



THE SENATE

FEDERAL REPUBLIC OF NIGERIA

**REPORT OF THE AD HOC COMMITTEE ON INVESTIGATION
OF ARREST EPISODES OF TUESDAY 21ST NOVEMBER 2017 AMONG OFFICERS OF
ECONOMIC AND FINANCIAL CRIMES COMMISSION, NIGERIA INTELLIGENCE
AGENCY AND DIRECTORATE OF STATE SECURITY SERVICES**

MARCH, 2018

1.0 BACKGROUND

On Wednesday 22nd November, 2017, the attention of the Senate was drawn to the arrest episodes of Tuesday 21st November, 2017 among the Officers of Economic and Financial Crimes Commission (EFCC), Nigeria Intelligence Agency (NIA), and Directorate of State Security (DSS). The open altercation arose from an attempt by the EFCC Officials to arrest Mr Ayodele Oke (former Director-General of NIA) and Mr Ita Ekpenyong (former Director-General of DSS) and the consequent resistance of NIA and DSS Officers guarding their former Principals. This development which was widely reported in the social, print and electronic media was considered embarrassing. Accordingly, the Senate resolved to constitute an Ad hoc Committee to investigate the matter and report within two weeks.

2.0 MEMBERSHIP

On Thursday 23rd November, 2017, the Senate Constituted the aforementioned Ad hoc Committee with membership as follows:

Sen. Francis A. Alimikhena	-	Chairman
Sen. Mohammed S. Lafiagi	-	Member
Sen. Robert A. Boroffice	-	Member
Sen. Dino Melaye	-	Member
Sen. Fatimat O. Raji Rasaki	-	Member
Sen. Chukwuka G. Utazi	-	Member
Sen. Abdul-Azeez M. Nyako	-	Member
Sen. Shehu Sani	-	Member
Sen. Kabiru G. Marafa	-	Member

3.0 METHODOLOGY

The Committee met on Wednesday 6th December, 2017 to map out strategies for conducting the investigation. The Committee also sought and obtained memoranda from the DG DSS, Ag Chairman EFCC and DG NIA. On Thursday 14th November, 2017, the Committee held an open Session with all the parties and later held a closed Session with the Acting Chairman and Senior Officials of the Economic and Financial Crimes Commission to receive oral testimonies. On Tuesday, 19th December, 2017, the Committee held a closed Session with the Director-General and Senior Officials of the Department of State Security to receive oral testimonies. On Wednesday, 20th December, 2017, the Committee held a closed Session with the Director-General and Senior Officials of the Nigeria Intelligence Agency to receive oral testimonies.

4.0 SUBMISSIONS BY THE AGENCIES

4.1 Acting Chairman, Economic and Financial Crimes Commission

The Acting Chairman of the Economic and Financial Crimes Commission, Mr Ibrahim Mustafa Magu submitted a memorandum to the Committee dated 11th December, 2017. Furthermore, the Acting Chairman appeared before the Committee to give oral testimony on Tuesday 14th December, 2017. The highlights of the submissions by the Acting Chairman, EFCC were as follows:

- I. At about 0900 hours on Tuesday, 21st November, 2017, a team of Operatives from the Commission embarked on a legitimate mission to effect the arrest of Mr Ita Ekpenyong, the former Director-General of the Department of State Services at his residence located at No. 46, Mamman Nasir Street, Asokoro, Abuja for an alleged case of conspiracy, abuse of office, theft and money laundering.
- II. On the same day, another team of operatives from the Commission was simultaneously carrying out a similar operation at the residence of Mr Ayodele Oke, the former Director-General of the National Intelligence Agency located at No. 10 Mamman Nasir Street, Asokoro, Abuja for an alleged case of conspiracy, abuse of office, theft and money laundering.

