

# GAPS IN GHANA'S Anti-Corruption Legislation



ACCOUNTABLE DEMOCRATIC INSTITUTIONS AND SYSTEMS STRENGTHENING (ADISS)



# Gaps In Ghana's Anti-Corruption Legislation



**ACCOUNTABLE DEMOCRATIC  
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## ACKNOWLEDGMENT

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## INTRODUCTION

The Ghana Integrity Initiative (GII) Consortium comprising GII, Ghana Anti-Corruption Coalition (GACC) and SEND Ghana is implementing the Accountable Democratic Institutions and Systems Strengthening (ADISS) Activity. ADISS is a four-year activity funded by USAID over the period (September 2014 to September 2018). The goal of ADISS is to increase government accountability in Ghana. Specifically, ADISS's purpose is to renew and build upon on-going anti-corruption efforts and increase the capacities of anti-corruption Civil Society Organizations (CSOs) to motivate citizens to apply pressure on policy makers and institutions with the aim of reducing corruption in Ghana. ADISS is being implemented in fifty (50) Districts across the ten regions of Ghana.

As part of ADISS implementation, this document titled “Gaps in Ghana's Anti-Corruption Legislation – 2016” has been developed to supplement on-going advocacy against corruption. It contains a list of corrupt conduct that should either have been criminalized or, if already criminalized, is deemed inadequate (gaps in anti-corruption legislation) to deal with the offence more effectively. The document captures the offence, the existing legislation (if any) that deals with the offence, the gaps that have been identified, and the action proposed to close these gaps.

In 2007, Ghana ratified the United Nations Convention against Corruption (the Convention), which provides a list of conduct that constitutes “corruption” and mandates each state party to criminalize the conduct as contained in articles 15-42 of the Convention. The conduct, considered as corruption that States Parties should criminalize are the following:

- 1) Bribery of national public officials (Art. 15)
- 2) Bribery of foreign public officials and officials of public international organizations (Art. 16(1))
- 3) Embezzlement, misappropriation or other diversion of property by a public official (Art. 17)
- 4) Trading in influence (Art. 18)
- 5) Abuse of functions (Art. 19)
- 6) Illicit enrichment (Art. 20)
- 7) Bribery in the private sector (Art. 21)

- 8) Embezzlement of property in the private sector (Art. 22)
- 9) Laundering of proceeds of crime (Art. 23)
- 10) Concealment [of corruption] (Art. 24)
- 11) Obstruction of Justice (Art. 25)
- 12) Participation in corruption offences (Art. 27 (1), para. 1)
- 13) Attempt / preparation of UNCAC offences (Art.27, paras. 2-3)

The Convention further mandates each party state to take appropriate measures to provide for:

- 1) Freezing, seizure and confiscation (art. 31)
- 2) Protection of witnesses, experts and victims (Art 32)
- 3) Protection of reporting persons (e.g. whistleblowers) (Art 33)
- 4) Compensation for damage (art 35)
- 5) Specialized authorities (art. 36)
- 6) Jurisdiction, art 42 (2),(4)

## GAP ANALYSIS

The review of the implementation of the Convention in relation to Criminalization and Law Enforcement, was done in 2013, by experts from Rwanda and Swaziland, and a report with recommendations on Ghana published. Some of the recommendations touch on the gaps in legislation.

Prior to the review, Ghana through the Attorney-General, conducted a gap analysis of the country's anti-corruption legislation as against the Convention and the AU Convention for Preventing and Combating Corruption. That analysis also indicated that though there appears to be a plethora of legislation on corruption, gaps still existed. In the report of the Constitution Review Commission 2012, some gaps in the anti-corruption legislation of the country were also identified.

