

The Institute of Economic Affairs (IEA), Ghana

Empowering Ghana's Anti-corruption Institutions In The Fight Against Corruption

By

Justice Emile Francis Short

Former Commissioner of Ghana's Commission on Human Rights
and Administrative Justice (CHRAJ)

Abstract

Purging Ghanaian society of the canker of corruption is one of the most herculean developmental challenges confronting the nation. Since the attainment of political independence in 1957, several anti-corruption policies and measures have been instituted to grapple with the problem. Among the measures is the creation of constitutional and statutory bodies with specific mandate of combating corruption. Contending that the performance of anti-corruption institutions must be critically assessed against the key governance principles of probity and accountability, this paper offers an incisive and scholarly critique of the mandate, functions, powers and performance of three anti-corruption institutions in contemporary Ghana. The paper concludes with a number of recommendations for strengthening the anti-corruption effort in Ghana and enhancing the effectiveness of the key constitutional bodies at the helm of that drive.

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Further information may be obtained from;

The Institute of Economic Affairs,
P. O. Box OS 1936, Osu, Accra, Ghana.
Tel: +233-0302-244716/+233-0307-010714
Fax: +233-302-222313
Email: iea@ieagh.org
Website: www.ieagh.org
www.facebook.com/ieagh
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CONTENTS

- Abstract.....2
- 1. INTRODUCTION4
- 2. DEFINITION OF CORRUPTION.....5
- 3. THE ANTI-CORRUPTION INSTITUTIONS.....6
- A. THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE
(CHRAJ)7
- B. THE ECONOMIC AND ORGANIZED CRIME OFFICE (EOCO) (ACT 804).....14
- C. THE ATTORNEY GENERAL'S OFFICE.....15
- 4. APPOINTMENT OF HEADS AND MEMBERS OF INDEPENDENT
CONSTITUTIONAL BODIES.....18
- 5. CONCLUSION AND RECOMMENDATIONS.....19
- 6. References.....20

1. INTRODUCTION

It is trite that corruption has a devastating impact on a nation's economy and national development (Attafuah, 1999). Contemporary struggles against corruption in Africa generally proceed from a widespread acknowledgment that the hydra-headed canker can only be effectively confronted through the concerted and holistic efforts of all stakeholders, including government and civil society. In Ghana, the importance of systematically conjoining, concerting and harmonizing the roles of key stakeholders in the fight against corruption has long been recognized in various academic papers and policy documents such as the National Anti-Corruption Plan (NACAP), a ten-year (2015- 2024) blue print for fighting corruption in Ghana. There is also growing recognition that purging Ghanaian society of corruption requires ardent commitment from all the critical stakeholders in the fight against corruption, namely Parliament, the Judiciary, the Executive and its various anti-corruption institutions such as the Commission on Human Rights and Administrative Justice (CHRAJ), the Economic and Organized Crime Office (EOCO) and the Auditor General, as well as civil society organizations and the citizenry at large. This recognition derives from the notorious conviction that corruption is pervasive, deep-rooted and multi-dimensional in causes, scope and effects, and that combatting the canker demands multipronged measures by multiple actors in a well-coordinated and concerted national scheme. Indeed, such an approach is highly warranted if the limitations and failures encountered in previous anti-corruption strategies are to be overcome. According to the NACAP (2011, p. 20), the major causes of the failure of previous anti-corruption initiatives include:

1. Lack of appreciation of the various factors that contribute to the growth of the canker;
2. Lack of commitment at all levels of society to stamp out corruption and to hold accountable, persons implicated in acts of corruption irrespective of their positions or status;
3. Lack of public participation in the development and implementation of the various strategies;
4. Lackadaisical government commitment to, and limited support for, the implementation of anti-corruption strategies; and
5. Lack of effective and sustained coordination in the implementation of anti-corruption measures.

Other factors militating against the success of previous anti-corruption efforts include (a) lack of

collaboration between the various anti-corruption institutions, (b) failure to establish effective anti-corruption agencies with the requisite powers; and (c) failure to reform institutions with procedures and loopholes that facilitate corruption. NACAP adopts a three-pronged approach to fighting corruption, namely, (a) prevention, (b) intensive public education about the evils and cost of corruption, and (c) effective investigation and prosecution. This three-pronged strategy is now widely considered as the most effective method of combatting corruption. Its leading proponent is the Hong Kong Anti-Corruption Commission and many other countries including Botswana have adopted this model.

