

INSTITUTIONAL RESPONSE TO CORRUPTION: A CRITICAL ANALYSIS OF THE  
ETHIOPIAN FEDERAL ETHICS AND ANTI-CORRUPTION COMMISSION

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PERSPECTIVE

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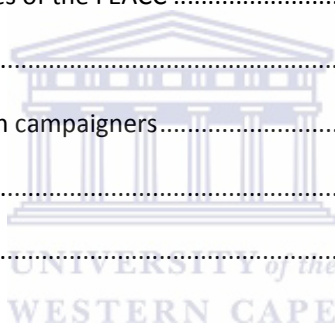
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## DECLARATION

I, Tewodros Dawit Mezmur, hereby declare that this dissertation is original. It has never been presented to any other University or institution. Where other people's ideas have been used, proper references have been provided. Where other people's words have been used, they have been quoted and duly acknowledged.

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## LIST OF ABBREVIATIONS

ACA	Anti-Corruption Agency
ACC	Anti-Corruption Commission
AU	African Union
CPI	Corruption Perceptions Index
EU	European Union
FEACC	Federal Ethics and Anti-Corruption Commission
IA	Initiative Africa
ICAC	Independent Commission against Corruption
IMF	International Monetary Fund
NEFCC	Nigerian Economic and Financial Crimes Commission
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
SADC	Southern African Development Community
TE	Transparency Ethiopia
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Program
US	United States

USAID

United States Agency for International  
Development





# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the study

In today's world, one factor that is affecting negatively the lives of millions is corruption.<sup>1</sup> Although there is no single, comprehensive and universally accepted definition of corruption,<sup>2</sup> it may be defined fruitfully as "the abuse or complicity in the abuse of private or public power, office or resources for personal gain".<sup>3</sup>

Over the last few decades, corruption has thrived despite efforts to eliminate it. Current reports on corrupt activities in the media all over the world show that corruption affects all types of nations, from industrialised, to poor, to transitional.<sup>4</sup> It mostly flourishes in countries where a culture of transparency and accountability is lacking; where democratic institutions have been compromised; where market participants do not operate under an internationally accepted set of standards; and where the rule of law has ceased to exist.<sup>5</sup>

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<sup>1</sup> According to Bantekas (2006: 484) corruption in the developing world, in particular, is a driving force of famine, civil war and poverty. See also Carr (2006: 44).

<sup>2</sup> International and regional anti-corruption instruments, instead of formulating one workable definition, provide a list of criminal offences and conduct that amounts to corruption, which list includes bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, and laundering of proceeds of crime. See Articles 15-24 of the United Nations Convention against Corruption (hereafter UNCAC) (adopted in 2003 and entered into force 14 December 2005), and Article 14 of the African Union Convention on Preventing and Combating Corruption (hereafter AU Convention) (adopted in 2003 and entered into force 05 August 2006).

<sup>3</sup> Chinghamo & Shumba (2007: 1).

<sup>4</sup> See Harms (2000: 161). According to Ampratwum (2008: 76-77) former UN Secretary-General Kofi Annan, while reporting to the General Assembly, charged that: "this evil phenomenon is found in all countries, rich and poor. The United States, despite its wealth, democracy, and elaborate system of justice, has been experiencing a troubling bout of financial fraud. Corruption, however, hits the poor countries especially hard by diverting money away from development".

<sup>5</sup> Kofele-Kale (2006: 698-699).

The mid-1990s saw a flurry of activity on the international front, with a number of organisations issuing declarations and setting up committees to address the problem through international instruments.<sup>6</sup> In addition, most States have implemented anti-corruption measures within their national systems, including the adoption of a range of policies to improve public administration, economic reforms, political reforms, legal and judicial reforms, and other institutional reforms.<sup>7</sup> Among the efforts made by States is the establishment of institutions whose major purpose is to prevent and/or combat corruption.<sup>8</sup> Although entrusted with a very critical task, in most cases these institutions have not been effective in accomplishing what they were established to do, principally due to structural flaws, political interference, and lack of sufficient powers and political will.

Ethiopia has followed the trend of creating specialised anti-corruption institutions by establishing a commission whose primary objective is preventing and fighting corruption.<sup>9</sup> The establishment of the Federal Ethics and Anti-Corruption Commission (FEACC) was motivated by the belief that corruption and impropriety are capable of hindering the social, economic and political development of the country.<sup>10</sup> And establishing the Commission was the right way to go about addressing the threat posed by corruption. This paper explores the strengths and flaws of the Commission, and the contribution made by it in the overall anti-corruption strategy of the country.

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<sup>6</sup> See Carr (2005: 24).

<sup>7</sup> See Shihata (1997: 464-469).

<sup>8</sup> See Heilbrunn (2004: 1).

<sup>9</sup> See Preamble paragraph 3 of the Federal Ethics and Anti-Corruption Commission Establishing Proclamation no. 433/2005 (hereafter Revised Establishing Proclamation),

<sup>10</sup> See Preamble paragraph 1 of the Revised Establishing Proclamation.

## 1.2 Objectives of the study

The purpose of this study is to examine the relevance and effectiveness of institutional support in the fight against corruption in Ethiopia, with special emphasis on the FEACC. The success of an anti-corruption commission or agency depends on a number of factors. Among them are political will and broad political support, operational independence and freedom from political interference, high standards of integrity among the institution's leaders and staff, and public awareness of and confidence in the commission's or agency's mission.<sup>11</sup> How is the FEACC set up with regard to its operational independence? How is the Commissioner, the nominal head of the Commission, appointed to and removed from office? How much is the public aware of the Commission and how confident is it in the Commission? An attempt is made to answer these and other similar questions.

Furthermore, the relationship between the mission of the Commission and its capacity to discharge that mission will be scrutinised.

In addition, best standards for anti-corruption institutions will be examined, in an attempt to deduce good practice and make recommendations about the operations and practices of the FEACC.

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<sup>11</sup> See Doig *et al* (2005: 12).

### 1.3 Significance of the study

Among other things, corruption lowers investment and retards economic growth, reduces the effectiveness of aid flows, lowers the quality of the infrastructure and public services, and distorts the composition of government expenditure.<sup>12</sup>

Ethiopia is one of the poorest countries in the world. Although general economic progress over the last few years may be undeniable, the scourge of corruption has been spreading rapidly. Hence, as impeding development is one of the consequences of corruption, there is no doubt that if Ethiopia is to be emancipated from the shackles of poverty, corruption will have to be one of the first and biggest enemies it has to fight.

As the institution that is charged with the mandate of preventing, investigating and prosecuting corruption, it would be crucial and appropriate for the FEACC to know what progress it has made since its inception in 2001, and whether there are factors impeding its success. Moreover, identifying the FEACC's problems, if any, would be helpful towards rectifying them.

### 1.4 Literature review

It should be underscored at the outset that the amount of literature on the subject matter of this thesis (FEACC) is negligible. In particular, academic writings on the issue are almost non-existent.

Generally speaking, the subject of combating corruption has evoked a considerable amount of comment in academic literature. Some have written generally on the

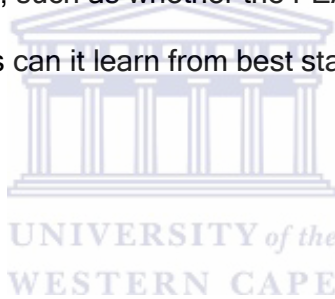
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<sup>12</sup> See Harms (2000: 166). Corruption alone is costing Africa nearly 150 billion US dollars a year, which amounts to 25% of the combined national income of African countries. See BBC News (2006).

approach and structure which institutions responding to corruption should take to maximise their effectiveness.<sup>13</sup> Others have given assessments of other countries operation of anti-corruption commissions and agencies.<sup>14</sup>

In the Ethiopian context, Megiso's paper basically introduces the Commission and discusses its achievements and focal points since its inception.<sup>15</sup> Therefore, the paper is more of a report than an academic endeavour and lacks the critical evaluation which this research paper seeks to provide.

Although there are two detailed country reports available on the mandate and progress of the Commission,<sup>16</sup> they do not deal directly with some of the major questions posed by this study, such as whether the FEACC is free from political interference and what lessons can it learn from best standards and practices?



## 1.5 Scope of the study

The subject area under consideration is extensive. For that reason, and taking into account the formal limitations, the proposed research will be confined mostly to the FEACC. However, some enquiry will be made into other anti-corruption commissions or agencies, to the extent that they may be relevant and helpful to analysing the FEACC. Reference will also be made to major relevant regional and international instruments on corruption.

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<sup>13</sup> See generally Meagher & Volland (2006); European Partners Working Group (2008); OECD (2007); De Sousa (2009).

<sup>14</sup> See, for example, Charron (2008) & Doig *et al* (2005).

<sup>15</sup> See Megiso (2007).

<sup>16</sup> See *FEACC Annual Report* (2008); Sartet (2004).

## 1.6 Overview of chapters

The study consists of five chapters. This chapter sets out the context of study. It highlights the basis and structure of the study. The second chapter will look into the history of and motivation for the establishment of specialised anti-corruption institutions, and the different kinds of institutions created by different countries. The third chapter will identify factors that enhance the effectiveness of anti-corruption institutions. In doing so, it also will make reference to the practices of different anti-corruption bodies found in different countries. The fourth chapter, which will use the third one as background, will reflect critically on the strengths and flaws of the Ethiopian Federal Ethics and Anti-Corruption Commission. In chapter five, a conclusion is drawn and a way forward is indicated through recommendations.

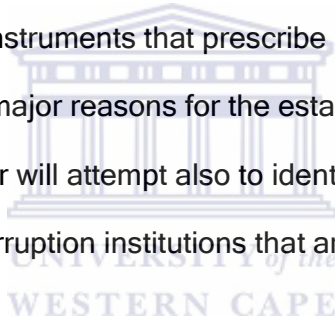


## CHAPTER TWO

### SPECIALISED ANTI-CORRUPTION INSTITUTIONS

#### 2.1 Introduction

One of the recent developments in the fight against corruption has been the recognition and importance given to institutions whose primary mandate is the performance of anti-corruption functions. This chapter will discuss the birth of these institutions, known as anti-corruption agencies (ACAs) or anti-corruption commissions (ACCs). Furthermore, the chapter examines the different international and regional anti-corruption instruments that prescribe specialised institutions for the fight against corruption. The major reasons for the establishment of these institutions will be discussed. The chapter will attempt also to identify and shed some light on the different categories of anti-corruption institutions that are currently in existence.



#### 2.2 Brief history of specialised anti-corruption institutions

A distinguishing feature of the fight against corruption in the 1990s is the increased appreciation of the role played by specialised anti-corruption bodies.<sup>17</sup> These bodies

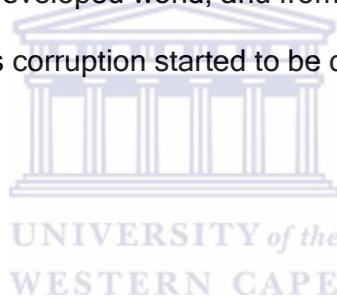
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<sup>17</sup> As maintained by Pope (2000), according to Transparency International (TI), which is the biggest non-governmental organisation in the fight against corruption, because of the complex nature of corruption, fighting it demands taking a holistic approach. TI considers the elements of a society that contribute to the fight against corruption as its National Integrity System. These elements include: the political will of the executive, auditor-general, ombudsman, independent anti-corruption agencies, parliament, the judiciary, administrative reforms, civil society, the media, the private sector and international institutions. These institutions and specific activities contribute to integrity, transparency and accountability in a society. Hence, any endeavour to combat corruption effectively and sustainably involves examining each of these institutions and practices and the various inter-relationships to determine where remedial action is required. Specialised anti-corruption bodies constitute just one important aspect of the general national plan of action. See Pope (2000).

are “permanent government bodies whose primary function is to provide centralised leadership in core areas of anti-corruption activity”.<sup>18</sup>

According to De Sousa, while predecessors of these institutional units can be traced back in time, in the form of parliamentary commissions, inquiry committees, special police branches or anti-corruption leagues, the first ACAs date back to 1952.<sup>19</sup> These first agencies were established due to the perceived failure of the British Colonial Government to devise an effective mechanism for fighting corruption<sup>20</sup> or “to root out corruption and restore public confidence in the Government”<sup>21</sup>.

