.

⁵ Corrupt Practices and Other Related Offences Act, no 5 of 2000

⁶ At the state level, the PCACC in Kano state pioneered this course with Oyo State Seconding and, most recently, Jigawa state

⁷ Doig Jon M, Anti-Corruption Agencies: "The importance of Independence for Effectiveness of National Integrity Systems" in corruption, Integrity and Law Enforcement, Ed Kluwer Law International 2002

⁸ Doig, Jon M, Anti-Corruption Agencies: "The importance of Independence for Effectiveness of National Integrity Systems" in corruption, Integrity and Law Enforcement, Ed Kluwer Law International 2002

⁹ De souze: "Does performance matter to institutional survival?" The methods and politics of performance measurement for Anti-corruption agencies" in EUI Working Papers for Robert Schuman Centre for Advanced Studies performance matters

¹⁰ Guides to good governance, anti-corruption policies and agencies in the center for integrity in the defense sector

¹¹ See OECD Report

¹² Chetty, Pilley, "Independence of Anti-Corruption Agencies, a Comparative Study of South Africa and India in EJC vol.9 no.8 Sept 2017.

¹³ Gjorgi slamkov, Zoran, p. in Institutional approach in the fight against corruption, Anti-Corruption Bodies" in Vision International Scientific Journal, vol.4 issue 1, march 2019, p.36

- independent
- Publicly funded.
The definitions above spell also give a hint as to the functions of the ACAs. These include:
- Prevention and repressing Corruption
- Investigation of alleged cases of corruption
- Prosecution of corruption cases
- Policy proposals on anti-corruption
- Awareness raising and education on anti-corruption

3.1. Coordination, Monitoring and Knowledge Creation through Research

The above functions can be found in a single ACA. Some ACAs emphasise education, awareness raising and policy proposal, research coordination and monitoring of corruption, and implementation and effectiveness of anti-corruption measures. In this case, the ACAs become the focal points of Cooperation and exchange of experiences on anti-corruption policies and practices. Some ACAs, on the other hand, are more preventive in their mandates. Preventing corruption can be challenging. Mechanisms here are to be put in place to prevent or minimize chances of corruption risks in risk-prone agencies, integrity protection and promotion, system reviews of organizations, corruption risk assessment in various sectors, etc. The most complex of these functions are the investigative and prosecutorial functions, having the tendency to clash with other agencies' laws and mandates.

From the multiplicity of functions which the ACAs can perform, according to OECD, the following Models of ACAs have been created in various countries depending on the needs the ACAs are expected to deal with¹⁴:

- The Multipurpose model has investigative, preventive and public outreach and awareness. Prosecution here remains a separate function to maintain its independence and provide checks and balances within the system. This model exercises broad powers, usually executive powers, and must have independence to secure its broad powers, e.g. The ICAC in Hong Kong and the IPIB of Singapore
 - Law enforcement models are engaged in the detection, investigation and prosecution bodies, and this is the most common model.
 - The preventive model is comprised of anti-corruption coordinating councils that lead reforms in the development, implementation, and monitoring of anti-corruption strategies. They comprise government agencies and ministries, representatives of executives, legislative and the judiciary. They may also have a secretariat. These councils are not permanent in nature and operate through regular meetings.
 - Corruption Prevention Bodies, unlike the coordinating Councils, have a permanent nature, are solely established for corruption prevention and usually have a broader mandate than just coordinating anti-corruption strategies. For example, they engage in corruption risk assessment and integrity plans for sectors, education and awareness raising, and system reviews for agencies, etc.
 - Other public institutions which are not particularly termed as anti-corruption institutions but also help in corruption prevention. Some countries have created such agencies which, looking at their mandates, have one thing or the other with preventing corruption. Examples include the Office of the Auditor General, Public Procurement Bureaus, Tax Authorities, etc.
- Halliburton and Quah have earlier classified the models into the following:
- The universal model, like the Hong Kong, ICAC
 - The investigative modelling of Singapore's CPIB
 - The parliamentary model, like Australia, New South Wales, ICAC
 - The multi-agency model like the U.S. Office for Government Ethics OGE

For the ACA to thrive well, it must have a degree of independence from political interference. Independence is not only a feature of ACAs but a standard for ACAs set up by the UNCAC¹⁵. This very important feature brings in the issue of transparency and accountability¹⁶ of the ACAs. It is expected that the more independence the ACA has, the more it is subjected to accountability. It is also expected that the more accountable and transparent the ACA is, the more it wields public support and popularity in terms of its legitimacy¹⁷.