2. DEFINITION OF CORRUPTION

A clear understanding of the concept of corruption is necessary for appreciating what policy actions and institutional reforms must be pursued to invigorate Ghana's anti-corruption drive. Although corruption is a criminal offence in Ghana, its definition is limited to the demand or payment of a bribe in its various forms. Under section 239 of the *Criminal and Other Offenses Act, 1960 (Act 29)* the scope of corruption encompasses only the following: (a) bribery of a public officer or a voter, (b) bribery by a public officer, (c) receiving a bribe before doing an act, and (d) the promise of a bribe. Specifically, the section provides as follows:

“Section 239—Corruption, etc. of and by Public officer, or Juror.

(1) Every public officer or juror who commits corruption, or willful oppression, or extortion, in respect of the duties of his office, shall be guilty of a misdemeanour. (2) Whoever corrupts any person in respect of any duties as a public officer or juror shall be guilty of a misdemeanour”.

Section 240 of Act 29 explains corruption by public officer in the following terms:

“A public officer, juror, or voter is guilty of corruption in respect of the duties of his office or vote, if he directly or indirectly agrees or offers to permit his conduct as such officer, juror, or voter to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever”.

Evidently, not only is the scope of corruption narrowly construed under *Act 29*, but also corruption is construed as a misdemeanour – a minor offence – which attracts a maximum punishment of three years imprisonment upon conviction. Yet, beyond bribe-giving and bribe-taking, both the

United Nations Convention Against Corruption (UNCAC) (2004) and the *African Union Convention on Preventing and Combating Corruption* (2003) provide much broader definitions of corruption which embrace a wide range of white-collar crimes and related conduct such as embezzlement, insider trading, illicit enrichment, laundering of proceeds of crime, abuse of office, abuse of power, nepotism, conflict of interest, influence peddling, patronage, moonlighting and obstruction of justice. Although Ghana ratified these two important conventions as far back as 2005, it is yet to fulfill its international obligation under the said conventions to enact domestic legislation that adopts a broader definition of corruption as contained in the two conventions. The NACAP rightly recommends the passage of such legislation as a matter of urgency. Such a law must also enhance the punishment for corruption by elevating the offence from a misdemeanor to a second degree felony.

3. THE ANTI-CORRUPTION INSTITUTIONS

Anti-corruption institutions in Ghana include (a) the CHRAJ; (b) the EOCO; (c) the Attorney General's Department; (d) the Audit Service; (e) the Auditor General's Department; (f) Parliament, particularly the Public Accounts Committee; and (g) the Financial Intelligence Centre.

This section of the paper assesses the establishment, mandate, functions, powers and performance of the CHRAJ, EOCO and the Attorney General's Department which are considered to be the three foremost anti-corruption institutions in Ghana. The objective is to ascertain the effectiveness of these institutions in the fight against corruption, and to articulate a set of recommendations for enhancing their performance.

A. THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ)

(i) Functions of CHRAJ

Article 218 of the Constitution of Ghana (1992) provides that the functions of CHRAJ include the duty to:

1. investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his or her official duties;
2. investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service, in so far as the complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services;
3. investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
4. investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney General and the Auditor General, resulting from such investigations; and
5. educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia.

Additionally, the CHRAJ has a duty, under Chapter Twenty-Four of the Constitution of Ghana (1992), to investigate an allegation that a public officer has contravened or has not complied with a provision of the *Code of Conduct for Public Officers* as contained in that chapter. The relevant provisions of the chapter are Article 284 and 286. Specifically, Article 284 provides that “a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office”, while Article 286 requires certain specified public officers to declare their assets and liabilities under the following prescribed terms: (a) within three months after the coming into force of the Constitution or before taking office, as the case may be, (b) at the end of every four years; and (c) at the end of their tenure of office. The Commissioner of CHRAJ, upon completion of an investigation into any such alleged

contravention or non-compliance, has a duty under Article 287(2) to “take such action as he considers appropriate in respect of the results of the investigation or the admission”.