This document draws on those reports

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OFFENCE	EXISTING LEGISLATION	GAP/ACTION REQUIRED
1. Bribery	The following Sections of the Criminal Offences Act 1960 (Act 29) apply to the offence of Bribery: 3, 151, 239, 242-244, 247, 253, 254 of national public officials.	Bribery of foreign public officials and officials of public international organizations has not been criminalized, though the sections listed may apply to the offence to a limited extent. For purposes of clarity of the law, transnational bribery (passive & active) should be criminalized.
2. Embezzlement, misappropriation or other diversion of property by a public official	Sections 124, 125, 128, 129, 179A, C and D, and 260 of the Criminal Offences Act, 1960, (Act 29), Section 62(1)(d) of the Financial Administration Act, 2003 (Act 654) and section 93 of the Public Procurement Act, 2003 (Act 663) apply to these offences. In addition, Sections 1 to 4, of the Public Property Protection Act, 1977 (SMDC 140) also apply.	<p>Though these provisions apply to all persons, including public officials, section 3 of the Public Property Protection Act refers to assets “entrusted to the care” of the offender, but not assets that are entrusted by virtue of an official position.</p> <p>The law also does not provide for embezzlement for the benefit of a third person specifically. This gap requires amendment to s. 3 of SMCD 140 to create a more specific offence for public officials in relation to assets entrusted to the official by virtue of their position.</p>
3. Trading in influence	Section 252 (2) of Act 29 covers the offence of trading in influence.	Though Section 252 (2) of the Criminal Offences Act, 1960 (Act 29) is the relevant criminal offence, it is still deficient in two respects: 1) the offence only covers the case in which an undue benefit is given, or agreed to

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OFFENCE	EXISTING LEGISLATION	GAP/ACTION REQUIRED
		<p>be given or has been offered to a public officer, not to “any other person” .; 2) it also does not cover the conduct of “promise” and the granting “directly or indirectly” of such undue benefit.</p> <p>An amendment to the law is required in that respect.</p>
<p>4. Abuse of functions, or abuse of office/power</p>	<p>Section 179 C of Act 29 contains the relevant offence, “Using Public Office for Profit”.</p>	<p>Though Section 179 C of Act 29 is applicable, there is a need for legislative clarification to bring it into conformity with the elements of the offence and for that matter, into conformity with UNCAC. Art. 19 which provides as follows :</p> <p><i>Each State Party shall consider adopting such legislative and other measures... to establish as a criminal offence, ... the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity</i></p>
<p>5. Illicit enrichment</p>	<p>Article 286 (4) of the 1992 Constitution, section 5 of Act 550, Sec. 7(1)(e) of Act 456, relate to the offence.</p>	<p>Although the provisions in the Constitution, Act 550 and the CHRAJ Act 456, deal with illegal acquisition of wealth or illicit enrichment, the conduct has not been criminalized.</p>

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OFFENCE	EXISTING LEGISLATION	GAP/ACTION REQUIRED
6. Bribery in the private sector	Section 241 of Act 29, Sections 92 & 93 of the Public Procurement Act, 2003 (Act 663) contain relevant provisions in relation to the offence.	Although sections 92 and 93 of the Public Procurement Act contain provisions that can be relevant to bribery in the private sector, they are limited to the procurement process. Therefore, there is the need to criminalize bribery in the private sector (both active & passive).
7. Embezzlement of property in the private sector	Sections 124, 125, 128, 129 and 140 of the Criminal Offences Act, 1960 (Act 29) apply. Further, Sections 1-4, and especially Section 3, of the Public Property Protection Act (1977), establish the offence.	Section 3 of SMCD 140 refers to assets “entrusted to the care” of the offender but does not specifically address embezzlement or misappropriation by those directing or working in a private sector entity. Furthermore, they refer to public property. Embezzlement for the benefit of a third person is not specifically regulated. Legislative amendments are required.
8. Laundering of proceeds of crime	Sections 1-3 of the Anti-Money Laundering Act, 2008 (Act 749) contain the relevant offence.	<p>The Ghana Anti-Money Laundering Act, 2008 (Act 749), covers the disguise of the origin and the location, but not of the true nature, disposition, movement or ownership of or rights with respect to property as stipulated in art. 23 (1)(a)(ii) of UNCAC.</p> <p>Amendment is required to provide for the disguise of the origin, true nature, disposition, movement or ownership of or rights with respect to property.</p>