Various features in the design and location are used to determine the degree of independence of the ACA. For instance, a feature that determines the independence of the ACA is the function it was engineered to perform, meaning the more complex the functions, the greater level of independence it should be allowed.

It has been argued that the ACAs which perform all of these functions as its mandate or those with investigative and law enforcement mandates require the most independence and autonomy in order to carry out the mandate¹⁸. Independence is greatly required as a shield when high-levelled corrupt individuals are challenged or when those who tend to benefit from a weakened anti-corruption strategy are challenged with a possible review and reform of a weakened anti-corruption strategy with stronger ones. Independence means the ability of an ACA to decide and act impartially

¹⁴ Anti-corruption policies and agencies in Guides to Good Governance no.3 center for integrity in the defense sector

¹⁵ Council of Europe Criminal Law Convention on Corruption. Art 20 also provides for independence as a standard of the ACAs.

¹⁶ Accountability here does not mean the ACA acts according to dictates but its ability to justify decisions or actions taken by it regarding the disposition of a matter.

¹⁷ Supra note 14 p.16

¹⁸ Supra note 14

without external influence, particularly during investigations of alleged acts of corruption committed. This means that an ACA should not have any political interference or undue pressure against performing its mandate. Political interference can manifest in many ways, like threats to terminate the ACA's work, dismissing the ACA appointment or even limiting or withholding the ACA's finances or curtailing the ACA budget¹⁹. For an ACA to achieve the desired degree of independence, there must be a strong political will devoid of political interference²⁰ to fight corruption by the state. As such, the desire to create an ACA should be one borne out of political consensus and not merely the need to satisfy international minimum standards and requirements for combating corruption²¹.

Other avenues for detecting such independence²² could be found in the Constitution or Laws which establish the ACA, the limited nature of oversight functions of the supervisory legislature or executives, the processes of appointment and removal, in other words, security of tenure of the ACA officials or heads, remuneration, financial and personal management autonomy²³.

The South African Constitutional Court in the Case of *Glenister v the president of South Africa and others*²⁴ in a majority, the decision has given clues as to how the independence of an ACA can be inferred from a legislature by stating what points were missed in the South African legislature, the absence of which made The Directorate of Priority Crime Investigation (DPCI) feeble and not independent. Thus, legislation establishing an ACA should not miss these features, without which the legislature would be insufficient to secure the independence of the ACA²⁵. These are:

- Not having the requirement that members of the DPCI take an oath of office, committing to impartiality.
- Lack of job security for members and that of the commissioner of DPCI as the South African Police Services (SAPS) commissioner could discharge persons to promote efficiency and economy or otherwise in the interest of the SAPS. For the commissioner, his office is renewable as opposed to a non-renewable term, which heightens the vulnerability of the commissioner to political and other pressure.
- Absence of statutorily secured remunerations;
- Powers of the heads of the DPIC and the commissioner of the SAPS are subjected to issued ministerial committee guidelines which the majority of the Court considered severally as inimical to independence, unavoidably inhibitive, not conducive to independence or efficacy, untrammelled, creating a plain risk of executive and political influence on investigations and the entity's functioning and creating the possibility of hands-on management, hands-on supervision and hands-on interference.
- The powers of the supervisory body, in this case, the parliament, are too weak to be able to straighten the limping independence of the DPCI due to the strong powers of the ministerial committee exercised over the DPCI.
- The power to initiate prosecution is left at the mercy of an officer who is also not free from political influence.
- The complaints mechanisms operate after the fact and so do not constitute an efficient hedge against interferences.

Other instruments used to establish the independence of the ACAs can be used to secure their independence. For instance some are spelt out in The Jakarta Principles. The principles were adopted in Jakarta in 2012. With its sixteen principles, the Jakarta principles set out not only methods to acquire independence but also the efficacy of the ACAs²⁶. The same can also be said about the Council of Europe's 20 article principles on the standards of the ACAs²⁷.