Since the mid-1990s, the number of these bodies has proliferated. It has expanded from the developing<sup>22</sup> to the developed world, and from societies in transition<sup>23</sup> to consolidated democracies, as corruption started to be discussed and condemned all over the globe.<sup>24</sup>



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<sup>18</sup> See Meagher & Volland (2006: 5). These areas may include policy analysis and technical assistance in prevention, public outreach and information, monitoring, investigation and prosecution. However, there are organisations with different names, different forms of organisations, and different kinds of legal authority that can perform the functions that are carried out by an ACC or ACA. These bodies include Criminal Justice Commissions, Administrative Control Authorities, Serious Fraud Offices and the Office of the Ombudsman. See U4 Anti-Corruption Resource Centre.

<sup>19</sup> See De Sousa (2009: 1). The Corrupt Practices Investigation Bureau (CPIB) was established in Singapore in October 1952.

<sup>20</sup> Due to rampant corruption in the police, which at the time was entrusted with the task of fighting corruption in Singapore, it was decided to rely on an autonomous agency. See Quah (2008: 5).

<sup>21</sup> See Quah (2008: 10). The Independent Commission Against Corruption (ICAC) was established in Hong Kong in February 1974 after the chief superintendent of the Hong Kong Police fled to the United Kingdom in mid-1973, while under investigation for alleged corruption by the Anti-Corruption Office of the Police. This Office is mandated to investigate allegations of corruption in the civil service. The mishandling of this case triggered a huge public outcry against the Government. Ultimately, this led to the establishment of the independent Commission, which was taken as a new and alternative anti-corruption arrangement. See Johnston (1999: 219).

<sup>22</sup> Developing states have been under significant international pressure to curb domestic corruption from such international and regional organisations as the United Nations (UN), International Monetary Fund (IMF) and the European Union (EU). See Charron (2008: 3).

<sup>23</sup> See OECD (2005: 24-25) and Dionisie & Checchi (2008: 4).

<sup>24</sup> See Arze *et al* (2006: 7). To a large extent, the assumption that specialised anti-corruption agencies can have a significant contribution in curbing corruption at a national level is attributable to the successful model of the Hong Kong Anti-Corruption Agency which produced significant reductions of corruption in a society where that seemed unlikely. See Johnston & Doig (1999: 27).



## 2.3 International and regional instruments calling for specialised anti-corruption institutions

In the mid-1990s the problem of corruption was recognised as a subject of international concern and drew the attention of numerous global and regional inter-governmental organisations. As a result, the last decade witnessed a growing collection of international and regional instruments that are designed to enhance the fight against corruption at a domestic level. Most importantly, for purposes of this paper, these instruments advocate the establishment of specialised entities as one means of fighting corruption.

### 2.3.1 The Council of Europe Criminal Law Convention on Corruption<sup>25</sup>

This Convention has been ratified by 41 States, including Belarus which is not a member state of the Council of Europe.<sup>26</sup> Article 20 of the Convention, under the title 'Specialised Authorities', provides that:

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

Even though the Convention does not identify explicitly the activities that need specialisation, it generally recognises the need to make sure that persons and entities in the fight against corruption are specialised.

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<sup>25</sup> Council of Europe Criminal Law Convention on Corruption (adopted 4 November 1998 and entered into force 1 July 2002).

<sup>26</sup> See *Council of Europe Criminal Law Convention on Corruption: Status*.

### 2.3.2 The United Nations Convention against Corruption

UNCAC has been ratified by 136 States Parties, including Ethiopia and 39 other African States.<sup>27</sup> According to Article 6 of the Convention:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
  - (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and co-ordinating the implementation of those policies;
  - (b) Increasing and disseminating knowledge about the prevention of corruption.
2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

Article 36 of the Convention further stipulates that:

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

UNCAC contains the most detailed provisions of all the anti-corruption instruments pertaining to the different activities that can be undertaken by an anti-corruption body or bodies. According to the Convention, it is up to States Parties to decide whether to establish an entirely new and independent body or to designate the anti-corruption functions to a body or bodies within an existing organisation. However, while the Convention deals with preventive and law enforcement functions under different

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<sup>27</sup> See *United Nations Convention against Corruption: Status*.

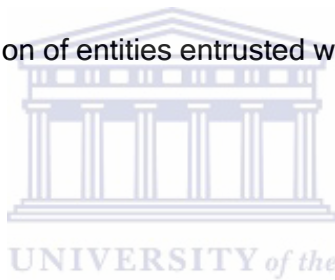
articles, States Parties may decide to entrust one specialised body with a combination of preventive and law enforcement functions.<sup>28</sup>

### 2.3.3 The African Union Convention on Preventing and Combating Corruption

The AU Convention has been ratified by 29 States, including Ethiopia.<sup>29</sup> Under Article 20(5):

States Parties undertake to adopt the necessary measures to ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Although not as detailed as UNCAC, the Convention imposes on States Parties the duty to ensure the specialisation of entities entrusted with the task of fighting corruption.



### 2.3.4 The Southern African Development Community Protocol against Corruption<sup>30</sup>

The SADC Protocol, which is open to Member States of the SADC, has 14 signatories and has been ratified by 9 of them.<sup>31</sup> Article 4(1)(g) of the Protocol provides that States Parties undertake to create, maintain and strengthen “institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption”. Even though it does not state specifically that anti-corruption institutions should be specialised, the Protocol demands their establishment and strengthening. And one way to strengthen them is through the recruitment and training of staff with a view to specialisation.

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<sup>28</sup> See United Nations Office on Drugs and Crime Prevention for Treaty Affairs (21: 2006).

<sup>29</sup> See *African Convention on Preventing and Combating Corruption: Status*.

<sup>30</sup> South African Development Community Protocol against Corruption (adopted 14 August 2001 and entered into force 6 July 2005),

<sup>31</sup> See *Southern African Development Community Protocol against Corruption: Status*.

### 2.3.5 The Inter-American Convention against Corruption<sup>32</sup>

This Convention, which was the first major regional Convention in the fight against corruption, has 33 ratifications and accessions, with only one signatory that has not ratified.<sup>33</sup> Article III Paragraph 9 requires States Parties to consider creating, maintaining and strengthening “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts”. This provision is similar to the one found in the SADC Protocol in that it requires States to strengthen their anti-corruption institutions. As discussed above, one way of making sure that the institution is strengthened is by ensuring that the staff has the required training and know-how.

As indicated above, although different in scope, content and objectives, international and regional instruments recognise the need for a clear specialisation in the area of corruption. It is also worth noting that the obligation of institutional specialisation under UNCAC is mandatory. Even though there is no consensus on the form of specialisation required, it has been maintained that, due to the complex nature of corruption, experts with specific knowledge and training from a variety of fields are needed to fight it effectively.<sup>34</sup>

## 2.4 The purpose of anti-corruption agencies

According to De Sousa, the rationale for the establishment of a specialised anti-corruption institution is combating corruption in an “independent, knowledge-based fashion and developing a preventive measure in which scientific research plays a

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<sup>32</sup> Inter-American Convention against Corruption (adopted 29 March 1996 and entered into force 6 March 1997),

<sup>33</sup> See *Inter-American Convention against Corruption status*.

<sup>34</sup> See De Sousa (2008: 7). According to Camerer (1999: 2), these fields include law, finance, economics and accounting.

central role”.<sup>35</sup> However, in democratic societies, anti-corruption functions<sup>36</sup> usually are available in existing institutions.<sup>37</sup> These anti-corruption functions normally are spread across many institutions and, hence, there is no single body that systematises and makes sure that the anti-corruption functions are being carried out coherently and with shared objectives.<sup>38</sup> Furthermore, a specialised anti-corruption institution may be needed to retain control over the chain of command and overcome the barriers of conventional corruption combating mechanisms.<sup>39</sup>

Generally, according to the Organisation for Economic Co-operation and Development (OECD), the imperative reason for establishing a new anti-corruption institution is based on the expectation that, unlike existing state institutions,<sup>40</sup> it

(i) will not itself be tainted by corruption or political intrusion; (ii) will resolve coordination problems among multiple agencies through vertical integration; and (iii) can centralise all necessary information and intelligence about corruption and can assert leadership in the anti-corruption effort.<sup>41</sup>

From the aforementioned reasons, it can be inferred why ACAs are given preference to spearhead national anti-corruption movements. Nonetheless, it is worth keeping in mind that the ultimate goal should not be establishing them, but making sure that they achieve the goals for which they are established.

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<sup>35</sup> De Sousa (2008: 13).

<sup>36</sup> These functions include detection, investigation and prosecution of criminal offences, ensuring transparency of public expenditure through financial control, and securing open government through access to information and openness to civil society.

<sup>37</sup> See OECD (2007: 34).

<sup>38</sup> See Hussmann *et al* (2009: 17).

<sup>39</sup> See De Sousa (2008: 13). This is especially the case in situations where there is systemic corruption and distrust of justice institutions.

<sup>40</sup> One of the major reasons why ACAs are regarded by governments, donors and international governmental organisations (IGOs) as the ultimate institutional response to corruption is because of the perceived failure of law enforcement bodies such as the police and attorneys-general offices. See De Sousa (2009: 1).

<sup>41</sup> See OECD (2007: 35).

## 2.5 Models of Specialised ACAs

International standards do not imply that there is a single best model for a specialised anti-corruption institution nor do they strictly require the existence or establishment of a consolidated entity to fight corruption. Hence, it is the responsibility of individual countries to find the most effective institutional solution for their local context and situation. Nevertheless, an attempt has been made by the OECD to classify existing specialised anti-corruption institutions, in accordance with their main functions.<sup>42</sup> It has identified three categories: Multiple-purpose agencies with law enforcement powers; preventive, policy development and co-ordination institutions; and law enforcement type institutions. An additional fourth model is identified by Khemani, namely, multi-purpose institution with law enforcement and prosecutorial powers.<sup>43</sup>



### 2.5.1 Multiple-purpose agencies with law enforcement powers

This model refers to ACAs which combine preventive and repressive powers and that engage in a wide spectrum of activities that go beyond traditional criminal investigation. These activities include: policy analysis; counselling and technical assistance; providing information and education; ethics monitoring; training and scientific research (into high risk areas, surveys, etc).<sup>44</sup> In the majority of cases, the prosecutorial power is made an outside function, so that a single body will not have too much power.<sup>45</sup>

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<sup>42</sup> See OECD (2007: 23).

<sup>43</sup> See Khemani (2009: 17).

<sup>44</sup> See De Sousa (2009: 14). Agencies that fall within this category can be found in Hong Kong, Lithuania, Latvia, Botswana, and Uganda.

<sup>45</sup> See De Sousa (2008: 4).

