

Throes of Corruption in Ghana

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Abstract

Corruption has eaten deep into the very fibre of many societies. It is a generalized and an integrated culture in many institutions. As a result, well-meaning Ghanaians express outrage and disgust at these never unending scandals of corruption in the country. Often, research reports, media publications, reported cases on the subject confirm the notoriety of the practice with growing impunity. Many citizens in various positions: public officers, ruling elites, business men and women, are all entangled in it. Those who engage in these acts of corruption know that it is unlawful; however, they continue with this abominable practice for various reasons including: a sense of entitlement, belief of not being held accountable, sheer greed, wickedness and wilful intent to loot every available resource for themselves at the expense of all others. On the other hand, the citizens who do not practice corruption, also accommodate it by their inaction for fear of victimization among others. By these acts of corruption, public funds meant to benefit the entire citizenry are diverted into the wrong hands which undoubtedly reduces the trust of the public in the government in power. Further, it weakens the effectiveness of public institutions and the practicality of the rule of law in general. This paper will reveal the reality of the age-old perception of corruption in Ghana with a view to provide guidance to policy makers to curb it. The paper will also add to the growing literature on corruption and provide meaningful information to those seeking to understand how corruption plays out negatively in the development of the economy of the state among others.

Keywords

Corruption, Kinds of Corruption, Political Corruption, Actors, Accountability

1. Introduction

Corruption is universally illegal (Bishop, 2010). Most literature on economic

development and good governance cites it as one of the major ills that stifle development in many countries (Dissou & Yakautsava, 2012). Meanwhile, there exist a variety of laws on corruption which touches on issues including: money laundering, government transparency, organized crime, and trade and investment regulations among others. Despite these efforts made to decentralize the fight against corruption and its related offences, it appears there is more work to be done based on published reports on the subject (Atta-Mensah, 2016). For instance, the Corruption Perception Indexes (CPI) on Ghana by Transparency International, reports of Afrobarometer, CDD, etc. on Ghana do not show a favourable picture and hence there is the need to rethink a more effective strategy to fight the menace.

Corruption operates to frustrate fair dealings with government agencies, advance unequal treatments of individuals, continue to widen the gap between the rich and the poor and renders state institutions undesirous to effectively and efficiently discharge their lawful duties.

There is extensive research on corruption, its meaning, causes, effects and solutions. What is glaring from the literature on the subject is the absence of a single definition. Most often, international organizations decline an all-encompassing definition as the purviews of corruption in a state are peculiar to the social facts of that state. It is for this reason that most national legislations have adopted or provided peculiar instances of what will constitute corruption to deal with its special needs. In Ghana for instance, the 1992 Constitution and the Criminal and Other Offences Act, 1960 (Act 29) view the offence of corruption from public institutions and their officers (Criminal Offences Act). Despite the huge investments by African Economies to fight corruption, statistics from the World Bank estimates, that about 5% of the world's economy translating into over a trillion dollars is associated with corrupt activities (Mousoudakis et al., 2020).

In Ghana, there is hardly any political platform in an election year, where the presidential aspirants do not propose to make corruption a thing of the past. For instance, in 2016, the current President of the Republic of Ghana assured the State of abating corruption upon his election. True to this, in 2017, the State established the Office of the Special Prosecutor among others, to investigate and prosecute acts of corruption and corruption-related offences (Office of the Special Prosecutor Act). Indeed, the euphoria that characterized the setting up of this office and the expectations of the general public brought a new life to the citizenry that their elected representatives will work in their best interest and create equal opportunities for all. The said Office unfortunately, has failed to meet up to the high hopes and aspirations of the public.

In 2019, Afrobarometer reported that most people in Ghana perceive that there has been an increment in corrupt practices in the country (Osse & Norviewu, 2019). It is very alarming to stress, that the very institutions and people vested with state power to fight corruption are themselves tagged as largely corrupt. According to Afrobarometer, the general public's view of the most corrupt persons and institutions in Ghana is: the police, judiciary, members of parliament, civil servants and

tax officials (Osse & Norviewu, 2019). They blame the government of failing the fight against corruption. In similar observation, Transparency International ranked Ghana 74 out of 180 countries with a score of 43% in its 2020 corruption perception index (Transparency International, 2020). These statistics are very disturbing, having regard to the substantial laws on corruption in Ghana as well as the specialized institutions set up to deal with the issue. There is therefore, the urgency to revisit the discussions on corruption in Ghana and suggest some appropriate measures in dealing with the canker more effectively.

Structurally, the paper shall first, consider the nature and meaning of corruption. Here, the paper considers the issue from a global perspective before confining it to the African Context and then to Ghana. This part will also look at the major causes of corruption. The next part shall give an overview of corruption in Ghana and its effects. The legal and institutional regimes that have been established in Ghana to deal with corruption shall be considered. It is after a consideration of the causes and effects of corruption in Ghana, that solutions will be proposed to deal with the menace. The final part of the paper shall be the conclusion.