- III. However, in both instances, the operatives were obstructed by heavily armed operatives of the two security agencies.
- IV. As regards the case against the former DG DSS, Mr Ita E. Ekpenyong, a stage was reached where it became necessary for investigators to interview the former DG. He was contacted via 08033118907 after which he sent his contact address requesting for an official letter of invitation to be dispatched to his residence.
- V. The Commission sent former DG DSS, Mr Ita E. Ekpenyong an invitation letter dated 30th October, 2017 and was duly acknowledged by one D.M. Cobham, a Department of State Services Personnel attached to him.
- VI. It was his failure to honour the invitation that prompted the Commission to secure a Warrant of Arrest and a Search Warrant against him on the 21st November, 2017.
- VII. Upon arrival at the aforementioned address, the Commission's Operatives met heavily armed personnel of the Department of State Services numbering about thirty (30) with three (3) operational vehicles. In a bid to carry out our legitimate duty, the Operatives approached the DSS personnel at the gate, introduced themselves as Operatives of the EFCC and requested to see former Director-General, Mr. Ita E. Ekpenyong.
- VIII. Their response to the Operatives was 'No'. Upon further inquiry and presentation of Warrant of Arrest, they responded as follows: 'We are under instruction from the Headquarters'. The Operatives went further to ask if they were under instruction to deny them access to the subject, they again replied: 'We are under instruction from the Headquarters'.
- IX. Against this, the EFCC Operatives were then directed to return to their office in order to avoid any untoward situation.
- X. The move to effect the arrest of the former DG NIA, Mr Ayodele Oke was in furtherance of an ongoing investigation which necessitated an invitation to be extended to him and his wife. Letters of invitation dated 19th April, 6th May and 1st November, 2017 were sent to his wife, Mrs Folashade Oke and were not honoured. Furthermore, the former DG NIA, Ambassador Ayodele Oke was also invited via a letter dated 1st November, 2017. His failure to honour the said invitation necessitated the

Commission to send a second letter dated 7th November, 2017 to the Ag. DG NIA, soliciting their cooperation to inform Mr Oke to report for an interview.

- XI. In the course of dispatching the said letter, EFCC operatives demanded for an acknowledgement. However, the NIA Operative who received the letter decided to return it. On inquiring as to why the letter was returned, one Benjamin Daniel Kikesenenso, a staff of the NIA who interfaced with the EFCC operatives stated that he was directed to return the letter because the invitee was no longer in the service of the NIA.
- XII. The exact mission of the operatives to the residence of the erstwhile Director-General of the NIA was to execute valid Court Orders as a last resort to have him respond to allegations bordering on conspiracy, abuse of office, theft and money laundering.
- XIII. There was no open altercation between EFCC Operatives and NIA or DSS Operatives as has been widely reported.

4.1.1 APPENDICES AND EVIDENCE

The Acting Chairman EFCC further tendered the following documents (Photocopies) in evidence:

- I. A1 – Warrant of Arrest issued by Magistrate Elizabeth T. Jones-Wonni authorizing EFCC Officials to arrest Mr Essien E. Ita dated 21st November, 2017.
- II. A2 – Invitation letter from EFCC to Mr Ita Ekpenyoung Essien dated 30th October, 2017.
- III. A3 – Search Warrant issued by Chief Magistrate Elizabeth T. Jones-Wonni authorizing EFCC Officials to search the residence and premises of Mr Essien E. Ita (No. 46 Mamman Nasir Street, Asokoro, Abuja) dated 21st November, 2017.
- IV. A4 – Pictures of the Scene of the altercation on Tuesday 21st November, 2017.
- V. A5 - Pictures of the Scene of the altercation on Tuesday 21st November, 2017.