### 2.5.2 Preventive, policy development and co-ordination institutions

This model focuses on one or more corruption prevention functions.<sup>46</sup> These include: research; monitoring the implementation of national and local anti-corruption strategies; reviewing and preparing relevant legislation; monitoring declaration-of-assets requirements for public officials; elaboration and implementation of codes of ethics; assisting in training for officials; and facilitating international co-operation with civil society.<sup>47</sup>

### 2.5.3 Law enforcement type institutions

These specialised agencies often have the prosecutorial authority in specific cases and sometimes they also have investigative structures and functions.<sup>48</sup> However, on occasion it may be difficult to establish the difference between this category and the other two. This is because the specialised agencies under this category may also have important preventive functions and are required to support the development of anti-corruption strategies and legislation, as well as conducting research on corruption.<sup>49</sup> This perhaps is the most common model applied in Western Europe.<sup>50</sup>

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<sup>46</sup> For more on the preventive role of ACAs see generally Gorta (2008).

<sup>47</sup> See OECD (2007: 32). Examples of such institutions can be found in France, Britain, Albania, and the United States.

<sup>48</sup> Dionisie & Checchi (2008: 7).

<sup>49</sup> Dionisie & Checchi (2008: 7).

<sup>50</sup> See OECD (2007: 32). Countries such as Norway, Belgium, Spain, Croatia, Romania and Hungary have adopted such a model.

#### **2.5.4 Multi-purpose institutions with law enforcement and prosecutorial powers**

While the current anti-corruption literature<sup>51</sup> also identifies models of anti-corruption institutions based on the above-mentioned functions, Khemani argues that a fourth model should be identified: the “multi-purpose institutions with law enforcement and prosecutorial powers model”.<sup>52</sup> The reason why this model is separately identified from the ones discussed above is because there are anti-corruption institutions combining investigative, preventive, educational and prosecutorial functions. An example of this type of commission would be the Nigerian Economic and Financial Crimes Commission (EFCC).

#### **2.6 Conclusion**

In recent years, the establishment and specialisation of anti-corruption bodies have been given preference by anti-corruption campaigners and policy makers. This can be deduced also from some of the major anti-corruption international and regional instruments. The variety of functions entrusted to these specialised bodies is an indication of the major role they are expected to play in the overall fight against corruption. It is pertinent also to take into account that there is no conventional single model which is recommended for all states. However, it is essential to show the different forms available to help identify which is appropriate to fit the circumstances of a particular country. The next chapter will enquire into standards and best practices for making anti-corruption institutions effective.

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<sup>51</sup> See, for example, Heilbrunn (2006: 136).

<sup>52</sup> See Khemani (2009: 17-18).



## CHAPTER THREE

### EFFECTIVENESS OF ANTI-CORRUPTION INSTITUTIONS: DRIVERS OF SUCCESS AND BEST PRACTICES

#### 3.1 Introduction

One of the major arguments in favour of the establishment of an independent anti-corruption institution is the inability of existing government institutions, especially supervisory and law enforcement agencies, effectively to fight and curb corruption. This can be ascribed mostly to lack of efficient resources to deal with the complex nature of corruption, the institutions being corrupt themselves and lack of public trust. Hence, if anti-corruption institutions are to spearhead the fight against corruption in a country, they need to overcome the flaws and limitations of their predecessors. Although it is virtually impossible to conduct a concrete measure of the costs and benefits of the introduction of an anti-corruption institution,<sup>53</sup> it has been maintained that it is possible to improve and enhance the impact of an anti-corruption institution in the overall national anti-corruption strategy.<sup>54</sup>

This chapter will endeavour to identify a number of factors that need due consideration in order to enhance the effective functionality of anti-corruption institutions. These factors include: the independence of the institution; appointment of executives of the institution; political willingness of the government; positioning of the institution; oversight over the institution; expertise of the staff; funding; and public awareness and trust. Where possible and appropriate, an attempt will be made to make reference to the relevant institutional practices of different countries.

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<sup>53</sup> See Smilov (2009: 14).

<sup>54</sup> See De Speville (2008: 6).

## 3.2 Drivers of success and best practices

### 3.2.1 Choosing the right institutional arrangement

As discussed in the previous chapter,<sup>55</sup> there is no one-size-fits-all institutional arrangement that can be recommended for every country. For this reason, from the outset, policy makers should assess whether establishing a new anti-corruption institution is necessary, considering the context of the particular country, or whether an existing institution should be adapted to have an ACA.<sup>56</sup>

### 3.2.2 Independence of ACAs

The independence of anti-corruption institutions is fundamental for their success. Although it is difficult to talk of complete independence, because these bodies need to be supervised by external control, the international and regional anti-corruption instruments propagate that necessary independence and autonomy be ensured.<sup>57</sup> The aim of this guarantee is to assure the effectiveness and freedom from undue influence of anti-corruption institutions. Ensuring the required independence includes considerations such as: where the institution is positioned; the personal features of persons appointed as senior officials; the procedure followed for their appointment; and budget and fiscal autonomy.<sup>58</sup>

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<sup>55</sup> See the discussion under Section 2.5 above.

<sup>56</sup> See OSCE (2004: 168).

<sup>57</sup> See, for example, Articles 6(2) & 36 of UNCAC and Article 5(3) of the AU Convention.

<sup>58</sup> See Pope (2000: 95-97).

### 3.2.2.1 Where should ACAs be positioned?

According to TI, the success of the Singapore and the Hong Kong agencies owes much to their institutional placement.<sup>59</sup> However, what worked for them does not necessarily work for others. This is so because usually 'grand corruption' takes place in and around the executive body of a State. Thus, if positioned in such an office, an anti-corruption institution's ability to curb corruption may be compromised.<sup>60</sup> In such situations, it has been argued that an ACA should preferably be responsible to the legislature instead of the executive.<sup>61</sup>

### 3.2.2.2 Appointment of executives

The major challenge in appointing executives of anti-corruption institutions is to ensure that persons of integrity, who enjoy independence from political interference are selected.<sup>62</sup> TI recommends that an appointment mechanism that guarantees consensus support for an appointee through parliament, together with an external accountability mechanism, which can be a Parliamentary Select Committee on which all major parties are represented, can reduce the room for abuse or biased activities.<sup>63</sup>

Thus, so that the office holder can check the executive if necessary, the appointment procedure must be one which involves more actors than those presently in power.

Even if the exact appointment procedure may vary from country to country, it should

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<sup>59</sup> See Pope (2000: 96). While Singapore's agency is situated in the office of the Prime Minister, Hong Kong's is placed in the office of the Governor.

<sup>60</sup> For example, the agencies in Tanzania and Zambia, which are housed within the president's office, failed to tackle corruption within the national political leadership. See Pope & Vogl (2000: 8).

<sup>61</sup> See OSCE (2004: 168).

<sup>62</sup> Jennett (2007: 1).

<sup>63</sup> See Pope (2000: 97).

be one that ensures that people of integrity are selected and that they are protected from political pressures while they are in office.<sup>64</sup>

### 3.2.2.3 Budget and fiscal autonomy of ACAs

The importance of adequate funding is crucial for an anti-corruption institution. Assuring full financial independence, however, is usually difficult, because budget is usually allocated by the Government and approved by the Parliament in most countries. Nevertheless, mechanisms, such as a legal framework, need to be devised to curb the unfettered discretion of the executive over the level of funding.<sup>65</sup>

### 3.2.3 Accountability and transparency of ACAs

The type of independence envisaged under international and regional anti-corruption instruments should not amount to lack of accountability. This is best demonstrated by the Explanatory Report of the Council of Europe Criminal Law Convention on Corruption, which submits that:

The independence of specialised authorities for the fight against corruption, should not be an absolute one. Indeed, their activities should be, as far as possible, integrated and co-ordinated with the work carried out by the police, the administration or the public prosecutor's office. The level of independence required for these specialised services is the one that is necessary to perform properly their functions.<sup>66</sup> Among other things, the level of accountability required for anti-corruption institutions is dependent on their level of specialisation, their institutional position and their powers over other institutions and individuals.<sup>67</sup>

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<sup>64</sup> See Pope & Vogl (2000: 8).

<sup>65</sup> See OECD (2007: 19).

<sup>66</sup> See paragraph 99, *Council of Europe Criminal Law Convention on Corruption: Explanatory Report*.

<sup>67</sup> See OECD (2007: 19).

Accountability of anti-corruption institutions is essential for ensuring their credibility and transparency, and for building the public's trust.<sup>68</sup> Consequently, taking into consideration the big role attached to the need to account, several countries have devised multiple reporting lines or have shifted the reporting line to parliament to avoid manipulation by the main institutional hosts of their anti-corruption institutions.<sup>69</sup> For instance, the Independent Commission Against Corruption (ICAC) of New South Wales is held accountable to citizens through the multiparty Parliamentary Joint Committee (PJC)<sup>70</sup> and through its obligation to report regularly to the public and annually on its major investigations.<sup>71</sup> Where the PJC decides to do so, it may bring to the attention of the Parliament any matter related to the ICAC.<sup>72</sup>

The Hong Kong ICAC has four advisory committees, namely, the Corruption Prevention Advisory Committee, the Citizens Advisory Committee on Community Relations, the Operations Review Committee and the Corruption Prevention Advisory Committee.<sup>73</sup> Through these Committees, comprised of prominent community members, citizens play a vital role in monitoring the Commission's actions.<sup>74</sup>

Another method followed by some states is to shift reporting lines from the prime minister or the president to the peoples' representative body of the parliament.<sup>75</sup> This will allow for the work of the anti-corruption institution to be scrutinised by various

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<sup>68</sup> See European Partners Working Group (2008: 9).

<sup>69</sup> UNDP (2005: 6).

<sup>70</sup> See Sections 63 & 64 of the Independent Commission against Corruption Act (ICAC Act) No 35 of 1988.

<sup>71</sup> See Sections 74 & 76 of the ICAC Act.

<sup>72</sup> See Section 64(1)(b) of the ICAC Act.

<sup>73</sup> See *ICAC Advisory Committees*.

<sup>74</sup> See Heilbrunn (2004: 4).

<sup>75</sup> See UNDP (2005: 6).

political parties. In this regard, Zambia has made its Anti-Corruption Commission (ACC) report to Parliament instead of to the Head of State.<sup>76</sup>

### 3.2.4 Adequate resources

International and regional anti-corruption instruments provide that institutions created to fight corruption should have the required financial resources and properly trained staff.<sup>77</sup> Establishing and maintaining an anti-corruption institution is expensive.

However, if not supported by adequate resources, the institution is unlikely to obtain and maintain public confidence because its activities will be hampered.<sup>78</sup> In addition, as mentioned in chapter two,<sup>79</sup> the fight against corruption requires not only well-trained investigators and prosecutors, but also forensic specialists, financial experts, auditors, information technology specialists and so forth.<sup>80</sup> The number of staff of an anti-corruption institution should also be commensurate with the activities it is expected to perform.

In spite of this knowledge, however, governments regularly fail to provide the required financial and human resources to anti-corruption institutions. Although, sometimes, there may be legitimate justifications for this failure, such as shortage of resources in a country, in most cases, as the OECD submits, the reason is lack of genuine political will to fight corruption, or lack of knowledge by decision makers of the complexity of corruption.<sup>81</sup>

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<sup>76</sup> See UNDP (2005: 6).

<sup>77</sup> See the discussion under Section 2.3 above.

<sup>78</sup> See OECD (2007: 19).

<sup>79</sup> See the discussion under Section 2.4 above.

<sup>80</sup> See OECD (2007: 19).