The independence of ACAs, in particular the ICPC/EFCC, will be considered in turns vis a viz the provision of the sections of laws that cater for the independence of the two institutions in the light of the *Glenister Judgment* on features of Independent ACAs and two most cited models; the Honk Kong ICAC and Singapore CPIB²⁸. Particularly, the following would be looked at:

- Tenure of appointment of the heads.
- Funding of the ACAs.
- Powers of oversight/ supervisory bodies.
- Prosecutor powers.

4. The ICPC and EFCC

By 1999, corruption in Nigeria had become malignant and had become deeply enshrined in aspects of public and private life. The Democratic Regime that had assumed power made the fight against corruption its main thrust. The first

¹⁹ Evolution of Anti-corruption Agencies and Laws in Nigeria; Where Are They Now? <http://ssrn.com/abstract=1932763>

²⁰ Chitty, Pillay "Independence of Anti-Corruption Agencies; A Comparative study of South Africa and India independence of ACAs, Centre For Anti-Corruption Education and Research, South Africa. vol.9 no.8 2017.

²¹ Mathew Jenkins, Caitlin Maslen, Matias Bak, the relationship between Anti-corruption agencies, robust enforcement and economic development.(transparency International (2021)

²² Martin Painter, Myths of political independence or how not to solve the corruption problem; Lessons for Vietnam p.5

²³ See also J Chetty and P Pillay; Independence of Anti-corruption Agencies, a comparative study of South Africa and India(2017)

²⁴ The case relates specifically to South Africa's constitutional dispensation and may not apply *stricto sensu* to other countries. It is cited here to understand what the independence of ACAs may entail and how they can be or cannot be inferred.

²⁵ Meela Lewis, Philip Stenning, Considering the *Glenister Judgment*; Independence requirements for anti-corruption Institute, SA Crime Quarterly no 39, 2012.

²⁶ https://www.unodc.org/documents/corruption/WG-Prevention/art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf

²⁷ <https://rm.coe.int/16806cc17c>

²⁸ For a more detailed reading on Honk Kong and Singapore, read Quah ACAs in Asian Countries, Quah, the lesson from Singapore,

Bill submitted by the president to the National House of Assembly was the Independent and Corrupt Practices and Other Related Offences Act. S.3 of the Act established the Independent Corrupt Practices and Other Offences Related Commission (ICPC). S.6 of the ICPC Act spells out the duties of the Commission. The ICPC powers are broad and include search, seizure, investigation, inspection and examination of persons and records of financial institutions, shared accounts and the contents of safe deposits.²⁹

The ICPC has two major setbacks. Firstly, its provisions do not have a retrospective effect. This means that all cases of kleptocracy that have happened before the Act by government officials cannot be investigated. Secondly, the Act does not cover a lot of financial crimes that occur outside the public domain, like banking crimes, etc. The government faced accusations of not tackling the challenges faced. It was against this backdrop that the EFCC was born, and it eventually became the biggest ACA in Nigeria.

In 2002, the EFCC Act was enacted to purposely liberate society of national economic crimes, including corrupt activities and to coordinate effectively the domestic and global efforts against money laundering and terrorist financial support³⁰. The Act established all kinds of offences financial in nature which have roots in corruption perpetuated by corrupt persons who have powers to handle financial issues within the state³¹. The Act established the Economic and Financial Crimes Commission in a bid to support national reform and efforts to address Nigeria's anti-money Laundering and financing of terrorism to handle the problem. The powers of the EFCC are contained in s.5 and offences in sections 8-13 of the Act³².

5. Appointment

The ICPC has suffered accusations of being a weapon in the hands of the executives to whip political opponents and screen its friends no matter how corrupt they were³³. The allegations may not be far from the truth, looking at the manner of appointment of the chairman. According to s.6 of the ICPC Act, the chairman is appointed by the president on the recommendation of the senate.