1.1. Meaning, Causes and Effects of Corruption

To date, it is difficult to chance upon a universally acceptable definition of corruption (Callaway, 2019). However, because of the criminal law principle, that a conduct amounts to a crime only if there is a statute that has clearly criminalized it (Boakye, 2022), the meaning of corruption has become territorially defined. What further undergirds a universal definition of corruption is informed by the urge to make laws that can deal with particular needs of particular societies (Cordell et al., 2020). According to Cordell et al. a further difficulty in defining corruption stems from the diverse conflicting jurisprudential approaches to law.

For the positivists, their approach to law is contingent on formalism hence, they postulate a clear and precise definition of corruption in all cases. The difficulty in accepting such an approach and a definition is obvious. As discussed, criminalizing corrupt conducts must situate well with the social order of a society. In a country, there may be various social conducts which if going by the positivists' all-encompassing definition will portend a difficulty at legislating.

The naturalists' views are contingent on justifying an act based on its moral good. Therefore, for the naturalist's corruption will fall into such acts that are not morally justified in the society while the historical school considers the developments of the society in times past to influence how the law must be. The realist view laws from prevailing social factors and public policy. For them, judge-made law is the better law and the judges make laws through interpretations from analysing social values and public policy (Cordell et al., 2020). As seen, even from a jurisprudential point of view, corruption will admit of diversity in definition.

Corruption in Sub-Saharan Africa age into colonization. Imiera (2020), observes that the genesis of corruption in Africa is traceable to colonialization and

the industrial revolution in the nineteenth century. In the political structure that was created, the local leaders exercised their rights on behalf of the colonial governors and with time, such exercise turned into a corrupt venture. They will demand for money from the subjects with a view to influencing the chequered systems created by the colonial masters. These foundational happenings progressed steadily into our contemporary governance system (Imiera, 2020).

1.2. An Attempt at Definition?

In attempting a definition of corruption, Cordell et al. (2020) considered several definitions from some philosophical theorists and pointed out the features shared by all the definitions as follows:

“Firstly, they all refer to a form of dereliction of a duty. Secondly, that dereliction is caused by some form of gratification, whether in the form of wealth or power. Thirdly, that dereliction is generally considered to be detrimental to the society in question, based upon that society’s particular values” (Imiera, 2020: p. 73).

The authors acknowledged however, that all the definitions do not represent a universal definition. This then, reiterates the earlier point that corruption is difficult to define.

It can be deciphered from the readings on corruption that it generally encompasses three broad areas. First, the misuse of public office for private benefit; secondly, the inappropriate exchange of favours and or money to influence the exercise of power; thirdly, violations of public interest for private gains (Ayee, 2016). Per these strands of meanings of corruption, it is clear, that the term persists in both private and public offices. The corrupt conduct clearly is a conduct not in the best interest of the public or the private set-up and finally, it is triggered when a person abuses his office through being influenced for his private gains. Research has even shown, that corruption is no longer confined to national institutions and that it has widened in its subjects. For instance, Liu (2016) observes, that academic corruption has not been amplified as well as other “interest exchange processes” like nonfeasance, nepotism and wanton disposal of public resources.

1.3. Types of Corruption

Various categorizations of corruption have been identified in the literature. Begovic (2005) argues, that the types of corruption are determined by the theoretical views on corruption. He notes, that economic theories have propounded two views on corruption. One view is anchored on the agency theory. This theory is founded on the assumption of unequal information gap between politicians or decision makers and civil servants. As a result, the decision makers or politicians are bereft of information as regards wrongfulness of their subordinates.

On political corruption however, Begovic (2005) expresses the view, that the first approach is insufficient to explain political corruption which is anchored on the assumption that the state is kind with information. From the political angle,

corruption is viewed as not institutionalized. It is argued, that corruption rather, is the consequence of the political activity. Generally, however, three basic types of corruption are identified. First is corruption that aims at achieving what otherwise the citizen is entitled to. So here, the practical example is where civil servants are influenced to perform their legally mandated duties. This practice questions the extent of efficiency of a country's administrative capacity. The Ghanaian case of *Ampofo v Fiorini* (1981) GLR 829 can be used to expatiate on this. In that case, the Plaintiff, an employee of the Forestry Service Department agreed to help the Defendant an Italian business man set up a timber business. Per the agreement, the Plaintiff was to receive about 35% of the profits from every business he assisted in the setting up. The Defendant failed to pay the Plaintiff despite setting up three timber businesses with the Plaintiff's help. The action was dismissed, since, the Plaintiff had used his office for purposes of private gain. The court reasoned that, the conduct of the Plaintiff violated the Civil Service Act, 1960 (CA 5) which made it a misconduct for a civil servant to use his office for a private advantage improperly.