<sup>81</sup> See OECD (2007: 20).

Besides law enforcement institutions, courts should also have the required knowledge on how to handle corruption cases.<sup>82</sup> This is because institutions that investigate and prosecute corruption cases cannot be effective if the courts are not equipped and skilled to the extent that will allow them to deal with complex cases of corruption. Usually this can be done by training judges who often preside over corruption cases.

### 3.2.5 Focus of ACAs

It has been held that anti-corruption institutions should not be expected to fulfil a wide range of functions which their organisational capacity does not allow, and that all extraneous functions must be delegated to other agencies.<sup>83</sup> In order to be effective, an anti-corruption institution needs to define its focus strategically.<sup>84</sup> For instance, its jurisdiction could be mainly prospective by limiting its concern with past cases (as is the case in Hong Kong).<sup>85</sup>

### 3.2.6 Monitoring wealth of public officials and criminalising unexplained property

Public office holders are expected to act in the interests of the public. Citizens have an interest to know whether individuals working in public offices are serving the public interest with fairness, and administering public resources properly. Thus, to develop and maintain public trust and confidence in public officials, and to uphold a system of accountability and transparency and minimise incidents of corruption, many

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<sup>82</sup> See OECD (2007: 20).

<sup>83</sup> See Doig *et al* (2005: 47).

<sup>84</sup> See Meagher & Voland (2006: 9).

<sup>85</sup> See Meagher & Voland (2006: 9).

governments require that public office holders disclose their assets.<sup>86</sup> International and regional anti-corruption instruments also enjoin states to require all or designated public officials to declare their assets.<sup>87</sup>

On the one hand, due to its clandestine nature, detecting an act of corruption and, especially, producing sufficient evidence in court to secure the conviction of offenders is difficult.<sup>88</sup> On the other hand, it is relatively easy to discover wealth of an official that is manifestly out of proportion to his or her present or past official income.<sup>89</sup> As a result, to fight corruption effectively, anti-corruption laws have been developed in such a way as to allow for this unique feature of corruption.<sup>90</sup> And one such law developed by states and later incorporated into international and regional anti-corruption instruments<sup>91</sup> is the criminalisation of illicit enrichment or possession of unexplained wealth. The act is generally considered a criminal offence where a public official is found to be in possession of property which appears to be beyond his or her lawful income, provided that he or she fails to give a satisfactory explanation as to how he or she acquired it. Such states as Hong Kong<sup>92</sup> and Botswana,<sup>93</sup> that have been praised for their success in combating corruption, have been using this crime to convict high-ranking state officials whom they could not have convicted otherwise.<sup>94</sup> For example, in Hong Kong, in the 25 years that the offence has existed, at least 50

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<sup>86</sup> See Larbi (2005: 2).

<sup>87</sup> See Article 52(5) of UNCAC and Article 7 of the AU Convention. While the requirement of disclosure of assets is not mandatory under UNCAC, it has been made mandatory under the AU Convention.

<sup>88</sup> See Wilsher (2006: 1).

<sup>89</sup> See Asian Development Bank (2004: 37).

<sup>90</sup> See Kututwa (2007: 5).

<sup>91</sup> See Articles 8 and 20 of the AU Convention and UNCAC respectively. Both instruments request States Parties to consider criminalising inexplicable wealth of public officials.

<sup>92</sup> See Section 10 of the Hong Kong Prevention of Bribery Ordinance (1971).

<sup>93</sup> See Section 34 of the Botswana Corruption and Economic Crime Act (1994).

<sup>94</sup> Wysluch (2007: 7).



cases have been prosecuted and among the accused are to be found high-ranking state officials who would have been otherwise hard to prosecute.<sup>95</sup>

Therefore, such legal frameworks that can enable anti-corruption institutions to monitor the assets, income and life-styles of public servants should be available. And in appropriate situations, anti-corruption institutions should be able to prosecute those holding public office and against whom direct evidence of corruption has been difficult to adduce. This may be justifiable where it can be proved that they are leading a life that is not commensurate with their incomes, hence creating a *prima facie* suspicion that they have been prospering at the expense of the public.

### 3.2.7 Civil asset forfeiture

In addition to the punishment of offenders, an important measure to prevent crime is sending the message that crime does not pay. As former Mafia Don Gaspare Motolo said, “Criminals prefer to be put behind bars and keep their money than to stay free without the money”.<sup>96</sup> Forfeiture of the proceeds of corruption is therefore an important factor to curb corruption. The campaign to forfeit the proceeds of corruption has also been underpinned by international and regional anti-corruption instruments.<sup>97</sup>

There are two ways in which forfeiture of criminal property can be attained, namely, conviction-based forfeiture and civil asset forfeiture.<sup>98</sup> Conviction-based forfeiture, as the name itself implies, requires obtaining a criminal conviction against the owner of

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<sup>95</sup> Wysluch (2007: 8).

<sup>96</sup> Wysluch (2007: 8).

<sup>97</sup> See Articles 31 and 16 of UNCAC and AU Convention respectively. Both instruments oblige their States Parties to take the necessary legislative measures to freeze and confiscate proceeds of corruption and instruments used to commit corruption.

<sup>98</sup> See Simser (2009: 15).

the property and is part of the sentencing process. Civil asset forfeiture, by contrast, has nothing to do with the charging, prosecution or conviction of any individual. Generally, an action is brought by the state not against individuals, but against the designated property (*in rem*).<sup>99</sup>

The benefit of the civil forfeiture proceeding is that, even if a suspect is acquitted in a criminal court because the state could not prove his or her guilt beyond reasonable doubt, a civil action can still be brought against property which is considered to be proceeds of crime or property used to facilitate crime.<sup>100</sup> Hence, if the state can prove, on a balance of probabilities, that the property is the proceeds of a crime, or was used in the crime, then a forfeiture order can be rendered by a court.

Anti-corruption institutions should, therefore, have a civil asset forfeiture system at their disposal to deter corruption more effectively. This is likely to be of paramount importance for those states that do not have well-trained investigators and the required technology to investigate a complex crime like corruption. In case the prosecutors in these states fail to have a corrupt public official criminally convicted, it is still possible to proceed against the ill-gotten property via a non-criminal avenue. In this regard, South Africa can be cited as a good example for its success in initiating and succeeding in civil asset forfeiture actions.<sup>101</sup>

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<sup>99</sup> See Simser (2009: 13).

<sup>100</sup> See OSCE (2004: 174).

<sup>101</sup> See OSCE (2004: 174). According to Shaw (2002: 133) assets seized using the civil asset forfeiture strategy as of 2002 alone have exceeded 11 million US dollars in value, with a success rate of 90%.

### 3.2.8 Co-operation with civil society and the media

Legislation and institutionalisation by itself will not be enough to enforce transparency and accountability of government. Civil society and the media have very crucial role to play in ensuring the sustenance of corruption-free governance.<sup>102</sup>

TI emphasises the vital role played by civil society in the fight against corruption:

Governments could not hope to tame corruption without the help and support of their people - and that the way to build this support is through serious-minded NGOs who are prepared to form cooperative but independent and critical partnerships with their governments.<sup>103</sup>

One of the major aims of anti-corruption institutions is to prevent corruption by changing social attitudes towards corruption. Strategies aimed at changing the perception of corruption are pertinent particularly where systemic corruption is present and citizens are accustomed to paying bribes as a normal phenomenon. Civil society programs can help raise awareness about corruption and increase citizen partnership.<sup>104</sup> Also, civil society and the media can help anti-corruption institutions to counteract any tendency among public officials to undermine existing checks and balances.<sup>105</sup> They can monitor whether a government is complying with its commitment to fighting corruption or they can expose cases of corruption and campaign for investigations and punishments.<sup>106</sup> In addition, they can liaise with anti-corruption institutions in relation to evidence and relevant information and testify at hearings.<sup>107</sup>

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<sup>102</sup> See Kumar (2004: 338-340). See also Articles 13 and 12 of UNCAC and the AU Convention respectively. Among other things, the instruments call for States Parties to take appropriate measures to promote the active participation of civil society, non-governmental organisations and community-based organisations in the fight against and prevention of corruption. Furthermore, these instruments stipulate that States Parties should ensure that the media is given access to information in cases of corruption and related offences to the extent that it would not interfere with fundamental rights.

<sup>103</sup> See Pope (2000: 134).

<sup>104</sup> See Johnson (2005: 85).

<sup>105</sup> See Gyimah-Boadi (1999: 2).

<sup>106</sup> See OECD (2003: 21).

<sup>107</sup> See Gyimah-Boadi (1999: 2).

### 3.2.9 Co-ordination and co-operation with other institutions

Anti-corruption bodies cannot operate in an institutional vacuum. They are just one important part of the National Integrity System. They can achieve what they are established to do only if they can direct their efforts in a co-ordinated manner with other national authorities.<sup>108</sup> Where anti-corruption institutions are entrusted to carry out corruption preventive functions, they need to co-operate with government bodies to implement corruption preventive measures such as a new work method in a government office.<sup>109</sup> The importance of co-operation between national authorities in combating corruption can be also inferred from UNCAC, which provides that public authorities and public officials should be encouraged by states to co-operate with corruption investigation and prosecution authorities.<sup>110</sup> As anti-corruption institutions usually investigate and prosecute corruption that takes place in the public sector, they are dependent on public authorities and public officials for information about the alleged commission of corruption offences.

### 3.2.10 International co-operation networks

Corruption is a transnational phenomenon. Although anti-corruption institutions have been established to fight national corruption, situations may arise where they require co-operation in the international arena.<sup>111</sup> Involvement in international co-operation networks and participation in fora that open

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<sup>108</sup> See Hussmann *et al* (2009: 17).

<sup>109</sup> See Hussmann *et al* (2009: 18).

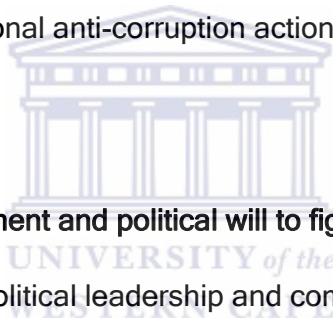
<sup>110</sup> See Article 38 of UNCAC.

<sup>111</sup> UNCAC has devoted an entire chapter (Chapter IV) to dealing with issues of international co-operation.

opportunities to share experiences and know-how are crucial for an anti-corruption institution to do its work effectively.<sup>112</sup>

### **3.2.11 Contributory role of anti-corruption institutions**

It is noteworthy that even when ACCs or ACAs are successful, they still have to rely on other institutions. If, for example, the judiciary is weak and unpredictable, then fighting corruption through the courts will be challenging. Especially where widespread corruption exists, anti-corruption institutions cannot be expected to provide a complete answer.<sup>113</sup> However, they can be one very important component in the overall national anti-corruption action.



### **3.2.12 Government commitment and political will to fight corruption**

It has been held widely that political leadership and commitment to fight corruption at the highest levels is one of the most important preconditions for success in the fight against corruption.<sup>114</sup> Political will with respect to fighting corruption means political support to make sure that, among other things, the resources, independence and accountability mechanisms required for the anti-corruption institution to be successful, are put in place.

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<sup>112</sup> See European Partners Working Group (2008: 13-14).

<sup>113</sup> OSCE (2004: 175). A single ACA, even where it is adequately funded and well staffed, cannot hope to reach beyond a relatively few instances of high profile corruption, especially where the country is geographically vast and with a large population. See Jacobs & Wagner (2007: 330).

<sup>114</sup> See Simons (2009: 15).