With regards to the tenure of office of the ICPC Chairman, there is no security of the job. For instance, the ICPC Act provides that the office of the chairman is renewable after a certain period of time³⁴. When there is no security of tenure, then there is a likelihood of subservience of the chairman to the executive appointing him, particularly in a country like Nigeria where power is personalized.

Another issue that relates to the security of the office of the Chairman of ICPC is that he can be removed at any time³⁵. This resembles the provision in Hong Kong ICAC. These kinds of provisions do not augur well with the independence of any ACA, let alone ICPC. Such provisions pose a challenge and constitute a barrier to any ACA to achieve independence. S.6 does a great disservice to the independence of the ICPC. For these reasons and other unbecoming issues pertaining to the manner and the direction in which the fight against corruption by the ICPC was heading, the National Assembly called for the amendment of the Act. The amendments provide³⁶:

- Appointment of the Chairman to be by the Chief Justice of Nigeria (and not the president) on the recommendation of the National Judicial Commission, subject to confirmation by the senate.
- The chairman must be serving justice of the court of appeal, and his conditions of service should be in line with the conditions of service of the judiciary.
- The Secretary of the ICPC is to be appointed by the commission itself.

This provision is commendable in the sense that it divests the appointment of the chairman from executive control. Also, the appointment of a serving Court of Appeal Judge is commendable because, being a serving Judge, the issue of integrity is put on a higher pedestal. Also, the condition of service is subject to the Judiciary. This means that even disciplinary action would be governed by the Judiciary should the chairman be found wanting on Disciplinary issues regarding his performance as the chairman of the Commission.

The same accusation about the ICPC as a political whip of the politicians has been levied on the EFCC as well.

In Singapore, the Corruption Prevention and Investigation Bureau CPIB has been attached to the office of the prime minister since 1969. The Act establishing the CPIB does not specifically spell the independence of the CPIB. However, the appointment process of the Director indicates that the Director is not like other heads of agencies under the Civil Service, who are all subject to the direction of the prime minister. According to the Constitution, the Director can continue to investigate other ministers and top civil servants even where the Prime Minister does not approve, provided he has permission from the president³⁷. This is the *de jure* guarantee of independence. This is a setting that is regular and can

²⁹ S. 6 ICPC Act 2000, Ogbu, "Combating corruption in Nigeria". Annual survey of International and Comparative Law, vol. 14(208), iss.1, Art.6

³⁰ Saphy, L., B., "An overview of Nigeria's legal framework and structural position towards corruption "in National Journal of Criminal, p.43

³¹ Ibid

³² Ibid

³³ The Senate Committee on Judiciary made an elaborate cathartic description of the situation, calling for the amendment of the ICPC Act in 2002. See the Senate Committee on the Judiciary, Advertorial, Sunday Champion (Nigeria), March 9, 2003, at 38. See also *ibid* at p31-32.

³⁴ S.3(7)

³⁵ S.3(8)

³⁶

³⁷

even be openly abused, but the same has not been due to strong political commitment rather than legal guarantees³⁸. Therefore, the legal backing and bureaucratic powers to investigate corrupt practices only lend help to the CPIB.

In Hong Kong, the same political commitment is invested in the ACA, i.e. the Independent Commission Against Corruption (ICAC). It is said that in Hong Kong, the rule of Law is an article of faith among the politicians and the members of society³⁹. In Hong Kong, the independence of the ICAC is not clear. The Commissioner of the ICAC is appointed directly by the Chief Executive and can be dismissed at any time by the Chief Executive⁴⁰. This is a provision that can be grossly abused, but because the rule of law in Hong Kong is an article of faith, no incidence of abuse has been recorded, and the ICAC does not suffer from operational inferences. In fact, interfering with the operations of the ICAC is termed as a political suicide

6. Prosecutory Powers

One of the mandates of the ICPC is to prosecute cases involving Corruption. According to s.6 of the Act, the ICPC has powers to initiate prosecution, and it would be deemed to have the fiat of the Federal Attorney General to prosecute⁴¹. Nevertheless, despite the free hand to commence prosecution, the ICPC has not prosecuted a good number of cases to protect it from criticism of poor performance on this mandate. For instance, during the first four years of its establishment, it was only able to investigate about 600 cases, which number is not up to half of the number of petitions it has received⁴². It was also only able to prosecute 34 cases⁴³. The reasons for the poor investigation and prosecution of cases have been attributed to poor funding.

