



**Ghana Integrity Initiative (GII)**  
Local Chapter of Transparency International

# TOWARDS ENFORCEMENT OF AFRICA'S COMMITMENTS TO ANTI-CORRUPTION:

CIVIL SOCIETY ENGAGEMENT WITHIN THE  
2018 AFRICAN YEAR OF ANTI-CORRUPTION

A FOCUS ON GHANA'S  
OBLIGATIONS UNDER THE AU  
CONVENTION ON PREVENTING  
AND COMBATING CORRUPTION

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Established in 1999, Ghana Integrity Initiative (GII) is a non-partisan, non-profit civil organisation focused on addressing corruption. GII is the local Chapter of Transparency International (TI), the global, non-governmental, non-profit civil society organisation leading the fight against corruption through more than 90 chapters and over 30 individual members worldwide with its International Secretariat in Berlin, Germany.

The vision of GII is

“a corruption-free society where all people and institutions act accountably, transparently and with integrity”.

The mission of GII is

“to fight corruption and promote good governance in the daily lives of people and institutions by forging strong, trusting and effective partnership with government, business and civil society and engagement with the people”.

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# 1.0 INTRODUCTION

This is a report of a study on “Towards Enforcement of Africa's Commitments to Anti-Corruption: Civil Society Engagement within the 2018 African Year of Anti-Corruption: A Focus on Ghana's Obligations under the African Union Convention on Preventing and Combating Corruption”

It has been prepared for the Ghana Integrity Initiative (GII) as part of a project by Transparency International on “*Towards Enforcement of Africa's Commitments to Anti-Corruption: Civil Society Engagement within the 2018 African Year of Anti-Corruption*”.

The study focuses on whether, and to what extent Ghana has discharged her obligations under the African Union Convention on Preventing and Combating Corruption (AU Convention), as a state party. Specifically, the study does not cover all the 28 articles of the AU Convention but only a selected few. These relate to Money Laundering, illicit enrichment, funding of political parties, civil society and media, code of conduct and assets declaration, as well as confiscation and seizure of proceeds and instrumentalities of corruption.

## 1.1. Objectives of the study

The Study sought to strengthen the contribution of African civil society to African Union's anti-corruption efforts and commitments during the Anti-Corruption Year and beyond.

Specifically, it seeks to:

- i. document anti-corruption commitments of Ghana under the AU Convention
- ii. monitor the domestication by Ghana of the selected commitments of the AU Convention
- iii. advocate and support national level implementation of anti-corruption commitments of the Government of Ghana, and
- iv. advocate stronger enforcement of regional-level anti-corruption commitments during the 2018 African Anti-Corruption year

## 1.2. The Scope of the Study

The study focused only on selected obligations/commitments by Ghana in relation to the AU Convention. These are the following:

### i) Illicit enrichment:

Article 5, paragraph 1: “State Parties undertake to adopt legislation and other measures that are required to establish as offences, the acts mentioned in Article 4 paragraph 1[g]...”,

Article 8: 1. Subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment.

2. For State Parties that have established illicit enrichment as an offence under their

domestic law, such an offence shall be considered an act of corruption or a related offence for the purposes of this Convention.

3. Any State Party that has not established illicit enrichment as an offence shall, in so far as its laws permit, provide assistance and cooperation to the requesting State with respect to the offence as provided in this Convention.

## ii) Laundering of Proceeds of Corruption

Article 6: States Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action

(b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences

(c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences

## iii) Assets Declaration and Code of Conduct

Article 7: The Fight Against Corruption and Related Offences in the Public Service.

In order to combat corruption and related offences in the public service, State Parties commit themselves to:

1. Require all or designated public officials

to declare their assets at the time of assumption of office during and after their term of office in the public service.

2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.

3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increasing the efficiency of those responsible in this regard.<sup>1</sup>

## iv). Access to Information

Article 9: Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

## v). Funding of Political Parties

Article 10: Each State Party shall adopt legislative and other measures to:

(a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and

(b) Incorporate the principle of transparency into funding of political parties.

## vi). Civil Society and Media

Article 12: State Parties undertake to:

1. Be fully engaged in the fight against corruption and related offences and the popularisation of this Convention with the

1. With focus on conflict of interest

full participation of the Media and Civil Society at large;

2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;

3. Ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention;

4. Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.

vii). Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption

Article 16, paragraph 1: Each State Party shall adopt such legislative measures as may be necessary to enable:

(a) its competent authorities to search, identify, trace, administer and freeze or seize the proceeds and instrumentalities of corruption pending a final judgement;

(b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;

(c) repatriation of proceeds of corruption.

Also related to article 16 (1) is article 19, paragraph 3 on international cooperation for purposes of asset recovery.

### 1.3. Methodological Considerations

Predominantly, the study applied qualitative methods. The study made use of primary and secondary sources of data. Questionnaires developed for data collection contained both closed and open-ended questions, specially designed to elicit the views of the sampled respondents who, in the view of the Researcher, are likely to have the required information, which is vital to the study and are also willing to share such information. They also include respondents whose activities had a direct relationship with the issues covering the subject.

For this purpose, the following were targeted: anti-corruption practitioners; anti-corruption agencies; civil society leaders; current and former members of the AU Advisory Board on Corruption and other relevant stakeholders.. The Researcher also elicited views on the subject from some Heads of Anti-Corruption Agencies in and out of the country.

Secondary sources were obtained from reports, articles, publications, presentations, international anti-corruption instruments, Acts of Parliament, policy, reports and cases, among others.

A workshop was organised on 17th September 2018 to introduce key stakeholders to the study, its purpose and scope and to elicit their support. For purposes of enhancing the transparency of the study and its findings, a validation workshop was also organised on 26th October 2018 for stakeholders to confirm some of the responses given in the

questionnaire earlier administered, and to elicit clarification or explanation on the findings of the study. The draft report was circulated to participants ahead of the workshop, some of whom made useful suggestions to improve on the report.

The questionnaire submitted to states parties by the Board as well as comments by a TI Consultant preparing a global report for TI on some of the articles covered in this study, also provided useful information to the study.

The above data collection methods and processes were complemented by the Researcher's own knowledge, observation and experience on the subject.

## Limitations

The time frame for the study was very short, such that some respondents could not provide responses within the stipulated time. There was also a lack of clear understanding of some of the issues that the questionnaires sought to elicit from some of the sampled respondents. The limited knowledge of the issues under consideration also affected the responses provided by some of the respondents. Nevertheless, the limitations were

managed to produce a balanced and evidence-based report.

## 1.4. Organisation of the Report

The report of the study is organized in four (4) sections. Section 1 contains the introductory part, which discusses the purpose of the study, objectives, scope and methodological considerations. Overview of existing literature is contained in section 2, whilst the status of implementation of the AU Convention by Ghana (the Findings), are discussed in section 3 and presented in the following outline:

- Reproduction of provisions of the article of the Convention under consideration;
- Implementation or enforcement, that is the law or policy dealing with the requirements of the article under consideration;
- Examples of implementation, which includes practical application of the law or policy, and
- Observations, where conclusions are drawn as to whether or not Ghana has met the requirements of (complied with) the AU Convention with respect to the particular article.

The last section, 4, contains conclusions and recommendations.

# 2.0. OVERVIEW OF EXISTING LITERATURE

## 2.1. Context and Background to adoption of AU Convention

By the time of the adoption of the AU Convention, Africa was perceived as a very corrupt continent based on various measurements of corruption existing at the time. It has to be pointed out that the term "corruption," is not easily amenable to one single definition<sup>2</sup> applicable to all countries. Despite the difficulty in the definition,<sup>3</sup> there is global consensus on its negative impact on Africa and the world at large, which necessitated global and regional responses to dealing with it.

Nevertheless, for the purposes of the study, corruption is the "abuse of entrusted office or power for private gain". This definition is also consistent with the definition adopted by Ghana's National Anti-Corruption Action Plan (NACAP)<sup>4</sup>. It consists of the following acts and practices: bribery, embezzlement, misappropriation, trading in influence, abuse of office/power, illicit enrichment, conflict of interest, fraud, laundering of proceeds of crime, concealment, obstruction of justice, patronage and nepotism<sup>5</sup> among others.

The magnitude of the problem of corruption is aptly captured in the Preamble to the AU Convention, where concerns were expressed about the negative and devastating effects of corruption and impunity on the political, economic, social and cultural stability of African States and the social development of African people. The Preamble also acknowledged that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent.

A similar recognition of the effects of corruption by the United Nations is in its Resolution 58/4, where it is stated "*the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values, and justice and jeopardising sustainable development and the rule of law*"<sup>6</sup>

According to UNECA, (2016), corruption subverts development plans and programmes and resources that may have been invested more efficiently in the continent and that the estimated cost of corruption to Africa is as much as USD148

2. See UNODC, 2003. TRAVAUX PREPARATOIRES of the negotiations for the elaboration of the United Nations Convention against Corruption, UN, New York, pages 24-26, where several proposals were made as to the definition of corruption but in the end that approach was abandoned for "defining" corruption by listing its constituent acts and conducts.

3. UN General Assembly Resolution 58/4: United Nations Convention against Corruption:  
In: UNODC, 2005. Compendium of International Legal Instruments on Corruption, 2ed. UN, New York.

4. Republic of Ghana, 2011. National Anti-Corruption Action Plan (NACAP)-2015-2024., CHRAJ, Accra.

5. Ibid, paragraph 2.1., p. 24

6. Ibid, p. 22



billion per annum (equivalent to 25% of African GDP). In addition, UNECA, (2015), estimates that Africa lost a total of about USD 59 billion between 1970 - 2008 through illicit financial flows out of Africa. Besley, T., and Torsten P., (2014) also estimate that more than a third of businesses in Ghana expect to give gifts to procurement officials<sup>7</sup> and that corruption creates disincentives for taxpayers to pay taxes.<sup>8</sup>

These are but a few of the effects of corruption on societies, Africa and the world that require global and regional strategies to address. However, before any meaningful strategy can be developed, the causes of corruption have to be understood. On this score, William Gumede (2012) argues that most well-intentioned corruption busting remedies in Africa fail because the root causes of corruption on the continent is often poorly understood.

For (UNECA, 2016), one of the main reasons for the prevalence of petty corruption in the African context is that public services and providers spearhead widespread financial mismanagement. Petty corruption also thrives where there is an absence of transparency and accountability in rules, and the penalty imposed on the perpetrators is weak.<sup>9</sup>

World Bank, (2010) reports that leakage of resources in the provision of health care in Ghana is huge and that in 2000, for instance, leakages of non-salary cash flows in health care delivery system in Ghana amounted to 80%, which was only next to Chad which recorded 99%.

Corruption in Africa would not be better appreciated if approached only from the moralist, legal or public office holder perspectives. It appears to be embedded in the wider socio-political, economic and social relations, which Medard (2002) vividly refers to as neo-patrimonialism: characterized by personalization of power; interchangeability of wealth and power; clan or family-based and depends on social patronage (Joost Oorthuizen, 2004).

Republic of Ghana (2011)<sup>10</sup> the NACAP, lists the causes of corruption in Ghana to include institutional weaknesses, poor ethical standards including limited commitment to the values of integrity and self-discipline, skewed incentives structure, and insufficient enforcement of laws within a patrimonial social and political context.

Nsongurua J. U., (2003) writes that a precursor to the adoption of the AU convention is the Transparency International (T.I.) Corruption Perception Index (CPI), which was first published in 1995. The CPI, which is published on annual basis, ranked target countries according to their perceived levels of corruption, thus, providing an assessment of worldwide perceptions of the extent of corruption. Subsequently, other studies by international organizations, research centres and businesses, among others were also conducted in a bid to gauging the levels of corruption in countries.

UNECA, (2016) lists some of them as Worldwide Governance Indicators, World Bank Country Policy, World Business

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7. <https://www.business-anti-corruption.com/country-profiles/ghana/>

8. Besley, Timothy, and Torsten Persson. 2014. "Why Do Developing Countries Tax So Little?" *Journal of Economic Perspectives* 28 (4): 99–120.

9. Page 20

10. NACAP, p. paragraph 2.2.1.

Environment Survey and Institutional Assessment and the World Bank Enterprise Survey.

Since 1999 when Ghana was added to the countries surveyed, scores for Africa ranged from 1.5 (Cameroun) to 6.1. (Botswana) on the CPI in 1999 and in 2003 when the AU Convention was adopted, the scores did not improve to any appreciable level. In fact, the highest score by African countries was 4.9 (Tunisia) and the lowest was 1.4 (Nigeria). Ghana maintained its score of 3.3 on the CPI that year.<sup>11</sup>

The effect of all the studies including the CPI, according to (Nsongurua J. Udomban, 2003) is the verdict of the international community, including TI, the World Bank and IMF that, Africa was/is a corrupt continent.

Despite the fact that corruption is not amenable to one single definition that is accepted and applicable universally, these studies released yearly continue to single out Africa as the most corrupt continent.

Be that as it may, while these initiatives were gaining currency, the coups d'état that occurred in Africa at the time, used corruption as a reason for driving out corrupt leaders, a fact Nicholas Sanchez and Alan R. Waters (1974) acknowledge. They put it thus:

*[Every revolution in the less developed world has been at least partially inspired by the desire to drive out corrupt rulers and officials, replacing them with honest men and raising the moral tenor of society. But the process is never completed. One regime replaces another, and the corruption]*<sup>12</sup>

Within the context of the developments, the need to develop global and regional strategies to address corruption shifted to Africa (Kolawole Olaniyan, 2004)<sup>13</sup>; generating various initiatives by non-governmental organisations (NGOs) and within the framework of the African Union.

According to Kolawole O., (2004), the Assembly of Heads of States and Governments of the Organisation of African Unity (OAU) adopted Decision AHG-Dec 126 (XXXIV) in 1998, which among others, espoused the determination to tackle impunity and corruption and a decision to draft a regional convention on corruption.

Another initiative (Kolawole O, 2004), leading to the drafting and adoption of the AU Convention were two 'experts' meetings in Addis Ababa, Ethiopia in 2001 and 2002 on the matter, following which an approval by the Executive Council of the AU meeting in N'djamena, Chad, in March 2003, was granted and the text was then finalized and recommended to the AU Assembly for adoption.