The second type of corruption is corruption that infringes legal rules or biased against the enforcement of the rules. This normally, is centred on administrative corruption where individuals are corrupted not to abide by legal rules or seek their enforcement (Begovic, 2005). It is interestingly argued, that as a result of some bad policies arising from the political process, this type of corruption is the instrumentality to be adopted to responding to the bad policies. The final type of corruption is aimed at state capture. Here, the aim of the corruption is rather, to change the rule to suit the political governors.

Enste and Heldman (2017) have also identified two variants of institutionalized corruption: the bottom-up and the top-down corruption. The bottom-up corruption occurs where subordinates receive bribes and share with their superiors. Where such system is institutionalised, then, as explained by the authors they become a condition precedent for employment (Enste & Heldman, 2017). The "top-down" corruption on the other hand operates in two instances. The first is where the superiors are fearful of subordinates denouncing them. The second is where the superiors will need the cooperation of their subordinates for a contract already decided at the superior level to be operational. It must be observed, that these categorizations are based on institutionalized corruption, and as such, will not be exhaustive of other types of corruption that may not have been nationalized.

Finally, Article 4 of the African Union Convention on Prevention and Combating Corruption and Related Offense considers corruption to be either direct or indirect. The Convention provides these as:

- 1) *The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.*
- 2) *The offering or granting, directly or indirectly, to a public official or any*

other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.

3) *The diversion by a public official of any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the state or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position* (African Union, 2003).

These various variants of corruption discussed point out several conducts that may amount to corruption. As outlined by Goto & Ogunnubi (2014), they include: bribery and graft; kleptocracy; non-performance of duties (cronyism); influence peddling; acceptance of improper gifts; abuse of power; manipulation of regulations; electoral malpractice such as vote buying and rigging of elections; rent seeking; illegal campaign regulations.

2. Effects of Corruption

The Rule of Law, is threatened when corruption is endemic in a state. For instance, where the government diverts revenues reserved for specific developments away from investment in public capital which in turn is a necessary input in private production, private marginal product of capital is diminished (Dissou & Yakautsava, 2012).

Corruption therefore has the greatest potency of contributing to underdevelopment, poverty, deprivation and exclusion of individuals. Where public servants and citizens do not respect the law, that is a threat to the rule of law. Eschewing corruption in a state, thus, is a major critical factor to upholding the rule of law.

According to Atta-Mensah (2016), the monetary value of a corrupt activity is equivalent to a regular bond and an embedded European call-option.

Begovic (2005) shares the further view, that corruption has the potency of affecting the foreign direct inflows into an economy. This is particularly so, because, corruption generally, leads to a decrease in the returns on investments. This will therefore, lessen the amounts of investments that foreign investors are willing to invest into an economy.

Further, Corruption leads to the siphoning of huge revenue meant for African states out of the continent. In 1991 for instance, it was reported that over 200 billion dollars were siphoned by African leaders through corrupt means (Owoye & Bissessar, 2014). Further, corruption deepens inequalities in nations, crippling efforts at promoting good governance. In fact, the United Nations Security Council observed in 2018 that corruption fuelled the conflicts in DR Congo, South Sudan and the Central African Republic among others (Cordell et al., 2020).

2.1. What Are the Real Causes of Corruption?

Various scholars ascribe several causes to corruption. Most of the literature on corruption in Africa is in unison that the canker is hugely informed by the

importation and implantation of western culture on the continent. For instance, Hope formulates six main causes of corruption. First is the elitist control of all power and the making of decisions in the society. By such exercise of power, the ruling class controls all state assets furthering the ease of their misappropriation. Next, is the bureaucratic systems that have been entrenched in state institutions. This tends to complicate processes unless money exchanges hands. The third is colonial influences on the distribution of resources in the state. The colonial era created a situation where resources were vested in the minority few and this was used to suppress the majority. The fourth, is the lack of proper application of the law and uncertainty of the law as well as with respect to administrative decisions. This leaves lapses in administrative set-ups which breeds corruption. Ethical leadership is identified also, as the next factor. In countries particularly that of Africa, most public officials are without any fear of being held to account. Hope argues finally, that African customary norms and practices tend not to situate well with western norms hindering corruption. According to him, African traditions are built on loyalty and favouritism surrounding the family system which leads to creating corruption. This view of Hope has been criticized for being inherently flawed. First, he assumes that African societies are inherently corrupt which is shared as a Eurocentric view since such practices are also reflective of western culture. More so, there is little scientific proof, that gift giving in Africa is more prevalent than in Europe (Hope & Chikulo, 2000).

From an economist point of view, Begovic (2005) identifies as a major cause of corruption to be the selfish interests of the economic agents. Economic theory teaches, that human needs are insatiable. Therefore, man will do whatever he can to satisfy these needs. Humans therefore, will allocate resources to those activities that will bring major returns by way of rent and hence, corruption will be used as the instrument to maximize individual welfare through rent appropriation.