(ii) Powers of CHRAJ

By virtue of Article 219 of the Constitution, the Commission may, for the purposes of performing its functions,

1. issue subpoenas requiring the attendance of a person before the Commission and the production of a document or record relevant to an investigation by the Commission;
2. cause a person contemptuous of a subpoena issued by the Commission to be prosecuted before a Court;
3. question a person in respect of a subject matter under investigation before the Commission; and
4. require a person to disclose truthfully and frankly any information within the knowledge of that person relevant to an investigation by the Commission.

(iii) Challenges and Limitations of CHRAJ's Anti-Corruption Mandate

A number of factors militate against the ability of the CHRAJ to effectively perform its constitutional functions. First, the CHRAJ combines the traditional functions of a human rights commission, an ombudsman and an anti-corruption agency. This triple mandate of the CHRAJ is overly broad and imposes an enormous strain on its ability to discharge its multiple functions effectively. This view is shared by Kwasi Prempeh (2010) and some, though not all, of the previous and current members and staff of the CHRAJ. Significantly, when on September 17, 2014, in a radio interview with Citi FM, the current Commissioner of CHRAJ, Ms. Laretta Lamptey, was confronted by the media as to why the CHRAJ was not vigorously pursuing its anti-corruption mandate, her response was that the CHRAJ spends 95% of its time and resources on human rights and 5% on administrative justice and anti-corruption work. This implies, at best, an imbalanced or disproportionate allocation of time and resources to the various mandates of the CHRAJ, with the anti-corruption responsibilities receiving negligible attention. Although the Commissioner's assertion may be unconvincing, it lends some credence to my longstanding position that the mandate of the Commission is too broad.

The burdensome mandate of the CHRAJ is further compounded by the fact that the NACAP places additional responsibilities on the CHRAJ with respect to the implementation of the anti-corruption strategy. Indeed, out of the 136 activities to be carried out to implement the Plan, CHRAJ is mentioned 66 times either as a “Lead Agency” or a “Collaborating Agency”. The

CHRAJ is also given the responsibility, as part of the Monitoring Committee of NACAP, of continuously tracking progress made and routinely supervising the collection of quantitative and qualitative data to verify progress towards achieving the agreed targets.

Moreover, an examination of the anti-corruption mandate of the Commission reveals a number of limitations. First, it has no power to prosecute persons against whom it makes adverse findings of corruption, including the embezzlement of public funds; it can only recommend prosecution of such persons to the Attorney General who has the exclusive and plenary authority under the Constitution to prosecute. The Attorney General exercises his or her prosecutorial powers in a discretionary manner and thus sometimes elects not to implement the recommendations of the CHRAJ without assigning any reasons, especially if the persons affected are members or appointees of the ruling government. In this regard, Prempeh (2010, p. 62) has astutely observed that:

“The total absence of clear legal standards to regulate how the Attorney-General generally exercises its prosecutorial discretion, especially in cases involving alleged political corruption or abuse of office, is unhelpful to CHRAJ's work and arguably also violates the spirit of Article 296 (a & b) of the Constitution. At a minimum, where the Attorney General rejects a CHRAJ request for prosecution, the Attorney General must be required to provide written reasons that shall be made public.”

Second, the CHRAJ has none of the powers traditionally conferred on constitutional and statutory anti-corruption agencies such as the powers of arrest, search and seizure, and the power to freeze bank accounts where necessary and appropriate. Such powers are vital to the efficient conduct of an effective investigation of allegations of corruption, including the embezzlement of state funds.

Third, the decisions of the CHRAJ are not binding as they are, by law, required to be delivered in the form of recommendations rather than binding orders. Section 18 of the CHRAJ's enabling statute, the *Commission on Human Rights and Administrative Justice Act (1993) Act 456*, provides that after an investigation “the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make the recommendation that it thinks fit”.

² Even though Article 296 requires the holder of a discretionary power to publish guidelines or standards as to how the discretionary power would be exercised, that constitutional obligation is honoured more in its breach than in its observance.