The provision of the Amendment Act of 2002 under s.6 of the ICPC, if applied, divests prosecutorial powers of the ICPC only to misplace it in the hands of the Attorney General of the Federation. This provision is not very laudable. The reason is that this provision has made the ICPC become a toothless bulldog. While the ICPC can investigate cases of alleged corruption, at the end of everything, it becomes *functus officio*. The ball will be thrown at the Attorney General's court, which now decides whether to prosecute or not. There are many examples of this point. For instance, Adoke at a time withdrew 25 high-profile cases, and also at another time, the ICPC Chairman was requested to withdraw a case involving a Minister on an allegation of receiving 11.2 Million Naira from a Governor while he was a resident Electoral Commissioner in Adamawa state⁴⁴.

The problem with the Attorney General having the power to prosecute over the cases investigated by the ICPC is that, with all due respect, the Attorney General does have the security of tenure ship. Thus, the Attorney General is not free and cannot be free from influence by the Executive. This will perhaps be the reason why a number of investigations carried out by the ICPC do not see the light of the courtroom. With all due respect, the power to prosecute should remain vested in the ICPC to ensure its independence is secured.

EFCC, on the other hand, has suffered similar counterattacks on its prosecutor jurisdiction. There is no doubt that the EFCC has powers to prosecute, but such powers are subject to the overriding powers of the Attorney General under s.174 of the Constitution⁴⁵. These powers have been utilized negatively by the EFCC. So many cases abound where the EFCC files were recalled by the Attorney General, and then they were never heard of again⁴⁶. Today, there are many cases initiated by the EFCC that have not been concluded for years in court and where injunctions are granted, stalling further investigations by the EFCC⁴⁷.

In Hong Kong, where the rule of law is an article of faith, strong political commitment and self-denial allow for proper investigation. While this is in Hong Kong, in Singapore, public shaming through publicity is part of punishment because in Singapore, the "face" remains important. Singapore, the prosecution success rate is high, and the judiciary generally imposes the toughest punishment⁴⁸. According to the CPBI Annual Press Release, in 2020, 129 individuals were prosecuted on Corruption charges. 126 of these from the private sector, while just 3 from the public sector⁴⁹. The conviction rate for CPBI cases in 2020 is also stated to be at 97%, excluding withdrawals⁵⁰. Top government officials are successfully prosecuted. Political will in Hong Kong means letting the Law take its natural course regardless of one's position⁵¹.

³⁸ Martin Painter, 'Political independence of Anti-corruption bodies' in Asia Pacific Policy Studies, vol.1, no.22.p273-286

³⁹

⁴⁰ Supra note 33 p.278

⁴¹ S.6 ICPC Act

⁴² Nkereuwem S, Toinpre, C' The Challenges of Curbing Corruption In Democracy; The Nigerian Experience" in International Journal of Innovative Research and Advanced studies, v6issue 11 Nov 2019 p.p.35

⁴³ *ibid*

⁴⁴ Review of public administration and management.

⁴⁵ Richard A.O, Analysis of Legal Framework for Fighting Corruption in Nigeria: Problems and Challenges

⁴⁶ For more details on cases handled by EFCC, please read I.A. Jamo, Economic and Financial Crimes Commission (EFCC) and anti-corruption Crusade in Nigeria: Success and Challenges in Gusau International Journal of Management and Social Sciences, Federal University Gusau, Vol4 No.2, July 2021.p. 190.

⁴⁷ See the case of Peter Odili, where the court directed the EFCC to stop all actions against him. Supra note 39

⁴⁸ See Anti-corruption Measures for the Prosecution Service: The Singapore Perspective In International Association of Prosecutors, 6th Middle East and Asia Pacific Regional Conference (2009) p.9

⁴⁹ Annual Statistics 2020 Press release by Corrupt Practices Investigation Bureau, www.cpbj.org

⁵⁰ *Ibid*.