A further identification by Begovic (2005) is the cumbersome procedural regulations left at the discretion of civil/public servants. Because of the bureaucracy in most public systems, there tend to be slowness in decision making. As a result, corruption is used to expedite these processes, since the systems themselves inherently are major incentives to attract corruption. The size and structure of government has also been identified as a causative factor of corruption. Some empirical studies show, that large governments have the tendency of breeding corruption. Yet, there are other studies which challenge this view and rather posit that a large government can stifle corruption due to large budgetary allocation (Enste & Heldman, 2017).

Studies have further demonstrated, that an undemocratic government has the tendency to breed corruption. Where accountability and transparency are built into the legal systems of states, it helps reduce the level of corruption in a country. However, for this to be more effective, there is the need for proper enforcement mechanisms and institutions. This therefore demands, that where state institutions do not possess the requisite quality to order the affairs of the state, the tendency of an increment in corruption is high.

Low levels of salaries of public officers are again a major contributing factor to corruption. Enste and Heldman (2017) observe that high wages and salaries in the public sector translates into low corrupt activities. Most Public servants who are better paid are less corrupt as compared to those that receive low salaries. Moreover, this approach to dealing with corruption has been justified on moral philosophy, on the basis that a worker who earns a higher wage will feel morally hurting to his employer if he accepts bribes.

It has been further researched, that although natural resources should translate into an improvement in the economic fortunes of a state, its abundance in a nation can be a trigger of corruption (Begovic, 2005). In most African countries such as Ghana, the paradox of plenty “the resource curse” is more than institutionalized in the nation despite its plentiful natural resources. In the abundance of these more natural resources, the empirical research shows that the government is less efficient and joins the citizens in competing for rents from these natural resources (Transparency International, 2020).

2.2. Ghana

In discussing corruption in Ghana, it is noteworthy to state that some presidents of the Republic of Ghana resolved to fight the menace. In 1981, President Rawlings in an attempt to address corruption in all its forms, introduced some radical measures and reforms. This turned out to be relatively successful with the tax systems which was made more transparent and simpler. Again, the average tax rate was lowered and corruption was generally contained to an appreciable level (Dis-sou & Yakautsava, 2012).

Reference is also made to the statement by the former President of the Republic of Ghana, John Agyekum Kuffour that “corruption is part of human kind since it started in the days of Adam and Eve in the Garden of Eden and that it was as old as creation itself.”

Whiles the causes of corruption already discussed are generally reflective of global causes, the social facts in particular societies trigger additional or different causes. In 2016, a report by the Institute of Economic Affairs found that traditional and cultural values are not the main causes of corruption in Ghana. There is rather, a misinterpretation of these values and cultures by some section of the public.

Moreover, in a 2018 report by Transparency International on Corruption in Ghana, the organization identified about four forms of corruption in Ghana namely: political corruption, corruption in businesses, petty and bureaucratic corruption (Transparency International, 2020). On political corruption, every government administration in Ghana has been viewed as politically corrupt. This kind of corruption paints a negative image of a government among its citizens. According to Transparency International, in a survey conducted by the Washington Post in 2015, over 46% of Ghanaians viewed vote buying during elections to be normal and not wrong and if wrong at all should go unpunished. Further,

Ghana has witnessed what people believed to be politically motivated dismissals of persons who threatened corruption in the state. A recent happening is the dismissal of the then Auditor General. The views of the general public are that, the dismissal was politically motivated. Again, in 2017, the country witnessed some corruption scandals involving the Electoral Commission and some of its deputies and following probes by EOCO, several senior officers of the Electoral Commission were removed from office for being corrupt and or incompetent.

Corruption in businesses in Ghana is prevalent. Doing business in Ghana is very expensive. The procedural bottlenecks and Ghana's procurement laws and practices have stifled major businesses in Ghana. Government agencies and most civil servants on low salaries must be corrupted before they do what otherwise they are already obligated to do (Transparency International, 2020).

Transparency International has again observed, that corruption permeates more in Ghana with specific focus on the management of the country's natural resources, the Police Service and the Judiciary. As noted above, there is considerable research supporting the findings that the adequacy of natural resources in a country promotes corruption, particularly in Africa. This fact, is not different in Ghana. Issues of little or no transparency and misuse of funds in the natural resource sectors in Ghana signal corruption.

In Ghana, the independence of the Judiciary is well guaranteed under Ghana's 1992 Constitution and other relevant laws, yet, corruption in the Judiciary is prevalent. As noted by Transparency International, there was a judicial crisis in 2015 where many judges were dismissed following a documentary that implicated most of these judges as having received bribes. Moreover, Ghana's litigation procedures are very expensive. Most often, it is perceived that those with the financial wherewithal are able to gain access to effective justice in the Courts. Afrobarometer has noted, that the police and judges are the most perverse with corruption in Ghana. With the police, there has been several complaints of engaging in unlawful arrests and detention, sometimes at the behest of a rich complainant (Osse & Norviewu, 2019).