Whilst these initiatives continued (Nsongurua J. U., 2003) in June 2000, the eight-member Economic and Monetary Union of West Africa (UEMOA) signed a Transparency Code for the Management of Public Finances, which called for a "qualitative change" in the conduct of public finances. Earlier, the Economic Community of West African States (ECOWAS), also held the first meeting of a new Inter-Governmental Action Group against Money Laundering (GIABA) in Dakar in November 2000. Furthermore,

11. Available at [https://www.transparency.org/research/cpi/cpi\\_1999/0](https://www.transparency.org/research/cpi/cpi_1999/0)

12. Nicholas Sanchez & Alan R. Waters, Controlling Corruption in Africa and Latin America, in THE ECONOMICS OF PROPERTY RIGHTS 279 (Eirik G. Furubotn & Svetozar Pejovich eds., 1974)

13. 2004. The African Union Convention on Preventing and Combating Corruption: A critical appraisal, IN: 4 AFRICAN HUMAN RIGHTS LAW JOURNAL, 2004



(Nsongurua J. U., 2003), Attorneys-General and Ministers of Justice of ECOWAS Member Countries had issued the Accra Declaration on Collaborating against Corruption, which later resulted in the ECOWAS Protocol on Corruption.

Ultimately, the AU adopted the Convention on 11 July 2003 at the Second Ordinary Session of the Assembly of the AU held in Maputo, Mozambique<sup>14</sup> as a regional response to the problem of corruption in Africa

## 2.2. Highlights of Provisions of the AU Convention

The Convention has 28 Articles in addition to the Preamble. Article 1 contains the definition of terms used in the Convention. “Corruption” is defined as “...*the acts and practices including related offences proscribed in this Convention*”. The lists and description of the acts and practices that the Convention proscribes are provided in article 4, which in brief, are the following:

- Bribery (receiver and giver) or what is sometimes referred to as “active” and “passive” bribery in public sector (article 4(1)(a) and (b)) and in the private sector (article 4(1)(e)(f));
- Abuse of functions (abuse of power or office)-article 4(1)(c);
- Diversion of public property, that includes misappropriation and embezzlement (article 4(1)(d));
- illicit enrichment is provided for in articles 4(1)(g) and 8, which is defined in Article 1 of the AU Convention to mean “...*significant increase in the assets of a*

*public official or any other person which he or she cannot reasonably explain in relation to his or her income*”.

- Article 4(1)(h) relate to “the use or concealment of proceeds derived from any of the acts referred to in article 4, or simply use or concealment of proceeds of corruption”, whilst “participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in article 4 is provided for in article 4(1)(i) of the Convention.

It also contains an omnibus or open-ended clause that makes provision for acts and practices not included in article 4 (1) but which could be considered corruption under the Convention, “...*by mutual agreement between or among two or more State Parties...*” (Article 4(2))

The objectives and principles of the Convention are in articles 2 and 3 respectively, while the scope of application of Convention, that is the article that lists and describes the acts of corruption proscribed in the Convention, are provided for in article 4 and article 5.

Article 4, paragraph 1, provides for the adoption of legislative and other measures to criminalise the acts of corruption and to generally implement the Convention.

The rest of the articles deal with the following:

- Article 6: Laundering of proceeds of corruption

14. Preamble to the AU Convention

- Articles 7 and 11 deal with the Fight Against Corruption and Related Offences in the Public and private sectors respectively
- Article 9. Access to information
- Article 10: Funding of Political Parties
- Article 12: Civil Society and Media
- Article 13: Jurisdiction
- Article 14: Minimum Guarantees of a Fair Trial
- Article 15: Extradition
- Article 16: Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption
- Article 17 Bank Secrecy
- International Cooperation, Cooperation and Mutual Legal Assistance are under articles 18 and 19 respectively, whilst National Authorities are in article 20.
- Article 21: Relationship with other Agreements
- Article 22 provides for a “Follow up Mechanism”.
- Articles 23-28 contain “Final Clauses” and they include “signature, ratification, accession and Entry into Force, Reservations, Article 25- Amendment, Article 26-Denunciation, Article 27-Depositary.
- Article 28 -Authentic Texts- make equally authentic, the Arabic, French and Portuguese texts of the Convention, which shall be deposited with the Chairperson of the Commission.<sup>15</sup>

## 2.3. Implementation of the Convention

The Convention entered into force on 5 August 2006 “...30 days after the date of the deposit of the fifteenth instrument of ratification or accession;<sup>16</sup> and for those states parties that ratify/accede to Convention, it shall come into force “thirty (30) days after the date of the deposit by that state party of its instrument of ratification or accession.<sup>17</sup>

The coming into force of the Convention on 5th August 2006 meant that states parties were to communicate to the Board by 5th August 2007 and then, through their relevant procedures, ensure that their national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.

It is 12 years since the Convention came into force. Therefore, it is expected that, at least, those 15 states that ratified it, should have submitted 12 reports, at the minimum. In the case of Ghana, that ratified it on 27 June 2007, reports to the Board should not be less than 10 (one report between 27 June 2007 and 27 June 2008) and then one report through its national institutions each year from 2009 -2018.

UNODC, (2008), describing the review mechanism of the AU Convention, submits

15. UNODC, 2005. African Union Convention for Preventing and Combating Corruption, In Compendium of International Instruments on Corruption. 2ed. UN, New York. P. 116-130

16. article 23 (2) of the AU Convention

17. article 23 (3) of the AU Convention

that it consists of (1) the submission of a report to the Advisory Board on the progress of implementation of the states parties, "...within a year after the entry into force of the instrument and thereafter on an annual basis through reports by national anti-corruption authorities to the Board" and (2) the Board, in turn, then reports to the Executive Council of the AU regularly on the progress made by each State party in complying with the provisions of the Convention.

Unlike the AU Convention, which has two-step process (UNODC, 2008), the African Peer Review Mechanism (APRM) of the African Union has a four-step process in gauging the governance situation in the participating countries that are subject to its review. Firstly, each of the 23 participating States (as of 2008) completes a self-assessment questionnaire and prepares a draft national action plan that, among others, identifies the major governance challenges facing that State. Secondly, country review visits are conducted and a country report containing analysis and recommendations for improving governance (including anti-corruption) is compiled. Thirdly, the African Peer Review Panel reviews the report of the country review visits and makes recommendations to the African Peer Review Forum. Lastly, Heads of states discuss the report with an action plan that has been recommended at the African Peer Review Forum.<sup>18</sup> The process does not include ranking of the participating countries. Rather, it identifies challenges facing the countries and steps of a particular country would take to address the challenges.

## 2.4. Status of Implementation of the AU Convention

Noa. P., (2017), in a presentation, indicates that of 55 countries in Africa, only 49 (89%) are signatories to the AU Convention (or the Convention), and 38 (69%) states have ratified/ acceded to it. Three (3) countries are yet to indicate their intention whether to be bound by it or not. He lists those countries as Central African Republic, Cape Verde and Morocco.<sup>19</sup> He further reveals that 13 states parties responded to questionnaires that the AU Advisory Board on Corruption (the Board) sent to states parties in May 2015, in accordance with article 22 (7) of the Convention.

On achievements made by the reporting states parties in terms of the implementation of the Convention, Noa P. lists them to include the following:

- The states parties met their obligations under Article 5 (1) which requires them to adopt legislative and other measures necessary to establish as offences the acts provided for in the Convention;
- They have also enacted other laws to provide for protection of witnesses and informants, declaration of assets, confiscation and seizure of instrumentalities and proceeds of corruption, and anti-money laundering,
- Others have established and strengthened anti-corruption bodies and adopted national anti-corruption strategies.

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18. *ibid.*, p. 6

19. Paulus Noa., Overview on AUABC, Project 2018 and Draft AUABC Strategic Plan, presentation delivered on 15 November 2017, Arusha, Tanzania.

- Civil society and media are active in those states parties,
- There are strong accountability systems such as the Audit institutions and the Accounts Committees of the various Parliaments.

## 2.5. Ghana and the AU Convention

### 2.5.1. Ratification and Gap

#### Analysis

The Parliament of Ghana adopted a resolution to ratify the AU Convention together with the United Nations Convention against corruption on 16 December 2005. Finally, Ghana ratified both Conventions on 27 June 2007. The basis for the adoption procedure used by Parliament is in Article 75 (2)(b) of the Constitution. It provides: *“A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by (b) a resolution of Parliament supported by the votes of more than one and half (1 1/2) of the number of all the members of Parliament”*.

Soon after ratification of the Convention, Ghana conducted a comparative analysis of the provisions of her anti-corruption laws and policies existing at the time and the provisions of the UNCAC and the AU Convention with the view to identifying existing gaps that needed to be filled in order to bring Ghana into full compliance with both AU Convention and the UNCAC (Republic of Ghana, 2009).

The analysis covered about thirteen (13) articles of the AU Convention and all the articles of the UNCAC. In terms of the AU Convention, the following were considered:

- Laundering of Proceeds of Corruption (Article 6);
- Fight Against Corruption and Related Offences in the Public Service (Articles 7);
- Illicit enrichment (Article 8);
- Access to Information (Article 9);
- Funding of Political Parties (Article 10);
- Private Sector (Article 11);
- Jurisdiction (Article 13);
- Extradition (Article 15);
- Bank Secrecy (Article 17);
- Cooperation and Mutual Legal Assistance (Article 18);
- International Cooperation (Article 19);
- National Authorities (Article 20), and
- Relationship with other Agreements (Article 21).

The analysis did not contain information on Article 5, paragraphs 2-8 of the Convention on “Legislative and other Measures” which provides for State Parties to undertake to:

- Strengthen national control measures to ensure that the setting up and operation of foreign companies in the territory of a State Party shall be subject to the respect of the national legislation in force (Paragraph 2);
- Establish, maintain and strengthen independent national anti-corruption

authorities or agencies (Paragraph 3);

- Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services (Paragraph 4);
- Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities (Paragraph 5);
- Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisal (Paragraph 6. );s;

Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences, (Paragraph 7);

- Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitization of the media, and the promotion of an enabling environment for the respect of ethics (Paragraph 8), and
- Article 12 on Civil Society and Media as an obligation was not touched.

Furthermore, draft bills pending at the time were presented as measures being prepared to meet the requirements of the AU Convention. These were the Mutual Legal Assistance Bill, the Right to Information (RTI) Bill, and the Economic and Organised Crime Office (EOCO) Bill. These Bills, except the RTI Bill, have since been enacted into law.

Other anti-corruption laws have been amended after 2007, such as the Anti-Money Laundering (Amendment) Act, 2014 (Act 874). The amendment was made in order make the anti-money laundering laws of the country consistent with international standards set by the Financial Action Task Force (FATF) as well as to further strengthen the legislative framework for combating money laundering.

Other important developments on the anti-corruption arena had also taken place. Ghana ratified the United Nations Convention against Transnational Organised Crime (UNTOC). Parliament of Ghana adopted the National Anti-Corruption Action Plan (NACAP), which is in its fourth year of implementation as the blue print for fighting corruption in Ghana.

Furthermore, the implementation of the UNCAC in terms of Chapters 3 & 4 (Criminalisation and Law enforcement and International Cooperation) by Ghana was reviewed in 2014/15 and is being reviewed again in 2018 in terms of Chapters 2 (Preventive measures) and Chapter 5 (Asset Recovery). All these developments show that the anti-corruption landscape, which existed in 2009, when the report of the gap analysis was released, is not the same as it is today, the year of anti-corruption.



## 2.5.2. Report of the African Union Advisory Board on Corruption

AU-ABC (2013) reports that the Board visited Ghana in 2012/13 and met with various interest groups including government, anti-corruption institutions, and civil society to “...*evaluate the implementation of the convention [by Ghana], the challenges hampering its implementation; how to overcome those challenges and to encourage the government to fully commit itself to the implementation of the convention*” p.2.

The Board also met with “... *UNDP and European Union officials ... helped the mission[Board] to get a neutral information on how Ghana is implementing the AU Convention on corruption*” p.2.

The report produced after the visit contained over 38 findings (described as key) and recommendations, almost all of which were based on views and opinions of the persons consulted. No reference was made to any information provided by the Board based on the questionnaire that it may have received prior to the visit to Ghana.

Some of the findings are the following:

i. *“Development of Code of Conduct for the Public Service: The document had been prepared and codified and the Ministry of Justice is working hard to ensure its completion.*

ii. *In addition to the above major work by the Ghana Governance Working Group other anti-corruption initiatives by the country include:*

a. *Development of Access to Information Bill*

b. *Passage of Whistle Blowers Bill into law*

c. *Good work is also ongoing by the Ghana Extractive Industries Transparency Initiative (GEITI) and the Ghana chapter of Publish What You Pay to promote transparency in Ghana extractive sector.*

d. *The transformation of the Serious Fraud Office into Economic and Organized Crime Office*

iii. *Although, there is enactment of the Whistle Blowers Act, citizens are yet to have confidence in the whistle blowers law and its provisions, for that they continue to relates with the civil society organizations to blow corruption whistles: there are too many technicalities in the law...*

iv. *There is little research work on corruption, anti-corruption institutions in the country and other stakeholders should as a matter of urgency prioritize this in the anticorruption programmes to positively influence anti-corruption policies in the country...*

v. *The government of Ghana has good governance objectives and one of these objectives is the war against corruption. They also concurred with the UNDP position that Ghana is at the forefront among its peers in the war against corruption in Africa...*

vi. *Ghana has opaque and confusing public management system and there is a need for a review of the system to promote transparency and accountability in the country...*

vii. *The definition of corruption in Ghana is narrow, there is conflict of interest in the work of CHRAJ as anti-corruption institution and human rights defenders, the two offices needs to be separated...*

viii. *Ghana should stop signing and ratifying international conventions that they are not ready to implement...*

ix. *The Asset Declaration law is comprehensive but it is not being implemented by both the public servants and the elected government officials; Whistle Blowers Bill has been passed into law but they are yet to see its result...*

*x. Illiteracy is high in Ghana and there is a need for capacity building for the citizens at the district level on the war against corruption”.*

According to the Board, it sent another questionnaire to States Parties in 2015 but only 13 States Parties, excluding Ghana submitted their responses to the questionnaire.

From a careful reading of the report on Ghana, it is not clear whether the visit by the Board was a follow up on any response that Ghana had submitted to the Board. Even assuming the visit was a follow up, it is also not clear if the Board did consider those responses in compiling its report. It does not appear to be the case, as the report is heavily reliant on views and opinions of the persons consulted.