³ Indeed, during my tenure of office, a recommendation by the CHRAJ to the Attorney General to prosecute some public officers for corruption was ignored and one of the persons against whom adverse findings of corruption had been made was subsequently appointed to a public office.

Where the recipient of the CHRAJ's report fails to “take an action which seems to the Commission to be adequate and appropriate”, the CHRAJ has the discretion, after considering the comments made by or on behalf of that recipient or person against whom the complaint was made, to “bring an action before a Court and seek an appropriate remedy for the enforcement of the recommendation of the Commission”. Mildly stated, these powers are minimal, inadequate and ineffectual.

Fourth, the CHRAJ is chronically under-resourced as government after government routinely provides it only a fraction of its required annual budgets. The inadequate budgetary provision stifles the ability of the CHRAJ to discharge its triple mandates effectively. Without significant donor support, particularly from DANIDA, USAID and other development partners, CHRAJ would have been unable to meet financial obligations and to discharge its constitutional duties to the extent that it did over the entire period of its existence since 1993..

Finally, the Anti-Corruption Department of the CHRAJ is severely understaffed. Comprising only one (1) Director, 13 staff and 10 regional focal persons, the department lacks the requisite human resource base for meeting the challenges of competently investigating cases of corruption and conducting public education to raise the scale of integrity across the country.

In light of the above factors, it is evident that the CHRAJ faces an almost insurmountable task of mounting a robust and proactive fight against the canker of corruption on a national scale.

⁴ For instance in the year 2015 although the CHRAJ budgeted for a total of GH¢ 15,244,538.00, the total funds provided by government amounted to GH¢ 5,919,766,62.

(iv) Modest Achievements of CHRAJ

In spite of the above limitations and challenges, the CHRAJ has chalked some modest achievements over the years. In 1995/96, it investigated on its own initiative a number of high-ranking public officers on allegations of corruption and illegal amassing of wealth. The respondents included Mr. Paul Victor Obeng, Presidential Adviser to the then President Jerry John Rawlings, Mr. Osei-Wusu, Minister of Interior, Mr. Ibrahim Adam, Minister of Agriculture, and Mr. Adjei-Marfo, a Presidential Staffer at the Office of the President. The CHRAJ made adverse findings against all the respondents except Mr. Obeng and recommended, among other sanctions, that the Government should reconsider their official positions. Even though the Government rejected the findings in a White Paper, a procedure not warranted by the law establishing CHRAJ, the CHRAJ stood its ground and the respondents against whom the adverse findings were made resigned their official positions. That case set a precedent of investigating and holding accountable high public officials of the sitting government. It paved the way for similar investigations that occurred later.

To its further credit, in 2006, the Commission launched a publication, “**Guidelines on Conflict of Interest**” (the “Guidelines”) which aim at assisting public officials to identify, manage and resolve conflicts of interest. The Guidelines have been introduced to several public officers at both the national and local levels of the public service. Over 80,000 copies have been disseminated locally and copies given to National Human Rights Institutions, Ombudsman institutions as well as anti-corruption agencies internationally.

A generic **Code of Conduct for Public Officers of Ghana**(the “Code”) was developed in collaboration with key stakeholders, including the Public Services Commission, the Office of the Head of Civil Service, Parliament of Ghana, the Judicial Service, Civil Society, State Enterprises Commission, the Office of the President and the Auditor-General's Department. The Code, which seeks to promote integrity, probity, accountability and transparency in the country, was launched on 9th December 2009.

It has also conducted public education to create awareness of the evils of corruption through community outreach programmes, educational programmes for basic and secondary schools, and the media. It has organized training programmes on the Code of Conduct for Public Officers for Members of Parliament and other public officials and key stakeholders across the country. The CHRAJ also facilitated the development and dissemination of the NACAP.

(v) The Way Forward

With strong and competent leadership, sufficient financial support, adequate comprehensive staff recruitment and capacity-building in corruption investigation and reporting, and legal reforms that accord it with prosecutorial powers, the CHRAJ can make a significant difference in the fight against corruption. Given the historical and current realities of the leadership profile, funding, staffing, training and performance of the CHRAJ, this is unquestionably a tall order.

