CONSTRUCTIVE ENGAGEMENT

Volume 1. No. 1. January 2009

A Journal of
Alumni Association of National Defence College (AANDEC)
National Secretariat, National Defence College, Herbert Macaulay Way,
P. M. B. 323, Garki, Abuja - NIGERIA

Website: www.nwcalumni.com Email: aandecjournal@yahoo.com
Mobile Phone: +234 80 3703 1744

ISSN: 2006 - 9197

Published by
Alumni Association of National Defence College (AANDEC)
P. M. B. 323, Garki, Abuja - NIGERIA

Designed & Printed by:

National Defence College Printing Press
Herbert Macaulay Way (North)
P. M. B. 323, Garki
Abuja-NIGERIA.

MODALITIES FOR COORDINATING NIGERIA'S ANTI-CORRUPTION AGENCIES

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INTRODUCTION

Corruption is one of the most potent factors that have stalled Nigeria's development. Its effects permeates all sectors of society as it touches all public institutions like health, education, industry, utilities etc. It has plunged the nation into serious debt, ruined the economy, impoverished and humiliated the citizens and beggared many of them[2]

Corruption has been responsible for the instability of successive governments since the first Republic as every coup was predicated on stamping out the disease called corruption. Unfortunately, the cure often turned out to be worse than the disease, and Nigeria has been worse for it.[3]

The entire gamut of the Nigerian society labour under the yoke of corruption as it is not only the politicians and the executives that are corrupt in Nigeria, but so are the bureaucrats, public servants, bankers, insurance brokers, officials involved with the administration of justice, law enforcement agencies, the press, religious leaders and other members of the public"[4]

It is against this backdrop that successive administrations in Nigeria were involved with the fight against corruption leading to the design of several anti corruption policies and creation of multiple agencies. However, the operational environment for these institutions and agencies became confounded with duplication of functions. In some cases, two or more of these agencies would initiate prosecution against a person for similar or same offence(s). This has exacerbated public debate on the need or otherwise for the integration of the litany of anti corruption agencies or institutions.

This paper therefore, examines the agencies or institutions involved in the fight against corruption, their functions or duties as circumscribed in their enabling laws, with a view to identifying areas of contradiction or overlap and the consequences of these overlaps on the fight against corruption. It goes further to examine the validity of the claims for the integration of these agencies. The case is made for coordination among the relevant agencies rather than integration.

CONCEPTUAL DISCOURSE

For a better understanding of the issues discussed in this paper, the classification of some key concepts is germane. Accordingly this section shall define and operationalise the concepts of integration, coordination, cooperation, strategy and corruption.

Lexically, to "**integrate**" means to combine two or more things so that they work together; Integration therefore, is the act or process of combining two or more things so that they work together.[5] Integration entails the amalgamation of processes, procedures, institutions and agencies for effective management. **Coordination** on the other hand means to organize the different parts of an activity and the people involved in it so that it works well. Coordination therefore denotes the act of making parts of something or groups of people work together in an efficient and organized way[6]. **Cooperation** means to work together with somebody else in order to achieve something. Cooperation is therefore, the act of working together towards a

shared aim[7]. Coordination and cooperation can therefore be achieved without necessarily integrating agencies, institutions and processes.

The term "**strategy**" has several technical usages especially in the military parlance[8]. However, for the purpose of this discussion, we shall give the word its ordinary literal meaning as a plan that is intended to achieve a particular purpose; the process of planning something or carrying out a plan in a skilful way in order to achieve a particular purpose[9].

Corruption is a difficult concept to define. This difficulty is not unconnected with its manifold manifestation or elements as well as its constant metamorphosis. For instance, at the time the Penal and Criminal Codes were enacted, they did not anticipate the current revolution in money laundering which the Economic and Financial Crimes Commission (EFCC) is now fighting. Despite this difficulty, an operational definition is imperative.

According to Okonkwo, "corruption is an amorphous expression ... because it can be used to embrace a wide range of misdeeds; strictly however, to corrupt in the present context is to deflect, to sway someone from a proper performance of his duty. But it can also encompass bribery, extortion and other forms of official malpractices"[10]. This definition is open ended and silent on the delineation between public and private sector corruption, the motive for such deflection of a person from the proper performance of his duty has also not been stated.