The findings are contradictory. For instance, findings (v): “...Ghana is the forefront of its peers in the fight against corruption in Africa” and (vii) -“*Ghana should stop signing and ratifying international conventions that they are not ready to implement...*” if Ghana is at the forefront of its peers, then that judgement by the Board was misplaced. Apart from that the visit by the Board was in relation to article 22 of the AU Convention and if Ghana were not interested in implementing the Convention she would not have allowed the visit. The Board also was speculative, pre-judgmental and without any basis when it said “... international Conventions” when its jurisdiction and the purpose of the meeting did not extend to other international conventions.

The report does not provide supporting and verifiable documentation. Therefore, little credibility can be given to the report of the Board on Ghana.

Ogundokun, O.A., (2005) states that the AU Convention does not explicitly provide for a peer review procedure when compared with the implementation review mechanism provided under Article 63 (5) of UNCAC, whilst Sabina Seja in a presentation states that the institutional capacity of the Board needs to be enhanced<sup>20</sup> to enable it conduct reviews of implementation by States Parties and generally perform its other functions more effectively. It is difficult to disagree with the view espoused by Seja, looking at the quality of the report on Ghana by the Board. There is little publicly accessible information on how the review mechanism of the Convention works in practice (Transparency International (2014). As such, “...*it is not possible to assess its potential and effectiveness in terms of promoting effective implementation of the convention across African States*”<sup>21</sup>. Thus, the lack of information (Transparency International, 2016), has the potential to limit the very important role that civil society can play in the ratification, implementation and monitoring of the implementation of the obligations by States Parties.

## 2.6. Outstanding Issues for Consideration

A review of the existing literature reveals that quite a few touches on the AU Convention such as context and background to adoption of the AU Convention Nsongurua J. U,

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20. African Union efforts in Combatting Corruption: Achievements, Challenges and Opportunities Presentation by Honourable Sabina Seja  
21. T.I. 2014. Comparative Analysis of the UNCAC and the AU Convention, Anti-Corruption HelpDesk, 19 September 2014.

(2003),;:Kolawole O., (2004): follow up mechanism (UNODC, 2008.): comparative analysis of the provisions of the AU Convention and Ghana's anti-corruption legislation and policy (Republic of Ghana., 2009): transparency of the follow up mechanism (Transparency International, 2014), ratification and status of implementation (Noa., 2016): a visit to Ghana by the Board in 2012 (AU-ABC., 2012). Even fewer examine whether and to what extent, States parties including Ghana have fulfilled their obligations under the AU Convention and on the subject: "Towards Enforcement of Africa's Commitments to Anti-Corruption: Civil Society Engagement within the 2018 African Year of Anti-Corruption".

The following issues remain relevant and some of them, as well as other areas (see scope of study) predetermined by the Ghana Integrity Initiative will be addressed in the report.

- Has Ghana discharged its obligations under the AU Convention? And if she has, how compliant is Ghana?
- As may have already been indicated, has Ghana submitted all her reports to the Board as required under Article 22, paragraph 7 of the AU Convention?
- Is information regarding the status of implementation of AU Convention by Ghana publicly available?
- How relevant is the comparative analysis conducted by Ghana in 2009 in terms of her obligations under both the AU Convention and UNCAC today? Would it be more useful to update the 2009 Manual?
- How can civil society support States Parties such as Ghana in the implementation of and reporting on the AU Convention?



# 3.0. FINDINGS: STATUS OF IMPLEMENTATION OF THE AU CONVENTION BY GHANA

As already stated, of the 28 articles of the AU Convention, the study focused on six (6) obligations. They are those which relate to illicit enrichment, Money Laundering, funding of political parties, code of conduct and assets declaration, civil society and media, and confiscation and seizure of proceeds and instrumentalities of corruption; and related to confiscation and seizure, international cooperation for purposes of preventing corrupt public

officials from enjoying ill-acquired assets.

Reporting obligations arising from Article 22, paragraph 7 of the Follow-Up Mechanism of the AU Convention, has also been considered on the basis that not until a state party has communicated to the Board on the measures the state party has undertaken in furtherance of the Convention, the Board would not be able to report to the Executive Council of the AU.

## 3.1. Illicit Enrichment

*Article 5, paragraph 1: "For the purposes set forth in article 2 of this Convention, State Parties undertake to: ...adopt legislation and other measures that are required to establish as offences, the acts mentioned in Article 4 paragraph 1(g)...illicit enrichment.*

*Article 8 (1): "Subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment"*

*Article 8, paragraph 2: For those States Parties that have illicit enrichment as an offence, it shall be considered an act of corruption or a related offence for the purposes of this Convention.*

*Article 8, paragraph 3, Any State Party States that have not established illicit enrichment as an offence, those States Parties shall provide assistance and cooperation to a requesting State with respect to the offence as provided in this Convention, in so far as their laws permit*

### 3.1.1. Implementation

Ghana has not established illicit enrichment as a criminal offence. Rather illicit enrichment or more specifically illegal acquisition of wealth or property is a breach of the Code of Conduct for Public Officers of Ghana and it emanates from Article 286 of the 1992 Constitution of the Republic (the Constitution).

Article 286 (1) of the Constitution provides:

*A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by him whether directly or indirectly,*

- (a) within three months after the coming into force of this Constitution or before taking office, as the case may be,*
- (b) at the end of every four years, and*
- (c) at the end of his term of office.*

The public officials include the President of the republic, Vice-President, Speaker of Parliament, Judges, high senior and other officials and the chairman, managing director, general manager and departmental head of a public corporation or company in which the State has a controlling interest<sup>22</sup> and an officer in any other public office or public institution other than the Armed Forces, the salary attached to which is equivalent to or above the salary of a Director in the Civil Service.<sup>23</sup>

Article 286 (2) provides that failure to declare or knowingly making a false declaration shall be a contravention of this Constitution and shall be dealt with in accordance with article 287 of this Constitution.

Article 286 (4) establishes that any property or assets acquired by a public officer after the initial declaration required by clause (1) of article 286 (supra) and which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be deemed to have been acquired in contravention of this Constitution [or illegally].<sup>24</sup>

The Public Office Holders (Declaration of Assets and Disqualification) Act 1998, (Act 550), enacted pursuant to Article 286, also regulates declarations of assets and contains similar provisions on illegal acquisition of property or assets.

Section 1 (1) of Act 550 states, “Pursuant to Article 286 of the Constitution, a person who holds a public office mentioned in section 3 shall submit to the Auditor-General a written declaration of (a) the properties or assets owned whether directly or indirectly by that person, and (b) the liabilities owned whether directly or indirectly by that person.

Section 1(4) provides that “In accordance with clause (1) of Article 256 of the Constitution, the declaration shall be made by the public officer (a) before taking office, (b) at the end of every four years, and (c) at the end of the term of office of that public officer, and shall be submitted not later than six months of the occurrence of any of the events specified in this subsection.

Just as the Constitution, section 5 of Act 550, “Assets acquired after declaration”, provides, “In accordance with clause (4) of Article 286 of the Constitution, the property or the assets required under section 1 to be

22. Article 286 (4) of the Constitution

23. section 3 (first schedule of Act 550)

24. The Public Office Holders (Declaration of Assets and Disqualification) Act 1998, (Act 550) passed pursuant to article 286 contains similar provisions also deals with illicit enrichment similar to the provisions of the Constitution.

declared, and which is or are acquired by a public officer after the initial declaration and which is or are not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be regarded as acquired illegally and in contravention of the Constitution.

Neither the Constitution nor Act 550 provides any specific sanction to be applied in case of contravention or non-compliance of the Code of Conduct for Public Officers (Chapter 24 of the Constitution) on assets declaration, conflict of interest or illicit enrichment.

Article 287 (2) of the Constitution mandates both the Commissioner for Human Rights and Administrative Justice or the Chief Justice, as the case may be, to investigate allegations of non-compliance or contravention of the Code of Conduct for Public Officers under chapter 24 of the Constitution and take appropriate action in respect of the results of an investigation or admission by the public officer.<sup>25</sup>

The provisions on illicit enrichment describe “*failure to declare or knowingly making a false declaration*” simply as contravention and not an “offence”. The provisions do not apply to all public officers but only a limited category of public officers. Personnel of the armed forces are not covered except those seconded to civilian establishment.<sup>26</sup> The private sector is also left out, and the declarations shall be made to the Auditor-General, whose declaration, in turn, is made to the President.<sup>27</sup> The declarations are not published, neither are they

verifiable. Only an investigator of the CHRAJ or a Court of Competent jurisdiction or commission of enquiry<sup>28</sup> may request for copies of the declaration of a public officer lodged with the Auditor-General. Therefore, unless an allegation of illegal acquisition of property or wealth is made against a public officer covered under Chapter 24 (Code of Conduct) of the Constitution, no declaration can be obtained.

In addition to the Constitutional provisions and those of Act 550, the Economic and Organised Crime Office (EOCO) Act, 2010 (Act 804) provide for declaration of property and income by a person charged with an offence.

Under section 41 (1), where a person has been charged with an offence under this Act, the Executive Director may serve on that person a notice to make a declaration of that person's property and income, which in section 4(4) of the Act shall contain the following information:

- (a) *property received or expected to be received by the accused person;*
- (b) *property held or disposed of by the accused person including property held by*
- *any other person or in the name of any other person on behalf of the accused person; and*
- (c) *the income and the source of the income whether the person charged has actually received it or not.*

5) *Where a person charged and given notice to make a declaration fails to make a declaration of property and income within the period specified*

- (a) *that person commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to*

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25. also see section 8(2) of Act 550

26. section 3, first schedule of Act 550

27. article 286 (5) of the Constitution

28. article 286 (3) of the Constitution

*imprisonment for a term of not more than two years or to both, and*

- *(b) the property or income which has not been declared is liable to confiscation to the Republic.*

Under Act 804, only a person charged with an offence that may be requested by the Executive Director of EOCO to make a declaration of property and income, and failure to make a declaration constitutes an offence and the person is liable on summary conviction to a fine of not more than two thousand penalty units (GHC 24,000) or to imprisonment for a term of not more than two years or to both. Any property that is not declared may also be confiscated.

### 3.1.2. Examples of Implementation

The following among others are examples of implementation or enforcement of Chapter 24 of the Constitution:

- Case of five Senior Officials (Col Osei Wusu & Ors): This case involved illegal acquisition of wealth (illicit enrichment), and conflict of interest by the officials. On conclusion of investigations, the action CHRAJ took with respect to those found liable involved payment of taxes and recommendation for disciplinary action to be taken against them by the appropriate institution/person.
- Hon. Bondong – This was a case of conflict of interest and involved self-dealing by the respondent in relation to public procurement. He caused a contract to be awarded to companies he established. The respondent was disqualified from holding public office for two years.

- Appiah Ampofo “facilitated” a transaction, which touched on his official functions and for that he received a bribe for the work he had done. The sanctions imposed were recovery of money illegal received, disqualification from holding public office and a recommendation for prosecution by the Attorney-General of the Republic.

- AB & Ors v. BTE, Suit No: CHRAJ/NR/019/2012. This case concerned failure by the public officer to make a declaration of his assets and liabilities in accordance with article 286 of the Constitution.

### 3.1.3. Observations

From the provisions of the Constitution, Act 550, and Act 804, illicit enrichment has not been criminalized in Ghana, even though Ghana has taken some legislative measures to prevent public officers from acquiring assets or property illegally.

In Article 8, paragraph 3, the Convention states that for those States Parties that have not established illicit enrichment as an offence, those States Parties shall provide assistance and cooperation to a requesting State with respect to the offence as provided in this Convention, in so far as their laws permit.

Under the MLA Act 807, Ghana can provide assistance and cooperation to a requesting State with respect to the offence of illicit enrichment as provided in the Convention. Section 1 of the Act states:

- (1) Subject to subsection (2), the provisions of this Act apply to mutual legal assistance in respect of criminal

matters under an agreement or other arrangement between the Republic and-(a) a foreign State, or (b) a foreign entity.

(2) The provisions of this Act shall not be construed so as to abrogate or derogate from an existing or future agreement, arrangement or practice with respect to co-operation between the Republic and a foreign State or foreign entity.

(3) This Act does not apply to an offence in a foreign State or with respect to a foreign entity where the offence is (a) of a political character subject to section 15; (b) not an offence in Ghana subject to section 17; or (c) an offence only under military law or a law relating to military obligations.

(6) This Act shall have effect with the modifications that may be necessary to give effect to a foreign entity that makes and receives requests for mutual legal assistance.

Section 2: Designated foreign States and foreign entities: The States and entities that appear in the Schedule to this Act are designated as foreign States and foreign entities for the purposes of this Act. Member States of the AU and those that are Parties to the AU Convention are covered under the said schedule.

#### Section 82. Interpretation

In this Act, unless the context otherwise requires “agreement” means a treaty,

convention or other international agreement that is in force, to which Ghana is a party and that contains a provision respecting mutual legal assistance in criminal matters;

#### Section 4. Administrative arrangements

(1) Where there is no agreement between the Republic and a foreign State or foreign entity, the Minister may enter into an administrative arrangement with the foreign State or foreign entity for mutual legal assistance in respect of an act specified in the arrangement if that act when committed in Ghana would be a serious offence.

(2) Where an agreement expressly states that mutual legal assistance may be provided with respect to an act that does not constitute an offence within the meaning of the agreement, the Minister may enter into an administrative arrangement with the foreign State or foreign entity concerned, for mutual legal assistance with respect to the act specified in the arrangement if that act when committed in Ghana would be a serious offence.

(3) An administrative arrangement entered into under subsection (1) or (2) may be implemented by the Minister under this Act, in the same manner as an agreement.

(4) An administrative arrangement under subsection (1) or (2) shall have effect as specified in the arrangement or for a period not exceeding six months.



## 3.2. Laundering of Proceeds of Corruption

*Article 6: States Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:*

*(a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action*

*(b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences*

*© The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences*

### 3.2.1. Implementation

Ghana has established as offences the matters specified in article 6 of the AU Convention. Ghana has also established institutions responsible for the enforcement of the provisions on money laundering, among other measures.