### 3.3 Conclusion

The list of factors and best practices that can be determining for the success of anti-corruption institutions provided in this chapter is not comprehensive. Undoubtedly, a number of other reasons may be cited for the failure of a particular anti-corruption institution and hence of the accompanying cures. Nevertheless, it is submitted that observing and applying at least some of the abovementioned elements and accompanying recommendations and best practices will enhance the performance of an anti-corruption institution. The next chapter will endeavour to introduce the Ethiopian Federal Ethics and Anti-Corruption Commission and examine its compatibility with some of the standards discussed in this chapter.



## CHAPTER FOUR

### THE FEDERAL ETHICS AND ANTI-CORRUPTION COMMISSION OF ETHIOPIA

#### 4.1 Introduction

Over the last two decades several developing countries have opted for creating an institution charged with the overall responsibility of fighting corruption.<sup>115</sup>

Nevertheless, corruption remains a challenge in most developing countries, especially those in Africa.<sup>116</sup> For this reason, it is important to analyse the contribution of anti-corruption institutions to the overall national anti-corruption movement in order to review, strengthen and improve their efforts.

This chapter will shed some light first on the historical and political background of Ethiopia in an attempt to facilitate understanding of the discussion in subsequent sections. The chapter will then endeavour to discuss the road map that led to the establishment of the Ethiopian Federal Ethics and Anti-Corruption Commission (FEACC). In addition, the different features of the Commission, including its independence, accountability, powers and duties, allocation of budget and co-operation with other anti-corruption campaigners, will be elucidated. Finally, the achievements it has registered in the fight against corruption will be assessed.

#### 4.2 Physiognomy of Ethiopia

Ethiopia is a country with a population over 80 million and a territorial jurisdiction of 47 776 square miles. Emperor Haile Selassie ruled the country from 1930 to 1974,

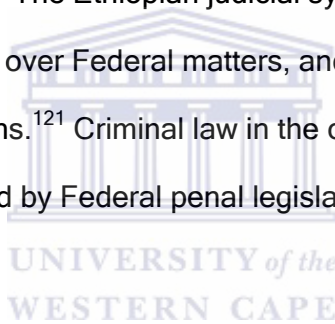
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<sup>115</sup> See Heilbrunn (2004: 2).

<sup>116</sup> See Khan (2006: 2).

when he was replaced by a military government (Derg), which ruled until it was overthrown in 1991 by the coalition Ethiopian People's Revolutionary Democratic Front (EPRDF).

Currently, the Federal Democratic Republic of Ethiopia (FDRE) comprises the Federal Government and nine State members.<sup>117</sup> Power is divided between the executive, legislature and judiciary.<sup>118</sup> The legislative body is the House of Peoples' Representatives, which nominates both the Head of the State and the Prime Minister.<sup>119</sup> The Prime Minister is the chief executive and heads the Council of Ministers, which is made up of representatives from a coalition of parties constituting a majority in the legislature.<sup>120</sup> The Ethiopian judicial system consists of the Federal courts which have jurisdiction over Federal matters, and State courts which have jurisdiction over State concerns.<sup>121</sup> Criminal law in the country is uniform as it is only in matters that are not covered by Federal penal legislation that States may enact penal laws.<sup>122</sup>



### 4.3 Establishing the FEACC

As is the case with most developing countries, high levels of corruption exist in Ethiopia. According to research, corruption in Ethiopia is attributable to a number of factors.<sup>123</sup> During the Derg regime, despite coming to power with a promise to tackle corruption and actually taking some steps to prosecute corrupt personnel, anti-

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<sup>117</sup> Article 50(1) of the Ethiopian Constitution (1995).

<sup>118</sup> Article 50(2) of the Ethiopian Constitution.

<sup>119</sup> Articles 70 and 73 of the Ethiopian Constitution.

<sup>120</sup> Article 72(1) of the Ethiopian Constitution.

<sup>121</sup> Article 78(1-3) of the Ethiopian Constitution.

<sup>122</sup> Article 55(5) of the Ethiopian Constitution.

<sup>123</sup> The major ones include poor governance, lack of accountability and transparency, lack of citizen participation, low level of institutional control, extreme poverty and inequality, harmful cultural practices and centralisation of authority and resources. See Megiso (2007: 2).



corruption efforts were not sustained over time, due mostly to a lack of resources (financial and human) and political interference.<sup>124</sup> In any case, corruption is said to have affected the country devastatingly during the imperial and Derg regimes.<sup>125</sup> Regrettably, that trend continues currently, and corruption is contributing significantly to the reduction of government revenue and is hampering the country's poverty reduction programme.<sup>126</sup>

The Ethiopian Government commissioned a corruption survey in 2001 in order to understand how severe the problem was and how it was affecting the country. The survey revealed, among other things, the presence of a generalised dissatisfaction with the performance of the public sector. People working in customs, land distribution, public housing, telephone, water and other public services were reported to be engaged in institutionalised corrupt practices.<sup>127</sup> The Ethiopian Government conducted a Civil Service Reform Programme which included an ethics sub-programme that was designed mainly to tackle corruption and improve service delivery. It was at this stage, then, that the corruption in public institutions was revealed.<sup>128</sup> In the same year, the Institute of Educational Research in Ethiopia also conducted research on 600 firms. It was revealed that 78.5% of these firms, which are found across the regional States, considered corruption in the public sector to be the number one factor that negatively influenced their operations and growth.<sup>129</sup>

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<sup>124</sup> See Olowu (2000: 265) For example, specialised agencies created with extensive powers of prosecution and punishing ethical breaches during the Derg regime include the Special Court, the Procuracy and the Working People's Control Committee.

<sup>125</sup> It is said to have undermined the legitimacy of the governments, weakening their structures, reducing productivity, hindering development, worsening poverty, creating social unrest and, finally, speeding up their downfall. Megiso (2007: 2).

<sup>126</sup> See Megiso (2007: 2).

<sup>127</sup> See African Development Bank Group (2003: 16).

<sup>128</sup> See Megiso (2007: 2).

<sup>129</sup> See Getahun (2006: 5).

The abovementioned findings led to donor pressure to combat corruption.<sup>130</sup> This was further reinforced by the TI corruption report which placed Ethiopia in 59<sup>th</sup> place out of 104 countries in its latest Corruption Perceptions Index.<sup>131</sup> Based on these findings, a central body, the FEACC, was established by parliament on 24 May 2001, with the objectives of promoting ethics and anti-corruption education, and of preventing, investigating and prosecuting corruption offences and other improprieties.<sup>132</sup>

The FEACC resembles Khemani's "multiple-purpose institutions with law enforcement and prosecutorial powers" model.<sup>133</sup> It is submitted that the adoption of this model is commendable for a number of reasons. The law enforcement institutions in the country suffer from certain major shortcomings. The Police has been one of the most corrupt and politically biased public institutions.<sup>134</sup> Furthermore, it has a very poor public image and suffers considerably from lack of resources (financial, technological and skilled staff).<sup>135</sup> The Public Prosecution Service is considered also to be politically biased and in significant shortage of qualified prosecutors.<sup>136</sup> Leaving the fight against corruption to these traditional law enforcement institutions would minimise the level of attention it requires in the country. In addition, the working of prosecutors and investigators in partnership under one body has the advantage of enhancing the specialisation and efficiency of

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<sup>130</sup> See Mwenda (2002: 2).

<sup>131</sup> See African Development Bank Group (2003: 16).

<sup>132</sup> See Article 6 of the Federal Ethics and Anti-Corruption Establishing Proclamation No. 235/2001 (hereafter Repealed Establishing Proclamation). This Proclamation was, however, later revised and repealed in 2005 by Proclamation No. 433/2005. Some commentators were, however, totally sceptical about the purpose for which the Commission was established. They claim that the Commission was created principally to pursue powerful figures who had fallen out of favour with the ruling party. See Belai (2004); Justice in Ethiopia (2002).

<sup>133</sup> See the discussion under Section 2.5.4 above.

<sup>134</sup> See Global Integrity Report Ethiopia: *Law Enforcement Integrity Indicators Scorecard* (2008).

<sup>135</sup> See Vibhute (2009: 3).

<sup>136</sup> See Vibhute (2009: 3).

anti-corruption law enforcement, which the country needs.<sup>137</sup> Within existing institutional structures, it is difficult to achieve the kind of honest and efficient law enforcement efforts necessary to punish perpetrators of corruption offences and deter future offenders. Hence the need for the FEACC.

It has been asserted that those countries that have established only “preventive, policy development and co-ordination institutions” are countries whose bureaucratic institutions are strong and efficient, and have sufficient resources and good coordination.<sup>138</sup> However, as is the situation in most African countries,<sup>139</sup> Ethiopia has neither the required institutional capacity nor a well-developed inter-agency cooperation culture to implement that type of institutional anti-corruption arrangement.

Considering its magnitude and what corruption is costing the country, it makes sense, in the pursuit of effectiveness and efficiency, to centralise and vertically integrate anti-corruption functions under a single designated body. The creation of a distinct body also demonstrates, on the symbolic level, that the government has the commitment to fight corruption, which is important in gaining public support and awareness.<sup>140</sup> Yet, needless to say, even though establishing the appropriate institutional framework is a significant step towards combating corruption, building the capacity and ensuring the effectiveness of the Commission is the next critical measure.

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<sup>137</sup> See Khemani (2009: 23).

<sup>138</sup> See UNDP (2008: 17). For example, those anti-corruption institutional models that are found in the United States and the United Kingdom incorporate a number of branches and departments of government.

<sup>139</sup> See Khemani (2009: 21).

<sup>140</sup> See Khemani (2009: 22).

## 4.4 Specific features of the FEACC

### 4.4.1 Positioning of the FEACC and freedom from interference

One of the determining factors that can assist in measuring the independence of an anti-corruption institution is the position it occupies within the structure of government. The FEACC is not legally subsumed under any government office. It is established as an independent Federal Government body.<sup>141</sup> However, where as originally the Commission was free formally from any interference from any person or government body in discharging all of its activities,<sup>142</sup> currently the revised FEACC Establishing Proclamation accords the Prime Minister the power to interfere in areas other than the prosecutorial and investigative roles of the Commission.<sup>143</sup> The justification given for this revision has been that the previous law prevented the Prime Minister from giving the Commission general direction and extending support in areas other than investigation and prosecution of corruption offences.<sup>144</sup>

It is argued that, although according power to the Prime Minister, who is the most powerful official in government, to facilitate the work of the Commission may be commendable, conferring on him or her the authority to give directions may pose a threat to the independence of the Commission. As an independent body that is established to oversee the government, the Commission should have as little interference as possible in terms of its operations from the executive.<sup>145</sup>

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<sup>141</sup> Article 3(1) of the Revised Establishing Proclamation.

<sup>142</sup> Article 4 of the Repealed Establishing Proclamation.

<sup>143</sup> Article 4 of the Revised Establishing Proclamation.

<sup>144</sup> See FEACC: *Amendment of the Proclamation*.

<sup>145</sup> See Meagher (2002: 2).