The Asian Development Bank (ADB) defines corruption as "the behaviour on the part of officials in the Public and Private sectors, in which they improperly and unlawfully enrich themselves and/or those closely related to them, or induce others to do so, by misusing the position in which they are placed"[11].The World Bank (WB) on its part says:

> Corruption is the abuse of Public Office for private gains. Public office is abused for private gain when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit, public office can also be abused for personal benefits even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenues[12].

The World Bank and ADB definitions are persuasive because unlike others, they capture private sector corruption which is often overlooked by some definitions. Private sector corruption complements public sector corruption. The recent revelations by the EFCC on how public officers launder money through Banks and other corporate organizations eloquently testifies the fact that for the fight against corruption to be wholly effective, both the private and public sectors must be subsumed under culpability.

The Economic and Financial Crimes Commission Act 2004 does not define corruption in its interpretation section, however, its sister legislation, the Corrupt Practices and Other Related Offences Act (CPOROA) 2000 gives an inclusive definition of corruption. Section 2 of the CPORO Act says corruption includes; bribery, fraud and other related offences. The EFCC Establishment Act however provides for offences which may come under the ADB's definition in sections 14, 16, 17, 22, and 32, while sections 8-26 of the ICPC Act prohibit acts that fall within the ambit of corruption as defined by the ADB and WB. Similarly, part II of the Money Laundering (prohibition) Act 2004 also prohibits acts that fall under the ADB's definition of corruption.

In view of the expansive and mutative nature of corruption as evidenced by the definitions above, we define corruption in this paper as any act which is a violation of the penal laws of Nigeria, committed by officials in the private or public sectors, in which they wrongfully enrich themselves and or those closely related to them, or induce others to do so by misusing their official positions.

CATEGORISATION OF CORRUPTION

To most people, the word corruption is usually viewed from the perspective of official abuse of public office for private ends. The gravity of corruption in the corporate domain and its deleterious consequences on national development is therefore, often overlooked in the circumstances. This section previews some categories of corruption which are either offshoots of official corruption or fall within the ambit of the private sector.

(a) Political Corruption: This involves the use of political power or office for financial gain or the use of financial power to buy political favours or even to secure political power[13].

The indicators of political corruption include, but are not limited to –

- vote buying
- election rigging
- use of public funds for political patronage
- improper award of contracts to political clients without due process
- the use of ruling party as an entrepreneurial political organization and channel for lucrative contracts thereby becoming a source of political and economic corruption. (Ayua 2001)
- Sale or franchise of public property or corporations to political clients, friends or family members at ridiculous prices, etc

(b) Bureaucratic Corruption: This captures various manifestations of improper and unlawful conducts by public officials for the purposes of enriching themselves or their cronies or conferring unmerited benefits on those related to them. Ayua summarizes the manifestations of bureaucratic corruption as involving:

> The design or selection of uneconomical projects because of opportunities for financial kickbacks; procurement fraud including payment, kickbacks, collusion, overcharging, misrepresentation, the delivery of substandard goods and services; illicit payments and/or receipt of "speed money" to facilitate the timely delivery of goods and services to which the public is rightly entitled. Bureaucratic corruption also includes; extortion, misappropriation of funds, nepotism and favouritism, personal use of official and government secrets, any improper exercising of power; or even time wasting or sleeping on the job[14].

(c) **Private Sector Corruption:** This form of corruption involves persons and officials in the non public sector. This include but not limited to the use of bank officials by public officers to launder public funds, bribing public officials for the purpose of obtaining contracts, tax evasion by corporations, false declaration of profits and dividends for the purpose of luring investors and even spiritual corruption which involves the use of religion for wrongful gains. The synergy between these types of corruption produces deleterious effects on national development. However, political corruption is most destructive since it borders on the source of public wealth and the common good.

STRATEGIES FOR COMBATING CORRUPTION BY SUCCESSIVE ADMINISTRATIONS IN NIGERIA

Corruption has for long been a major concern to the public; accordingly, various strategies have been developed by successive administrations to combat it. These include legislative, policy, institutional and ethical strategies. We shall therefore, make a cursory review of successive administration's efforts at combating corruption in this part of the paper.