Section 1(1) (a-c) of Anti-Money Laundering Act 2007 (Act 749) as amended by Anti-Money Laundering (Amendment) Act 2014 (Act 874)<sup>29</sup> provides

*“(1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person,*

*(a) converts, conceals, disguises or transfers the property,*

*(b) conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property, or*

*(c) acquires, uses or takes possession of the property”.*

“Unlawful Activity” is defined in Section 1 (2) of the Act to mean “...conduct which constitutes a serious offence, financing of terrorism, financing of the proliferation of weapons of mass destruction or other transnational organised crime or contravention of a law regarding any of these matters which occurs in this country or elsewhere”

And a “serious offence” means an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months.<sup>30</sup> Obviously, corruption as a predicate offence is a serious offence in Ghana as it attracts a penalty of between 3-25 years imprisonment. Corruption under the laws of Ghana includes bribery (active and passive) embezzlement, misappropriation and extortion.

Aiding and abetting money laundering activities is also a criminal offence. Section 2 of Act 749 stipulates that a person commits an offence if he knows or ought to

29. Act 749 was amended to bring Ghana into compliance with her international obligations, presumably, under UNTOC, UNCAC, FATF, AU Convention and all others that required her to have strong anti-money laundering legislation.

30. section 51 of Act 749

have known that another person has obtained proceeds from an unlawful activity and enters into an agreement with that other person or engages in a transaction where:

- (a) the retention or the control by or on behalf of that other person of the proceeds from unlawful activity is facilitated; or
- (b) the proceeds from that unlawful activity are used to make funds available to acquire property on behalf of that other person.

In terms of sanctions of the offence of money laundering under sections 1 and 2 of Act 749, the penalty for money laundering is a fine of not more than five thousand penalty units (GHC 60,000) or to a term of imprisonment of not less than twelve months and not more than ten years or to both the fine and the imprisonment, (section 3 of Act 749).

### 3.2.2. Observation

Going by the provisions of Article 6 of the AU Convention alone, Ghana is in full compliance with the Article as can be seen from the provisions of section 1 of the Anti-Money Laundering Act, 2007 (Act 749) as amended by Act 874.

Apart from the AU Convention, Ghana is also party to the United Nations Convention against Corruption and the United Nations Convention against Transnational Organised Crime (UNTOC), both of which require her to take more robust measures to prevent money laundering. Furthermore, Ghana is also subject to the Financial Action Task Force Standards. Ghana therefore, enhanced her capacity to address money laundering in several ways. That partly explains why Ghana had to amend Act 749 to bring her into full compliance with her anti-money laundering and other obligations.

Apart from establishing money laundering as an offence under the law, Ghana has gone further to establish the Financial Intelligence Centre (FIC) as the body to, among others, receive, analyse, and disseminate information to competent authorities on suspicious transaction reports (STRs) and generally assist in combating money-laundering and other crimes. Ghana has also established the Economic and Organised Crime Office (EOCO) to investigate money-laundering offences.

Section 5 of Act 749 as amended by Act 874 spells out the objects of the Financial Intelligence Centre (FIC) to include assisting in the identification of proceeds of unlawful activity, combating money laundering activities; making information available to investigating authorities, intelligence agencies and revenue agencies to facilitate the administration and enforcement of the laws of the Republic; and exchanging information with similar bodies in other countries as regards money laundering activities, terrorist financing and financing of the proliferation of weapons.

The FIC has been empowered to perform its functions that are provided for in section 6 (1)(a-g) of the Act. It can on its own or upon request, share information with its counter parts in other countries, request, receive, analyse, interpret and disseminate information concerning suspected proceeds of crime and terrorist property, as provided for under this Act or any other law; inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts, co-ordinate and supervise activities for the investigation and suppression of money laundering, terrorist

financing and financing of the proliferation of weapons of mass destruction or other transnational organised crime.

An Accountable institution and any person who knows or reasonably suspects that a property is terrorist property, the proceeds of money laundering, for financing of proliferation of weapons of mass destruction, intended for any other serious offence, shall submit a suspicious transaction report (STR) to the FIC within twenty-four hours after the knowledge or suspicions was formed (section 30(1) of Act 749 as amended).

Accountable institutions are also to apply Customer Due Diligence (CDD) measures to prevent money laundering as provided for in Section 23 of Act 749 as amended. It provides among others that an accountable institution shall not establish or maintain anonymous accounts or accounts in fictitious names (subsection 1), and accounts and customers existing prior to the implementation of the Regulations shall be subject to customer due diligence measures within the timeframe and to the extent provided for by the Regulations (subsection 3).

“Accountable Institution” includes an entity or person that conducts as a business one or more of the following activities or operations for and on behalf of a customer: auctioneers, lawyers, notaries or accountants when they prepare for, engage in, or carry out a transaction for a client concerning any of the following activities, religious bodies, non-governmental organisations, a person whose business or a principal part of whose business consists of providing financial services that involve the remittance or exchange of funds. The

rest are operators of game of chance, a company carrying on insurance business, a real estate company or agent, only to the extent that the real estate agent or company is involved in transactions for a client concerning the buying and selling of real estate, dealers in precious metals and precious stones and in motor vehicles, trust and company service providers which as a business prepare for or carry out instructions on behalf of a customer in relation to any of the following services to a third party, and nominees (section 51 of Act 749).

Furthermore, an accountable institution is required to put in place measures to identify politically exposed persons and other persons whose activities may pose a high risk of money laundering or terrorism financing, and to manage the risk associated with persons prescribed by Regulations, by, among others, exercising enhanced identification, verification and ongoing due diligence procedures with respect to those persons (section 23 (5) of Act 749).

“Politically Exposed Persons”, is defined in section 51 (j) of Act 749 to include:

- (a) a person who is or has been entrusted with prominent public function in this country or a foreign country, including
  - i. a Heads of State or of Government
  - ii. a senior political, Government, judicial or military official
  - iii. a person who is or has been in an executive in a foreign country of a state-owned company, and



(b) a person who is or has been a senior political party official in a foreign country and includes any immediate family members or close associates of such persons

Ghana has also enacted subsidiary legislation to generally facilitate effective implementation of the Anti-Money Laundering Act and some regulatory institutions such as the Bank of Ghana, National Insurance Commission and Securities and Exchange Commission, have also issued Guidelines on money laundering with a view to preventing money laundering and terrorists financing.

The EOCO has been established with the object of preventing and detecting organised crime, and (b) generally

facilitating the confiscation of the proceeds of crime, has power to investigate money laundering offences (section 3(a)(iii)) as part of its functions, as well as “*monitor activities connected with the offences specified in paragraph (a) to detect correlative crimes; take reasonable measures necessary to prevent the commission of crimes specified in paragraph (a) and their correlative offences...*”. The EOCO also has the power to prosecute money-laundering offences on the authority of the Attorney-General.

### 3.2.3. Examples of Implementation

Between 2014-2016, Ghana registered six convictions arising out of STRs and five convictions not related to STRs., mostly cases prosecuted by the EOCO. (see Table below):

**Table 1: Statistics on ML Case**

Type/Year	2014	2015	2016
ML/TF Convictions arising out of STRs	2	3	1
ML/TF Conviction arising out of others	Nil	3	2
Total	2	6	3

Source: GIABA (2017)<sup>31</sup>.

In terms of reporting STRs, as a result of increased awareness, the number reported by banks to the FIC rose from 137 in 2011 to 369 in 2015. The FIC has received over 1,730 STRs<sup>32</sup>. Those from foreign/domestic and other sources apart from domestic financial institutions were 19 in 2013, 11 in 2014, 9 and 4 in 2015, 2016, respectively.<sup>33</sup>

### 3.2.4. Observation

It is quite obvious from the foregoing that Ghana is in full compliance with article 6 of the AU Convention, which is narrower in scope than Ghana's obligations under the UNCAC, UNTOC, and FATF Recommendations.

31. GIABA (2018), Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report, GIABA, Dakar, Senegal. P. 42

32. Ibid, p. 71

33. Ibid, p. 73

### 3.3. Assets Declaration & Code of Conduct

*Article 7: Fight Against Corruption and Related Offences in the Public Service In order to combat corruption and related offences in the public service,*

*State Parties commit themselves to:*

- 1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.*
- 2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.*
- 3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard.<sup>34</sup>*

#### 3.3.1. Implementation

Ghana has measures/policy in place that among others, require not all public officials but a certain category to declare their assets owned and liabilities owed periodically within the scope of a Code of Conduct for Public Officials. There is also an institution to investigate non-compliance and contravention of the requirement to declare assets and the Code of Conduct in general.

##### The Code of Conduct for Public Officers

The Constitution provides for Code of Conduct for Public Officers (the Code) under Chapter 24, (Articles 286-288) which consists of the requirement on public officers to put the public interest before their personal interest, to subscribe to oaths of office to defend the Constitution and do good to all manner of people, among others, and declare assets. The Constitution also prescribes the procedure for dealing with breaches of the Code of Conduct for public officers including designating the Commission on Human Rights and Administrative and the Chief Justice as the persons responsible.

On Conflict of Interest, Article 284 provides “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”.

To prevent conflict of interest, a number of measures have been put in place.

Article 68 (1) (2) (3) of the Constitution prevents the President from taking outside employment, public or private while he is President and after leaving office as President. It provides (1) The President shall not, while he continues in office as President, (a) hold any other office of profit or emolument whether private or public and whether directly or indirectly; or (b) hold the office of Chancellor or head of any university in Ghana.

(2) The President shall not, on leaving office as President, hold any office of profit or emolument, except with the permission of Parliament, in any establishment, either directly or indirectly, other than that of the State.

Ministers, Deputy Ministers and Members

34. Article 7, paragraph 3

of Parliament also have limitations on outside activities and emoluments. Article 78(3) (3) provides “A Minister of State shall not hold any other office of profit or emolument whether private or public and whether directly or indirectly unless otherwise permitted by the Speaker acting on the recommendations of a committee of Parliament on the ground (a) that holding that office will not prejudice the work of a Minister; and (b) that no conflict of interest arises or would arise as a result of the Minister holding that office. These same provisions apply to Deputy Minister in Article 79(3) of the Constitution.

Article 98 (2) of the Constitution: “A member of Parliament shall not hold any office of profit or emoluments, whether private or public and either directly or indirectly, unless permitted to do so by the Speaker acting on the recommendations of a committee of Parliament on the grounds that (a) holding that office will not prejudice the work of a member of Parliament; and (b) no conflict of interest arises or would arise as a result of the member holding that office”.

Article 285. Other public appointments: A person shall not be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority except the Governor of the Bank of Ghana, who whilst being an employee of the Bank of Ghana, chairs the governing body of the Bank of Ghana (Article 183 (4) (b)).

Conflict of interest of a public official not resulting in a criminal conduct is not criminalized. The sanction provided in Article 287 (2) of the Constitution is for the

Commissioner of CHRAJ or the Chief Justice to take “...such action as he considers appropriate...”. And on the basis of Article 19 (11) of the Constitution, No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.” Thus, administrative sanctions are largely applied in cases of conflict of interest.

### Declaration of Assets

Article 286 (1) requires public officers to declare their assets and liabilities before assuming public office, every four years and at the end of the term of public office of the public officer. The public officers subject to Article 286 (1) are the following (Article. 286, (5)):

- (a) the President of the Republic;
- (b) the Vice-President of the
- (c) the Speaker, the Deputy Speaker and a member of Parliament;
- (d) the Minister of State or Deputy Minister;
- (e) the Chief Justice, Justice of the Superior Court of Judicature, Chairman of a Regional Tribunal, the Commissioner for Human Rights and Administrative Justice and his deputies and all judicial officers;
- (f) the Ambassador or High Commissioner;
- (g) the Secretary to the Cabinet;
- (h) the Head of Ministry or government department or equivalent office in the

Civil Service;

(i) the chairman, managing director, general manager and departmental head of a public corporation or company in which the State has a controlling interest; and

(j) such officers in the public service and any other public institution as Parliament may prescribe.

The Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550) makes provision for other officers to be included on the list in section 3 and schedule thereto. Those included are, among others, the following:<sup>35</sup>

*“(o) Officers in the Armed Forces seconded to civilian establishments and institutions;*

*(p) Members of the Tender Boards of the Central, Regional and District Assemblies;*

*(q) Officials of the Vehicle Examination and Licensing Division not below the rank of Vehicle Examiner;*

*(r) Presidential Staffers and Aides;*

*(s) An officer of the rank of Assistant Inspector of Taxes and above in the Internal Revenue Service or its equivalent in*

*(i) the National Fire Service;*

*(ii) the Immigration Service;*

*(iii) the Customs, Excise and Preventive Service;*

*(t) Officers of the Police Service; and officers of the Prison Service;*

*(u) the District Chief Executive, the Presiding member and secretary of Metropolitan, Municipal and District Assemblies;*

*(v) Chairman, Public Service Commission and the deputies;*

*(w) Head, Office of the Civil Service;*

*(x) Persons who are*

*(i) Heads of,*

*(ii) accountants in,*

*(iii) internal auditors in,*

*(iv) procurements officers in, and*

*(v) Planning and budget officers in, finance and procurement departments of government ministries, departments and agencies, District, Municipal and Metropolitan Assemblies;*

*(y) An officer in any other public office or public institution other than the Armed Forces, the salary attached to which is equivalent to or above the salary of a Director in the Civil Service”.*

The salary of a Director in the Civil Service, according to the Auditor-General was 3,700 GHC as of February 2018.<sup>36</sup> What it means is that even if the public officer is a messenger or other low level officer but works in an organization with good remuneration such that he earns as much as a Director's salary, the person is subject to declare assets owned and liabilities owed.

The designated public officers declare their assets owned and liabilities owed to the Auditor-General and the Auditor-General makes the declaration to the President of the Republic (Article 286 (6) of the

35. First Schedule, section 3 of Act 550

36. Public servants earning over ₵3,700 to declare their assets - Auditor-General, 28 February 2018., available at, <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Public-servants-earning-over-3-700-to-declare-their-assets-Auditor-General-629520>

Constitution.<sup>37</sup>

The assets and liabilities to declare include: lands, houses and buildings; farms; concessions; trust or family property in respect of which the officer has beneficial interest; vehicles, plants and machinery. Others are fishing boats, trawlers, generating plants; business interests; securities and bank balances; bonds and treasury bills; jewellery of the value of five million cedis or above; objects of art of the value of five million cedis or above; life and other insurance policies.<sup>38</sup>

### Observations on Assets Declaration Law

It has been variously brought out that the assets declaration law in Ghana is deficient in several respects. Many have said that the extent of coverage is narrow. It excludes members of the armed forces from the purview of the law except those seconded to civilian establishments. Heads of Tertiary institutions are officers in vulnerable positions yet, those whose salaries are less than 3,700 GHC are also excluded. The frequency of filing (every four years) is also thought to be too long. It seems not to allow for verification of declaration, which is very important even for checking the accuracy, completeness and consistency of the declarations.<sup>39</sup> The absence of explicit requirement for verification also has the tendency to encourage “anticipatory” declarations and prevent detection of false declarations in general.<sup>40</sup>

Above all, the law has failed to provide for public disclosure and access to the

declarations. This appears to be an “about turn” as Ghana has successfully legislated and implemented an assets declaration regime with public access under PNDCL 280 of 1992, (repealed) under which assets declared were published in the Gazette within fourteen days of submission.