Based on my experience as former Commissioner of CHRAJ, and for the reasons expressed above, I am of the firm conviction that Ghana should pass legislation to set up a strong, independent anti-corruption agency similar to what exists in countries such as Hong Kong, Indonesia, Botswana, Singapore and Sierra Leone. The current staff of the present Anti-Corruption Department could form the nucleus of the new agency after going through a rigorous recruitment process. The mandate of the new agency should reflect the three-prong approach adopted in the NACAP, namely, (a) education, (b) prevention and (c) investigation and prosecution. Like EOCO, it should have the powers of arrest, search and seizure, the freezing of accounts, and prosecutorial powers. The proposed independent anti-corruption agency should also have a large and well-paid staff comprising lawyers, accountants, investigators and adequate support staff.

Such an agency should have, like some other anti-corruption agencies, an Investigation Department, a Public Education Department and a Corruption Prevention Department. The latter Department should be empowered to conduct studies for public sector agencies, especially those prone to corruption, and make recommendations to Government on how those public sector agencies can be transformed to eliminate or reduce opportunities for corruption. The Corruption Prevention Department will also be empowered to regularly review laws and suggest revisions on the basis of conclusions from its studies. The cost of setting up and running such a Commission would be negligible compared to the billions of cedis it would save the nation. The experience of Indonesia is illustrative and compelling in this regard.

As part of a series of publications in 2012 themed “**Innovations for Successful Societies**”, the Princeton University published an article entitled, “Inviting a Tiger into Your Home: Indonesia Creates an Anti-Corruption Commission with Teeth, 2002 – 2007.” The article gave an instructive account of how in “2002, under domestic and international pressure to confront corruption after the economic and political collapse of the 32-year Suharto regime, Indonesia established the Corruption Eradication Commission (the Komisi Pemberantasan Korupsi, or

KPK). The law gave the agency strong powers including the power to prosecute cases. KPK agents could make arrests, conduct searches and seizures, investigate and freeze assets, ban suspects from foreign travel, and compel cooperation from any other government agency. Most controversially, they could intercept telecommunications without prior judicial approval.”

As an institutional check on the KPK's power, the law requires the Commission to report annually to the President, Parliament and the State Auditor and to “convey reports transparently and regularly”. Parliament also controls the KPK's budget.

Parliament confirms KPK commissioners from a pool of 10 nominated by the President based on the work of a selection committee under the Justice ministry “composed of government and private individuals.” If Parliament felt that none of the President's nominees was sufficiently “fit and proper,” it could call for new nominations. Once confirmed, the commissioners serve four-year terms without any possibility of impeachment or removal unless subject to a criminal charge. The commissioners formed a well-balanced team combining people with a political background, administrative capacity in state-owned enterprises, an experienced attorney who understood the law and knew how to investigate corruption cases, someone who had an auditing background and knew the weaknesses of the system, a senior accountant who had connections with senior foreign law enforcement bodies and civil society as well as experience in financial crime investigation

The KPK used a competitive tender process to select an independent consultant to manage an online staff recruitment system. To standardize the process and ensure computer literacy, all applicants had to apply online. The consultant gave each applicant a battery of tests to assess competence, fitness, psychometric profile and integrity. Even though proficiency requirements varied with each position, all candidates needed perfect integrity scores.

The process was highly selective. In the system's first year, KPK received 12,000 applications for 100 positions. By 2010, the applicant pool was almost 45,000. There was one high-level position for which the KPK received 800 applicants and rejected all of them.

The KPK law created a structure that put preventive, investigative and educational functions on an equal legal footing. After creating an effective operating structure, the commissioners spent more than a year building capacity by introducing innovative human resources policies, cutting edge technologies, strong ethical codes and savvy investigative tactics. The Commission then launched a series of investigations that netted dozens of high-level officials and politicians, with

a 100% conviction rate. By the end of 2007, the KPK was standing on a stable foundation, buttressed by solid public support.

In addition, the drafters set up a specialized court to try corruption crimes. Danang Widoyoko, Chairman of Indonesia Corruption Watch, cited support by the public as a critical factor behind the KPK's success. He compared the political elites of a country establishing an anti-corruption agency to “inviting a tiger into your home, a tiger that can attack you. Whether the tiger will be tame, or very effective, depends on the people” (Princeton University, 2012).