3. Legal and Institutional Framework for Combatting Corruption in Ghana

Ghana, has various laws and established several institutions to deal with corruption in the Country. Additionally, the country is signatory to pertinent international treaties geared towards the fight against corruption. Some of these laws or treaties and institutions will now be considered and examined whether they are indeed, effective in dealing with corruption in Ghana.

3.1. International Framework

Ghana's Constitution, urges the state, to in its dealings with other states respect international law. The state therefore, is obligated to conform to the pertinent hallowed principles of International Law (Article 40 of the 1992 Constitution). Ghana

is signatory to the United Nations Convention Against Corruption. Further, the state has signed and ratified the African Union Convention on Preventing and Combating Corruption.

Domestic Framework; The 1992 Republican Constitution of Ghana

The Fourth Republican Constitution of the Republic of Ghana is undergirded by various democratic and constitutional pillars, paramount of which are Probity and Accountability. These foundational principles are re-echoed in diverse forms under the Constitution. Right from the first Article of the Constitution, the Government, is reminded that sovereign power in Ghana is vested in the People of Ghana. By this provision, the State is enjoined to ensure, that the exercise of governmental power is in tune with the welfare of the people of Ghana.

The Constitution mandates the Government to take steps to eradicate corrupt practices in Ghana. The Constitution in further dealing with issues of corruption, has provided a code of conduct to regulate the acts and actions of public officers under Chapter 24. The chapter attempts a mechanism to deal with conflict-of-interest situations which has the potency of breeding corruption in the country. In this light, Article 284 of the Constitution prohibits a public officer from putting himself in a position that will conflict or likely to conflict with the performance of the functions of his office. Further, a person who holds a position or office in a public corporation is proscribed from being appointed to act as the Chairman of a public corporation. These provisions under Ghana's 1992 Constitution are further reflected under the Civil Service Act towards dealing with conflict-of-interest situations. It is important to observe as noted also by Transparency International, that these provisions under Ghanaian laws do not consider issues of nepotism, cronyism and patronage which are all diverse breeds of corruption ([Transparency International, 2020](#)).

In its bid, to ensure the pursuit of transparency and accountability, the 1992 Constitution demands certain senior public officers to submit a written declaration of their entire assets they own directly or indirectly to the Auditor-General upon coming into office. These persons are: the President and his Vice, the Speaker of Parliament and Deputy Speakers of Parliament as well as Members of Parliament; Ministers of State and their Deputies; Justices of the Superior Court of Judicature including the Chief Justice; the Commissioner for Human Rights and Administrative Justice and all his Deputies; Ambassadors and High Commissioners; the Secretary to the Cabinet; the Head of a Ministry or a government department; the Chairman, the Managing Directors and other General Managers of Public Corporation and such other persons as Parliament may prescribe (Article 286(5) of the 1992 Constitution of the Republic of Ghana).

The Commission on Human Rights and Administrative Justice (CHRAJ) is vested with authority to investigate such matters of noncompliance and in the case of the Commissioner himself, his default, shall be referred to the Chief Justice. It is a sad cry, that these requirements are hardly efficacious in the fight against corruption. The declarations once made are left at the offices of the Auditor General

and upon the retirement or dismissal of such a person from the public service, they are not resorted to ascertain whether the officer involved did abuse his office. These laws on asset declaration thus clearly require a further critical introspection.

Abotsi (2020) argues, that notwithstanding the general framework of the constitution towards the eradication of corruption, the constitution has “unwittingly [promoted] corruption through a series of inactive systems and structures as well as other power arrangements whose exploitation helps promote corruption.” As he observes, the manifold discretionary power vested in public officials create a constitutional lacunae that allows “a filling -in of legislation and broad policy prescriptions which were designed to be general in character to be worked out through implementation.” Rightly, these fill-ins mostly favour party supporters and sympathisers as a means of compensating them. The constitution, recognizing the likelihood of this abuse, has provided a discretionary check under its Article 296. However, the extent of effectiveness of this provision largely rests on their enforcement by the law courts.

3.2. The Criminal Offences Act, 1960 (Act 29)

The *Criminal Offences Act of Ghana, 1960* (Act 29) contains provisions that criminalises certain conducts as amounting to corruption. Act 29 however, unlike the international understanding of corruption limits and directs criminality in this instance to only public officers or public offices. In Ghana, unless there is a law that makes a conduct criminal, no person can be held liable on such a conduct as constituting a crime.