- VI. A6 – Video footage of the Arrest episode on Tuesday 21st November, 2017.
- VII. B1 – Warrant of Arrest issued by Chief Magistrate Elizabeth T. Jones-Wonni authorizing EFCC Officials to arrest Ambassador Ayodele Oke dated 21st November, 2017.
- VIII. B2 - Invitation letter from EFCC to Mrs Ayodele Folashade Oke dated 19th April, 2017.
- IX. B3 – Invitation letter (Reminder) from EFCC to Mrs Folashade Ayodele Oke dated 1st November, 2017.
- X. B4 – Invitation letter from EFCC to Mrs Folashade Ayodele Oke dated 16th May, 2017.
- XI. B5 – Invitation letter from EFCC to Ambassador Ayodele Oke addressed through the Acting Director-General (NIA) and dated 7th November, 2017.
- XII. B6 – Invitation letter from EFCC to Ambassador Ayodele Oke dated 1st November, 2017.
- XIII. B7 – Search Warrant issued by Chief Magistrate Elizabeth T. Jones-Wonni authorizing EFCC Officials to search the residence and premises of Ambassador Ayodele Oke (No. 10 Mamman Nasir Street, Asokoro, Abuja) dated 21st November, 2017.

4.2 Director General, Department of State Services

The Director-General of the Department of State Services, Mr Lawan M. Daura submitted a memorandum to the Committee dated 11th December, 2017. Furthermore, the DGSS appeared before the Committee to give oral testimony on Tuesday 19th December, 2017. The highlights of the submissions by the DG. DSS were as follows:

- I. The recent stand-off between the Department of State Services and the Economic and Financial Crimes Commission (EFCC) on 21st November, 2017, at No. 46 Mamman Nasir Street, Asokoro, Abuja could be traced to the events that occurred sometime in July 2016, in the aftermath of the inauguration of the probe Panel set up by the National Security Adviser

(NSA), upon the approval of the President, Commander-in-Chief to investigate Defence procurement from 2014 to 2015.

- II. The Probe Panel at inception, consisted of members from the Military, Office of the National Security Adviser (ONSA), DSS, National Intelligence Agency (NIA) and the EFCC. However, shortly after the commencement of investigation activities, operatives of the DSS, serving on the Panel were removed by the NSA, leaving members from the Military, NIA and EFCC to continue the investigation. Thereafter, the DSS acting on intelligence discovered that some Ad-Hoc members were brought in by the NSA to serve on the Committee.
- III. These Ad-Hoc members were later found to be involved in some shady deals, which bordered on Corrupt Practices. The Service subsequently arrested Mohammed UMAR (Air Commodore/Rtd), the arrowhead of the members involved in extorting money from suspects under investigation in order to give them soft landing. At the end of investigation, he (UMAR) was arraigned in Court and is presently being prosecuted at the Federal High Court, Abuja.
- IV. Against this backdrop, the NSA and Ibrahim MAGU, Acting EFCC Boss who were clearly not happy with the arrest and prosecution of UMAR (Air Commodore/Rtd), decided to embark on a vendetta to investigate the Service on some trumped-up charges, including corrupt practices. The starting point of this was the invitation sent to Ita E. EKPEYONG (Mr) and Kunle S. KADIRI (Mr), former Director-General State Services (DGSS) and Head of Account of the DSS, respectively. The investigation was actually a voyage of discovery to fish out incriminating evidence against the Service with a view to depict it and the Management as being corrupt.
- V. The crux of the matter is the attempt by EFCC to investigate the DSS accounts with the CBN and other expenditures by the Service. To this end, the Commission requested the Service to ensure the release of Mr Ita Ekpennyong (former DG State Services) and Mr Kunle Kadiri (former Head of the Accounts Department of the Service) for investigation. The EFCC claimed that it was investigating an alleged case of conspiracy and

misappropriation of public funds in which there was the need to seek clarification from these erstwhile Officers of the Service.

- VI. The Service discovered that this effort by the Commission was part of a clandestine investigation of DSS accounts by a team set up by the NSA in collaboration with the EFCC Acting Chairman in complete violation of extant laws pertaining to financial regulations of the Service. Section 14 (1) & (2) of Instrument NO. SSS1 provides as follows:

- 1) **"The Director-General of the SSS is responsible to the President Commander-in-Chief of the Armed Forces for the proper expenditure and accounting of all funds made available to the Service from the security votes and any other source.**
- 2) **The accounts of the State Security Service shall not be subject to external audit, but the Director-General shall by the first week of March each year, render to the President, Commander-in-Chief of the Armed Forces, returns of expenditure and copy the National Security Adviser".**

The above cited Instrument was made pursuant to Section 6 of the **National Security Agencies (NSA) Act CAP 278 now N74 LFN 2004** which is in turn, retained as an existing legislation by S. 315 (5) (c) of 1999 Constitution of the Federal Republic of Nigeria (as amended).