When one considers the fact that the Criminal Code which was enacted into law in 1916 recognized and prohibit official corruption, it will not be a wrong to assume that the colonial government itself was not immune from the malaise. Agedah, indeed attributes corruption in Nigeria to the country's colonial experience and chronicles several indices of corruption during colonial rule[15]. The Criminal Code is therefore, the first legislative strategy for combating corruption in Nigeria. After the Criminal Code, the Penal Code which was enacted in the Northern Protectorate also made novel provisions prohibiting official corruption. Succeeding regimes also introduced some policy, institutional, judicial and ad hoc legislative measures to combat what was consistently identified as the obvious obstacle to national development. These will be examined below.

THE GOWON ADMINISTRATION (1966-1975)

The Gowon administration enacted the famous Public Officers (Investigation of Assets) Decree No. 5 of 1966. Some Senior Public Officers were investigated and assets corruptly acquired were forfeited under the Decree. However, the initial nerve to fight corruption soon waned and the administration was eventually swallowed by allegations of corrupt practices against members of the cabinet and top functionaries of that administration. For instance, on July 8 1974, one Mr. Dabo Adzuana, accused the Federal Commissioner for Information of corruptly enriching himself. In a 12 point affidavit sworn to at the Lagos state High Court, Chief Dabo revealed graphically, some evidence of abuse of office and corrupt enrichment against the Federal Commissioner[16]. Similarly, another affidavit deposed to by a business man Mr. Aper Aku, accused the then Benue–Plateau state Governor, Mr J.D. Gomwalk of corruptly enriching himself and members of his family. Aku specifically alleged that the Governor awarded contracts in excess of N5.3 million to a company where he and members of his family had stakes without due process. Although these allegations were eventually confirmed by several commissions of enquiry, General Gowon was said to have treated the allegations with "uncanny levity and slipshoddiness while the whole country looked helplessly for moral redemption[17]". These were part of the circumstances that led to the intervention of General Murtala Muhammed in July, 1975.

THE MURTALA ADMINISTRATION (July 1975-Feb. 1976)

General Murtala Mohammed was reputed as the first Head of State who showed genuine commitment towards fighting corruption. In 1975, he set up a three man Panel of enquiry to investigate the assets of some military officers in the Gowon administration who allegedly abused their offices to acquire such assets. The panel investigated and found that some of those officers corruptly enriched themselves and the assets were forfeited.

The administration subsequently, commenced what could be described as a "house cleaning exercise" by taking bold steps to restore sanity into the nation's public institutions. This commenced with the indictment and eventual retirement of some ex military Governors found guilty of corruption[18]. The

great purge eventually spread through the entire public service including the police, judiciary and customs where many people who were alleged to be corrupt or inept lost their jobs. This exercise was however, not devoid of cases of obvious victimization as General Murtala's successor, Olusegun Obasanjo confirmed that "in view of the numerical magnitude of people involved in the shakeup, one could not rule out instances of miscarriage of justice...[19]. As a result of the multiple cases of victimization via the so called shake up and the apparent difficulties that the resultant unemployment caused to the Nigerian family, this otherwise noble intention of cleaning the stable soon became unpopular.

The Murtala administration also promulgated the Corrupt Practices Decree 1975 which formed the fulcrum of the present EFCC and ICPC Acts, and also laid the foundation for the making of the 1979 Constitution. The Constitution provided for a Code of Conduct for Public Officers which has survived all constitutional transitions.

THE SHAGARI ADMINISTRATION (1979-1983)

The Shagari administration is reputed for its record of uncontrollable corruption among politicians and public servants. According to Agedah, "the administration may perhaps for a long time continue to represent the most corrupt, most graft stricken period when public office holders tremendously continued in elevating profligacy and public treasury looting to an art form"[20]. The President himself acknowledged this fact when he said "there is the problem of bribery, corruption, lack of dedication to duty, dishonesty, and all such vices[21]". In view of this realization therefore, the President launched the "Ethical Revolution" and appointed a Minister for National Guidance.

It was this administration that also established the Code of Conduct Bureau and the Code of Conduct Tribunal nine months after assuming leadership, in fulfillment of the provisions of the 1979 constitution. President Shehu shagari pledged his administration's resolve to fight corruption when he promptly submitted his declaration of assets and that of his Vice President and promised that his ministers and top public officers would soon follow. This was, however, not to be as most ministers under this administration either failed or neglected to do so[22].