If Ghana is serious about dealing with the pervasive corruption facing the country, it needs to take a bold step to establish an independent anti-corruption commission with teeth, similar, though not necessarily in all respects, to the Indonesia model.

B. THE ECONOMIC AND ORGANIZED CRIME OFFICE (EOCO) (ACT 804)

A key function of EOCO is to investigate financial or economic loss to Ghana or any State entity or institution in which the State has financial interest. Given this fact, and in light of the broad definition of corruption, there is no question that EOCO is an anti-corruption institution. It is important to note, however, that EOCO is a specialized agency established for the purpose of monitoring and investigating economic and organized crimes such as cyber fraud, tax fraud, human trafficking, money laundering especially involving proceeds from drugs, recovering the proceeds of crime and, on the authority of the Attorney General, prosecuting such offenses. It is involved in the implementation of NACAP. There is a mutual understanding between CHRAJ and EOCO that conventional corruption is the preserve of CHRAJ, especially because the Constitution of Ghana (1992) expressly confers on CHRAJ an anti-corruption mandate.

The Economic and Organized Crime Office Act, 2010 (Act 804) confers on EOCO the powers and immunities of a police officer to request information, summon individuals under investigation, search and remove documents on an “ex parte” (without notice) application to the court, and seize and detain currency and property suspected to be the proceeds of crime under certain circumstances.

EOCO is an agency under the Ministry of Justice and Attorney General's Department and therefore lacks independence. The Executive Director is appointed by the President on terms

stated in the letter of appointment. The EOCO boss therefore lacks the security of tenure that the Commissioner and Deputy Commissioners of CHRAJ have. This limitation has the potential of undermining EOCO's ability or willingness to investigate and prosecute high-ranking members of the incumbent government. Indeed, there have been allegations that the EOCO is used as an instrument to target political opponents of the sitting government. Whether this is true or an unfounded perception, until the EOCO is decoupled from the Ministry of Justice and Attorney General's Department, these allegations will persist. On 4th March 2015 I met and had a discussion with the Executive Director of EOCO, Mr Mordey Akpadze, in order to better acquaint myself with some of the challenges facing his institution. In response to my suggestion that EOCO should be separated from the control and influence of the Attorney General's Office, he replied that it was not timely for the institution to be independent of the Attorney General's Office since it does not have adequate and skilled prosecutors. However, to its credit, EOCO is governed by a Board comprising high-ranking personalities that has power to formulate policies to enable the Office carry out its functions. The President appoints the members of the Board but significantly two seats are allocated to representatives of the Ghana Bar Association and the Institute of Chartered Accountants. Though not an adequate insulation against compromise, these arrangements appear as rigorous as could be under the circumstances.

The major challenge of EOCO, according to its Executive Director, is the need for adequate, qualified professional investigators and lawyers to investigate and prosecute the complex economic crimes under its jurisdiction. Training in such areas is not easily available locally. A key recommendation under the NACAP is the need to build the capacity of EOCO to undertake intelligence gathering work.

It is fair to say that EOCO operates mainly in the background and the public knows very little about the modalities of its operations.

C. THE ATTORNEY GENERAL'S OFFICE

One of the three-pronged approaches in the fight against corruption recognized internationally and adopted in the NACAP is effective investigation and prosecution, besides education and prevention. Corruption will flourish when persons implicated in the misconduct are not prosecuted and when found guilty imprisoned. Corruption, it has been said, must be made a high risk and low gain enterprise. The deterrent factor is promoted when potential culprits know that the risk of detection, investigation and prosecution is real and high.