#### 4.4.2 Appointment and removal of executives of the FEACC

An issue closely related to the independence of an anti-corruption institution is how its executive officials are appointed and removed from office. At the higher administrative level, the FEACC has two major posts, namely, Commissioner and Deputy Commissioner.<sup>146</sup> The Commissioner of the FEACC is appointed by the House of Peoples' Representatives upon nomination by the Prime Minister,<sup>147</sup> while the Deputy Commissioner is appointed directly by the Prime Minister himself.<sup>148</sup> Previously, the only grounds for removal from office were criminal conviction and mental and physical illness that hamper performance.<sup>149</sup> However, under the revised FEACC Establishing Proclamation, violation of code of conduct and manifest incompetence and inefficiency are included in the grounds for removal, while excluding criminal conviction.<sup>150</sup> Finally, the term of office of both the Commissioner and Deputy Commissioner is six years, with the possibility of reappointment for another term.<sup>151</sup>

It has been held that the appointment procedure of the heads of an anti-corruption body should be one which recognises that the primary task of the office holder is to maintain a check on the executive and, in particular, on the political party in power.<sup>152</sup> The reasoning behind this assertion is that leaving the appointment to the executive or the ruling party, will damage the practical effectiveness of and public confidence in the institution.

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<sup>146</sup> Article 10 of the Revised Establishing Proclamation.

<sup>147</sup> Article 10(1) of the Revised Establishing Proclamation.

<sup>148</sup> Article 10(2) of the Revised Establishing Proclamation.

<sup>149</sup> Articles 10(2) & 12(2) of the Repealed Establishing Proclamation.

<sup>150</sup> Article 14(2) of the Revised Establishing Proclamation.

<sup>151</sup> Article 14(1) of the Revised Establishing Proclamation.

<sup>152</sup> See Jennett (2007: 3).

According to the 2005 Africa Governance Report, the Ethiopian executive branch of government has been found to be very corrupt.<sup>153</sup> Also, it has been held that the FEACC was created mostly to be used as a tool to pursue political rivalries.<sup>154</sup> Hence, the fact that the Prime Minister, who is the head of the ruling party, selects the Deputy Commissioner and recommends who should be appointed as Commissioner, may prove to be detrimental to the image and effectiveness of the FEACC.

The grounds for removal of the Commissioner and Deputy Commissioner should also be matters of concern. In particular, it is submitted that the ground of manifest incompetence and inefficiency is subjective and hence very prone to manipulation. This assertion may be reinforced by reference to the removal of Auditor-General Lema Argaw by the Prime Minister in 2006, after he released a report showing that 400 million US dollars were unaccounted for in the Federal Government's funding allocation to regional administrations.<sup>155</sup> Although, on the one hand, there is a need to remove the leaders of the Commission in situations where they manifestly prove to be incompetent or inefficient, on the other hand, there is a pressing reason to make sure that the ground of removal is not going to be used as a tool of reprisal by the government.<sup>156</sup> This, for example, may happen in a situation where the Commission has opted to investigate and possibly prosecute officials whom the government does not want to be put behind bars.

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<sup>153</sup> See *Africa Governance Report* (2005).

<sup>154</sup> See Dizard *et al* (2008: 315).

<sup>155</sup> After thirty years of service, the Auditor-General was removed from office in what was seen by most as a retaliatory move by the Prime Minister of Ethiopia. See Smith (2007: 15).

<sup>156</sup> It has been widely held that the effectiveness of the Commission has been curbed mostly due to control and influence by the ruling party (EPRDF). The Commission has been accused also of not going after the "big fish". See Global Integrity Report Ethiopia: *Anti-Corruption Agency Integrity Indicators Scorecard* (2008).

#### 4.4.3 Fiscal autonomy and resources of the FEACC

For the Commission to be effective, the resources apportioned to it should be commensurate with the responsibilities and competencies with which it is endowed. However, it can be observed that lack of adequate resources has been one of the major challenges faced by the FEACC.<sup>157</sup>

In Ethiopia, the executive has the mandate to prepare the Federal budget and, when approved by Parliament (House of Peoples' Representatives), to implement the same.<sup>158</sup> Although the mandate to prepare the annual budget of the Commission lies with the Commissioner, the proposed budget has to be submitted to the Prime Minister, who in turn submits it to Parliament for approval.<sup>159</sup>

As is evident, the Commission neither has the ability to propose the budget directly to Parliament, nor is there a legal framework in place that can guarantee its budgetary stability.<sup>160</sup> Allowing the Commission to put forward its annual budget plan to Parliament may require an amendment to the Constitution, which is a lengthy and burdensome process.<sup>161</sup> Hence, it is submitted, that as the discretion of the Prime Minister in deciding the level of funding required for the Commission is unfettered,

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<sup>157</sup> See Megiso (2007: 9) & FEACC: *Annual Report* (2008). The Commission has 227 staff and its annual budget for the year 2008 has been close to \$1.4 million only. Furthermore, among other things, the Commission is faced with shortage of office space, vehicles and staff skilled in surveillance and intelligence.

<sup>158</sup> Article 77(3) of the Ethiopian Constitution.

<sup>159</sup> Article 12(2)(d) of the Revised Establishing Proclamation. There is no limitation on the power of the Prime Minister as to what he or she is able to do with the budget prepared by the Commissioner.

<sup>160</sup> Though the Commission has been receiving regular funds, it has not been securing the amount it requested. See Global Integrity Report Ethiopia: *Anti-Corruption Agency Integrity Indicators Scorecard* (2008).

<sup>161</sup> See Article 105(2) of the Ethiopian Constitution, which provides that the Constitution may be amended only "when the House of Peoples' Representatives and the House of Federation, in a joint session, approve a proposed amendment by a two-thirds majority vote; and when two-thirds of the Council of the member States of the Federation approve the proposed amendment by majority votes".

there is a need to put in place a legal framework that guarantees budgetary stability for the Commission.<sup>162</sup>

#### 4.4.4 Accountability and transparency of the Commission

The FEACC is accountable only to the Prime Minister.<sup>163</sup> The Commissioner submits performance and financial reports of the Commission to the Prime Minister.<sup>164</sup> This accountability arrangement was selected over two other proposed alternatives: for the Commission to be accountable to Parliament (House of Peoples' Representatives); or to a committee comprising members drawn from the legislature, executive and judiciary.<sup>165</sup> The underlying reasons for the appointment of the Prime Minister as the person to whom the Commission is responsible includes the time-taking nature of decision-making in Parliament and the fact that most corruption occurs in the executive departments of government organisations.<sup>166</sup> Hence, it was concluded that the Commission's work of investigating and prosecuting cases would be enhanced if supported by the Prime Minister's orders.<sup>167</sup>

It is submitted that the argument to choose the Prime Minister as the person to whom the Commission is accountable is weak and contradictory. On the one hand, it has been conceded that most corruption takes place in the executive and, on the other hand, it has been decided to make the Commission responsible to the Prime Minister (who is the head of the executive). That may amount to opening the door for shielding friends and allies, while oppressing political adversaries at the same time.

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<sup>162</sup> For example, a law which restricts the discretion of the Prime Minister to reduce the proposed budget of the FEACC from what has been approved the previous year (depending on inflation rates) can be enacted to ensure the stability of the budget of the Commission.

<sup>163</sup> Article 3(2) of the Revised Establishing Proclamation.

<sup>164</sup> Article 12(2)(i) of the Revised Establishing Proclamation.

<sup>165</sup> Sartet (2004: 9).

<sup>166</sup> Sartet (2004: 9).

<sup>167</sup> Sartet (2004: 9).



As emphasised by TI, “in setting the parameters for the establishment of an Anti-Corruption Agency, a government must ask itself if it is creating something that would be acceptable if it were an opposition party”.<sup>168</sup> As indicated earlier, it is widely contended that the Commission has been created to serve as a pawn of the ruling party (EPRDF). Thus, it may be deduced that the accountability arrangement made is one that cannot be acceptable for opposition parties or any person who may be deemed a target by the government. Therefore, there is compelling reason to shift the accountability mechanism to a committee composed of members of the legislature, executive and judiciary. This will provide the necessary platform for the work of the Commission to be scrutinised by the various arms of government. In addition, creating a tripartite committee will bypass the time-taking nature of decision-making that was feared if the Commission had been made accountable to Parliament.

The Commission can be also accountable to the public through reporting regularly. In this regard, the Commission has been making annual reports and posting them on its official website.<sup>169</sup>

#### **4.4.5 Major powers and duties of the FEACC**

Amongst others, the FEACC is tasked with the powers and duties to:

- Combat corruption by creating awareness about its effect and promote ethics in the public service and the society in co-operation with relevant bodies;
- Prevent corruption, in co-operation with relevant bodies, by examining and revising methods of work conducive to corrupt practices;

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<sup>168</sup> Pope (2000: 97).

<sup>169</sup> See FEACC: *Annual Report* (2008).

- Investigate or cause the investigation of alleged serious breaches of codes of ethics in government offices and public enterprises, and follow up the taking of appropriate measures;
- Investigate and prosecute or cause the investigation and prosecution of alleged perpetration of corruption offences specified in the Criminal Code and other laws, where committed by public officials or employees or other public offices or enterprises;
- Inspect, search and seize any property during the process of investigation of offences;
- Summon persons for questioning and receiving testimonies, and order the presentation of any evidence from any person or office;
- Investigate any bank account suspected to contain proceeds of corruption;
- Freeze and cause the forfeiture of assets and wealth obtained by corruption or its equivalent, through court order;
- Register or cause the registration of the assets and financial interests of public officials and employees;
- Provide for or facilitate the physical and job security protection of witnesses and whistle blowers; and
- Ensure the preparation of or prepare and monitor the implementation of codes of ethics for public offices and public enterprises, apart from legislative and judicial bodies.<sup>170</sup>

As can be observed from the above rather lengthy list, the Commission is mandated to engage in a number of anti-corruption and ethics activities. And in order to discharge these far-reaching activities the Commission is divided into six

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<sup>170</sup> See Article 7 of the Revised Establishing Proclamation for the full details of the powers and duties of the Commission.

departments: Department of Ethics Education and Public Relations; Department of Corruption Prevention; Department of Corruption Investigation; Department of Corruption Prosecution; Department of Research Studies and Department of Co-ordination of Ethics Infrastructures.

The time during which UNCAC was drafted and adopted coincided more or less with the revision of the Ethiopian Penal Code.<sup>171</sup> As a result, a number of new provisions in the Code were devoted to criminalising acts that constitute corruption offences in order to meet international standards.<sup>172</sup> This is commendable, because it shows that the country is willing and able to implement the obligations it has assumed by ratifying an international instrument. Most importantly, it will serve as a stepping stone for the Commission to fight more forms of corruptive acts and practices.

The Commission has not been, however, able to enforce two of its major powers and which are essential in fighting corruption, namely, registration of assets and financial interests of public officials and employees, and protection of whistleblowers and witnesses. Both powers lack enforcing legislative provisions that are required for the Commission to exercise them.

Registration of assets, as discussed in the previous chapter,<sup>173</sup> is crucial to facilitate the prosecution of public officials under the illicit enrichment offence.<sup>174</sup> Although the Commission has submitted a draft law on the registration of assets to Parliament, it is yet to be adopted.<sup>175</sup> Considering that the Commission is ill-equipped when it comes to the experts and technology required to reveal complex cases of corruption, it is

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<sup>171</sup> The 1957 Ethiopian Penal Code was amended in 2004 and became the Ethiopian Criminal Code.

<sup>172</sup> See Mengistu (2009: 7). Some 23 articles are included in the revised Criminal Code to address the issue of corruption.

<sup>173</sup> See the discussion under Section 3.2.6 above.

<sup>174</sup> The crime of “unexplained property” is criminalised under Article 419 of the Ethiopian Criminal Code (2004).

<sup>175</sup> See Mengistu (2009: 7).

imperative to adopt the draft legislation and provide the Commission with the tool to facilitate its fight against grand corruption.