Another worthy anti corruption effort by the Shagari administration was the inauguration of the Crude Oil Sales Tribunal of Inquiry, headed by Justice

Ayo Irikefe, to investigate allegations of N2.8 billion misappropriation from the NNPC account. The tribunal however found no truth in the allegations even though it noticed some lapses in the NNPC accounts. It is noteworthy that these measures were largely ineffective as corruption soared under this administration leading to its eventual overthrow in 1983.

THE BUHARI ADMINISTRATION (DEC 1983-1985)

The Buhari Administration which took over power from the Shagari administration predicated its action on of corruption. The administration left no one in doubt about its determination to rid the country of the evil. Many public officers were arrested, tried by special military tribunals and either retired or imprisoned or both, while some of them forfeited ill gotten wealth and assets to the state. The War Against Indiscipline (WAI) was launched and prosecuted with brute tenacity thereby leading to the undermining of the rule of law and human rights.

While the intention of ridding the nation of corruption was applauded, the modus operandi was fundamentally totalitarian. The enactment of retroactive Decrees and punishment of persons under them, the appointment of military officers to preside over special tribunals and lack of publicity of proceedings at these tribunals and the totalitarian approach of the Nigerian Security Organization (NSO) in the arrest and prosecution/persecution of alleged corrupt persons soon turned the initial optimism that heralded the administration into despair. These indices led to the enthusiastic welcome of the Babangida's coup that expectedly attributed Buhari's overthrow to human rights violation and autocracy among others.

THE BABANGIDA ADMINISTRATION (1985-1992)

The Babangida Administration inherited the 1979 Constitution without suspending the part dealing with Code of Conduct for public officers. However, public officers who were hitherto convicted of corruption were not only released and pardoned; their assets which were forfeited were returned to them.

A face saving measure was however taken against corruption by the setting up of a National Committee on Corruption and Other Economic Crimes in Nigeria to among others –

(i) Identify causes and extent of corruption in the country
(ii) Examine deficiencies in the existing legislation on corruption and other economic crimes; and
(iii) Suggest remedies which would lead to the curbing of the incidences of corruption including suggested improvements to the existing legislation.

The Committee which comprised of experts from various disciplines embarked on research trips both at home and abroad and eventually presented the Head of State with a draft Corrupt Practices and Economic Crimes Decree. The Committee also recommended –

(a) the establishment of an Independent Commission against Corruption;
(b) Private investigation of corrupt practices; and
(c) Establishment of Corrupt Practices Courts.

It is however, regrettable to state that this laudable effort which was accompanied with huge expense did not see the light of day, as the draft Decree was never implemented. Corruption therefore became widespread and many have asserted that this administration institutionalized corruption[23].

THE ABACHA ADMINISTRATION (1993-1998)

The Abacha Administration also presented an early impression that it was poised to fight corruption. The administration rehashed Babangida's draft copy of the Corrupt Practices and Economic Crimes Decree and renamed it Indiscipline, Corrupt Practices and Economic Crimes (Prohibition) Decree, 1994. This draft was circulated in all states for imputs which were made but the Decree was never promulgated.

General Abacha also launched the War Against Indiscipline and Corruption (WAIC), but the war was fought only on pages of newspapers and the television. The Failed Bank Decree was promulgated to fight the incidence of fraud among bank officials. The Decree established a Failed Banks Tribunal which tried and convicted many bank officials. Despite all these, subsequent revelations about gross acts of corruption among officials of that administration, including the head of state and his family revealed that the administration had no genuine intention of fighting corruption.[24]

THE OBASANJO ADMINISTRATION (1999-2007)

Realizing the enormous damage corruption had done to the nation, President Obasanjo in his inaugural speech declared that his administration will spare no sacred cow in its fight against corruption[25]. This sentiment pervaded most addresses presented by President Obasanjo during his eight year tenure.

In order to match his words with action, the first bill presented by Mr. President to the National Assembly was the Corrupt Practices and Other Related Offences Bill which was eventually passed into law and assented to in 2000. The Act established the Independent Corrupt Practices Commission and gave it enormous powers to combat corruption. Thereafter, the Economic and Financial Crimes Commission (Establishment) Act was enacted in 2002 (and amended in 2004). This Act established the Economic and Financial Crimes Commission (EFCC) and equally endowed it with similar powers with the ICPC. The money Laundering (Prohibition) Act was also enacted in 2004 to augment and expand the scope of operation and powers of the EFCC.