- VII. The extant laws regulating the Service, prohibit it from the Commission's kind of investigation without a Presidential Order. It was suggested to him to call EFCC Board meeting to thrash it out or to secure such Presidential Order. The Service also advised appropriate authorities to setup a Presidential Committee in the manner that the Ikoyi Tower/NIA money was investigated.
- VIII. The EFCC Chairman was advised to convene a Board meeting of the Commission to resolve this matter. The Commission consists of the Governor of Central Bank of Nigeria, Director-General of the State Services, the Honorable Attorney General of the Federation and other 15 relevant stakeholders. However, the EFCC Chairman chose instead to

sideline or ignore these key stakeholders and intelligence community members, in contravention of **Section 2 (1) of the EFCC Establishment Act, 2004**. The Act grants powers and functions to the Commission (the aforementioned stakeholders) exercisable on their behalf by the Chairman and not vice versa as the EFCC Chairman's recent conduct indicates.

- IX. Since the EFCC Chairman avoided calling the EFCC Board meeting according to the Law, he was further advised to seek and obtain Presidential authorization otherwise the Service would be unable to accede to his request for the release of the above mentioned officers in aid of an ongoing investigation.
- X. Instead of doing the needful, the EFCC Chairman resorted to arguing that the EFCC had absolute powers to investigate the finances of the DSS. He also created media hype with the aim of hoisting unnecessary mass hysteria and public hostility depicting the DSS as not only shielding the officers requested but also showing that they are above the law. In this regard, the public was informed that upon the DSS preventing the said Officers from honoring invitation by the Commission, the EFCC, obtained a warrant of search and arrest from the Court in respect of the said Officers but were obstructed by the DSS to execute same.
- XI. The method (brawn instead of brain) deployed by the current EFCC under Magu is a Gestapo style that belongs to dictatorial regimes. The Acting Chairman runs the agency based on public rumours, maneouvers, gossips, political interferences from certain quarters and marabouts.
- XII. The foregoing indicates that the finances of the DSS and operations to which they were applied are classified matters affecting internal security of Nigeria which the Service is duty bound to protect and preserve.
- XIII. The powers of the EFCC to investigate financial crimes contained in the EFCC Act, is not in doubt. However, the general rules provided in the Act, cannot operate without exception. Investigation of finances of the DSS falls within that exception and can only be waived with the approval of the President, Commander-in-Chief of the Armed Forces, Federal Republic of Nigeria. In the instant case, the Commission failed to provide such

approval and therefore, could not be allowed to go ahead with the planned investigation.

- XIV. The DSS has always ensured the promotion of synergy and mutual collaboration. Over the years, the Service has always handled inter-Agency issues with decorum and respect for such Agencies. In this regard, whenever the Service discovered the involvement of operatives of sister Agencies in any professional misconduct and or criminal act, the practice has always been to first inform the agency about such matters and subsequently hand over the operative concerned to his or her agency for the matter to be handled internally and thereafter, if need arises, revert the person back for further investigation and possible prosecution.