⁵¹ Painters supra note 34

7. Fundings

Every government agency is dependent on funds to run efficiently and effectively. This is not any different for Anti-Corruption agencies. According to de Sousa, ACAs are like any public-funded agencies that have a mandate and are like any other Agencies expected to run and deliver their mandates⁵². Funding of ACAs is crucial not only for its effectiveness but also for its survival. Countries which have been cited as successful in the fight against corruption are well-funded. For instance, in Hong Kong, the annual funding of the ICAC runs in millions of dollars. The funding of the Hong Kong ICAC was in 1974 \$193 million in and \$ 668 million by 2006. The same can be said to have happened in Singapore. Funding is crucial because the ACAs require specialization and expertise. This means that a lot of money is required to train its staff on skills for investigation and even prosecution of complex corruption cases. Where the staff is not adequately trained, the outcome is generally poor, having effects on the prosecution. Investigating corruption itself is complex and may require travel, site visits, etc. Other mandates of education and awareness raising cannot also be met where there is insufficient funding. For instance, former ICPC Chairman Justice Ayoola once stated:

"Poor funding has become a menace to the successful prosecution of the fight against corrupt practices. As in some of the other government agencies, insufficient funding is slowing down the war against corruption... thus, the ICPC will require money to recruit more personnel in all departments and expand its operation nationwide. By the ICPC Act, the Commission is expected to have offices in all 36 states of the Federation and Abuja. However, it currently has offices in 1 and 14 states due to inadequate funding; the result is that the remaining staff are overworked."⁵³

The ICPC Act does not make any particular provision as to the funding of the ICPC. Do not make provision as to who is responsible for the funding of the ICPC is a big lacuna in the ICPC Act. However, the Government budgets a meagre amount of money to the ICPC as funding⁵⁴. It is called meager because of the huge tasks it is to perform and high expectations of delivery by the people.

The budget strangulation is not different in the EFCC. Stories of how EFCC was bankrupt were exposed by Leadership newspaper to not just ICPC but the EFCC as well. For instance, in 2011, the EFCC budget was 13.8 billion naira, but this figure dwindled to 9.8 billion naira in 2013 and increased by little to 10.2 billion in 2014. For the ICPC, the budget was N3.6 billion in 2013 and got a marginal increase to N4.6 billion in 2014⁵⁵.

8. Oversight Powers

The more independent an ACA is, as stated earlier⁵⁶, the more it will be subjected to accountability and transparency. It is assumed that the more independence ACA has, the more power it wields. The more power an ACA wields, the more need to ensure that those powers are not abused and that laws and civic rights are not violated in the process. It creates a situation of who is watching the watchdog. This brings in the question of accountability and transparency of the ACAs to supervisory bodies or committees like the parliament, the House of Assembly, the Office of the Attorney General or the Office of the Prime Minister. There is no one particular manner of oversight. The arrangement is one to be decided by each country. Accountability here does not mean that the ACA is under the control of any of the supervisory bodies or bodies, as the case may be. However, it means justifying every decision they have taken. This also gives rise to transparency in their activities. In some countries, ACAs are required to publish every decision they make regarding the investigation of a case or reasons for not prosecuting. For instance, in Singapore, a decision not to prosecute an officer of the government for buying a car based on an insider report that the prices would rise had to be published publicly because there was not enough evidence to sustain the allegation and subsequent prosecution.⁵⁷ The ICPC and EFCC report to the National House of Assembly. Their budgets are determined by the House of Assembly. As we have seen, the budgets of both ICPC and EFCC have been so constricted that they cripple their ability to deliver their mandates as they should. The supervision of prosecution by the Attorney General of the Federation also leaves much to be desired. At a point in time, upon his assumption of duty, the then-attorney general of the Federation requested that EFCC hand over all of its prosecution cases. This caused a lot of turmoil, and Gani Fawehinmi wrote a letter requesting the removal of the said Attorney General.

9. Lessons Learnt and Conclusion

The first lesson learnt is that legal provisions, no matter how beautifully couched about the independence of ACAs, are not of much benefit where political will and commitment are missen. By political will, we mean that the political leaders are committed to eradicating corruption. According to Quah⁵⁸ among the requirements for political will is that the Anti-corruption laws are enforced fairly by the ACAs. Legal provisions ironically only give support and backup, but the real

⁵² Luis De Sousa, "Does performance matter to institutional survival? The method and politics of performance measurement for Anti-Corruption Agencies" in EUI Working Papers, Robert Schuman Center for Advanced Studies.