Some policy strategies were also adopted to curb corruption under the administration. The Budget Monitoring and Price Intelligence Unit (BMPIU) otherwise known as 'Due Process' was established to ensure accountability, integrity, transparency, competence and competitiveness in government procurement which was hitherto, a drain pipe for corrupt officers. Similarly, the Extractive Industry Transparency Initiative (EITI)

was also adopted by Nigeria to subject the oil and gas sectors of the economy to openness, transparency and accountability.

The implementation of EITI commenced with the presidential constitution of a National Stake- Holders Working Group led by Oby Ezekwsili, to conduct an independent audit of Nigeria's oil revenue to establish transparency and accountability[26]. Despite these efforts, the anti-corruption strides of President Obasanjo were viewed as vindictive, and strategies to witch-hunt political enemies and force regime loyalty[27]

From the analysis of various anti corruption strategies adopted by successive administration shown above, it is obvious that the strategies were more or less ad hoc policy strategies that were not institutionalized for purposes of continuity.

PRESENT INSTITUTIONS FOR COMBATING CORRUPTION IN NIGERIA

From the strategies adopted by successive administrations in fighting corruption discussed above, several institutions were established and charged with the responsibility of fighting corruption. The surviving institutions include: the Police, the Code of Conduct Bureau, the Independent Corrupt Practices Commission, the Economic and Financial Crimes Commission, the judiciary, the Office of the Attorney General of the Federation and the Attorneys General of States.

(a) **The Nigeria Police:** The Police Act empowers the Nigeria Police to investigate the Commission of all crimes in the statute books (corruption inclusive). Recently, the Supreme Court affirmed the prosecutorial powers of the Police at Superior Courts of record[28]. The Consequence of this is that the Police are lawfully authorized to arrest, investigate and prosecute anybody on charges of corruption.

(b) **The Code of Conduct Bureau/Tribunal:** The Code of Conduct is another anti-corruption agency. It derives its powers from the Constitution. The enabling provisions are contained in the 5th schedule to the 1999

Constitution of the Federal Republic of Nigeria CFRN. The Code of Conduct is circumscribed under sections 1-4 of Part 1 of the 5th schedule to the 1999 Constitution, while Sections 15-18 of part 1 of the same Schedule provides for the establishment of the Code of Conduct Tribunal and its powers. By virtue of Section 12, part 1 of the said Schedule -

> *Any allegation that a public officer has committed a breach of or has not complied with the provisions of this Code shall be made to the Code of Conduct Bureau.*

In practice, the bureau then transmits such allegation or petition to the Code of Conduct Tribunal for trial or prosecution. Section 18, Part 1 of the Fifth schedule provides that –

> *Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this Code, it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the National Assembly.*

The punishments prescribed under sub-paragraph (2) include vacation of seat, disqualification from holding public office for a period of 10 years and seizure of property acquired by way of abuse of public office or corruption. In view of the above, it is crystal clear that the Code of Conduct Tribunal too has the power to prosecute public officers on charges of corruption.

Curiously, sub-paragraph (3) of section 18 of the said schedule provides that the sanctions mentioned above shall be without prejudice to the penalties that may be imposed by any law where the conduct is also a criminal offence. Similarly, sub-paragraph (6) of Section 18 of the said schedule also provides that –

> *Nothing in this paragraph shall prejudice the prosecution of a public officer punished under this paragraph or preclude such officer from being prosecuted or punished for an offence in a court of law.*

The combined effect of these provisions is that, the police, Attorney General of the Federation or state, customs, EFCC and ICPC could prosecute a public

officer in respect of conducts for which he may have been sanctioned by the Code of Conduct Tribunal. This is a stack contradiction to the provision of Section 36 (9) of the same CFRN which says:

> *No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.*

These inherent contradictions must be reviewed.

(c) **The Law Courts:** Section 6 of the CFRN confers judicial powers on various courts established and enumerated under subsection (5) of the said section. Subsection (6) (1) extends the judicial powers of the courts to -

> *All matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of an question as to the civil rights and obligations of that person.*

In addition, section 36 (5) of the CFRN provides that –

> *Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.*

The combined effect of these provisions is that the appropriate courts have the powers to try persons of allegations or charges of corruption and until such is done, no person should be made to suffer any detriment in respect of such allegation. This is a sharp contradiction from the role played by the EFCC in the past, especially at the heels of the last April 2007 election where some persons were recommended by the body for disqualification on the basis of EFCC 'indictment[29]