The Constitution of Ghana (1992) vests the Attorney General with the exclusive authority to prosecute crimes. The Office of the Attorney General is therefore a key player in the fight against corruption. However, the Attorney General's Department is faced with allegations of incompetence and commitment deficits that undermine its ability to effectively combat corruption. In an address to law students on Monday, 13th April 2014, no other person than Justice William Atuguba of the Supreme Court of Ghana is reported as stating that:

“... the Attorney General's Office also has lost much of its glory. Its operation these days cannot be fairly matched with the days of A. N. E. Amisshah, Taylor, Gyeke-Darko, etc. It is said that the conditions of service have for long stagnated there and may be the cause of this present situation. But this does not seem to be the exclusive factor. There were those days when unlike today high ranking state officials including former ministers of state were prosecuted to conviction for various economic crimes. In the civil sector we all know of several governmental international agreements which have found way to the Supreme Court” (Citifmonline, 2015, para 5)

In the Wednesday, 24th June 2015 edition of the *Daily Graphic* appears a front-page story captioned, “Supreme Court shoots down State”. In dismissing the State's application against the conviction of a former Managing Director of the National Investment Bank, the paper reports that “The Supreme Court took a state attorney to the cleaners over the lackadaisical manner in which he handled” the case. The court lamented the lack of seriousness exhibited by the State Attorney.

The proceedings and report of the one-member Judgment Debts Commission chaired by then Court of Appeal judge, Justice Yaw Apau, revealed serious lapses in the Attorney General's Office, including failure of state attorneys to attend court resulting in judgments being entered against the State, and state attorneys consenting to judgments in cases which should have been contested.

The Government needs to take immediate steps to build the capacity of the Attorney General's Department to enable it represent the State effectively in cases brought before the courts and also to enable the Department proffer sound legal advice to the Government.

There have been incessant calls in recent times by several legal analysts and anti-corruption activists to separate the Attorney General's Office from the Ministry of Justice. According to the Constitution Review Commission the majority of submissions on this issue called for decoupling the two positions and for vesting the prosecutorial functions of the Attorney General in an

independent prosecutor. “The proponents of this view argued that the many possible politically motivated prosecutions are borne out mainly by the fact that we have Attorneys Generals who are politicians. The two positions should, therefore, be decoupled so that an independent public prosecutor can perform the prosecutorial functions of the Attorney General” (Constitution Review Commission, 2011, para 242).

The CRC stated the problem in this way, “The issue is how to ensure that the prosecutorial discretion of the Attorney General, who is constitutionally mandated to execute or oversight all criminal prosecutions, is not tainted by partisan considerations because he is appointed by the President. In other words, how do we provide for the independence of the prosecutorial function of the Attorney General?” (Constitution Review Commission, 2011, para 238, pp. 128)

More specifically, the argument by anti-corruption activists is that given our political culture, the fusion of the office of the Attorney General with that of the Minister for Justice theoretically places the Attorney General in a difficult position when he or she has to prosecute his or her colleagues of the sitting government for corruption.

In its report, the Constitution Review Commission recommended that the practice of combining the offices of Minister of Justice and Attorney General may be continued at the discretion of the President. The Commission further recommended that the office of the Attorney General be re-structured to contain two semi-independent divisions headed by competent, professional and politically neutral Director of Public Prosecutions and Solicitor-General in charge of criminal and civil cases respectively. The two officers should be appointed by the President acting on the advice of the Legal Service Board in consultation with the Public Services Commission.

The above appointment procedure recommended by the CRC would not, in my view, guarantee the political neutrality of the two officers. A better recommendation would be one similar to that proposed by the IEA/Advisory Committee on the Winner-Takes-All System in relation to the appointment of heads and members of independent constitutional bodies discussed below.

It is gratifying to note that the Presidential Candidate of the New Patriotic Party (NPP), Nana Addo Dankwa Akufo-Addo, has indicated that if elected president in 2016, he will take practical steps to root out corruption in government by appointing an independent prosecutor. One such step, according to him, will be the creation of an office for a Special Prosecutor who will be independent of executive control in order to prosecute corrupt government officials. Nana Akufo-Addo said this when he addressed a cross section of Ghanaians in the United Kingdom on

Saturday 18th July 2015.

Persons who will serve in this special office will not be chosen by the President but “by a formula that will ensure their independence and the capacity to do their work.” He also remarked that the Commission of Human Rights and Administrative Justice (CHRAJ) as presently constituted is not strong enough to be the “fulcrum for the anti-corruption drive in our country.”