⁵³ Awepuju, A. "An appraisal of the Nigerian Independent Corrupt Practices and Other Related Offences Commission(ICPC), 2001-2013, Review of Public Administration and Management Vol.3, no.7, July 2015 at p.64

⁵⁴ Awopeju, A., Oluwo, S.& Jegede, I. "Significance of Funding ACAs; Lessons from Singapore and Hong Kong, Africa's Public Service Delivery and Performance Review 6(1) at 233. See also supra note 26 at p.37.

⁵⁵ Richard A.O, Analysis of the legal framework for fighting corruption in Nigeria: Problems and challenges in Arabian Journal of Business and Management Review, vol.5 no.3, Nov 2015

⁵⁶ Op.cit.

⁵⁷ Painters supra note 33.

⁵⁸ Quah, "Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis in a Revised version of a paper presented at the Sith Asian Forum on Public Management on 'Comparative Governance Reforms in Asia: Democracy, Government and Government Trust' organized by University of Bangkok, Thailand, Jan 12-13, 2007.

deal is honesty and sincerity of purpose, which is manifested by the Government. This is seen in the cases of CPIB in Singapore and the ICAC in Hong Kong. Until the Nigerian government and its people are willing to show more political commitment to the independence of the ACAs, curbing corruption will remain a futile effort.

The second lesson to be learnt, which cannot be over-emphasized, is the rule of law and Good governance. This is what has held the fight against anti-corruption in Hong Kong together, and the success of the ICAC boils down to strict observance of the rule of law and good governance. Where these two are found, it is almost impossible not to have a sound system of government where every system functions. In essence, there cannot be a system failure. For this reason, we find a high prosecution success rate in Hong Kong. In Hong Kong, we find that even the judiciary is independent, and this, on its own, has a positive impact on the fight against corruption. Political leaders exhibit self-denial, and everyone faces the consequences of the law. This can be achieved in Nigeria when it is able to observe the rule of law.

The last lesson learnt is that oversight functions should be applied sincerely, judiciously and judiciously without trampling on the independence of the ACAs or making them paper tigers, stripping them of their immediate mandate. To do so would be robbing the ACAs of their true worth and their credibility as anti-corruption warriors.

The magnitude of corruption in Nigeria today is palpable. To say that there are anti-corruption agencies claiming to have independence and a host of other institutional arrangements for combatting corruption in Nigeria is a farce and only shows how resistant corruption has become in Nigeria. The independence of the ACAs will remain laughable if there is no sincerity of purpose on the part of the Executives. Unfortunately, only a few Government regimes can be said to have been sincere about fighting Corruption in Nigeria: the Murtala/ Obasanjo Regime and the Buhari/Idiagbon Regime. Sadly, these two were short-lived.