(d)The Independent Corrupt Practices Commission (ICPC): This commission was established by the Independent Corrupt Practices and Other Related Offences Act 2000. Section 6 of the Act confers on it the general duties of receiving, investigating and prosecuting persons who violate its provisions. The Act is however not without some contradictory provisions. Section 26 (2) of the Act provides that -

> *Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority in any superior Court of record so designed by the Chief Judge of a state or the Chief Judge of the FCT Abuja under Section 61 (3) of this Act. Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney General.*

This implies that any prosecution arising from the investigation of a person for corruption must be initiated by the Attorney General or any of his delegates or if the ICPC must initiate such prosecution, it must be with the express consent of the Attorney General.

Another area of overlap is inherent in section 69 of the Act which provides that –

> *Nothing contained in this Act shall derogate from the powers of a police officer to investigate any offence under this Act or to prosecute any person in respect of any such office provided that the police shall bring to the attention of the Commission every case of bribery, corruption or fraud being investigated or prosecuted by them after the coming into force of this Act.*

This section confirms the investigative and prosecutorial powers of the Police save that they must bring such cases to the notice of the ICPC.

(e)The Economic and Financial Crimes Commission (EFCC): The EFCC was established by the EFCC Establishment Act 2002 and amended in 2004. Its functions are circumscribed under Part II of the Act while Section 19 of the Act confers on the Federal High Court, State's High Court and the High Courts of FCT the jurisdiction and special powers to try persons charged for any offence under the Act. Section 43 confers on the Attorney General of the Federation powers to make rules or regulations with respect to the exercise of any of the duties, functions or powers of the commission under the Act. Section 13 (2) of the Act however, empowers the legal and prosecution unit created under section 12 (1) (b) to prosecute offenders under the EFCC Act.

A careful study of the Act reveals that the Commission is empowered to investigate, prevent and detect, arrest and prosecute persons alleged to have indulged in corrupt practices and most importantly, coordinate the activities of other agencies charged with the responsibility of fighting corruption and economic crime. While this paper argues that coordination is the best strategy for overcoming the obvious bottlenecks and conflicts inherent in the multiple anti graft agencies, it is intriguing to note that the EFCC Act has conferred the responsibility of coordination on the Commission created under it. This situation surely creates a constitutional conflict since it is argued that the AGF rather than the EFCC has the constitutional right of coordinating all prosecutions.

Consequently, unlike the ICPC Act, the EFCC Act does not concede to the AGF the powers to prosecute or grant consent to prosecute offenders under the Act. It has also not left anybody in doubt about its driver's role in coordinating the fight against corruption. This is evident in the following provisions:

> Section 6 (c) provides for ... the coordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority.
>
> *(m) taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes.*
>
> *(n) The coordination of all existing, economic and financial crimes investigation units in Nigeria.*
>
> *Section 7 (2) provides that in addition to the powers conferred on the commission by this Act, the commission shall be the co-coordinating agency for the enforcement of the provisions of –*
>
> *(a) the money laundering Act, the failed Banks Act, the Advance Fee Fraud and Other Related Offences Act 1995 etc.*

By virtue of the definition of "economic and financial crimes" under Section 46 of the Act, corruption is evidently subsumed in it. Accordingly, these provisions have made the EFCC the coordinating body for all agencies involved in anti-corruption; the other agencies especially the Attorney General of the Federation (AGF) has however refused to concede to this, thus the present debate over which Agency should coordinate these activities.

(f) **The Attorney General of the Federation (AGF):** Section 174 of the CFRN 1999 empowers the Attorney General of the Federation to -

a. Institute and undertake criminal proceedings against any person before any court of law in Nigeria ... in respect of any offence created by or under any Act of the National Assembly;
b. to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
c. To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

In view of the supremacy of the Constitution over any written law, the Attorney General has the exclusive right to initiate, continue or discontinue any criminal proceedings[30]. Any exercise of this constitutional power in respect of proceedings initiated by the EFCC may create public outcry, yet that will be valid and constitutional. The public outcry against the request of the AGF was simply a demonstration of the loss of public confidence in the ability of that office to honestly prosecute corruption related cases.[31]

OVERLAP AND FRICTION BETWEEN ANTI-CORRUPTION AGENCIES

From the analysis of these anti corruption agencies thus far, there are noticeable overlaps in functions which have already manifested themselves. One of these is the conferment of the powers to investigate, arrest and prosecute corrupt offenders by the Police, EFCC and ICPC. To complicate matters, the AGF has constitutional powers to initiate, continue or terminate

any criminal proceedings before any court in Nigeria. The Code of Conduct Tribunal can also prosecute public offenders for corrupt practices.