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OFFENCE	EXISTING LEGISLATION	GAP/ACTION REQUIRED
9. Concealment	Sections 1(a)(b) and 3 of the Anti-Money Laundering Act, 2008 (Act 749). Section 62 (1)(e) of the Financial Administration Act, 2003 (Act 654) do apply.	<p>The provisions being referred to cover the concealment of product of corruption but not the "continued retention" as required.</p> <p>If "continued retention" would not be interpreted as "takes possession", then the element of "continued retention" should be provided for.</p>
10. Obstruction of justice [in criminal process]	Sections 222, 234, 235 and 251, together with Section 20, of the Criminal Offences Act provide relevant provisions.	<p>The use of physical force, threats or intimidation for purposes of obstruction of justice described as in article 25 (a) are regulated in Section 222 of the Criminal Offences Act. However, this is limited to interference with the giving of testimony, not with the provision of false testimony or the production of evidence.</p> <p>Furthermore, the provisions of the Criminal Offences Act only provide for obstruction of justice by the use of violence against justice or law enforcement officials, not by means of threats and intimidation.</p> <p>Section 21 of the EOCO Act is broader, but does not specifically cover the use of physical force, threat and intimidation.</p> <p>The relevant legislation should be amended to provide for elements of threat and intimidation in a comparable manner to physical violence.</p>

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OFFENCE	EXISTING LEGISLATION	GAP/ACTION REQUIRED
11. Liability of legal persons	Section 46 of the Interpretation Act, defines “person” to include a body corporate; Section 2 of Act 29 (Provisions Relating to a Company and its Officers); Section 39(2), (4) and (5) of the Anti-Money Laundering Act, 2008 (Act 749); Section 7 of the Public Property Protection Act; Section 3 (q) and (r) of the Public Procurement Act, all apply.	Criminal sanctions for legal persons are not clear and steps ought to be taken to include sanctions applicable to legal persons for corruption, with a view to ensuring that they are effective, proportionate and dissuasive.
12. Protection of witnesses, experts and victims	Section 69 of the Evidence Act gives the court the general obligation to protect witnesses from intimidation and harassment.	The existing law is inadequate to deal with the offence. The enactment of witness protection legislation is advised. A Witness Protection Bill is currently before Parliament.
13. Compensation for damage	Section 15 of the Whistleblower Act, 2006 (Act 720) provides for it.	S. 15 of Act 720 provides an exceptional privilege of an employee victimized due to breach of contract or other entitlements but no law provides for compensation for damage as a result of corruption. Such a law is desirable.

## RELATED LEGISLATION/MATTERS

OFFENCE/AREA	EXISTING LEGISLATION/MEASURE	GAP/ACTION REQUIRED
<p>14. Breaches of the Code of Conduct for Public Officers, including Assets Disclosure and Conflict of interest</p>	<p>Act 286 of 1992 Constitution, CHRAJ Act and Act 550, apply. There are guidelines on conflict of interest</p>	<p>Assets Disclosure: deficiencies include: no verification, no publication, and the scope is limited. The Guidelines on conflict of interest remain soft law and are largely unenforceable. The CRC recommendations include: verification and monitoring of the declared assets to be done within one year of the declaration and within three (3) months after the officers' exiting office; extensive amendments to Act 550 and issuing regulations on: (a) how assets declared can be verified; (b) how the public may access the declaration; and (c) the punishment for failure to declare and false declaration. Gift Rules: new legislation on ethics, on "gifts" and "conflict of interest", also need to be put in place. A Conduct of Public Officers' Law should be enacted. A Bill is currently before Parliament. It, seeks to consolidate the law on asset disclosure, breaches of the Oaths of Office and conflict of interest. The Bill has received considerable attention from civil society in the last few years, and is at the consideration stage.</p>

## RELATED LEGISLATION/MATTERS

OFFENCE/AREA	EXISTING LEGISLATION/MEASURE	GAP/ACTION REQUIRED
15. Definition of Corruption	Section 239-240 of Act 29 defines the scope of corruption offences, in the main.	The scope of corruption under the definition falls short of the UNCAC & AU Convention standard. An amendment of Act 29 to widen the scope to include illicit enrichment, conflict of interest, bribery in the private sector, embezzlement in the private sector, is
16. Specialized Authorities (Anti Corruption)	CHRAJ, EOCO, Ghana Police Service, Attorney-General's Office, Financial Intelligence Centre, Auditor General's Office, Internal Audit Agency, Public Procurement Authority, controller and Accountant General's Department, Bureau of National Investigations, Public Accounts Committee of Parliament and Judicial Service of Ghana, and others established by legislation and funded from Consolidated Fund (Chapter 18 of Const. 1992); EOCO Act, among others	<p>The powers of CHRAJ are limited. Funding has been inadequate and unpredictable, impacting on performance. Allocations are made through the Ministry of Finance undermining independence. It is proposed to establish an "Independent Constitutional and other Bodies Fund" to finance the operations of all independent constitution and other bodies.</p> <p>Powers: The CRC recommends that (a) the Commission on Human Rights and Administrative Justice should be empowered to initiate investigations without a formal complaint in all aspects of its mandate; (b) the decisions of the Commission on Human Rights and Administrative Justice should be directly enforceable by the Courts.</p>