On the weakness of transparency in the declarations, the Constitution Review Commission observed in its report at paragraph 156, thus:

“The Commission [CRC] finds that though the Constitution attempts to curb the menace of corruption through the assets declaration regime, the absence of compulsion and the lack of transparency in the exercise, defeat the very purpose of that regime”.<sup>41</sup>

The Code of Conduct further provides in Article 286 (7) of the Constitution that before entering upon the duties of his office, a person appointed to an office to which the provisions of this article apply, shall take and subscribe the Oath of Allegiance, the Oath of Secrecy and the Official Oath set out in the Second Schedule to this Constitution, or any other oath appropriate to his office. By subscribing to Oaths, the public officers swear to or affirm, among others, to:

- Oath of Allegiance: “... bear true faith and allegiance to the Republic of Ghana as by law established; that I will uphold the sovereignty and integrity of Ghana; and that I will preserve, protect and defend the Constitution of the Republic of Ghana.

37. Also see section 2 of Act 550

38. section 4 of Act 550

39. Recommendations of the Working Group on Reforming the Asset Declaration Law in Ghana, May 2008, prepared for the GII and the Ghana Audit Service, May 2008

40. *ibid*

41. Republic of Ghana 2011. Report of the Constitution Review Commission: From a Political to a Developmental Constitution, 20th December 2011, paragraph 156



- Oath of Secrecy: not directly or indirectly communicate or reveal to any person any matter, which shall be brought under my consideration or shall come to my knowledge in the discharge of my official duties except as may be required for the discharge of my official duties or as may be specially permitted by law.
- Official Oath "...at all times well and truly serve the Republic of Ghana in the office of [of the public officer] and that I will uphold, preserve, protect and defend the Constitution of the Republic of Ghana as by law established.

### Establishment of Body on Code of Conduct

The Commission on Human Rights and Administrative Justice (CHRAJ), established pursuant to Article 216 of the Constitution by the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456), is the body responsible for promoting awareness of the Code, as well as enforcing non-compliance and contravention of the provisions of the Code.

The CHRAJ is a three-in-one institution: National Human Rights Institution, Ombudsman and Anti-Corruption Agency. Section 7(1)(e) of Act 456 mandates the CHRAJ to investigate an allegation that a public officer has contravened or has not complied with a provision of Chapter 24 of the Constitution (Code of Conduct for Public Officers) and in manner provided for in Article 287 of the Constitution.

It provides: (1) An allegation that a public

officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner for Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate, in respect of the results of the investigation or the admission,<sup>42</sup> a function exclusively reserved for the Commission, (as institution of first instance) to investigate matters under Chapter 24 of the Constitution (*see Okudzeto Ablakwa (No. 2) & Another v. Attorney-General & Obetsebi-Lampitey (No.2) 2 [2012] SCGLR, 845*)

### Development of Disciplinary Measures and Investigative Procedures

As already indicated above, in matters concerning breaches of the Code Article 287 provides the procedure. The complaint shall be made by an identifiable person who need not be the victim. The complainant may be an individual or a body corporate. The complaint shall be made to the Commissioner of CHRAJ or to the Chief Justice, where the respondent is the Commissioner of CHRAJ, who shall cause the matter to be investigated and take the action considered appropriate, if the respondent denies the allegation. Where

42. Also see section 8 of Act 550

the respondent admits the allegations, then the Commissioner or the Chief Justice, as the case may be, proceeds to take the action considered appropriate.

Complementing this procedure is the Commission on Human Rights and Administrative Justice (Investigation Procedure) Regulations, 2010 (C.I. 67). Regulation 3 of C.I. 67 provides: *“The Commissioner or a representative of the Commissioner may assign (a) an investigator, or (b) an officer of the Commission to conduct preliminary investigations into a complaint lodged with the Commission”*.

Some of the defects in the assets declaration, conflict of interest and generally, the Code of Conduct for Public Officers, will be addressed when the Conduct of Public Officers' Bill, 2018, (CoPOB) is passed into law.

The purpose of the CoPOB is to give effect to Chapter 24 of the 1992 Constitution, domesticate the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, both of which Ghana has ratified to provide for other purposes.

It provides, among others, as follows:

- Clause 7: a public officer who submits a declaration or provides clarification as required under the Act is to ensure that the declaration or clarification is not false or misleading. A contravention of this clause is an offence punishable by a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

- Clause 8: requires a public officer who submits a declaration to the Auditor-General to provide any clarification requested by the Auditor-General in writing. A request for clarification may include a request for information that has or may have been omitted. It also includes a request that a discrepancy or inconsistency be explained or corrected.

The CoPOB criminalises the contravention or non-compliance in relation to declaration of assets. It provides in Clause 9 (1): Failure to submit a declaration or clarification-

A public officer who (a) fails to submit a declaration or clarification as required under this Act, or (b) submits a declaration or clarification that contains information which the public officer knows, or ought to have known to be false or misleading commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than two years or to both.

The Bill envisages limited publication of declarations by Auditor-General. Clause 13 (1) provides: “The Auditor-General shall publish periodically in the Gazette a list of public officers who:

- (a) hold an office specified in the First Schedule, and
- (b) have declared their assets, or
- (c) have defaulted in the declaration of their assets.

Clause 13 (2): The publication referred to in subsection (1) shall be made each year on (a) the 30th day of March, and (b) the 30th day of September”.

Sexual harassment is prohibited. Clause 19 provides “A public officer shall not sexually harass another person”. Finally, it mandates the CHRAJ to publish a Code of Conduct for public officers in the Gazette (Clause 16) as well as procedures for the administration of the Act (Clause 48).

### 3.3.2. Examples of Implementation

Since the establishment of the CHRAJ, as the institution to promote observance and compliance with the Code of Conduct for Public officers of Ghana, it has taken various actions or sanctions on public officers found liable for breaches of the Code including disqualification from holding public office, recovery of assets, recommendation for payment of taxes, removal from office and disciplinary action and dismissal.

The Commission has applied the following sanctions since its inception in July 1993:

- i. Disqualification from holding public office either forever, or for a specific period of time. Two cases investigated resulted in disqualifying two public officers from holding public office; one (1) disqualified forever- *Crusading Guide v Appiah Ampofo*, and the other, disqualified for two years (*Concerned citizen v Hon Bondong*)
- ii. Recommendation for Prosecution: Since the Commission has no power of prosecution, recommendations were made for prosecution in the following cases: *Crusading Guide v Appiah Ampofo* (for receiving a bribe; two public officers in the case of 99.7 FM v.

SSNIT). Furthermore, two officers in same 99.7 FM v SSNIT, were recommended to be removed from Office

iii. Recovery of illegally acquired assets: In the case of *Crusading Guide v. Appiah Ampofo*, the Commission directed the confiscation of the money obtained through the bribe to the State.

iv. In some cases, the Commission recommended to the appropriate institutions/employers to take disciplinary action against the officers found liable and in others, a recommendation was made for the payment of taxes and customs duties not paid (*Ibrahim Adam and Others*)<sup>43</sup>

The Commission has issued guidelines on conflict of interest (the Guidelines) for public officers. The Guidelines were issued to provide more clarity to Article 284 of the Constitution and the specific objectives include:

- To provide a general framework for determining conflict of interest situations
- To guide public officials in the conduct of public business to address unethical behaviour in all public offices
- To ensure public confidence and the integrity of the public service
- Educate the public and increase awareness of conflict of interest situations, and
- To serve as a signpost/benchmark for

43. Ayamdoo C.A. Presentation On “Breaches Of The Code Of Conduct For Public Officers” Delivered On 21-06 2012 (based on reports of the Commission on those cases)



the CHRAJ in the exercise of its mandate under chapter 24 of the Constitution.<sup>44</sup>

On the Code of Conduct for Public Officers in general, the Commission, working with key stakeholders also launched a generic Code of Conduct for Public Officers of Ghana.

It set out values, principles and standards of acceptable ethical behaviour and conduct as “...important pillars for the entrenchment of good governance principles, which are key instruments for combating corruption, “...enhancing public confidence, public accountability and integrity in the Public Service”<sup>45</sup>

It was developed to apply to all public agencies, bodies and institutions. It states the general principles only. Public agencies, bodies and other public institutions, using it as a “minimum standard document”, shall develop their in-house codes elaborating on the principles of this Code. They may, in doing so, provide exceptions to the general principles where warranted.<sup>46</sup>

The generic Code established a National Ethics Advisory Committee (the Committee) to promote high ethical standards among public officers. The functions of the Committee shall include the following:

- a) formulate a long-term plan for promoting high ethical standards in the public service;
- b) monitor and evaluate the plan for promoting high ethical standards in the public service;

c) coordinate training programmes relating to the promotion of high ethical standards in public service;

d) review existing departmental measures relating to the promotion of high ethical standards, including the In-house codes, and

e) perform any other functions, which are incidental to the objects of the Committee (paragraph 5.0.)

Cases investigated include the following (already discussed supra):

- Case of five senior Officials (Col Osei Wusu & Ors)
- Hon. Bondong – Conflict of Interest and sanction was disqualification from holding public office for two years
- Staff of CHRAJ-dismissal
- Appiah Ampofo- recovery of money illegal received and disqualification from holding public office

### 3.3.3. Observations

Thus, Ghana is in compliance with article 7, paragraphs 1-3 of the AU Convention. It has legislation requiring a wide range of public officers to declare their assets at the time of assumption of office during (once every four years) and after their term of office in the public service. There is an independent constitutional body, the CHRAJ, responsible for promoting and enforcing the Code. It does investigations following a procedure spelt out by law (the Constitution and CI 67) and has applied various sanctions to public officers found liable for breaches of the Code.

44. Commission on Human Rights and Administrative Justice, 2006. Guidelines on Conflict of Interest to Assist Public Officials identify, Manage and Resolve Conflicts of Interest. CHRAJ, Accra, at pages 11-12.

45. Commission on Human Rights and Administrative Justice, 2009. Code of Conduct for Public Officers of Ghana.

46. CHRAJ, Accra, at page 5

## 3.4. Political Party Funding

### *Article 10: Funding of Political Parties*

*Each State Party shall adopt legislative and other measures to:*

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties;*
- and*
- (b) Incorporate the principle of transparency into funding of political parties.*

A declaration of sources of income is also required on registration. Section of Act 574 states:

(1) A political party shall, within ninety days after the issue to it of a final certificate of registration under section 11 or a longer period allowed by the Commission, submit to the Commission a written declaration giving details of all its assets and expenditure including contributions or donations in cash or in kind made to the initial assets of the party by its founding members.

(2) A declaration submitted to the Commission under subsection (1) shall state the sources of the funds and the other assets of the political party.

(3) The declaration shall also contain any other particulars directed by the Commission in writing.

(4) The declaration shall be supported by a statutory declaration made by the national treasurer and the national or general secretary of the political party.

(5) The Commission shall, within thirty days after receipt of the declaration required under subsection (1), publish the declaration in the Gazette.

(6) Without prejudice to any other penalty prescribed by this Act or any other enactment, where a political party,

(a) refuses or neglects to comply with this section, or

(b) submits a declaration which is false in a material particular,

the Commission may cancel the registration of that political party.

### 3.4.1. Implementation

Ghana operates a multi-party democracy and as such political parties play a very important role. In recognition of this role, Article 55 of the Constitution guarantees the right of Ghanaians to form or belong to a political party and participate in its activities.

Article 55 of the Constitution states:

(1) The right to form political parties is hereby guaranteed.

(2) Every citizen of Ghana of voting age has the right to join a political party.

(3) Subject to the provisions of this article, a political party is free to participate in shaping the political will of the people, to disseminate information on political ideas, social

and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.

(4) Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

(5) The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law.

(6) An organisation shall not operate as a political party unless it is registered as such under the Law for the time being in force for the purpose

To ensure transparency in political party activities, Article 55 (14) requires Political parties to declare to the public their revenues and assets and the sources of those revenues and assets; and to publish to the public annually their audited accounts.

Section 14 of Act 574 provides that (1) A political party shall, within twenty-one days before a general election, submit to the Electoral Commission a statement of its assets and liabilities in the form directed by the Commission. The Political party shall, within six months after a general or by-election in which it has participated, submit to the Commission a detailed statement in the form directed by the Commission of all expenditure incurred for that election (section 14 (2) of Act 574).

Section 14 (3): A statement required to be submitted under this section, shall be supported by a statutory declaration made by the general or national secretary of the political party and the national treasurer of that party.

(4) Without prejudice to any other penalty provided in this Act or any other enactment, where a political party,

(a) refuses or neglects to comply with this section, or

(b) submits a statement which is false in a material particular,

the Commission may cancel the registration of the political party.

On funding, Article 55 (15) prohibits non-Ghanaians from making a contribution or donation to a political party registered in Ghana. Consistent with article 55 (15) of the Constitution, section 23 of the Political Parties Act 2000 (Act 574) provides that only a citizen may contribute in cash or in kind to the funds of a political party. By section 23(2) of Act 574, a firm, partnership, or enterprise owned by a citizen or a company registered under the laws of the Republic at least seventy-five percent of whose capital is owned by a citizen is a citizen.

Section 24 of Act 574 also prohibits non-citizens from directly or indirectly making a contribution or donation or loan whether in cash or in kind to the funds held by or for the benefit of a political party. Equally, a political party or person acting for or on behalf of a political party shall not demand or accept a contribution, donation or loan from a non-citizen.

Where a person contravenes a provision of section 23 or 24, in addition to any other penalty imposed under this Act, the amount whether in cash or in kind paid in contravention of the section shall be forfeited to the Republic and the amount shall be recovered from the political party as debt owed to the Republic (section 23 (1) of Act 574 . And the political party or person in whose custody the amount is for the time being held shall pay it to the Republic.

A non-citizen who contravenes sections 23-24 of Act 574 and is found guilty, shall be deemed to be a prohibited immigrant and be liable to deportation under the Immigration Act, 2000 (Act 573).