Whereas, the ICPC has conceded the power to initiate prosecution of offenders under its enabling law to the AGF, the EFCC Act has not only failed to do that, but conferred upon itself the role of coordinating the other agencies charged with similar functions.

Secondly, the overbearing attitude of operatives of the EFCC and reckless disregard to judicial procedures in the arrest, search and declaration of persons as corrupt was an affront to the judiciary. EFCC indictment was given the force of conviction by a court of law. For instance, few months to the last April general election, EFCC released list of alleged corrupt politicians who were allegedly not qualified to contest for any political office even though they were not so pronounced by any court of law. This list was however, said to have been doctored by the presidency and the ruling party to eliminate top contenders in the opposing political parties[32].

While sister agencies charged with similar functions and Nigerians grumbled over the unbridled powers of the EFCC, they were silenced by the overbearing presidential shield. Moreover, because of the extreme impact of corruption on Nigerians and their obvious lack of confidence in existing institutions charged with the responsibility of fighting it, public sentiment always swayed the way of EFCC even though with some reservations. This is evident in the public condemnation of the AGF's request to take over the prosecution of ex-Governors.[33] The impact of these overlap of functions and contradictions are obvious; they include:

a. whittling down the efficacy of the war against corruption due to conflicts between the agencies;
b. double jeopardy suffered by suspects as they are often investigated and prosecuted by several agencies for same or similar offences;
c. abuse of court process owing to multiple prosecution of same or similar offences in different courts thereby confounding judicial activism.
d. Lack of systematic approach in the investigation and prosecution of alleged corrupt persons; and

e. Loss of public confidence in the efficacy of the fight against corruption among others.

EVALUATING THE CLAMOUR FOR THE INTEGRATION OF ANTI-GRAFT AGENCIES

As a result of the obvious overlap of functions and the accompanying confusion caused by it, some Nigerians have been clamouring for the integration of the anti-corruption agencies. Opinions on whether or not the merger of these agencies is expedient or necessary however vary. This has become a subject of intense debate among Nigerians and major government institutions.

At the occasion of the swearing in of the House Committee on Justice, the AGF said the EFCC, ICPC as well as the Code of Conduct Bureau/Tribunal may be merged to avoid duplication of duties between them.[34]

On his own part, the House Committee Chairman on Judiciary, Henry Seriaka said there must be harmonisation or merger of the anti-corruption agencies. He asserted further that "we cannot afford the multiplicity of anti-corruption agencies doing the same thing, funded separately both in terms of capital and recurrent expenditure, it is wasteful. It is best to keep all of them together so that they can concentrate and get better funded".[35]

This opinion however seem to be unpopular among many Nigerians. Opposition to this view is rooted in the National Assembly itself, as the Senate Committee Chairman on Drugs, Narcotics, Financial Crimes and anti-Corruption, Sola Akinyede said neither himself nor his Committee will support such merger.[36] He argued that in spite of the obvious but unavoidable jurisdictional conflicts, the various agencies perform separate but interrelated functions, hence his advice to the government to consider other options but merger.

The former Minister of External Affairs, Bolaji Akinyemi also differed with the opinion expressed by the AGF and the House Committee chairman on Judiciary. He said if those advocating for the merger of these institutions eventually succeed, Nigeria would have made a grievous mistake. While

agreeing with Senator Akinyede, he said that even though the agencies perform interwoven functions, their core functions are different.[37]

The Senate Committee Chairman on Finance and former Governor of Kaduna state, Mohammed Makarfi also cautioned against the merger of the agencies and instead advocated for specialisation of functions between them.[38] This suggestion appears to be a credible alternative as the ICPC in the past had concentrated its campaign on Local Governments.[39] Given the enormous level of corruption at the Local Government level, a specialised focus on them could bring the much needed respite. In view of the preponderance of opinions against the merger of these anti-corruption agencies therefore, this paper shall in the next part, consider some options for a conflict free working relationship between the agencies.