Under Section 239 of Act 29, Ghana criminalises corruption by a public officer or a juror in respect of the person’s office. Interestingly, the punishment for such a person is a misdemeanour. The Act explains two types of corruption: Corruption by public officers and corruption of public officers. With respect to the former, Act 29 explains it as follows:

“A public officer, juror, or voter commits corruption in respect of the duties of officer or the vote, if the public officer, juror or voter directly or indirectly, agrees or offers to permit the conduct of that person as a public officer, juror, or voter to be influenced by the gift, promise or prospect of a valuable consideration to be received by that person, or by any other person, from any other person.”

The second type of corruption, which is corruption of public officer is explained under Section 241 of Act 29 as follows:

“A person commits the criminal offence of corrupting a public officer, juror, or voter in respect of the duties of officer or in respect of the vote, if that person endeavours, directly or indirectly, to influence the conduct of the public officer, juror or voter in respect of the duties of office or in respect of the vote, by the gift, promise or prospect of a valuable consideration to be received by the public officer, juror, or voter, or by any other person, from any other person.”

The definitions of corruption above clearly exclude corporate or private

corruptions in the nature of bribes in private corporations. To that extent, in Ghana, private bribery offences are not criminal. It needs mention, that under Ghanaian Criminal Act, it matters not, that the person who is the subject of the corrupt act, was at the time the offer was made not a public officer, if same is made in expectation of the person becoming a public officer.

Another noteworthy provision under Act 29 is section 256 thereof which provides “a person who acts in a manner that amounts to corruption, intimidation or personation in respect of a public election, commits a misdemeanour, and shall not, during seven years from the date of the conviction, vote at a public election and shall not hold a public office in respect of which the election was held, or a public office of the same nature”.

4. Institutional Framework

Ghana has set up several institutions to deal with corruption and corruption related issues. Some of the principal institutions in this regard are the Commission on Human Rights and Administrative Justice (CHRAJ); The Economic and Organized Crime Office (EOCO); The Office of the Special Prosecutor and the Auditor General’s Office. While these institutions per their enabling legislations are seen and expected to help deal drastically with corruption in the country, they are rendered less effective due mainly to lack of necessary funds and over politicization of the offices.

4.1. Commission on Human Rights and Administrative Justice (CHRAJ)

CHRAJ is a constitutional body, established pursuant to the 1992 Constitution of the Republic of Ghana and the CHRAJ Act, (Act 456) to act as an ombudsman, an anti-corruption agency and a human rights commission. The 1992 Constitution vests the Commission under Article 218 to investigate corruption and corruption related offences towards the prevention of the menace. A major limitation on CHRAJ’s constitutional duty is the absence of any power to prosecute. Article 88 of the 1992 Constitution vests all prosecutorial powers in the Attorney General, who, however can delegate such powers. The effect of the absence of any power for CHRAJ to prosecute offences which upon investigation they find warrants prosecution will be to refer the matter to the Attorney General for the appropriate action to be taken. In most cases the Attorney General will be unwilling to prosecute officials of the state notwithstanding the fact of CHRAJ having made serious findings of corruption against them.

A further deficiency in the functioning architecture of CHRAJ is the appointment of its commissioners by the President upon the advice of the Council of State. This power given the president, tags the commission political as it does not assure of their utmost independence.

A major blow to the effective discharge of the functions of CHRAJ in Ghana is their inability to initiate their own investigations. This was as a result of the

decision of the Supreme Court of Ghana in the case of *The Republic vs. High Court, Accra, Ex Part CHRAJ (Anane Interested Party)* [2007-2008] SCGLR 213. The decision in this case is simply to the effect that, before CHRAJ can commence on any investigations on allegations of corruption, there must be a formal complaint to the Commission. The Commission cannot by itself be the complainant. This paper shares the view, that considering the mischief the law sought to cure with the establishment of CHRAJ, the Supreme Court ought to have held otherwise. This paper therefore agrees with the minority view of the Court expressed by Dr. Date-Bah in that case.

4.2. Economic and Organized Crime Office (EOCO)

The Economic and Organised Crime Office is established under the Economic and Organised Crime Office Act, 2010 (Act 804) to act as a specialised agency of the state to monitor, detect and investigate economic and organised crime and with the Authority of the Attorney-General prosecute such offences in the bid to recover the proceeds of crime. That is, the objects of the office are to detect and prevent organized crime and facilitate the confiscation of proceeds from such crimes. While the object of the establishment of EOCO is laudable, it still faces critical challenges leading to its underperformance particularly regarding matters involving government officials. This is mainly due to the fact that the Executive director and the board are appointed by the Executive Arm of Government. Moreover, investigations conducted by the Office are referred to the Attorney General which advised whether to prosecute or otherwise.

4.3. The Office of the Special Prosecutor

The passage of *Office of the Special Prosecutor Act, 2017* (Act 959) and the consequent establishment of the Office was received by the general populace of Ghana as a welcoming feat in efforts to eradicate corruption in Ghana. This was perhaps, the most important step taking by the state towards institutional de-politicization of the corruption fight in Ghana.

