



An Evaluation of the Independence of Ghana's Anti-Corruption Institutions

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ABSTRACT

Ghana has had a constant progress in cementing its democracy since its restoration to democratic governance in 1992, making it one of the most often cited success stories of democracies in Africa. Despite this achievement, the independence of anti-corruption institutions in Ghana such as the Auditor General,(AG), Commission of Human Rights and Administrative Justice (CHRAJ), Economic and Organised Crime Office (EOCO), Public Procurement Authority, (PPA), Internal Audit Agency (IAA), Office of Special Prosecutor (OSP) and others is over prejudice in terms of appointment of the Heads of these institutions, removal and budgeting as specified in Ghana's, 1992 Constitution empowering the president of Ghana as the sole appointor, remover and budget allocator hence making it difficult for these institutions to function effectively. This makes it a political gimmick when any other government talk about fighting corruption in its current form of constitutional arrangement. This research uses a qualitative method of collecting data.

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Due to these constitutional gaps, it shows that corruption remains a scourge that has eaten through the political fabric of the nation. All facets of the Ghanaian government are corrupt and accountability is often lacking. The criminals often get away with it. It is therefore recommended that the appointment, removal and budget of these anti-corruption institutions should be vested on Parliament through the Appointment Committee of Parliament. Their tenure of office should not directly match with any particular elected government tenure.

1. INTRODUCTION:

Constitutionally, the major Structural defects of Public Services Governance are undoubted. An in-depth examination of the public sector governance structure reveals that the Executive controls the system of governance. Under the 1992 Constitution of Ghana, the leader of the country (the President) wields the executive power as defined in Article 57 of the Constitution of the Republic of Ghana. The Executive appoints all officials in the Public Services (Article 190) and all key government functionaries, including the heads of all the anti-corruption institutions. The President appoints the Chief Justice and those occupying senior judicial positions. When it comes to fighting corruption within the Executive and the Public Services, the role of the Executive in appointing the Chief Justice weakens the fight against corruption. In reality the Chief Justice in a way does not have the total freedom to administer justice. The same analysis goes for the appointment of the Auditor-General, the Chairman of the Electoral Commission, the Controller and Accountant-General and all those listed under article 190 of the 1992 Constitution.

The Legislature (Article 93) is also partisan, making sure that the Executive toes the party line. This network and the fusion of the Executive, Legislature and the Public Services is one of the major causes of corruption. Theoretically anti-corruption institutions are supposed to be independent and separated as provided in the Constitution but in practice they are fused together with the Executive controlling the governance structure. Since the status quo has been maintained over the years, the functions of the three arms of government since independence are tainted with corruption. The expected checks and balances in the three arms of government are simply theoretical since practically no one checks the Executive.

This led to several unsuccessful initiatives to curb corruption but it often fought back strongly, hence, corruption remains a major threat to Ghana's quest for development. Corruption has also been identified as one of the main obstacles impeding growth in the sub-Saharan African continent. The situation in Ghana is similar or worse than other countries like Mauritius, Botswana and Rwanda as shown in the Transparency International yearly Corruption Perception Index. The country's political history demonstrates that corruption set up its shop in the early years following independence, if not even earlier, and that it has since become deeply ingrained in Ghanaian politics [1]. Almost every new administration has a tendency to exploit the patronage system, among other things, to reward its supporters. Unfortunately, in spite of the adoption of both extreme and diplomatic methods to solve the issue, nothing has changed. The Armed Forces Revolutionary Council, led by Flight-Lt. Jerry John Rawlings, launched its most recent two military interventions in the nation's politics in 1979 and 1981 with the goal of eradicating corruption [2]. For instance, the Limann administration was overthrown in a coup two years after gaining office as a result of accusations of corruption. The administrations that followed the coups, however, ended up becoming corrupt themselves since the issue was so deeply ingrained in the political system. Following the coup of 1981, control was transferred to the Provisional National Defense Council, whose leadership was responsible for both coups but was subsequently shown to have been corrupt. A British court convicted Maybey and Johnson, a UK civil engineering

firm, guilty of bribing several Ghanaian government officials in the 1990s in order to get contracts in 2009. These officials were all a part of the same PNDC/NDC3 administration that overthrew previous administrations due to corruption [3].

2. LITERATURE SURVEY

The Republic of Ghana became the first sub-Saharan nation in colonial Africa to achieve independence in 1957, and is now regarded as one of the more stable nations in West Africa since converting to multi-party democracy in 1992 [2, 3].

The economy of Ghana has been steadily growing since independence, and during the last 20 years, the nation has made significant progress toward democracy with a multi-party system. With a population of 29.6 million, Ghana routinely ranks among the top three nations in Africa for press freedom and freedom of expression, with radio having the largest audience among the broadcast media. These kinds of elements provide Ghana strong social capital [4].

