

**UNIVERSITY OF THE WESTERN CAPE**



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WESTERN CAPE**

**FACULTY OF LAW**

**SOUTH-AFRICAN GERMAN CENTRE TRANSNATIONAL CRIMINAL JUSTICE AND CRIME  
PREVENTION: AN INTERNATIONAL AND AFRICAN PERSPECTIVE**

**A Critical Appraisal of the Ethiopian Anti-Corruption Institutional Framework**

A Research Paper Submitted in Partial Fulfillment of the Requirements for the award of  
Masters of Law degree

BY

Tamene Ena Heliso

Student Number: 3750119

Supervised

By

Professor Raymond Koen

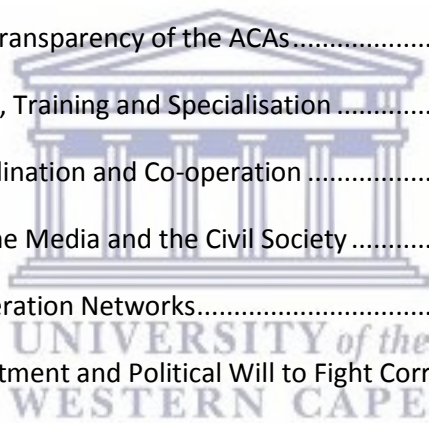
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### Declaration

I, **Tamene Ena Heliso**, declare that '**A Critical Appraisal of the Ethiopian Anti-Corruption Institutional Framework**' is my own work. It has not been submitted before for any degree or examination in any other university. Finally, where other person's ideas have been used or quoted, the sources have been properly indicated and duly acknowledged.

Student: **Tamene Ena Heliso**

Id. No: **3750119**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Supervisor: **Professor Raymond Koen**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



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## **Dedication**

To my parents, my wife and my daughter, Shalom, I remain grateful to you forever.

## **Abbreviations and Acronyms**

ACA	Anti-Corruption Agency
AG	Attorney General
AGJC	Attorney General Joint Council
AU Convention	African Union Convention on Preventing and Combating Corruption
AU	Africa Union
CPI	Corruption Perceptions Index
CPIA	Corruption Practices Investigation Bureau
CSRP	Civil Service Reform Programme
DAG	Deputy Attorney General
FAG	Federal Attorney General
FDRE	Federal Democratic Republic of Ethiopia
EPRDF	Ethiopian Peoples Republic Democratic Front
FEACC	Federal Ethics and Anti-Corruption Commission
FPC	Federal Police Commission
IACAC	Inter American Convention against Corruption
ICAC	Independent Commission against Corruption
NGOs	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
REACC	Regional Ethics and Anti-Corruption Commission
RPC	Regional Police Commission
RPO	Regional Prosecution Office
TCCPA	Trade Competition and Consumers Protection Authority
TE	Transparency Ethiopia
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNCTOC	United Nations Convention against Transnational Organised Crimes
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development



## **Key Words**

Accountability

Anti-Corruption

Corruption

Ethiopia

Federal Attorney General

Independence

Institutional Framework

Investigation

Multi-model Agency

Prevention

Prosecution



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## CHAPTER ONE

### INTRODUCING THE STUDY

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#### 1.1 Background to the Study

Corruption is a global problem, which poses a serious threat to the development of countries and their people.<sup>1</sup> Although its impact varies, all nations are facing the evils of corruption and, therefore, the international community calls upon states to take preventive and deterrent measures against corruption.<sup>2</sup> For example, the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AU Convention) obligate their member states to have both legal and institutional frameworks for effectively fighting corruption.

Corruption lacks a universal definition since it is a fluid concept.<sup>3</sup> Most international and regional anti-corruption instruments refrain from defining corruption as such. However, there are various definitions available. For example, Chinhamo & Shumba define corruption as the “abuse or complicity in the abuse of private or public power, office or resources for personal gain”.<sup>4</sup> Transparency International (TI) defines corruption as the “misuse of entrusted power for private gain”.<sup>5</sup> World Bank defines corruption as the “abuse of public office for private gain”.<sup>6</sup> In general, there is no settled definition for corruption. For the purpose of this study, corruption is defined as an abuse of power to gain an undue advantage.

Ethiopia is a party to UNCAC,<sup>7</sup> which has four anti-corruption pillars, namely, prevention, criminalisation, international co-operation and asset recovery. It has signed and

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1 Babu (2006)at 1.

2 Articles 6-12, 15-19, 23 & 25 of UNCAC and Articles 8 & 11 of the AU Convention.

3 Campbell (2016)at 1.

4 Obert & Gabriel (2007)at 1.

5 Transparency International (2007)at XXI.

6 ‘Helping Countries Combating Corruption: The Role of the World Bank’, available at <http://www1.Worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (accessed 15 September 2017).