In addition to sections 23 and 24 of Act 574, section 30 (1)(3) and (4) provides-

(1)A person who contravenes a provision of this Act commits an offence.

(3) An offence under this Act, unless otherwise specifically provided for, is punishable with a fine not exceeding ten million penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(4) Where an offence under this Act is committed by a political party, every executive officer of that party shall be deemed to have committed that offence.

In relation to the use of funds acquired through illegal and corrupt practices to finance political parties, the Political Parties

Act is silent on it. However, the Anti-Money Laundering Act, 2007 (Act 749) as amended by Act 874, requires that Accountable institutions apply enhanced CDD measures on Politically Exposed Persons, (section 23 (5) of Act 749, which includes political and senior political, Government, judicial or military officials: (section 51(j) of Act 749.

The Electoral Commission (EC), an independent constitutional body is set up as the elections management body and the regulator of the operations of political parties. Article 45 of the Constitution spells out its functions as:

(a) to compile the register of voters and revise it at such periods as may be determined by law;

(b) to demarcate the electoral boundaries for both national and local government elections;

(c) to conduct and supervise all public elections and referenda;

(d) to educate the people on the electoral process and its purpose;

(e) to undertake programmes for the expansion of the registration of voters; and

(f) to perform such other functions as may be prescribed by law.

In addition, the EC is responsible for the registration of political parties in accordance with the Constitution and Act 574: (section 5), among other functions in relation to political parties.

### **3.4.2. Examples of Implementation**

There are several examples of cases on the implementation of the political parties and related legislation as a whole dating as far

back as 1992. Very recent is the case of Sumaila Beibel vrs Adamu Sakande and the Attorney-General, case No. JI/2/2010 of 26th October, 2011, where the MP was disqualified from holding the position of MP for possessing dual nationality. However, information on cases relating specifically to article 10 of the AU Convention is not available.

Prior to the 2016 General Elections, the Electoral Commission disqualified some political parties for making false declarations in on nomination forms. Some Parliamentary candidates were also disqualified for similar conduct.

### 3.4.3. Observations

Article 10 of the AU Convention deals only with proscribing the use of funds acquired through illegal and corrupt practices to

finance political parties; and incorporating the principle of transparency into funding of political parties. As can be seen from the provisions of the Constitution and Act 574, the Ghanaian laws are wider in scope than the AU Convention. The Ghanaian legislation goes beyond the requirements of AU Convention by guaranteeing the right to form political parties, register the party, which shall have a national character, and obligation of the state to provide to each political party equal opportunity to present their views (article 55 (11) of the Constitution, among others.

Nonetheless, it is thought that the Political Parties Act 2000 (Act 574) does not cater for the activities of political party candidates in Parliamentary elections. There is no limit on campaign financing, and there is no transparency in campaign financing.<sup>47</sup>

## 3.5. Civil Society and Media

### *Article 12: Civil Society and Media*

*“State Parties undertake to:*

- 1. Be fully engaged in the fight against corruption and related offences and the popularisation of this Convention with the full participation of the Media and Civil Society at large;*
- 2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;*
- 3. Ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention;*
- 4. Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial”.*

### 3.5.1. Implementation

Article 35 of the Constitution on Political objectives, provides:

- (1) Ghana shall be a democratic State dedicated to the realisation of freedom

and justice, and accordingly, sovereignty resides in the people of Ghana from whom the Government derives all its powers and authority through this Constitution.

47. International Institute for Democracy and Electoral Assistance, 2013. Legal and Policy Frameworks Regulating the Behaviour of Politicians and Political Parties—Ghana, p. 18

(3) The State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law.

(5) The State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.

(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to (d) make democracy a reality by decentralising the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government; and (e) Ensure that whenever practicable, the headquarters of a government or public institution offering any service is situated in an area within any region, taking into account the resources and potentials of the region and the area.

Article 21 (1)(f) Article 21 of the Constitution provides:

(1) All persons shall have the right to (a) freedom of speech and expression, which shall include freedom of the press and other media;

(f) information, subject to such qualifications and laws as are necessary in a democratic society;

Article 162 of the Constitution provides for the freedom of the media, among others:

(1) Freedom and independence of the media are hereby guaranteed.

(2) Subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana.

(3) There shall be no impediments to the establishment of private press or media, and in particular, there shall be no law requiring any person to obtain a licence as prerequisite to the establishment or operation of a newspaper, journal or other media of mass communication or information.

(4) Editors and publishers of newspapers and other institutions of the mass media shall not be subject to control or interference by Government, nor shall they be penalised or harassed for their editorial opinion and views, or the content of their publications.

(5) All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.

(6) A medium for the dissemination of information to the public which publishes a statement about or against a person shall be obliged to publish a rejoinder, if any, from the person in respect of whom the publication was



made.

The rights and freedoms of the media (in article 162-163) are not absolute, though. They are "...subject to laws that are reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons" (article 164 of the Constitution).

In the above provisions of the Constitution lay the legal foundation for engagement with Civil society in the fight against corruption and related offences, creating an enabling environment for civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs, as well as providing access to information, among others.

The study also found that stakeholders are more aware of the UNCAC than the AU Convention and that though the AU Convention recognizes the role of civil society and the media in curbing corruption in article 12, that provision is yet to be practicalised as could be seen in the non-representation of CSOs on the Board and non-involvement of CSOs in delegations of country visits by the Board.

On the way forward for civil society, it was suggested that:

- A lot of civil society advocacy is needed to enhance effective engagement of stakeholders and government on the implementation of the AU Convention.

- Civil society should hold government responsible for ensuring the implementation of the AU Convention and also request for feedback on the reporting obligations as well as challenges Government may be encountering on the implementation.
- There is the need for CSOs to lobby for representation on the Board.
- As an effective tool of advocacy, CSOs should prepare their own reports on monitoring on activities of the Board for the consideration of the AU Commission.
- CSOs should collaborate more closely with relevant key state institutions on AU Convention.

### 3.5.2. Examples of Implementation

Formation of GACC as form of engagement with CSOs:

Civil Society and the Media are recognised stakeholders in the fight against corruption in Ghana. As such, the Ghana Anti-Corruption Coalition (GACC) was formed as a unique cross-sectoral grouping of public, private and civil society organizations (CSOs) with a focus on promoting good governance and fighting corruption in Ghana. The GACC seeks to promote anti-corruption and good governance initiatives in Ghana through capacity-building, research and advocacy interventions by engaging coalition members and other key stakeholders operating at the regional, national and

international levels.<sup>48</sup> The members of the GACC are Ghana Centre for Democratic Development (CDD-Ghana), CHRAJ, EOCO, Ghana Conference of Religious for Peace (GCRP),<sup>49</sup> Ghana Integrity Initiative (GII), Ghana Journalists Association (GJA), Institute of Economic Affairs (IEA), and Private Enterprises Federation (PEF).

## Representation on the Governing Board of the Office of the Special Prosecutor

CS is represented on the Governing Board of the Office of the Special Prosecutor, an Office established to (a) Investigate and prosecute specific cases of alleged or suspected corruption and Corruption-related offences; (b) recover the proceeds of corruption and Corruption related offences; (c) take steps to prevent corruption<sup>51</sup>. The composition of Governing body of the Office is a Board, which includes "... one other person who is a female representing the anti-corruption civil society organisations (section 5(1)(i) of Act 959.

### Specific Roles for CSOs under the NACAP:

In recognition of the role of CS in anti-corruption, specific roles have been assigned to public, private, media, civil society sectors in the fight against corruption in the NACAP These include:

- raising public awareness about the dangers of corruption and their rights and responsibilities as citizens in confronting corruption;
- partnering with government in this fight against corruption to ensure considerable success, and
- upholding strict principles of transparency and accountability in their own operations.

Civil society and other non-state actors were involved in the formulation and adoption of NACAP. They also had representatives on the National Working Group. In addition, CS is represented on NACAP Structures: the High Level Implementation Committee (HiLIC) and the NACAP Monitoring and Evaluation Committee (MONICOM).<sup>50</sup>

In terms of the popularisation of the AU Convention, activities to mark the day in 2007 , and in 2018, activities were organised by the Ghana Integrity Initiative (GII), a civil society organization in collaboration with CHRAJ, the National Commission for Civic Education (NCCE), and the African Parliamentarians Network Against Corruption (APNAC) to reflect on actions being taken by African governments to fight corruption.<sup>52</sup> More needs to be done.

There are other anti-corruption activities that due to the environment created for CS participation in anti-corruption have been and are being championed by civil society, such as RTI Coalition and the CSO Platform on Sustainable Development Goals.

Reporting on Corruption cases (Paragraph 4)

48. [http://www.gaccgh.org/maincat\\_select.cfm?corpnews\\_catid=5#.W6gHLLp2uHw](http://www.gaccgh.org/maincat_select.cfm?corpnews_catid=5#.W6gHLLp2uHw)

49. A five member body of religious associations including Christian Council of Ghana; Ahmadiya Muslim Mission,

Federation of Muslim Councils of Ghana, National Catholic Secretariat and Ghana Pentecostal Council

50. NACAP, p. 39

51. section 2 of Act 959

52. <https://chraj.gov.gh/news/a-training-workshop-organized-by-penplusbyte-people-for-health4h/>

Article 126 (3) of the Constitution provides that “except as otherwise provided in this Constitution or as may otherwise be ordered by a court in the interest of public morality, public safety or public order the proceedings of every court shall be held in public. Therefore, CS can attend and make fair reports of the proceedings, and in deed, they do freely.

The Right to Information Bill, when enacted would further enhance CS participation in the fight against corruption. The right to information is considered a prerequisite for the participation of civil society and the media. In deed, it is a tool and is subject of Article 9 of the AU Convention.

### 3.5.3. Observations

The Constitution lays the legal foundation for engagement with Civil society in the fight against corruption and related offences, creating an enabling environment for civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public

affairs, as well as providing access to information, among others. Though the Right to Information Bill was pending, civil society can still access information by the decision of the Court in the case of *Lolan K. Sagoe-Moses and 6 ors v the Honourable Minister and Attorney-General*, Suit No. HR/0027/2015 (High Court-Unreported) where the plaintiffs demanded for copies of a contract for branding some buses, which request was denied. The Court granted the request for the contract documents and held inter alia, “...in a democracy, the free and unrestricted marketplace for the free exchange of ideas and public debate is the heartbeat of democracy as well as the assurance of probity and accountability”. p. 12

The court also laid out the instances where information may not be provided. It must be shown that the release of the information would pose danger to public interest, national security, public order, public morality, against the rights of any other persons. .

Ghana is in full compliance with article 10 of the AU Convention

51. section 2 of Act 959

52. <https://chraj.gov.gh/news/a-training-workshop-organized-by-penplusbyte-people-for-healthp4h/>

## 3.6. Access to Information

*Article 9: “Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences”.*

### 3.6.1. Implementation

The right of access to information is one of the fundamental human rights and freedoms under the Constitution (articles 12-33), which “...shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution”.<sup>53</sup>

Every person in Ghana is entitled to the fundamental human rights and freedoms in the Constitution subject only to “...respect for the rights and freedoms of others and for the public interest,<sup>54</sup> which includes “...any right or advantage which is intended to inure to the benefit generally of the whole of the people of Ghana”.<sup>55</sup>

It is provided in Article 21 (1) (f) of the Constitution that all persons shall have the right to (f) information, subject to such qualifications and laws as are necessary in a democratic society. To further enhance the enjoyment of this right,<sup>56</sup> there is the Right to Information Bill, 2018<sup>57</sup> (the Bill), pending before Parliament of Ghana, which seeks to provide for access to information held by public institutions and the conditions under which the information may be accessed by

persons in Ghana.

#### Overview of the RTI Bill, 2018

The Bill is in compliance with Article 21 (1) (f) of the Constitution as well as international conventions on human rights, which recognise access to information as a fundamental human right.<sup>57</sup>

Clause 1 (1)-(3) of the Bill provides a person has the right to information, subject to qualifications and laws that are necessary in a democratic society, which may be exercised through an application made in accordance with section 18<sup>58</sup> of the Act and the persons making the application for the information does not have to give a reason for it. But where an applicant requests that the application be treated as urgent, the applicant shall state the reason for the urgency (clause 4).

Under Clause 18 of the Bill the application to access information held by a public institution, shall be made in writing to the public institution and where an applicant is unable to make the application in writing due to illiteracy or a disability, the applicant may make the request orally. The officer to whom the application is made shall reduce it into writing and shall give a copy of the written request as recorded and as duly

53. Article 12 (1) of the Constitution

54. article 12 (2) of the Constitution

55. Article 295 of the Constitution

56. [www.parliament.org](http://www.parliament.org)

57. Memorandum to the Bill

58. Clause 18 of the Bill

authenticated to the applicant.

The application shall contain sufficient description or particulars to enable the information to be identified.<sup>59</sup> It shall also indicate the form and manner of access required, state the capacity of the applicant to the satisfaction of the officer to whom the application is made, if the application is made on behalf another person, as well as state and address to which a communication or notice can be sent. The application shall also be accompanied with the prescribed fee.<sup>60</sup>

The Bill makes provision for Government to make general information on governance available to the public without application from a specific person.<sup>61</sup> The Bill also requires

Public institutions to compile and publish an up-to-date official information in the form of a manual, "...within twelve months from the date of the coming into force of the Act, and every twelve months after that date"<sup>62</sup> This Manual to be published shall contain information including:

- a list of departments or agencies under that public institution and a description of the organizational structure and responsibilities of each public institution including details of the activities of each division or branch of the public institution,
- a list of the various classes of information which are prepared by or are in the custody or under the control of each

public institution;

- a list of the types of information that may be accessed or inspected free of charge or subject to a fee, and the deposit required or the fee or charge payable in respect of an access to information as specified under section 69;
- the name, telephone number, fax e-mail, postal address and any other contact details of the information officer of the public institution or a designated officer of the public institution to who a request for access may be made;
- the place in the public institution where information which is accessible under this Act or any other enactment, can be found or made available, and
- the arrangements made or procedure established by the public institution to enable a member of the public to seek amendment of that member's personal official records with the public institution.

In order to create or raise awareness of the Right To Information law, Clause 47 of the Bill requires the Right to Information Commission established under the Law, to promote and sustain awareness within the country, and educate the public on the right to information, among others.