According to data provided in April 2018 by the Ghana Statistical Service, the country's GDP is predicted to have grown by 8.5% in 2017 compared to 3.6% a year earlier, mostly due to the mining and oil industries. Ghana's economy is based on the production of gold, cocoa, and oil, which has fuelled a boom [5].

The New Patriotic Party's (NPP) nominee for president, Nana Akufo-Addo, took office in January 2017, marking the third peaceful transfer of presidential authority between the NPP and the National Democratic Congress (NDC), the two major parties in Ghana (Freedom House 2018). Although both local and foreign observers agreed that the 2016 election and its immediate aftermath were calm, the campaign was contentious [6, 7].

3. CONTROL OF CORRUPTION

Since Ghana's return to multi-party democracy, many governments have said that they are committed to reducing corruption. These declarations, however, have mainly remained empty rhetorical gestures like Kuffour's "Zero Tolerance for Corruption" or superficial legislative improvements with significant implementation gaps [7].

Some participants stated that the nation has recently seen an increase in public knowledge of the pervasiveness of corruption in society, its impacts, and the role that people may play in reducing it. For instance, according to Mr. Aggrey Darko, a lecturer on public policy at the University of Ghana, "what has changed is public awareness and perhaps enthusiasm (and by enthusiasm he means the higher sense among Ghanaian society, especially among the Civil Society to fight corruption) but the enthusiasm alone will not grow fold [8]. Beyond raising awareness, there is the need to develop real institutional capabilities to combat corruption. The increased activity of CSOs in this sector and media pluralism are two significant variables that have been identified as contributing to the expanding public awareness. Mr. Asamoah, the Ghana Anti-Corruption Coalition's director of research, said that one of their organization's activities has been promoting the proper execution of the Whistle Blower Act and instructing individuals on how to utilize the Act [9].

Most public organizations have changed their organizational structures to encourage excellent collaborative governance. In order to practice sound financial management, these reforms have taken the form of modernizing public institutions, institutionalizing accountability units inside public departments and agencies. Ransford Agyei, the acting director general of the internal audit agency, claimed that sound corporate governance practices are now heavily emphasized by general auditors

inside government departments and agencies. He included the boards of each institution, the management, and the internal and external auditors as part of these structures [10]. He continued by saying that the majority of public institutions now have audit committees known as Audit Report Implementation Committees (ARIC), and one of its main responsibilities is to see that the recommendations made by the external and internal auditors are carried out. In addition, genuine internal auditing rather than pre-examination is now being done by internal auditors. Even though some people still perform pre-examinations, professionals who work specifically for ministries and other high departments and agencies are now performing internal auditing, which entails assessing and improving risk management within the organization and making sure that control systems are in place [11].

Additionally, several organizations have established Internal Audit Units. The anticorruption law framework has also seen certain advancements in addition to these organizational adjustments. For instance, the Whistleblowers Act was approved in the nation in 2003. Despite difficulties with implementation, efforts are being made, particularly by CSOs, to support the act's successful execution. In order to increase openness in public contracting and procurement, the Public Procurement Act (PPA) was also established; this topic will be covered in more detail in a later chapter. To strengthen efforts to combat corruption, the nation's Financial Administrative Regulation (FAR) and Financial Administrative Act (FAA) have both been updated [11].

4. DIMENSIONS FOR EFFECTIVE ANTI-CORRUPTION MECHANISM

The Global Integrity report (2008 and 2009), for example, assesses the nation's legislative system focused at combating corruption as extremely strong. Various initiatives have been undertaken to increase legal limits in the battle against corruption in Ghana. A thorough anticorruption strategy, however, goes beyond simply tightening the law to address other aspects of corruption, such as the resources that corrupt individuals frequently exploit and the tightening of other types of restrictions that help to raise the cost of corruption. The author sometimes uses a built-on model advanced, which depicts more of a causal relationship, since the monopoly plus discretion minus accountability model tends to represent an equilibrium state rather than a causal model. In this equation, resources are equated to corruption, and by resources we mean power discretion plus material resources minus restraints [7, 10].

Corruption = Resources (Power discretion + Material Resources – Constraint) or Monopoly of Power (M) + Power of Discretion (D) – Accountability (A) (M+D-A=C)

Power discretion, in this sense, extends beyond exclusive access and monopolistic power in order to exert influence and make decisions in many contexts.

The second component is material resources, which include both financial resources (such as the public budget and foreign assistance) and other types of resources (such as state-owned property and employment in the public sector).