“It is an ombudsman, a human rights watchdog, and it is also an anti-corruption agency,” he noted. These duties, he said, are too broad for one institution to undertake effectively, therefore, as President, he will take away the anti-corruption fight from CHRAJ and give that responsibility to the Office of Special Prosecutor (Graphic Online, 2015)

4. APPOINTMENT OF HEADS AND MEMBERS OF INDEPENDENT CONSTITUTIONAL BODIES

We have been reminded time and time again of the importance of having strong institutions to ensure good governance. But for institutions to be and remain strong, we must put in place an appointment process that is transparent and not unduly and unfairly influenced by political considerations and one that would ensure that the heads and top leadership of these independent constitutional bodies are competent, independent minded, have integrity and would not buckle under any undue pressure from any quarter.

The present procedure of the President appointing members of independent constitutional bodies like CHRAJ, the Electoral Commissioner and the Auditor General, among others, in consultation with or on the advice of the Council of State, has come under close scrutiny in recent times. The Constitutional Review Commission recommended that the Chairman, Deputy Chairmen and other members of the Electoral Commission, the Chairman and members of the National Commission for Civic Education, The Commissioner for Human Rights and Administrative Justice and Deputies and the Auditor General should be appointed by the President, in consultation with the Council of State, and with the prior approval of Parliament. The Government accepted this recommendation in its White Paper.

While this recommendation is an improvement on the present appointment process, it does not, in my humble view, and in the view of many analysts, go far enough. A better recommendation contained in a report submitted to His Excellency the President by the IEA, after public

consultations undertaken by the IEA Advisory Committee on the Winner-Takes-All System, was that appointment of heads of key constitutional bodies and governance institutions such as the Electoral Commission (EC), Commission on Human Rights and Administrative Justice (CHRAJ), Chief Justice, Supreme Court Judges, Governor of Bank of Ghana, National Media Commission (NMC), National Commission for Civic Education (NCCE), Economic and Organized Crime Office (EOCO), and Auditor-General should be done by the President with approval of two-thirds majority of Parliament.

Alternatively, a duly constituted independent and bi-partisan committee should advertise the vacant position, vet the applicants, draw up a shortlist and submit same to the President for appointment. The composition of such a committee would vary depending on the position to be filled.

5. CONCLUSION AND RECOMMENDATIONS

Anti-corruption institutions could play an important role in the fight against corruption if they are vested with the requisite functions and powers, are not subject to the control or influence of the executive or any other body or person and are headed by competent men and women who can demonstrate total commitment and dedication to combatting corruption.

I conclude with the following recommendations in relation to the three anti-corruption institutions discussed above:

1. The anti-corruption mandate of CHRAJ should be hived off from CHRAJ and given to an independent Anti-Corruption Commission which should be established with the singular mandate of educating against corruption, prevention and investigating and prosecuting cases of corruption. Its character should be similar to the Hong Kong and Botswana model.
2. The appointment process for the new commission should be transparent and open and involve civil society participation.
3. Given the fact that the qualifications for the position of Commissioner and Deputy Commissioners of CHRAJ are those of a Court of Appeal Judge and High Court Judge respectively, the Constitution should be amended to make the decisions of CHRAJ judgments of the High Court with the option of an appeal to the Court of Appeal.

4. NACAP's recommendation of increasing the number of CHRAJ Commissioners to five with a non-renewable 10-year tenure of office and the inclusion of non-lawyers in the membership of the Commission are steps in the right direction. Fortunately, these recommendations have been accepted by Government.
5. The EOCO should be made independent and detached from the control and influence of the Attorney General's Department.
6. The Staff of EOCO should undergo local and external training to equip them to meet the modern challenge of investigating the complex economic crimes under its jurisdiction.
7. The Attorney General's Department should be strengthened through the recruitment of competent and well-trained lawyers to avoid the lapses and inefficiencies documented in the report of the Justice Yaw Apau's Commission on Judgment Debts.
8. There should be close and dynamic collaboration between all the anti-corruption institutions to avert duplication and to foster synergies.

Government must give urgent and well-considered attention to the umbrella recommendations made in the NACAP for combating corruption in Ghana. The number of broad measures recommended by the NACAP to strengthen all the anti-corruption institutions include adequate resourcing and capacity building, institutional integrity, inter-agency relations, organizational support in terms of appropriate training, infrastructure development, and access to information.

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