4.2.1 APPENDICES AND EVIDENCE

The DG, State Services further tendered the following letters (Photocopies) in evidence:

- I. Illegal Investigation into alleged conspiracy and abuse of office by DSS and the Armed Forces, Ref. NO. DGSS.71/3174, dated 25th July, 2017.
- II. Investigation Activities: Letter of Invitation Ref No. CR: 3000/EFCC/ABJ/STF.5/vol.02/427, dated 30th October, 2017.
- III. Investigation Activities: Letter of Invitation: Kunle S. Kadiri, Service No. 122340, Ref. No. CR:3000/EFCC/ABJ/STF5/VOL.02/428, dated 31st October, 2017.
- IV. Re: Investigation Activities – Letter of Invitation (Kunle S. Kadiri) Service No. 122340, Ref. No. EFCC/EC/DSS/10/77, dated 10th November, 2017.
- V. Investigation Activities – Letter of Invitation: Kunle S. Kadiri, Ref. No. EFCC/EC/10/79, dated 27th November, 2017.
- VI. Obstruction of Officers of the Commission from performing their Legitimate Duties – Request to Release Former DG, Department of State Services, Mr Ekpeyong E. Ita to the Commission, Ref. No. EFCC/EC/10/79, dated 27th November, 2017.

4.3 Director General, National Intelligence Agency

The Acting Director-General of the National Intelligence Agency, Ambassador Mohammed Dauda submitted a memorandum to the Committee dated 11th December, 2017. Furthermore, the DG, NIA appeared before the Committee to give oral testimony on Wednesday 20th December, 2017. The highlights of the submissions by the DG, NIA were as follows:

- I. There was no official communication to the Agency from the EFCC on the exact mission of its operatives to the "residence" of the erstwhile Director General of the NIA, Amb. Ayodele Oke.
- II. Information about the purported attempt to arrest the former DG NIA by EFCC operatives reached him (Acting Director-General, NIA) as was reported in the media.
- III. It was the expectation of the DG NIA that a prior notice would be served on the Agency by the EFCC, particularly against the backdrop of the fact that the former DG NIA was still resident in the Command House (official residence of a serving DGNIA), while in the process of handing-over in line with extant practice.
- IV. By virtue of its status, the Command House is a critical National Security Asset with sensitive documents and equipment. Accordingly, the attempt to storm the Command House to effect an arrest had far-reaching national security implications.
- V. Resistance against the EFCC by Operatives of the NIA consequently served a larger national interest, in order to maintain the sanctity of the Agency, its operatives and sensitive security assets in the Flag House.
- VI. The NIA is a Secret Service, whose operations are clandestine and highly classified. Accordingly, it is imperative to shield the Agency from further negative publicity.
- VII. He denied knowledge of any letter from the Acting Chairman of EFCC addressed to him requesting for the surrender of the former DG, NIA. The only letter received from the EFCC Chairman was a threat to report the conduct of the NIA to the President and Commander-in-Chief.

- VIII. He regretted that the EFCC under the Chairmanship of Ibrahim Magu has been hostile to and uncooperative with the NIA leading to the massive withdrawal of NIA operatives from the services of the EFCC.

4.4 National Security Adviser (NSA)

The National Security Adviser, Major General Babagana M. Monguno (rtd) appeared before the Committee to give oral testimony on Tuesday 6th February, 2018. The highlights of the submissions by the NSA were as follows:

- I. He admitted knowledge of the letter submitted to his office by the DGSS reference number DGSS/71/3174 of 25 July, 2017 stating that his decision to disregard it was because it was written in a distasteful and impolite tone. He further noted that the DGSS was agitated due to some misinformation about the initial details of the scope of the investigation.
- II. He also traced the ongoing investigation by the EFCC as an outcome of the Vice-President's Panel which discovered the misappropriation of \$289 Million Intervention which was released by the CBN to some Security Agencies around 2015.
- III. He expressed the view that the EFCC investigation probing into the Agency Finances as it was a criminal investigation for fraud and misappropriation of funds to which the EFCC has the power to undertake as opposed an account audit of the Agencies.
- IV. He then further stated that he was not aware of the EFCC Chairman's plan to arrest any of the persons until after the media frenzy and that the resistance made by the Security Agencies during the arrest episode cast some aspersions.
- V. He was also concerned about the apparent lack of unity and cooperation which has led to the current state of disjointedness and disharmony amongst the sister Agencies. He said that this resulted due to the **National Security Agencies Decree 1986; Cap 278 LFN Section 14 01-2** which has stripped the NSA of the power to check the other Security Agencies that have now become independent of his office due to their

now 'easy' access to the President. Thus, there is a desperate need to streamline the Agencies and make them answerable to the NSA.