The third component, limitations, examines both legal and normative restrictions that deter corrupt actors from engaging in corrupt behavior. However, the goal of this section is to determine if these aspects of corruption have changed in the nation [12].

It would specifically assess the issue of whether anti-corruption initiatives are really putting a check on the use of discretionary authority, material resources, and also setting adequate restrictions. The three aspects of corruption that were discussed may be employed in a much wider context, but their usage would be sufficient with only one signal. For example, the use of "discretionary power" is restricted to

just examining the degree of accountability within the government; on the other hand, the use of material resources is restricted to public procurement since it makes up a significant portion of the national budget (apart from wages and allowances) [13].

The normative aspect would assess the level of active participation of citizens in calling for an ethical universalism rule, and finally, institutional constraints would provide a brief overview of the various anticorruption agencies in the nation. The legal 30 constraint is measured in terms of the existing anticorruption legal framework.

Power Discretion

A public official's capacity to use discretion and the amount to which they are held responsible for their decisions might both affect the level of corruption. Corruption tends to be high when discretion is high and accountability is low. A person with discretionary authority would consequently be less likely to commit corruption if there was an effective accountability mechanism in place since they would know they would be held responsible.

Material Resource

Rents that accrue to people or the political party in power are referred to in the second component of corruption, called material resources. Little would be mentioned about this problem in this area as it was covered in depth in the diagnostic section. There has little to no progress in this area, as was covered in chapter two. Even years after the public procurement legislation was put into effect, public procurement and contracts are being used as a means of generating rent. Four years after the act's enactment, in 2007, 61.23 percent of the businesses bidding for government contracts indicated they were required to make gifts in order to be chosen. This demonstrates that anticorruption initiatives should concentrate on making sure that procurement is carried out not just in accordance with the law but also that individuals involved are forced to operate impartially [14].

Constraints

Constraints are unquestionably crucial in the battle against corruption. This section will quickly examine the three types of constraints—legal, normative, and institutional constraints—as it has previously been described.

Legal Constraints

The Whistleblower Acts, Public Procurement Act, Asset Declaration Law, the law on creating financial damage to the state, and other laws relating to financial management were all passed and put into effect throughout the course of the previous ten years. The Global Integrity Index rates the nation's anticorruption legislation as extremely excellent, which reflects this.

5. EMERGING ANTI-CORRUPTION REFORMS

Ghana has had many procurement regimes since its independence. There was no comprehensive legislative structure governing the nation's governmental procurement practices prior to 2003. Mr. Agyei said that the various legal measures and government regulations governing the conduct of public procurement each presented unique difficulties in addressing the corruption problem.

In the 1990s, there were also calls for the public financial management system to be enhanced with an emphasis on lowering spending and raising income. As a result, the Public Financial Management Reform Program (PUFMARP) was launched, with procurement playing a significant role. Apart from salary and benefits, procurement accounts for 50–70% of all government spending and indeed the major

source of corruption in Ghana in recent time apply the procurement Act 663, 2003 as revised. This due lack of standardization contributed to several shortcomings in the new reform program, making it difficult to assess whether procurement was being done in an effective and efficient manner or not. For instance, Mr. Agyei argued that since there were no criteria and a set procedure of procurement, individuals were exploiting the system. The submission of quotes was the primary requirement for procurement at the time. As a result, someone could obtain three quotes from three brothers or one person could look for two or three quotes for a contract worth \$5 million without being held accountable (Agyei).

The enforcement of other anti-corruption measures is showing a similar pattern. Although some of them are accused of identical wrongdoings, one sees the criminal law applied to former government officials but not the current ones. There is likewise no exemption to the Asset Declaration Law. Government officials must report their assets before joining office and at the conclusion of their time in office, according to Article 28610 of the 1992 constitution, however this requirement is seldom followed. A report from the Ghana Anti-corruption Coalition revealed that despite the president issuing a fiat requesting that all of his appointees declare their assets, only 57 out of the 73 ministers have actually done so several months after taking office. Additionally, just six of the presidential staffs—out of an unknown number—had cooperated. Only 55% (127) of the legislators have followed the legislation, which was likewise the case.