10 References

- i. Anti-Corruption Policies and Agencies in Guides to Good Governance No.3 Center for Integrity in Defense Sector
- ii. Awepuju , A. " An Appraisal of the Nigerian independent Corrupt Practices and other Related Offences Commission(ICPC), 2001-2013, Review of Public Administration and Management Vol.3, no.7,July 2015 at p.64
- iii. Awopeju, A., Oluwo,S.& Jegede,I." Significance of Funding ACAs; Lessons from Singapore and Hong Kong', *Africas Public Service Delivery and Performance Review* 6(1) at233.
- iv. Ayo, Awepuju ' perception on the Modus Operandi and the Effectiveness of Selected Anti- Corruption agencies In Nigeria" in review of public Administration and Management/ Arabian Group of Journals vol.6(11), 2017.
- v. Chitty, Pillay "Independence of Anti-Corruption Agencies; A Comparative study of South Africa and India independence of ACAs, Centre For Anti- Corruption Education and Research, South Africa . vol.9 no.8 2017.
- vi. Corrupt Practices and Other Related Offences Act, no 5 of 2000
- vii. Council of Europe Criminal Law Convention on Corruption European Treaty Series No 173 Strasbourg, 27.1.1999 at <https://www.coe.int/en/web/impact-convention-humanrights/criminal-law-convention-on-corruption> last visited 23/1/2024
- viii. De Sousa, "Does Performance Matter to Institutional Survival? The Methods and Politics of Performance Measurement for Anti-Corruption agencies" in EUI Working Papers for Robert Schumnsn Centre for Advanced Studies performance matters.
- ix. Doig, Jon M, Anti-Corruption Agencies; The importance of Independence for Effectiveness of National Integrity Systems" in corruption, Integrity and Law Enforcement, Ed Kluwer Law International 2002
- x. Evolution of Anti-corruption Agencies and Laws in Nigeria; Where Are They Now?
- xi. Economic and Financial Crime Act 2004
- xii. Gjorgi Slamkov, Zoran, p. in Institutional approach in the fight against corruption, Anti- Corruption Bodies" in vision International Scientific Journal, vol.4 issue 1, march 2019 p.36
- xiii. Guides to good governance, anti-corruption policies and agencies in center for integrity in defense sector In DCAF Geneva Centre for security sector Governance No.3, Anti-Corruption Policies and Agencies 2015
- xiv. Glenister v President of South Africa CCT48/10 (2011) ZACC6
- xv. <https://rm.coe.int/16806cc6>
- xvi. https://www.unodc.org/documents/corruption/WG-Prevention/art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf
- xvii. Independent and Corrupt Practices Act No. 5 2000
- xviii. Luis De Sousa, "does performance matter to institutional survival? The method and politics of performance measurement for Anti- Corruption Agencies" in EUI Working Papers, Robert Schuman Center for Advanced Studies.
- xix. Martin Painter, Myths of political independence or how not to solve the corruption problem; lessons for Vietnam p.5
- xx. Martin Painter, 'political independence of Anticorruption bodies' in Asia Pacific Policy studies ,vol.1, no.22.p273-286
- xxi. Mathew Jenkins, Caitlin Maslen, Matias Bak; the relationship between Anti-corruption agencies, robust enforcement and economic development.(transparency International(2021)
- xxii. Meela Lewis, Philip Stenning, Considering the Glenister Judgement; Independence requirements for anti-corruption Institute, SA Crime Quaterly no39, 2012.
- xxiii. Micheal M.O "Political leadership in Nigeria since 1960: a socio-Economic Analysis" in Journal of Nigeria Studies vol.1 no.2 2012.

- xxiv. Nkereuwem S, Toinpre, C “ The Challenges of Curbing Corruption In Democracy; The Nigerian Experience” in International Journal of Innovative Research and Advanced studies, v6issue 11 Nov 2019 p.p.35
- xxv. OECD Specialized Anti-Corruption Institutions-Review of Models 2013, 2008 edition
- xxvi. Ogbu, “Combating corruption in Nigeria”. Annual survey of International and Comparative Law, vol. 14(208), iss.1, Art.6
- xxvii. Quah “Defying Institutional Failure: learning from the Experiences of Anti-Corruption Agencies in Four Asian Countries” in crime law and social change, Dordrecht, vol.53, Iss 1, 2010 p.23-54
- xxviii. Quah, “Anti-Corruption Agencies in Four Asian Countries: a comparative analysis in a revised version of paper presented at the sixth Asian Forum on public management on ‘comparative Governance Reforms in Asia: Democracy, Government and Government Trust’ organized by University of Bangkok, Thailand, Jan 12-13, 2007. Also found in International public management review- Electronic Journal at <http://www.ipmr.net> vol.8 Issue 2, 2007.
- xxix. RichardA.O, Analysis of legal framework for fighting corruption in Nigeria: problems and challenges in Arabian journal of business and management review, vol .5 no.3, Nov 2015
- xxx. Saphy,,B , “an overview of Nigeria’s legal frame work and structural position towards corruption “in National Journal of Criminal law 2019, p.39-48
- xxxi. United Nations General Assembly Convention against Corruption, 2003, A/58/422 available at <https://www.refworld.org/doicid/4374b9524.htm> last visited 23/1/2024.