There are mechanisms to appeal against the denial of requests for access to

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59. Clause 18 (1) of the Bill

60. Clause 18 (2) of the Bill

61. Clause 2 of the Bill

62. Clause 3

information.<sup>63</sup> A person aggrieved by a decision of the information officer of a public institution may submit an application for internal review of that decision to the head of the public institution<sup>64</sup> either in writing or orally<sup>65</sup> within thirty days of the receipt of the decision of an information officer.<sup>66</sup> The application for review shall be accompanied with the prescribed fee except where the applicant is exempt from paying a fee.<sup>67</sup>

Under clause 38 (1) of the Bill, where an applicant is refused access to information by a public institution (a) because the disclosure (i) will be prejudicial to the security of the State, or (ii) will be injurious to the public interest or (b) for any other reason, the applicant may apply to the High Court for a judicial review of the decision.

The proceedings of the High Court shall be held in camera and the High Court may prohibit the publication of information relating to the proceedings.<sup>68</sup> The High Court shall not, in the course of a review, disclose to a party other than the representative of the public institution and the Attorney-General, information which is exempt from disclosure under this Act. Where the High Court, upon hearing the application, orders that access should be given to information, the High Court shall specify the period within which access should be given.<sup>69</sup>

### 3.6.2. Examples of Implementation

The right to information is guaranteed in the

Constitution as the discussion shows. However, in practical terms, challenges remain and recourse had to be sought in the Courts. Such was the case in *Lolan K. Sagoe-Moses and 6 ors v the Honourable Minister and Attorney-General*, Suit No. HR/0027/2015 (High Court-Unreported) the plaintiffs demanded for copies of a contract for branding some buses, which request was denied. The Court granted the request for the documents and held inter alia, that *“under article 21(1)(f) of the Constitution, the applicants were entitled to access public information that is in the custody or possession of the Government upon request and where appropriate and lawful, the Government is bound to release the requested information or document to the persons requesting”*. p. 12

The Court also stated that *“...in a democracy, the free and unrestricted marketplace for the free exchange of ideas and public debate is the heartbeat of democracy as well as the assurance of probity and accountability”*. p. 12

### 3.6.3. Observation

From the foregoing, it is evident that apart from article 21(1)(f) of the Constitution on the right to information, the Right To Information Bill, which seeks to enhance the enjoyment of the right to information, has since 2009, when the Government made the comparative analysis and provided it as part of the measures to provide the right of access to information, been pending. Ghana, therefore, is not in full compliance with Article 9 of the Convention on right of access to Information.

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63. Clauses 32-41 of the Bill  
64. Clause 32 of the Bill  
65. Clause 33 (2) of the Bill  
66. Clause 33(1) of the Bill  
67. Clause 33(2) of the Bill  
68. Clause 39 (2) of the Bill  
69. Clause 40 (2) of the Bill



## 3.7. Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption

### *Article 16: Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption*

1. Each State Party shall adopt such legislative measures as may be necessary to enable:
- (a) its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement;
  - (b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;
  - (c) repatriation of proceeds of corruption.

*Article 19 (3): In the spirit of international cooperation, States Parties shall:... Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin*

### 3.7.1. Implementation

Section 24 of the Economic and Organised Crime Act, 2010 (Act 804) gives the EOCO the power to freeze and seize property. It provides:

Section 24. (1) An authorised officer of the Office or any other public officer authorised by the Executive Director, shall seize property if the officer has reasonable grounds to suspect that the property is the proceeds of a serious offence.

(2) The Executive Director shall direct the authorised officer to release the seized property to the person from whom it was seized if no charges are preferred against the person within fourteen working days after the seizure.

(3) The Court shall make an order for the continued seizure of the property for a period of not more than three months at a time from the date of seizure and for a total period of not more than two years.

Section 25. (1) An authorized officer shall

(a) search a person in respect of tainted property, or

(b) enter any land or premises and conduct a search in respect of tainted property and seize in the course of the search, the property which the authorized officer believes on reasonable grounds to be tainted property.

(2) A search in respect of tainted property includes search to the

(a) body and clothing worn by the person being searched,

(b) property in or apparently under the control of the person being searched, and

(c) property of the owner or occupier of the land or premises.

(3) An authorized officer may gather forensic evidence in the course of a search.

(4) An authorized officer shall make a search or seizure (a) under a search warrant, or (b) as an emergency search.

(5) The Court shall consider an application without notice which claims that communication in any medium including an article sent by post or through a courier services is likely to contain information or a substance that may be relevant to an investigation into a offence under a law in this Country or a corresponding foreign law, and the Court shall, where appropriate, order an authorised officer of the office to

(a) intercept, detain and open the article in the course of transmission by postal or courier service,

(b) intercept a message transmitted or received by any means of communication,

(c) intercept or listen to any conversation by any means of communication, or

(d) enter premises and install on the premises a device for the interception and retention of communication of specified description and remove and retain the device.

Section 23 contains a special provision on the seizing of currency. It states:

(1) An authorized officer of the Office or any other public officer authorized by the Executive Director, shall seize currency (a) that exceeds that amount prescribed by the Bank of Ghana being imported into or

exported from the country, (b) if the officer has reasonable grounds to suspect that (i) the currency is the proceeds of crime or (ii) the currency is intended by the person for use in the commission of a serious offence, or (c) if the holder of the currency is unable to provide satisfactory explanation for the source of the currency.

(2) The officer who seizes currency shall record (a) the name of the person from whom the currency was seized, (b) the particulars of the currency, and (c) any other relevant information as regards the currency, and send the record and the seized currency to the Executive Director.

(3) Where currency is in the possession of the Executive Director and a period of one month has lapsed from the date of seizure, the currency shall by order of the Court be forfeited to the Republic unless within that period the owner has claimed the currency by giving notice to the claim in writing to the Executive Director.

(4) A Court shall, on an application by or on behalf of a person by whom the currency was imported or exported, order the release of the currency seized in whole or in part after hearing the Executive Director or an authorized officer if the seizure of the currency is no longer justified.

(5) An authorized officer of the office shall not release currency seized where (a) an application for the confiscation of the whole or a part of the currency is pending, or (b) proceedings have commenced in this country or in any other jurisdiction against the person for the offence that involves the currency,

Section 33: (1) Where the Executive Director considers that freezing of property is necessary to facilitate an investigation or trial, the Executive Director may in writing direct the freezing of (a) the property of a person or entity being investigated, or (b) specified property held by a person or entity other than the person or entity being investigated or tried.

(2) The Executive Director shall within fourteen days after the freezing of the property apply to the Court for a confirmation of the freezing.

Application for freezing order

34. (1) An application for confirmation of a freezing order may be made without notice to the respondent and shall be accompanied with an affidavit.

(2) The affidavit shall (a) give a description of the property in respect of which the freezing order is sought, (b) state the name and address of the person who is believed to be in possession of the property, (c) state the grounds for the belief that the property is tainted property, (d) state that the respondent derived benefit directly or indirectly from the serious offence, or that the property is derived directly or indirectly from a serious offence, (e) state the grounds for the belief that the property is tainted property and is subject to the effective control of the respondent where the application seeks a freezing order against the property of a person other than the respondent, (f) state the grounds for the belief that a confiscation order is likely to be made under this Act in respect of the property, or (g) state that the property is at risk of being dissipated or removed from the country.

Section 35 (1) Where an application is made for a freezing order, the Court shall issue the order if it is satisfied that (a) the respondent is being investigated for a serious offence, (b) the respondent is charged with a serious offence, (c) there are reasonable grounds to believe that the property is tainted property related to a serious offence, (d) the respondent derived benefit directly or indirectly from the serious offence, (e) the application seeks a freezing order against the property of a person other than the respondent because there are reasonable grounds to believe that the property is tainted property related to a serious offence and that the property is subject to the effective control of the respondent, or (f) there are reasonable grounds to believe that a confiscation order shall be made under this Act in respect of the property.

(2) The Executive Director shall inform a person against whom a freezing order has been made within seven days after the order has been made.

(3) The Court shall in the case of an entity, lift the veil of incorporation to determine if the property is subject to the effective control of the respondent.

(4) A freezing order shall (a) prohibit the respondent or another person from disposing off or dealing with the property or a part of the property or interest in the property that is specified in the order, except in a manner specified in the order, (b) direct the Attorney-General to take custody and control of the property or a part

of the property specified in the order and manage or deal with the property as directed by the Court, or (c) require a person who has possession of the property to give possession to the Attorney-General to take custody and control of the property.

(5) An order under this section may be made, subject to the conditions that the Court considers appropriate and, without limiting the scope of the order, provide for (a) the reasonable living expenses of a person affected by the order, including the reasonable living expenses of the person's dependents, and reasonable business expenses of the person, and (b) a specified public debt incurred in good faith by the person affected by the order.

(6) When the application is made for the protection of third parties on the basis that a person is about to be charged, an order made by the Court shall lapse if the person is not charged within twelve months after the issue of the order.

Breach of freezing order in section 37 of Act 804 provides:

A person who contravenes a freezing order commits an offence and is liable on summary conviction (a) in the case of an individual, to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than four years or to both, or (b) in the case of an entity, to a fine equivalent to the value of the tainted property or of not less than two thousand penalty units whichever is greater.

Section 38. (1) A freezing order remains in force until (a) the order is (i) discharged, (ii) revoked, or (iii) varied, (b) twelve months after the date the order is made or a

later date determined by the Court, or (c) a confiscation order or a pecuniary penalty order is made in respect of the property which is the subject of the order.

(2) Where an investigation has commenced against a person for a serious offence and the property related to that offence is frozen or restrained, the Court shall order the release of the frozen or restrained property if (a) the person is not charged with a serious offence within twelve months after the date of commencement of the investigation, or (b) the person is acquitted of the serious offence.

Further, the Anti-Money Laundering Act provides for administrative freezing of assets by the FIC for seven days. After that, it has to apply for a court order:

Section 47 (1) The Centre shall not investigate serious offences but where the Chief Executive Officer is of the opinion that it is necessary to freeze a transaction or an account to prevent money laundering, the Chief Executive Officer may direct the freezing of a transaction or account of any accountable institution.

(2) The Chief Executive Officer shall apply to a court within seven days after freezing a transaction or account for confirmation of the action taken and the court may confirm the freezing on conditions or direct the de-freezing of the transaction or account.

(3) Where a transaction or account has been frozen, the Chief Executive Officer shall notify the person affected within forty-eight hours of the freezing of the transaction or account and the person affected may seek redress from court

## Repatriation of proceeds of corruption

Related to this, is article 19 (3): International Cooperation for purposes of Asset Recovery. It provides: “In the spirit of international cooperation, States Parties shall: *Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.*

Section 32 of the EOCO Act states: Where (a) the Executive Director suspects that property obtained from the commission of a serious offence is situated in a foreign country, or (b) a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of a serious offence within the jurisdiction of the foreign country, the provisions of the Mutual Legal Assistance Act, 2010 (Act 807) shall apply. And Section 5 (a), (q) (r) of the Mutual Legal Assistance Act, 2010 (Act 807) provides:

“A request for mutual legal assistance in a criminal matter includes a request for assistance: (a) to identify and locate persons; (q) to identify, trace and freeze proceeds of a crime; (r) for the recovery of assets

Further provisions are made in the Office of the Special Prosecutor Act 2017 (Act 959) for assets forfeiture. Section 3 (1) of Act 959 sets out the general functions of the Office of Special Prosecutor, to include the following:

*“(a) Investigate and prosecute cases of alleged or suspected corruption and corruption-related offences under the Public Procurement Act, 2003 (Act 663);*

*(b) Investigate and prosecute allegations of corruption and corruption related offences under the Criminal Offences;*

*(c) Investigate and prosecute alleged or suspected corruption and corruption-related offences involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offence under any other relevant law, and*

*(d) Recover and manage the proceeds of corruption...”*

On issues of confiscation and seizure, the Special Prosecutor has been empowered to apply to the Court to lift the veil (section 62 (1)) where the Special Prosecutor suspects that a property held by another person is subject to the effective control of a person on trial for corruption or corruption-related offence.

The factors that the Court may consider for making its determination in lifting the veil include assessing the value of benefits derived by a person from corruption or a corruption-related offence. The Court shall have also regard to:

*“(a) shareholdings in, debentures over a directorships in a company that has an interest, whether direct or indirect, in the property, and for this purpose, the Court shall order an investigation and inspection of the books of a named company;*

*(b) a trust that has a relationship to the property, or*

*(c) a relationship between the persons who have an interest in the property or in companies of the kind referred to in paragraph (a), or trust of the kind referred to in paragraph (b), and with any other persons” (section 62 (2)(3) of Act 959).*



Section 62 (4): Where the Court treats a particular property as the person's property for the purposes of making a pecuniary penalty order against that person, the Court shall make an order declaring that the property is subject to the effective control of that person and is available to satisfy the order

### Management of Proceeds of Corruption

Section 36 of Act 959 provides for Record, custody and management of seized property. It states-

“(1) An authorized officer who seizes property with or without a search warrant shall:

(a) make and deliver to the person from whom the property is seized a written record of the property; and

(b) hand over a copy of the record and custody of the property to the Special Prosecutor within seventy- two hours from the time of seizure

(2) Where the property seized is perishable, the Special Prosecutor shall inform the person from whom the property is seized of the intended sale of property and apply to the Court for an order for

(a) the sale of the property; and

(b) payment of the proceeds into an interest bearing account until the final determination of the matter.

(3) The procedure for the management of assets seized under this section shall be prescribed by Regulations made under this Act”. These regulations were yet to be

made.

Sections 65 and 66 of Act 804 provide for the management of proceeds of crime and corruption. Section 65 provides: (Realisation of property) that where a pecuniary penalty order is made, not discharged and not subject to an appeal, the Court shall, on an application by the Executive Director of the EOCO,

“(a) direct the Attorney-General to manage the property;

(b) empower the Attorney-General to take possession of the realisable property subject to the conditions specified by the court;

(c) order a person who has possession of the realisable property to give possession of the property to the Attorney-General;

(d) empower the Attorney-General to dispose of the realisable property in a manner as directed by the Court; and

(e) order a person who holds an interest in the property to make payment to the Attorney-General in respect of a beneficial interest held by the respondent or the recipient of a gift specified in this Act as the Court shall direct...” (Section 65 (1) of Act 804) and,

shall give a person who holds interest in the property reasonable opportunity to make representations to the Court before making an order under paragraphs (b), (c), (d) or (e) of subsection (1) and also under subsection (2) –see section 65 (2).