## RELATED LEGISLATION/MATTERS

OFFENCE/AREA	EXISTING LEGISLATION/MEASURE	GAP/ACTION REQUIRED
17. Transparency, Public Reporting and access to information.	Act 21 (1) (f) of the Constitution, Whistleblower Act, 2006.	<p>Although, the Constitution and the Whistleblower Act are the relevant laws, they are inadequate to ensure that the public has unfettered access to information.</p> <p>A Right to Information law that does not contain too many claw back clauses, should be passed. This law has been pending since 2003. Though it is being considered by Parliament and hopes are that it will be passed, it would be advisable to still keep an eye on it.</p>

### APPENDIX:

#### List of Anti-Corruption and Related Legislation

- 1) Anti-Money Laundering Act, 2008 (Act 749)
- 2) Anti-Money Laundering (Amendment) Act, 2014 ( 874)
- 3) Anti-Money Laundering Regulations, 2011 (LI 1987)
- 4) Anti-Terrorism (Amendment) Act, 2012 (Act 842)
- 5) Anti-Terrorism Regulations, 2012 (L.I. 2181)
- 6) Audit Service Act, 2000 (Act 584)
- 7) Banking Act, 2004 (Act 673)
- 8) Credit Reporting Act, 2007, (Act 726),
- 9) Criminal Offences (Amendment) Act, 1993 (Act 458)
- 10) Commission on Human Rights & Administrative Justice Act, 1993 (Act 456)
- 11) Customs, Excise & Preventive Service (Management) law, 1993 (PNDCL 330)
- 12) Economic and Organized Crime Act, 2010, (Act 804)
- 13) Economic and Organized Crime Office (Operations) Regulations, 2012 (L.I. 2183)

- 14) Electronic Transaction Act, 2008 (Act 772)
- 15) Financial Administration Act, 2003 (Act 654)
- 16) Financial Administration (Amendment) Act, 2008 (Act 760)
- 17) Internal Audit Agency Act, 2003 (Act 658)
- 18) Internal Revenue Act, 2000 (Act 592)
- 19) Mutual Legal Assistance Act, 2012 (Act 807)
- 20) National Identity Register Act, 2008 (Act 750)
- 21) Payment System Act, 2003 (Act 662)
- 22) Political Parties Act, 2000 (Act 574)
- 23) Public Office Holders (Declaration of Assets & Disqualification) Act, 1998 (Act 550)
- 24) Public Property Protection Act, 1977 (SMDC 140)
- 25) Public Procurement Act, 2003 (Act 663)
- 26) Representation of the People Act, 1992 (PNDCL 284),
- 27) Value Added Tax Act, 1998 (Act 546)
- 28) Whistleblower Act, 2006 (Act 720)

## **BIBLIOGRAPHY/LITERATURE**

1. Criminal Offences Act 1960 (Act 29)
2. Comparative Analysis of Anti-Corruption Legislation in the Republic of Ghana with the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption, January 2009
3. Ghana Index to Anti-Corruption Laws in force as at 1st April 2006
4. Review of the Implementation of the United Nations Convention against Corruption, Ghana Report, 2015 (Executive Summary)
5. Republic of Ghana, Constitution of the Republic of Ghana, 1992, Assembly Press, Accra
6. Republic of Ghana (2012). White Paper on the Report of the Constitution Review Commission of Enquiry, 15 June 2012, Assembly Press, Accra.
7. Republic of Ghana (2012). Report of the Constitution Review Commission of Enquiry: From a Political to a Developmental Constitution, presented to His Excellency the President of the Republic of Ghana, Professor John Evans Atta Mills, and 20th December 2011.

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