- VI. He informed the Senators during the meeting that the President is very aware of the state of things as he has informed him of the situation and also presented evidences of some instances in which his duties were usurped due to the lack of discipline exhibited by the Security Agencies.
- VII. He concluded by saying that the same problem that is being faced now was experienced by the NSA during the time of the former DGSS, (Ita Ekpenyong) and might continue in such a manner if the Act was not revised to establish clear reporting standards by all Security Agencies. He harped on the fact that failure to arrest this situation would have transnational implications as the hierarchical structure for command has been compromised.

5.0 CHALLENGE(S)

The Acting Chairman of the EFCC was directed by this Committee to forward evidence if any that he had informed higher Authorities (i.e. the National Security Adviser, the Attorney General of the Federation or the President) about lack of cooperation on the side of the NIA and DSS. The evidence was not forwarded by the Ag. Chairman of EFCC. This would have guided the committee in taking a decision for the resolution of the conflict.

6.0 OBSERVATIONS

The Committee observed that:-

- I. There exists an acrimony between the Chief Executive Officers of these Security Agencies. This was noticed from the outset of the investigation, leading the Committee to conduct the hearings in camera as well as holding separate meetings with the Security Agencies.
- II. This lack of cooperation and cohesion is reflected at a secondary level with the EFCC and the NSA belonging to one group and the NIA and DSS belonging to another group. Accordingly, the Principle of *esprit de corps* appears to be lost between this two groups.

- III. The Failure of the Office of the National Security Adviser to act on the letter by the Director-General, DSS, dated 25th July, 2017, by implication, amounted to failure to discharge its statutory responsibilities as contained in **Section 4 of the National Security Agencies Act, Cap 74 LFN 2004.**
- IV. Although the EFCC acted within the ambit of the law by obtaining all the relevant search warrants from the Court of Law (in a bid to arrest these Security Officers), the Commission failed to obtain authorization from the NSA or the President in accordance with **Section 4 of National Security Agency Act, Cap 74 LFN 2004**, before obtaining the search warrant.

7.0 RECOMMENDATIONS

In the light of the foregoing, the Committee recommends as follows:-

- I. That EFCC when dealing with sister Agencies that are clandestine in nature must conduct its activities with minimum publicity in order to retain the integrity of the institutions. Public altercations as witnessed between these agencies must not be allowed to repeat itself.
- II. The President and Commander-in-Chief should investigate the matter with a view to ensuring that inter-agency rivalry or public exhibition of envy is avoided at all cost.
- III. Although there is no institution or individual that is above the law or immuned from investigation, however, the Security Agencies must be properly guided against blanket investigations as these can jeopardize our security operations and bring our country into disrepute both locally and internationally.
- IV. The National Assembly should initiate the amendment of **National Security Agencies Act Cap N74 LFN 2010** with a view to giving powers of control to the Co-ordinator on National Security over these Agencies on behalf of the President.
- V. That Search and arrest operation that may be conducted in the future on these Agencies must first have the Presidential Approval. It must be done in a discreet manner rather than in a full public glare.

8.0 APPRECIATION

The Committee appreciates the President of the Senate of the Federal Republic of Nigeria for the opportunity to serve in this Committee. It is our hope that these recommendations will go a long way in achieving inter-Agency cooperation for the interest of our country.

SIGNATURE

I. Sen. Francis A. Alimikhena - Chairman

II. Sen. Mohammed S. Lafiagi - Member

III. Sen. Robert A. Boroffice - Member

IV. Sen. Dino Melaye - Member

V. Sen. Fatimat O. Raji Rasaki - Member

VI. Sen. Chukwuka G. Utazi - Member

VII. Sen. Abdul-Azeez M. Nyako - Member

VIII. Sen. Shehu Sani - Member

IX. Sen. Kabiru G. Marafa - Member

Christopher Ashiekaa -Secretary