Corruption is clandestine by nature, which makes it hard to detect. Also, it usually does not have a victim that can trigger investigation. Whistleblowing not only should increase the risk of detection, but can also bolster the chances of successful prosecutions by providing the kind of information that can help enforcement agencies.<sup>176</sup> That makes it crucial to motivate persons to blow the whistle whenever they encounter corrupt practices. However, whistleblowers and witnesses need protection from retaliation and victimisation by those they expose and help put behind bars. International and regional anti-corruption conventions also emphasise the need to protect whistleblowers and witnesses.<sup>177</sup> Therefore, the Ethiopian government has an important role to play in ensuring that citizens exercise their right of effective participation in the fight against corruption by giving them adequate legal protection, and by passing the law that has been drafted by the FEACC.<sup>178</sup>

Another measure which is crucial to prevent corruption is civil asset forfeiture.<sup>179</sup> The FEACC has the power to demand the forfeiture of assets obtained through corruption upon the conviction of a corruption suspect.<sup>180</sup> Nevertheless, it does not have the mandate to resort to an action against the ill-gotten property (*in rem*) in the absence of a conviction. Corruption offenders may try to take advantage of the inefficiency of the Commission (due to lack of required investigative techniques and of sufficient

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<sup>176</sup> See Hall & Davies (1999: 6).

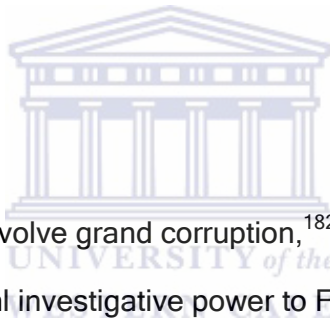
<sup>177</sup> See Articles 32 & 33 of UNCAC and Article 5(5) of the AU Convention. The Conventions require States Parties to adopt legislative and other measures to protect informants and witnesses in corruption offences.

<sup>178</sup> See Gebremedhin (2009: 26). The Commission has been faced with the problem of securing appropriate witnesses for the investigation and prosecution of alleged corruption offences, because witnesses fear reprisal. That necessitated a piece of legislation for the protection of whistleblowers and witnesses.

<sup>179</sup> See the discussion under Section 3.2.7 above.

<sup>180</sup> See Article 29 of the Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption Proclamation no. 434/2005.

finance) in exposing their corrupt practices and presenting evidence in court that may result in their conviction. As a result, criminals may not fear losing the proceeds of their corrupt conduct because the Commission has to prove its case beyond reasonable doubt to secure a conviction before proceeding against their property. What is more, corruption suspects are absconding from the country with large sums of money before getting caught.<sup>181</sup> Civil asset forfeiture can be used in these kinds of circumstances, because an action can be brought against the property of those criminals who fled but left their houses and businesses behind. It is submitted that, the Commission should be mandated to resort to civil forfeiture proceedings in an effort to enhance its crime preventive role and the recovery of stolen national assets.



#### 4.4.6 Focus of the FEACC

Except for those cases that involve grand corruption,<sup>182</sup> the Commission has the authority to delegate a general investigative power to Federal and Regional investigative bodies.<sup>183</sup> However, all investigative bodies, with or without delegated general investigative power from the Commission, are mandated to commence investigation of any alleged or suspected corruption offences falling under the jurisdiction of the Commission, provided that they inform the Commission.<sup>184</sup> Upon receipt of the report, the Commission may investigate the matter itself or cause the

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<sup>181</sup> See Gebremedhin (2009: 26). It has been maintained that the absence of extradition treaties between Ethiopia and other countries have helped corruption suspects to get away.

<sup>182</sup> Article 2(9) of the Revised Establishing Proclamation defines *serious corruption offence* and not *grand corruption*. However, it can be inferred from (FEACC: *Amendment of the Proclamation*) that *grand corruption* refers to *serious corruption offence*. The latter is defined as: “a corruption offence involving huge amount of money committed in highly strategic Public Office and Public Enterprise; a corruption offence involving a public official; or corruption offences which cause or are capable of causing a grave danger to the national sovereignty, economy, security or social life”. It is submitted that, the meaning of some of the terms like (huge amount of money, highly strategic, grave danger) is highly subjective and may need more clarification.

<sup>183</sup> Article 8(1) of the Revised Establishing Proclamation.

<sup>184</sup> Article 8(2) of the Revised Establishing Proclamation.

investigation to be conducted by the reporting body or other organ.<sup>185</sup>

In case the Commission fails to act on the report, the organ commencing investigation should finish the same and send the result to an organ that is competent to initiate prosecution.<sup>186</sup> The Commission has further, the authority to transfer a matter it has started to investigate to other investigative organs.<sup>187</sup>

The delegation power of the Commission also extends to prosecution.<sup>188</sup> While the Regions may institute corruption offence proceedings in the Regional offices relating to subsidies granted by the Federal Government to the Regions, the Commission may, however, substitute the Regional anti-corruption office or prosecutor and enter into the proceedings at any time.<sup>189</sup>

The aforementioned scheme makes it conducive for the Commission to converge its scarce resources on corruption offences that have a relatively deep impact on the country. The dilemma is that, it may not always be clear for those entities with general delegated power to exercise the Commission's powers, to identify their competencies. This problem may ensue because those offences that fall under the category "serious corruption offence", and which should not be delegated generally to other law enforcement bodies without being screened by the Commission, are not defined clearly. This may lead to situations where the delegated entities may fail to report to the Commission and transgress their authority. Transgression of the authority of the FEACC, in effect, defy the very purpose for which the Commission has been established, which is combating grand corruption in a knowledge-based fashion.

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<sup>185</sup> Article 8(3) of the Revised Establishing Proclamation.

<sup>186</sup> Article 8(4) of the Revised Establishing Proclamation.

<sup>187</sup> Article 8(5) of the Revised Establishing Proclamation.

<sup>188</sup> Article 9(1) of the Revised Establishing Proclamation.

<sup>189</sup> Article 9(2) of the Revised Establishing Proclamation. According to Mengistu (2009: 5-6), seven of the nine Regions have established their own anti-corruption institutions.

#### 4.5 Participation of anti-corruption campaigners

The involvement of anti-corruption campaigners is most appropriate and preferred in the crusade against corruption. These anti-corruption campaigners include civil society organisations, media, religious groups and the public at large.

The FEACC is aware of the significance of the participation of anti-corruption campaigners in the fight against corruption. With a view to enhancing the participation of the different anti-corruption campaigners, the Commission has established the Department for the Co-ordination of Ethics Infrastructures, which is duty-bound to liaise between the Commission and the different campaigners and to facilitate their partnership.<sup>190</sup> In particular, the Department has been seeking the involvement of civil society organisations in the common goal to curb corruption and impropriety.<sup>191</sup> Additionally, the FEACC has been attempting to create close ties with religious organisations, especially taking into consideration their indispensable role in disseminating anti-corruption education.<sup>192</sup> It has been also noted that the FEACC has a good relationship with both private and public media, and that among other things, it provides them with up-to-date information on the continuing anti-corruption campaign.<sup>193</sup>

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<sup>190</sup> See Mengistu (2009: 5).

<sup>191</sup> See Gebremedhin (2009: 26). Civil society is generally considered to be weak in Ethiopia, especially in the fight against corruption. The major civil society organisations leading the fight against corruption in Ethiopia are Transparency Ethiopia (TE) and Initiative Africa (IA). See Business Anti-Corruption Portal: *Ethiopian Private Anti-corruption Initiatives*.

<sup>192</sup> See Mengistu (2009: 5).

<sup>193</sup> See Megiso (2007: 6).

Major factors that may impede the media and civil society efforts to combat corruption are, nonetheless, lack of press freedom<sup>194</sup> and the new civil society law in Ethiopia.<sup>195</sup> These would hinder the ability of the media to air accusations of corruption or the ability of the press freely to conduct investigative journalism in an unbiased manner.<sup>196</sup> The role that can be played by civil society will also be curbed, because of the increased interference by the government in their operations. Therefore, the eagerness of the FEACC to mobilise the media and the civil society in the anti-corruption movement should be reinforced by laws that give these important anti-corruption campaigners access to information and freedom of the press, and protect them from unnecessary government interference.



#### 4.6 Achievements of the FEACC

Despite the fact that the TI Corruption Perceptions Index (CPI) shows that Ethiopia has not made much progress in the fight against corruption since the establishment of the Commission,<sup>197</sup> and the Global Integrity Report of 2008 rated the Commission

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<sup>194</sup> Although, in principle, freedom of the press and access to information is upheld and guaranteed by the Constitution, in reality the situation has reportedly deteriorated in recent years, after the 2005 elections in Ethiopia. See Business Anti-Corruption Portal: *Ethiopian Private Anti-corruption Initiatives*. Ethiopia ranks 142nd out of 168 countries in the Worldwide Press Freedom Index. See Reporters Without Borders - *World Press Freedom Index* (2008). The country also ranks 165th out of 195 countries and rated as “not free”. See Freedom House - *Freedom of the Press Index* (2009). In 2006, Ethiopia was the third leading jailor of journalists in the world, next to China and Cuba.

<sup>195</sup> Among other things, the law gives government-established agencies broad discretionary power over civil society organisations, which would allow strict government control and interference in the operation and management of civil society organisations. See Amnesty International Public Statement (2008). Despite severe criticism from donors, civil society and foreign governments, the Ethiopian Parliament passed the law on 6 January 2009. See World Alliance for Citizen Participation (2009).

<sup>196</sup> See Dizard *et al* (2008: 315).

<sup>197</sup> TI Corruption Perceptions Index (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of businesspeople and analysts from around the world, including experts who are resident in the countries evaluated. According to this index, Ethiopia’s ranking from the year 2001 to 2008 has been 59<sup>th</sup>/102, 92<sup>th</sup>/133, 114<sup>th</sup>/146, 137<sup>th</sup>/159, 130<sup>th</sup>/163, 138<sup>th</sup>/180, and 126<sup>th</sup>/180 countries respectively. See TI: *Corruption Perceptions Index* (2001-2008).



as “weak”,<sup>198</sup> sight should not be lost of some of the positive aspects of the work of the FEACC. The Commission has distributed more than 80 000 magazines, 68 000 posters, 355 000 brochures, and 160 000 fliers to educate the citizenry and create awareness about corruption in the country.<sup>199</sup>

The institution has prosecuted more than 800 corruption cases resulting in over 300 convictions.<sup>200</sup> In one case, twelve senior officials of the Development Bank of Ethiopia were arrested in May 2006 and charged with violations of bank policy and illegal overseas transfers.<sup>201</sup> Additionally, in an endeavour to tackle corruption in the areas of land administration and leasing, the Commission has succeeded in securing the invalidation of ownership titles of more than 600 000 square metres of urban land and the recovery of more than \$ 120 million.<sup>202</sup>

The Commission is leading the investigation and prosecution of corruption which allegedly has been committed in the competitive tendering for the supply of telecommunications equipment, and which involved nearly the loss of 200 million US dollars.<sup>203</sup> Finally, the Commission has been spearheading the investigations and prosecutions of a huge gold scam that took place at the Ethiopian National Bank, and which has resulted in the Government losing \$ 16 million.<sup>204</sup> Although the prosecution of those who were involved in this matter is not complete, the Commission has managed to freeze \$ 4.6 million and has seized 81 kg of gold.<sup>205</sup>

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<sup>198</sup> See Global Integrity Report Ethiopia: *Anti-Corruption Agency Integrity Indicators Scorecard* (2008).

<sup>199</sup> See Global Integrity Report (2006). See also FEACC: *Annual Report* (2008).

<sup>200</sup> See Norwegian Embassy (2009). See also South-South News (2009).