The primary aim of the Office of the Special Prosecutor's Act (OSP Act) was to combat corruption by targeting both public and private persons who are the most highly tagged corrupt. In this wise, the Act wields expanded primary prosecutorial powers in respect of corruption and corrupt-related offences. Under the Act, the office is empowered to investigate and prosecute any alleged or suspected corruption and corrupt-related offence that involve not only public officers but persons in the private sector as well.

A further attempt at championing the fight against corruption through the instrumentality of the OSP Act is the making of the office independent of the direction or control of any person or authority as regards the performance of the functions of the office. This may seem, that the issues that surrounded CHRAJ and EOCO as regards being politically independent has come to rest. However, in terms of Section 4(2) of the OSP Act, the office must seek the authorization of the

Attorney General to launch prosecutions into offences. This perhaps, is the most plausible way to avoid unconstitutionality if regard is given to Article 88 of the 1992 Constitution which vests the power to prosecute in the Attorney-General alone.

5. Dealing with Corruption in Ghana

The discussion so far reveals, that Ghana has expansive laws to deal with corruption. From the 1992 Constitution to the [Criminal Offences Act, 1960](#) (Act 29), corrupt conducts are prohibited. Our statutes however, appear not to be expansive enough in terms of criminalizing conducts amounting to corruption. Private persons are largely omitted from being held liable for corruption contrary to the international understandings of corruption. It is proposed, that the legislature takes a second look at Ghanaian provisions on corruption and subject it to a critical review to deal with particular acts of corruption in Ghana. It is not uncommon that in Ghana, offers which lead to corruption of a public officer are widely pursued by private persons. Yet private persons appear excepted from being held liable in corruption. This however, is not to suggest, that every engagement of a public officer with a private person will not pass the corruption test in terms of Act 29 as the involvement of such public officer clearly is criminal.

Where there are laws criminalizing a conduct, yet there is still an upsurge in that criminal conduct, then clearly, the solutions lie in whether the laws are effective enough or whether there is no proper mechanism for seeing to proper implementation of the law. In this instance, it is observed, that corruption under Ghanaian laws is only a misdemeanour which may attract a fine or a maximum sentence of three years.

The Judiciary also plays a pivotal role in cushioning support towards the dealing with corruption and corrupt related offences in Ghana. The Judiciary must be seen as the mouth piece of the citizenry, such that inaction or the play of politics by state actors will not be countenanced by them. In this instance, the paper argues, that the minority opinion in the case of *Ex Parte CHRAJ* (Anane Interested Party) holds more in the interest of the Republic if the State is determined in its fight Against Corruption. The decision of the court simply, has curtailed CHRAJ from acting, unless and until it receives a formal complaint from any persons.

According to one research report, where it is very difficult to curb corruption, a price or a special “tax” could be fixed by the government on its corrupt officials. Special taxes generated from these corrupt officials by the government could be used to provide public goods for the citizens ([Atta-Mensah, 2016](#)). Indeed, the continuous changes of laws together with stiffer punishments will have the tendency of contributing in the fight against corruption. It is noteworthy, that there is the critical need, for a complete ethical psyching of the individual of his or her mind from engaging in corrupt activities. As observed by the IEA, “even though it has been acknowledged that fighting corruption should be a collaborative venture, the commitment of the individual to combat corruption is key because corruption starts from the individual” ([Ayee, 2016](#)). In this connection, there must

be effective public education for individuals to appreciate the ills of corruption in the society. Already, The National Civic Commission on Education has been given constitutional impetus to engaging in necessary education of the citizenry where such activities are in the best interest of the Republic. The need for the entire populace to be sensitized and made to appreciate the ill-effects of corruption is timely. There is little or no public education currently on-going in Ghana towards dealing with the issue of corruption. The need for such public education further requires that the state institutions tasked to pursue same must be well equipped to be able to fight the menace.

A corollary to the immediate suggestion is for the state, to be transparent and easily disseminate information regarding the governance of pertinent sectors of the economy that are mostly prone to corruption. This will aid in the monitoring of those sectors and further deepen transparency and accountability in the society.

The Office of the Special Prosecutor, which was hailed as going to lead to crumble down corruption and corrupt related activities in recent times has been exposed to difficulties, paramount of which are political machinations. There is the need, for deepening the finances of the office from the government. This is critical in assuring the independence of the office and further deal with the very issue for the setting up of the office.

Civil Society Organisations as well as the media are important tools to dealing with corruption. Constructive criticisms from these two facets of democracy in Ghana assist in putting the government on its toes and further, help expose any corrupt ills in the country. Most serious corruption scandals have been revealed by journalists who defy all the odds despite the consistent threats to their lives. If indeed the government seeks, to battle the corruption menace in Ghana, then there must be vigorous support for the freedom of the press already constitutionalized and financial support for such journalist who wish to go in to contribute to this public interest aspect of our democracy.