6. EVALUATING FINDINGS OF ANTI-CORRUPTION INSTITUTIONS INDEPENDENCE

The objective of the Executive, from day one, is to win the next election and so with this in mind it starts amassing wealth for the party and so all government appointees must contribute either in cash or in kind into the party kitty (Heidenheimer, Arnold J.M.Jojnston and V.T. LeVine, 1989)). The Executive ensures that government contracts are awarded to favourites, friends and family members. Sometimes Chief Executive Officers in the districts inflate the cost of government projects and pass on the margins to their political parties and themselves. This practice in the end renders the entire public service corrupt and partisan. The few saints in the chain get entangled in the web of this corrupt network and in no time become sinners (Aryee, 2017)

Again, the rule of law is weakly and selectively enforced (Selective Justice System). Public sector corruption thrives where laws apply to some but not to others, and where enforcement of the law is often used as a device for furthering private interests rather than protecting the public interest. A common symbol of the breakdown of the rule of law in highly corrupt Ghana is the police acting as law-breakers rather than law enforcers – for example, stopping motorists for invented traffic violation as an excuse for extracting bribes. Also a situation where a police vehicle is used to convey illegal or contraband goods, and a police officer assisting a motorist by sitting in front of a vehicle with narcotic drugs. (Global Corrupt Report, 2001)).

Furthermore, Institutions of accountability are ineffective. There are glaring weaknesses in institutions of accountability that are expected to control public sector corruption. These institutions are either created by the state itself (for example, the Auditor-General (AG), Judiciary, Commissioner of Human Right and Administrative Justice (CHRAJ), Economic and Organised Crime Office (EOCO) and the legislature) or arise outside of formal state structures (for example, the news media and organised civic groups). Technically, these institutions are weak and lame due to their appointment nature, remuneration, and control structure hence they lack the independence the institutions required to check the executive as neatly pitched in the constitution (Gregory.R., 1999). In Ghana where public sector corruption is endemic includes the Ghana Police Service, Judiciary, Legislature and the Executive

(Afrobarometer, 2015; Ghana Integrity Initiative, 2012; 2014), it is reasonable to suspect that it touches the highest levels of government, and that many senior office-holders will not be motivated to work against it.

Again, an ineffective Assets Declaration Regime strongly backs and facilitates corruption. Assets Declaration Regime has been generally utilised as a governance control tool 1970s but never help in the fight against corruption as expected since its adoption. It succeeded in getting the support since the passage of the UN Convention Against Corruption (UNCAC), which was recommended by the UN General Assembly in 2003. The Convention's articles specifically require countries to institute relevant legislations for public officials to declare their assets. In Ghana, two main laws have regulated assets declaration – Article 286 (1) of the 1992 Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550). Act 550 provides the framework and guidelines for assets declaration in Ghana as a tool to combat corruption among public office holders, yet it has its gaps and defects like similar anti-corruption measures discussed earlier (Gregory R., 1999).

According to Transparency International (2012) Perceived levels of corruption are lower in countries with the following:

1. A longer established tradition of assets declaration by public officials.
2. Declaration laws that permit prosecution of offending officials.
3. Verification of officials' statements and clear public access to declarations.

7. CONCLUSIONS

The research found that because of the highly divided political environment and the influence of these political parties in these institutions, organizations with the authority to combat corruption have mainly been unsuccessful. It was discovered that the way these organizations are funded makes them vulnerable to manipulation by the executive branch of government. The study also revealed that there is a perception among citizens that the political class engages in witch hunts against people who are seen as political rivals while clearing their colleagues of wrongdoing, and that there is little or no cooperation between state institutions and ACIs. The research also showed that the agencies' leaders' appointment procedures do not permit them to seem to have an unbiased perspective on the battle against corruption. There is less cooperation across agencies, despite the fact that certain organizations' missions overlap and others are required for pursuing corruption and crimes linked to it in a thorough manner.

8. RECOMMENDATIONS

Parliament should amend the Constitutional Provision such that the Auditor General, Commissioner and his Deputy of the Commission of Human Rights and Administrative Justice (CHRAJ) and Director General of Economic and Organized Crime Office (EOCO), Public Procurement Authority (PPA), Internal Audit Agency, Special Prosecutor, appointments and remunerations, budget to run offices to be determined by Parliament and not the Executive to enhance their independence in the discharge of their duties.

Again, politicians must be educated to understand the continuum of governance and appreciate that both the government in power and the opposition play a complementary role for the development of Ghana. A change in government must not mean everything has to start with the new government. It must not mean everything the previous government did was bad and therefore must be jettisoned. A change in government must not mean a change in contracts signed by the previous administration. Such arbitrary

actions have legal and financial implications for the government and must be stopped.

Furthermore, the current practice where the Attorney General's office alone negotiates out-of-court settlement with plaintiff should be looked at again. It should be possible to set limits and negotiated settlements should have parliamentary approval through the review of parliamentary sub-committee.

Finally, it worth supporting the recommendation of the Auditor- General suggesting that Public officials should be surcharged for the loss they cause the state through judgment debts. Considering that these debts are so huge, and cannot be paid by these officials with their lifetime earnings, further charges of criminal negligence can be pressed against them with possible jail terms.

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