<sup>201</sup> See Business Anti-Corruption Portal - *Ethiopia Country Profile* (2009).

<sup>202</sup> See Mengistu (2009:4).

<sup>203</sup> See FEACC: *Annual Report* (2008). See also Addis Fortune (2009). Public tendering has been one of the most corruption-prone areas in the country. It has been indicated also that foreign companies rank corruption as the single most problematic factor for conducting business in the Ethiopia. See Global Competitiveness Report (2008-2009),

<sup>204</sup> See BBC News (2008). A number of the Bank's employees, other government employees and business people were implicated in the case.

<sup>205</sup> See FEACC: *Annual Report* (2008),

The FEACC has made a tremendous contribution to preventing corruption also. It has examined the practices and working procedures of almost 100 government offices and public enterprises and proposed recommendations and corrective measures.<sup>206</sup>

The FEACC has received more than 2 000 tips in the period 2008-2009 from the public, said tips increasing over time.<sup>207</sup> This may be due also to the toll-free hotline which has been made available for those who want to make anonymous reports and complaints to the FEACC.

#### 4.7 Conclusion

It has been eight years since Ethiopia chose to establish an institution to spearhead the anti-corruption movement in the country. The Commission has been given enough power, more or less, to combat corruption by engaging in educational, preventive, investigative and prosecutorial activities. And admittedly, although not a solution in and of itself, selecting the proper institutional arrangement is the starting point towards alleviating the scourge of corruption in the country. However, despite its wide-ranging powers, the Commission has not made a noteworthy impact in curbing corruption. This may be attributable mostly to its structural flaws, lack of independence from political interference and public distrust. Nevertheless, its efforts to prevent and combat corruption have improved over time.

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<sup>206</sup> See Gebremedhin (2009: 25). However, note should be taken that some of the offices and enterprises which the Commission examined and for which corrective measures were proposed, were unwilling to apply the recommendations.

<sup>207</sup> See Walta Info (2009).



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## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

This study has analysed the addition of specialised anti-corruption institutions to national anti-corruption campaigns. It further scrutinised the major factors that require due consideration to enhance the contribution of these institutions in the overall anti-corruption crusade. Central to the study was the assessment of the Ethiopian FEACC in terms of the identified factors that improve the effectiveness of ACCs or ACAs. What follows is a detailed conclusion and recommendations based on the findings of the study.



#### 5.2 Conclusion

Over the last fifteen years specialised ACCs or ACAs have been considered increasingly to be effective instruments in preventing and combating corruption. The importance accorded to these institutions can be inferred also from the recognition they are given in the different global, regional and sub-regional anti-corruption instruments. The preference given to ACCs and ACAs has been motivated mostly by the success they have registered in preventing and fighting corruption in states such as Hong Kong and Singapore. These specialised anti-corruption institutions can be tasked with the educational, preventive, investigative and prosecutorial anti-corruption functions. And although international standards provide for certain thresholds with which these institutions should comply, they do not dictate which

model states should adopt. Each state should implement the kind of institutional arrangement which best fits its local context.

Bolstering the effectiveness of anti-corruption institutions requires the consideration of a number of factors and accompanying best practices and corrective measures. These may include factors such as: maintaining their independence and choosing the appropriate line-of-accountability mechanisms; the availability of financial and human resources at their disposal; their major focus areas; and their relationship to other government offices and anti-corruption campaigners. Although these factors do not constitute a comprehensive list, observing them and supplementary best practices and measures have the potential to enhance the performance of anti-corruption institutions.

Ethiopia's FEACC, which has been in existence for the last eight years, has not made a notable impact upon the level of corruption in the country. This may be evidenced from the different assessments made by such organisations as TI and Global Integrity.

As to its independence, the Prime Minister has been given the authority to give directions to the FEACC. In addition, the appointment procedure and grounds for removal of the Commissioner and Deputy Commissioner have been designed in such a way as to pose a great threat to the independence of the Commission. The Prime Minister also has an unrestrained power to decide on the budget of the Commission.

The accountability arrangement of the FEACC is not designed to guarantee its transparency to a desirable level. Making it accountable to the Prime Minister reduces its credibility as well as the level of public trust it requires for its success.

The FEACC is endowed with quite a number of powers that it needs to discharge its wide-ranging duties. However, its right to exercise two of its major powers - registering assets of public employees and protection of witnesses and whistleblowers - has remained hampered due to lack of implementing legislation. Also, there is a need to add civil forfeiture to its list of mandates to maximise its corruption preventive role and efforts to recover money lost to corruption.

Progress has been made by the FEACC in respect of identifying its focus. especially, its mandates to investigate and prosecute corruption practices by allowing other investigative and prosecutorial bodies to share its burden. However, clarity is required in defining the thresholds which determine when these bodies are allowed to step in to investigate and prosecute corruption suspects.

The FEACC has been trying to solidify its ties with different anti-corruption campaigners. But its efforts may be limited because, in particular, the media and civil society, which can be located at the heart of the anti-corruption crusade, are faced with legal barriers to extending their maximum support to what the Commission is endeavouring to achieve.

The FEACC has examined the practices and working procedures of a large number of government offices and public enterprises, and has proposed corrective measures for implementation. But, some of the offices and enterprises for which the recommendations were made were reluctant to carry out the proposed corrective measures. This impedes the corruption preventive role of the Commission, especially, by undermining its effort to seal loopholes that are conducive for corrupt practices.

Corruption suspects have been absconding from the country before getting caught and are taking shield in countries with which Ethiopia does not have extradition treaties. This is detrimental, especially, to the preventive role of the FEACC. It sends the message to potential corruption offenders that they can get away with their criminal act by making arrangements to flee the country to haven countries.

Finally, as a Federal Government body, the jurisdiction and activities of the FEACC is limited to mostly public officials and employees of the Federal Government. The Regional States have the power to establish their own anti-corruption institutions. The Commission can institute proceedings in the Regional offices only where subsidies are granted by the Federal Government to the Regions. Therefore, the formal reach of the Commission to prevent and fight corruption in the country is very restricted.



### **5.3 Recommendations**

For the FEACC to maintain its operational independence, the Prime Minister should not have the power to give directions to the Commission of his or her own motion.

The Prime Minister's involvement in the work of the Commission should be limited to the extent that he or she is extending support requested by the Commission to facilitate and execute its mandate.

In order to ensure the independence of the FEACC, it is necessary for the public to be involved in the selection of the Commissioner and Deputy Commissioner. This can be done by inviting nominations from the public after publication of clear criteria pertaining to the kind of persons required for the posts. The nominations can then be presented to Parliament (House of Peoples' Representatives), which will shortlist the

nominees it has found suitable and submit these to the Prime Minister for endorsement. Nominees can be drawn from government offices or interest groups such as civil society organisations and professionals (such as chartered accountants or lawyers and even persons from the private sector). It is important to assess whether the nominees have personal integrity and can be trusted with the crucial task of leading the Commission.

The final decision to remove the Commissioner and Deputy Commissioner should lie with Parliament rather than the Prime Minister. This will significantly reduce, the possibility of grounds for removal - especially incompetence and inefficiency - being used as a tool by the executive to get rid of proactive and independent executives of the Commission who might decide to pursue cases against those who are closely tied to the Government.

The Commission should have a sound and stable financial base in order to be in a position to draw up and pursue its long term plans. It requires this financial base in order to prevent and fight a culture of corruption which has been entrenched in Ethiopian society for many years. For this reason, the legislature should pass a law which restricts the power of the Prime Minister to determine the budget of the Commission.

The accountability line should shift from the Prime Minister to a committee composed of members of the legislature, executive and judiciary. It is in the interests of accountability for the Commission to report through a committee comprised of members of all arms of government rather than through an individual. This can better enhance the transparency of the work of the Commission and guarantee that the FEACC is there to serve the interests of the nation as a whole and not the privileged few.



The legislature should adopt the draft proclamations that have been prepared by the FEACC on protection of whistleblowers and witnesses, and on registration of assets of public employees. Both laws, if implemented, have the ability to facilitate the cumbersome task of securing successful prosecution of corruption cases.

Moreover, the FEACC should be given the mandate to exercise one of the most well known tools in the prevention of corruption - a civil asset forfeiture scheme. Apart from prevention, this would help in restoring money lost to corruption back to the coffers of government.

The threshold provided to determine the competencies of other investigative and prosecutorial bodies that exercise the powers of the FEACC in a delegated capacity should be polished and made clear. This would avoid the controversies and dangers that may be posed as a result of such bodies intruding upon the competencies of the Commission.

The FEACC should be able to report to Parliament, in situations where the recommendations made by the Commission to reduce the likelihood of corrupt practices are not adhered to by government offices and public enterprises. In this way, those that are unjustifiably reluctant to implement the recommendations of the Commission can be called by Parliament to account for their actions.

As things stand, the FEACC is very short on finance and skilled staff. This means that it needs all the help it can get from other anti-corruption campaigners, such as civil society and the media. However, in order for civil society and the media to stand side by side with the Commission and provide further impetus to the fight against corruption, the legislature should first provide the legal framework which is needed to ensure press freedom and to avoid unnecessary operational interference from the

Government. Most importantly, there is a need to make sure that the law is adhered to in practice.

If corruption is to be prevented and fought nationwide, there is an equally pressing need to strengthen the Regional anti-corruption institutions. Also, in order to reach their common goal, which is reducing the scourge of corruption in Ethiopia, the FEACC and the Regional Anti-Corruption institutions should work closely and assist each other to the highest extent possible.

Such government offices as the Ministry of Foreign Affairs and the Ministry of Justice should make possible the extradition of persons who have committed corruption offences by concluding the required treaties and building good international co-operative relations with other countries. The FEACC should also endeavour to receive all the assistance it can from the international community - mostly states and NGOs - in all other areas that can facilitate the work of the Commission.

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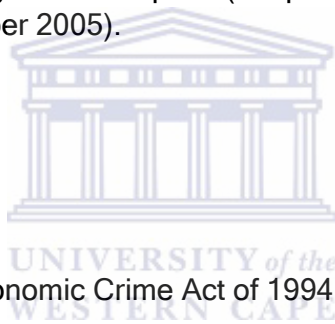
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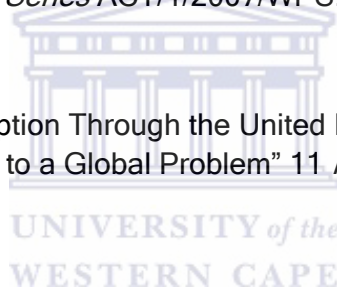
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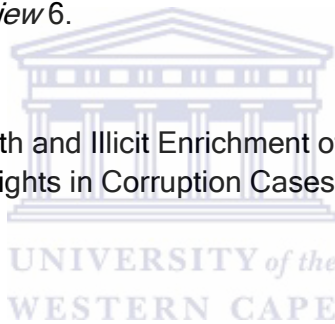
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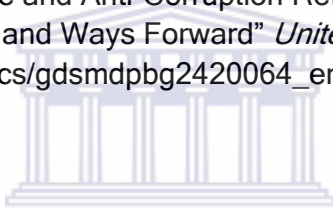
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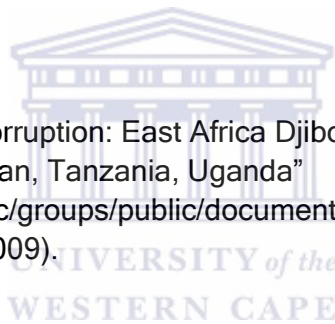
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