As observed, most of these suggestions must be triggered by the government. Where there is apathy on the part of the government towards this end, then these proposals will be rendered ineffective. There is therefore, the critical need, for a transformation in the leadership qualities of the state. The government must first, portray a picture of not condoning any corrupt related activities and government officials must be quick to own up and resign where there is so clear evidence of their involvement in corruption. This translates into private individuals and the ordinary citizens in abiding by the policies proposed to curb corruption as well.

6. Conclusion

Every society is dynamic in how it orders its affairs. Western practices to dealing with corruption may not fully suit the peculiar societal architecture in African countries such as Ghana. The discussion on corruption in Ghana has exposed some of the weaknesses in our laws, policies and institutions. There is the critical need for an urgent revision of the laws of Ghana on corruption to cover such acts

which glaringly have the semblance of corruption in the intentional world but alien as corrupt practices in Ghana. Further, there must be a revision of the judicial sentences on corruption from being merely a misdemeanour. The courts must be more proactive and pragmatist in spearheading a significant aspect on the fight against corruption. The government, while urged to abide by the independent crusade of institutions dealing with corruption in Ghana is also urged to provide every necessary financial support for such institutions.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Abotsi, E. K. (2020). Introspecting the Office of the Special Prosecutor's Act and Ghana's Constitutional Framework on Anti-Corruption. *African Journal of International and Comparative Law*, 28, 219-243. <https://doi.org/10.3366/ajicl.2020.0311>
- African Union (2003). African Union Convention on Preventing and Combating Corruption.
- Atta-Mensah, J. (2016). The Valuation of Corruption. *Journal of Mathematical Finance*, 6, 728-746. <https://doi.org/10.4236/jmf.2016.65051>
- Ayee, J. A. (2016). *The Roots of Corruption: The Ghanaian Enquiry Revisited*. Institute of Economic Affairs.
- Begovic, B. (2005). *Corruption: Concepts, Types, Causes and Consequences*. Center for Liberal-Democratic Studies, Year III No, 26.
- Bishop, D. (2010). Toward a More Flexible Approach to the International Legal Consequences of Corruption. *ICSID Review*, 25, 63-66. <https://doi.org/10.1093/icsidreview/25.1.63>
- Boakye, C. (2022). Criminal Punishment and the Law Courts in Ghana: A Critical Appraisal. *SSRN Electronic Journal*.
- Callaway, H. G. (2019). *Lincoln Steffens's the Shame of the Cities, and the Philosophy of Corruption and Reform*. Cambridge Scholars Publishing.
- Cordell, C. G. T., van As, H. J., & Botha, J. (2020). Formulating a New Conception of Corruption through Historical Analysis. *THRHR*, 83, 562.
- Criminal Offences Act (1960). ACT 29.
- Dissou, Y., & Yakautsava, T. (2012). Corruption, Growth, and Taxation. *Theoretical Economics Letters*, 2, 62-66. <https://doi.org/10.4236/tel.2012.21011>
- Enste, D., & Heldman, C. (2017). *Causes and Consequences of Corruption: An Overview of Empirical Results*. IW-Report, No. 2/2017, Institut der deutschen Wirtschaft (IW).
- Goto, K., & Ogunnubi, O. (2014). Corruption and Development in Africa: Critical Reflections from Post-Apartheid South Africa. *LUMINA*, 25, 48-69.
- Hope, K., & Chikulo, B. (Eds.). (2000). *Corruption and Development in Africa: Lessons from Country Case Studies*. Springer.
- Imiera, P. P. (2020). The Corruption Race in Africa: Nigeria versus South Africa, Who Cleans the Mess First? *De Jure Law Journal*, 53, 70-89.
- Liu, X. (2016). A Literature Review on the Definition of Corruption and Factors Affecting the Risk of Corruption. *Open Journal of Social Sciences*, 4, 171-177. <https://doi.org/10.4236/jss.2016.46019>

- Mousoudakis, M., Dowdle, J., Leal, S., & Searle, D. (2020). Changing Landscape of International Anti-Bribery and Corruption Compliance. *Currents: Journal of International Economic Law*, 24, 42.
- Office of the Special Prosecutor Act (2017). ACT 959.
- Osse, L., & Norviewu, N. (2019). AD333: Ghanaians Perceive Increase in Corruption Level, Give Government Low Marks on Fighting Graft. *Afrobarometer Dispatch*.
- Owoye, O., & Bissessar, N. (2014). Corruption in African Countries: A Symptom of Leadership and Institutional Failure. In G. Mudacumura, & G. Morçöl (Eds.), *Challenges to Democratic Governance in Developing Countries* (pp. 227-245). Springer International Publishing. https://doi.org/10.1007/978-3-319-03143-9_15
- Transparency International (2020). <https://www.transparency.org/en/countries/ghana>