On the utilisation of proceeds of realisable property, section 66 provides in clause 1 that the Court shall direct that an amount be paid to the Registrar of the Court out of the proceeds of the realisable property and that



part of the amount be applied to defray the expenses of the EOCO Office and on the directions of the Court, the Attorney-General shall pay thirty percent of the outstanding amount for the benefit of an institution of relevance to the action (clause 2 of Section 66).

Section 66 (3) tasks the Attorney-General to retain the thirty percent of the outstanding amount specified for the benefit of the institution of relevance and pay the rest into the Consolidated Fund, until the payment is made under subsection (2) of Section 66.

Section 27 of the Anti-Terrorism Act, 2008 (762) provides for the management of properties seized pursuant to the Act, whilst section 23A of Act 749 and amended by Act 874 also imposes an obligation on accountable institutions including financial institutions to preserve "...funds, other assets and instrumentalities of crime for a period of one year in order to facilitate investigations.

The Narcotic Drugs (Control, Enforcement And Sanctions) Act, 1990 (PNDCL 236) mandates a police officer to enter, search and seize property. Act 236 provides in section 24 (1) that " where it appears to an authorised police officer that there is reasonable cause to suspect that in or on any premises, there is concealed or deposited a property liable to forfeiture under this Act or in respect of which an offence under this Act is reasonably suspected to have been committed, or a

book or document directly or indirectly relating to or connected with a dealing, or an intended dealing, whether within or outside the Republic in respect of a property liable to seizure or forfeiture under this Act or which would, if carried out be an offence under this Act, the authorised police officer may at any time:

(a) enter the premises and there search for, seize and detain, that property, book or document;

(b) search a person who is in or on the premises, and for the purpose of the search, detain that person and remove that person to a place that is necessary to facilitate the search;

(c) arrest a person who is in or on the premises in whose possession a property liable to seizure or forfeiture under this Act is found, or whom the officer reasonably believes to have concealed or deposited the property;

(d) seize and detain a book or document found in or on the premises or on that person;

(e) break open, examine and search an article, a container or a receptacle; or

(f) stop, search and detain a means of conveyance.

### **3.7.2. Examples of Implementation**

Between 2011 and 2016, a total amount of confiscation by EOCO exceeds USD 4 million, as shown in table below:

Table: Confiscations by EOCO (2011-2016)<sup>70</sup>

Year	USD	Pounds	Euros	GHC	Other Currencies	Non - Pecuniary
2011	3,512,722	0	-	-	-	3 cars
2012	328,200	0	31000	358715	11950	-
2013	460,606	40000	161931	103780	0	3 cars
2014	19,7374	-	0	32232	0	0
2015	3,800	0	0	0	2450	0
2016	0	0	0	0	0	1 car, 3 laptops

### 3.7.3. Observations

Ghana is generally compliant in terms of the AU Convention. Law enforcement agencies such as the EOCO, SP, Police Officer and others have power to search, identify, trace confiscate and seize proceeds and instrumentalities of corruption and crime, either during trial or after trial.

However, in terms of compliance with the FATF standards, Ghana has more work to do. It was observed in the MER Report that despite having laws and standard operating procedures (SOP), the “follow the money principle” did not seem to be an integral part of the operations of law enforcement agencies and that there was no evidence (policy documents, statements) to demonstrate that recovering the proceeds of crime is an institutionalized policy objective within the criminal justice system in Ghana.

Furthermore, it was observed that there was also no evidence that confiscation was actively pursued and monitored by the LEAs and that LEAs, prosecutors and judges did not focus enough on confiscation either as a goal in itself or as an integral part of the mechanisms available to deprive criminals of their illicit proceeds”.<sup>71</sup>

It would appear that except for the EOCO, the Attorney-General, NACOB, the Office of the Special Prosecutor and Accountable institutions that have been entrusted with managing proceeds of crime and corruption, there are no provisions in relation to the management of these proceeds by the Ghana Police Service and the BNI, among others. That means that the country lacks a comprehensive mechanism for managing illicit wealth frozen, seized or confiscated.

## 3.8. Reporting on Implementation

*Section 22 (7). States Parties shall communicate to the Board within a year after the coming into force of the instrument, on the progress made in the implementation of this Convention. Thereafter, each State Party, through their relevant procedures, shall ensure that the national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.*

70. MER, 2017, pp. 45-46

71. *ibid.*, p. 46

As already pointed out, the Parliament of Ghana adopted a resolution to ratify the AU Convention together with the United Nations Convention against corruption on 16 December 2005. But, Ghana deposited the instrument of ratification on 27 June 2007.

Having ratified it, Ghana is obliged to ensure that her national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU, through "...relevant procedures at least once a year before the ordinary sessions of the policy organs of the AU". That means Ghana should have reported to the Board, at least, 10 times as of 2018.

#### The study found that:

The AU Advisory Board on Corruption conducts visits to states parties and that such visits are largely informed by responses submitted to it by the particular state party. The Board paid such a visit to Ghana in 2012/2013, implying that Ghana had communicated to the Board prior to that visit in respect of article 22 (7) of the Convention. However, these reports submitted by States to the Board on the status of implementation of AU Convention are not publicly available on the AUABC website.

On challenges of the Board, it was found

that the twoyear term of office, renewable once, is not enough for the members of the Board to fulfill their obligations effectively.

This, coupled with the four times a year meetings, renders the Board almost ineffective.

The inclusion of "political activists" in the Board is a big challenge to the realisation of the vision and mission of the AUABC

The following recommendations were suggested to improve reporting and monitoring by the Board:

- The AU-ABC should work very closely with the Anti-Corruption Agencies.
- The AU Commission should consider extending the term of office of Board to at least four years renewable once;
- Members elected onto the board must have proven competence in preventing and combating corruption. They must also have not less than ten years experience in anti-corruption. As it stands now, *"...the AU just picks any body to be a member of the Board, this is not the requirement of the Convention and the AU is not doing fair to the people of Africa"*.<sup>72</sup>
- Some steps were being initiated by the Board aimed at addressing some of the challenges identified.

72. The words of a respondent

# 4.0. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The purpose of the study was to find out whether and to what extent Ghana has discharged her obligations under the African Union Convention on Preventing and Combating Corruption (AU Convention), as a State Party, with respect to selected articles only. The articles selected are illicit enrichment, money laundering, assets declaration and Code of Conduct, access to information, funding of political parties, civil society and media, confiscation and seizure of proceeds and instrumentalities of corruption. Article 22, paragraph 7, which deals with reporting obligations of States Parties has also been examined as it is only through reporting that the AU would receive information on efforts by States Parties, including Ghana, to comply with the AU Convention.

## 4.1. Summary of Findings

To identify the gaps existing in her laws and policies vis-à-vis the AU Convention and the UNCAC, Ghana conducted a gap analysis to provide the basis for the adoption of legislative and other measures to bring her into full compliance with both

Conventions.

Since then, the Bills that were pending have been passed. They are the following:

- The Economic and Organised Crime Office Act, 2010 (Act 804)
- The Mutual Legal Assistance Act, 2010 (Act 807)

Others laws that have also been enacted including the following:

- Anti-Money Laundering (Amendment) Act, 2014 (Act 874)
- Office of Special Prosecutor Act, 2017 (Act 959)
- The Witness Protection Act, 2018<sup>73</sup>

Other draft legislation are pending for enactment. These are the Right to Information Bill, 2018 and the Conduct of Public Officers' Bill, 2018. The National Anti-Corruption Action Plan (NACAP) was unanimously adopted by Parliament as the blueprint for addressing corruption in Ghana.

73. Awaiting assent of President at time of Report.

## Illicit Enrichment

The existing legislative and measures show that illicit enrichment and conflict of interest have not yet been established as offences. Though Ghana has not established illicit enrichment as corruption offence as the first option, Ghana is in compliance with the minimal requirements of article 5 and 8 of the AU Convention, which require states parties to either criminalize it, or provide assistance and cooperate with other States making a request. Since Ghana has taken the second option, it is open to her to provide assistance to and cooperate with other States making requests in relation to illicit enrichment. With the Mutual Legal Assistance Act, 2010(Act 807), the legal basis exists for such cooperation and assistance. However, Ghana is compliant with Article 5, paragraph 1 and Article 8 paragraph 1 of the AU Convention but non compliant with Article 20 of the UNCAC,<sup>74</sup> which contains no option other than criminalise illicit enrichment.

## Laundering of Proceeds of Corruption (Money Laundering)

In terms of Ghana's obligations under Article 6 of the AU Convention, the analysis shows that Ghana is in full compliance. The Anti-Money Laundering Act, 2007 (Act 749) as amended by Act 874, criminalises money laundering. The Act has also gone further to establish the FIC to assist in the implementation of the Act, something not provided for by Article 6 of the AU Convention.

Furthermore, Ghana has assessed her vulnerability to money laundering and financing of terrorism in addition to conducting two mutual evaluations (2009 and 2016) in relation to the FATF recommendations on anti-money laundering and countering the financing of terrorism. These evaluations show that Ghana is yet to fully satisfy the requirements of some critical/key recommendations.

## Assets Declaration and Code of Conduct

Ghana is in compliance with Article 7, paragraphs 1-3. It has legislation requiring a wide range of public officers to declare their assets at the time of assumption of office, during (once every four years) and after their term of office in the public service as one of the strategies to prevent conflict of interest and combat corruption in general. However, the assets declaration regime is deficient in many respects and reform is required in order for the country to maximize the benefits of a robust and strong assets declaration regime.

## Political Party Funding

Article 10 of the AU Convention deals only with proscribing the use of funds acquired through illegal and corrupt practices to finance political parties; and incorporating the principle of transparency into funding of political parties.

However, measures adopted by Ghana go beyond the requirements of AU Convention by guaranteeing the right to form political parties, register the party, which shall have

74. Executive Summary of the Review of UNCAC in the 1st Cycle, available at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1500669e.pdf>

a national character, and obligation of the state to provide to each political party equal opportunity to present their views (Article 55 (11) of the Constitution, among others. Yet, the measures, especially, the Political Parties Act 2000 (Act 574), do not cater for the activities of political party candidates in Parliamentary elections. There is no limit on campaign financing, neither is there transparency in campaign financing. These and many others require serious consideration to strengthen transparency in political party financing in the country.

### CSO and Media

The Constitution and the law have created the enabling environment for Civil Society and the Media to hold governments to the highest levels of transparency and accountability in the management of public affairs, as well as provide access to information, among others. One clear example of this is the case of *Lolan K. Sagoe-Moses and 6 Ors v the Honourable Minister and Attorney-General*, Suit No. HR/0027/2015 (High Court-Unreported), where the High Court held inter alia, that “...in a democracy, the free and unrestricted marketplace for the free exchange of ideas and public debate is the heartbeat of democracy as well as the assurance of probity and accountability”. p. 12

That case concerned the decision not to grant the plaintiffs their demand for copies of a contract entered into for the branding of some buses by the Minister for Transport. And when the Minister declined to grant the request, the plaintiffs filed the suit.

In deed, Civil Society in Ghana has played and continues to play these roles. Ghana is

in compliance with this article of the AU Convention.

In terms of reporting and monitoring of the implementation of the AU Convention, the study found that many Civil Society actors and other stakeholders were more aware of the UNCAC than the AU Convention and that though the AU Convention recognizes the role of Civil Society and the Media in curbing corruption in article 12, that provision is yet to be practicalised. Respondents point out that the non-compliance of article 12 is demonstrated by the non-representation of CSOs on the Board and non-representation of CSOs in delegations of country visits by the Board.

### Access to Information

It is evident that apart from the article 21(1)(f) of the Constitution on the right to information, the Right To Information Bill, which seeks to enhance the enjoyment of the right to information, has since 2009 when the Government made the comparative analysis and provided it as part of the measures to provide the right of access to information, been pending. It is therefore difficult to predict when it shall be enacted, if at all. Ghana, therefore, is not in full compliance with Article 9 of the Convention on access to Information.

### Confiscation and Seizure

Ghana is generally compliant in terms of the AU Convention. However in terms of compliance with the FATF standards, there was no evidence (policy documents, statements) to demonstrate that recovering the proceeds of crime is an institutionalized



policy objective within the criminal justice system, neither is there evidence that confiscation is being actively pursued and monitored by Law enforcement agencies (LEAs). Furthermore, as found, LEAs, prosecutors and judges did not focus enough on confiscation either as a goal in itself or as an integral part of the mechanisms available to deprive criminals of their illicit proceeds.

## 4.2. Recommendations

### Government

1) Since Ghana has not criminalized illicit enrichment, it is recommended that Government considers establishing it as an offence in order to be able to prevent illegal acquisition of wealth not only by public officials but by any person-private or public.

2) Government should, as a matter of urgency, enact the right to information bill which has been pending for over 9 years;

3) Government should speed up reforms of the assets declaration regime to curtail, for instance, anticipatory declarations and ensure more transparency in the regime. It should also expand the coverage of the law to include other key public officials;

4) The Government should nominate one lead institution responsible for ensuring the reporting of the implementation of the AU Convention similar to what pertains in relation to the UNCAC.

### The AU and the Board

5) In order to improve reporting and monitoring by the Board, it is recommended for consideration, the following:

- The Board should work very closely with the Anti-Corruption Agencies.
- The Board should respect the following minimum principles in relation to the conduct of its country visits: transparency; accuracy; non-intrusiveness, objectivity and impartiality.

6) The Board should improve on the monitoring mechanism by, for example, making it possible for online reporting, clarifying by way of providing minimum list of the type of information required to complete its questionnaire on implementation, involving States Parties in validating information received by the Board after its visits prior to publication.

7) The AU should consider appointing competent and experienced persons on the Board as well as extending the term of office of the Board to at least four years renewable once.

### Civil Society and Media:

8) It is recommended as follows:

- A lot of Civil Society advocacy is needed to enhance effective engagement of stakeholders and government on the implementation of the AU Convention.
- Civil Society should hold government

- responsible for ensuring the implementation of the AU Convention and also request for feedback on the reporting obligations as well as challenges Government may be encountering on the implementation.
- There is the need for CSOs to lobby for representation on the Board.
  - As an effective tool of advocacy, CSOs should prepare their own reports on monitoring activities of the Board for the consideration of the AU Commission.
  - CSOs should collaborate more closely with relevant key state institutions on the AU Convention.

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