STRATEGIC OPTIONS FOR SYNERGY AMONG THE AGENCIES

In view of our discussion of the various strategies and agencies for fighting corruption in Nigeria, we are not persuaded to toe the line of integration as earlier defined; rather, a strategy that is aimed at effectuating coordination between these agencies and cooperation among them is more convincing. Accordingly, four strategies are hereby recommended. These includes; the strategy of covering the field, the strategy of coordination and cooperation, the strategy of due process and the jurisdictional strategy.

1. Coordination and Cooperation: Each of the strategies proffered in this paper will succeed only to the extent that coordination and cooperation are used as the framework for its effectuation. This is because without a supervising agency charged with the coordination of their activities, we may have a chaotic situation as it seems to be now. Coordination here anticipates the AGF exercising a supervisory role over the anti-corruption agencies especially as it relates to prosecution. Section 174 of the CFRN 1990 is clear on the role of the AGF in relation to prosecution; therefore, a coordinating framework should be evolved where every proposed prosecution shall pass through the office of the AGF for his consent. This would enable the office of the AGF to verify whether the person(s) sought

to be prosecuted are standing trial for same or similar offences in another court, initiated by another anti-corruption agency. In the event that this is so, the AGF could direct that the charges be consolidated or dropped out rightly. A detailed framework for such coordination should be included in the enabling laws, the Constitution or adopted as a practice directive by the Federal High Court and the various States' High Courts.

Sharing of information among these agencies is also very essential. The various agencies could design a process of sharing information among themselves on the persons they are investigating or prosecuting. This would also reduce the conflict of duties among them. The utility of this arrangement would include; the avoidance of multiple prosecution of persons by various agencies for same or similar offences thereby avoiding abuse of court processes, saving of cost of prosecution and the avoidance of the conflict of interest by the various agencies which has led to suggestions for their merger.

It is however instructive to state here that the anticipated bureaucracy from the Ministry of Justice, in the process of granting the AGF's consent, (which may frustrate the expeditious prosecution of persons) could be avoided by specifying in the framework, the requisite period of time within which such consent should be given or denied; and the clear reasons for the denial thereof where applicable. This will check the possible abuse of the powers of the AGF.

2. **Covering the Field:** What is conceived here is that whenever an anti-corruption agency has embarked on the investigation of a person (natural or corporate), no other sister agency should undertake the investigation or eventual prosecution of such person. It therefore mean that the agency that first commences investigation shall be allowed to complete it and initiate prosecution of such a person(s), subject to the exercise of the powers of the AGF to take over and continue or terminate such proceedings. Under this strategy, the AGF's consent to prosecute shall be implied. This strategy also can succeed only under a framework of coordination and sharing of information.

3. **Due Process:** What is conceived under this strategy is absolute compliance with the AGF's constitutional powers under section 174 of the CFRN. Here, every anti corruption agency shall be allowed to investigate offences under their powers and do other auxiliary things associated therewith. However, the initiation of proceedings should either be handed over to the AGF or his consent sought and obtained. The need for a time frame for the exercise of the power of the AGF in giving his consent is also imperative here. Coordination is also very critical to the working of this strategy if adopted.

4. **Jurisdictional Strategy:** Here, the conception is that each of the agencies should be given specific roles, (either *subject* or *geographical*) within which it could exercise its powers. For instance, a geographical allocation of function could put EFCC in charge of federal officials, Code of Conduct Bureau in charge of state officials and ICPC in charge of Local Government Areas respectively. Subject jurisdiction on the other hand could put EFCC in charge of money laundering, advanced fee fraud and other economic crimes like tax evasion etc; the ICPC with the investigation and trial of public officials for corrupt practices while the Code of Conduct Tribunal charged with the investigation and trial of public officials whose assets seem disproportionate to their income.

CONCLUSION

Corruption has no doubt been long identified as one of the major obstacles to national development. The establishment of the ICPC and subsequently, the EFCC came with unanimous approval. This approval however, became contentious as a result of the obvious lapses that were eventually manifested; top among which is the lack of coordination of the activities of the multiple agencies charged with the responsibility of fighting corruption. This conflict of functions and the accompanying consequences led to the clamor for the integration of these anti graft agencies. This paper therefore examined the various approaches to combating corruption by

successive governments as well as the legal and institutional frameworks adopted for the achievement of this objective. The paper therefore concludes that for the achievement of an efficient fight against corruption, the coordination of the activities of these agencies and cooperation among them is apposite.

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