7 Ethiopia signed UNCAC 10 December 2003 and ratified it on 26 November 2007.

ratified the AU Convention also,<sup>8</sup> which imposes duties on member states similar to those contained in UNCAC. Ethiopia, in its efforts to combat corruption, has enacted various laws to this end. The domestic criminalization of corruption goes back to 1957 when the Penal Code of Ethiopia punished breaches of integrity by public servants and other corrupt acts.<sup>9</sup> The Revised Criminal Code of Ethiopia also criminalises corrupt practices in detail.<sup>10</sup> In 2015, Ethiopia enacted a law that criminalises comprehensively several forms of corruption, including abuse of power, bribery, illicit enrichment, money laundering, undue delay of matters and corruption in the private sector.<sup>11</sup> The country also passed several other anti-corruption laws, such as the law on Special Procedure and Evidence for Corruption Crimes;<sup>12</sup> the Asset Disclosure and Registration law;<sup>13</sup> and the law on the Protection of Witnesses and Whistle-Blowers.<sup>14</sup>

In 2001, Ethiopia established the Federal Ethics and Anti-Corruption Commission (FEACC) as an institution devoted to fighting corruption, with mandates to promote, prevent, investigate and prosecute corruption crimes.<sup>15</sup> In 2005, the Establishment Proclamation of the FEACC was revised with the aim of redefining its powers and duties in line with the Criminal Code of the Federal Democratic Republic of Ethiopia (FDRE). Accordingly, the revised law required the Commission to focus on grand corruption, and to work in collaboration with other relevant investigation and prosecution institutions.<sup>16</sup> In 2015, a further Revised FEACC Establishment Proclamation was enacted with the purpose of bringing clarity regarding the investigation and prosecution of and the gathering of evidence in corruption matters.<sup>17</sup>

In Ethiopia, nine regional states and two city administrations also have Ethics and Anti-Corruption Commissions, with powers of preventing, investigating and prosecuting corruption crimes. The FEACC and the regional commissions work in co-operation and co-

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8 Ethiopia signed the AU Convention on 1 June 2004 and ratified it on 18 September 2007.

9 Articles 410-416 of the Ethiopian Penal Code of 1957(Proclamation 158 of 1957).

10 Articles 407-426 of the Ethiopian Criminal Code of 2005 (Proclamation 414 of 2004).

11 Articles 9-33 of Corruption Crimes Proclamation 881 of 2015.

12 Anti-Corruption Special Procedure and Rules of Evidence Proclamation 236 of 2001 and its Amendment Proclamation 239 of 2001. See also the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation 434 of 2005, as amended by Proclamation 882 of 2015.

13 Assets Disclosure and Registration Proclamation 668 of 2010.

14 Witnesses and Whistle-Blowers Protection Proclamation 699 of 2010.

15 Paragraph 3 of the Preamble to the FEACC Establishment Proclamation 235 of 2001.

16 Paragraphs 4, 5 & 6 of the Preamble to the Revised FEACC Establishment Proclamation 433 of 2005.

17 Paragraph 2 of the Preamble to the Revised FEACC Establishment Proclamation 883 of 2015.

ordinate their activities. The work of the regional commissions usually mirrors the trends at federal level.

Despite the enactment of so many anti-corruption legislative measures, corruption is still rampant in Ethiopia. The country is not making any tangible progress in the fight against corruption. Data compiled by Transparency International show that Ethiopia's citizens and institutions suffer from high levels of bribery.<sup>18</sup> Transparency International's Corruption Perceptions Indices (CPIs) indicate that Ethiopia scored 33 percent from 2013 to 2015, and 34 percent for 2016 and ranked at 111, 110, 103 and 108 respectively.<sup>19</sup> Although Ethiopia is not among worst sliders down the ladder of the CPI, it has failed to show significant improvement in combating corruption. Thus, Ethiopia remains a highly corrupt nation. The trivial changes in rank and score are due primarily to the reduced number of countries included in the CPI from 2013 to 2015, although 2016 is noticeable for a one point increment in index score and some progress in rank despite an increase in the number of countries. Further, a public opinion survey conducted for Transparency International's Global Corruption Barometer indicated that 44 *per cent* of respondents in Ethiopia reported having paid a bribe for one of a basket of eight public services.<sup>20</sup> This information suggests that a significant number of Ethiopians accept paying a bribe for a public service as normal, and that the community lacks confidence in the legal and institutional arrangements for fighting corruption. In this regard, Global Integrity, an NGO advocating transparency and accountability in government, has noted that sub-Saharan African countries rank high in adopting strong anti-corruption statutes but fail badly in implementing them.<sup>21</sup> Indeed, sub-Saharan Africa, including Ethiopia, is regarded widely as the most corrupt region in the world.<sup>22</sup> The disappearance of 10 000 tons of coffee ready for export from a government warehouse and failure to conduct a serious investigation into the disappearance show the prevalence of corruption.<sup>23</sup> The former Prime Minister, Melese Zenawi, gave a speech suggesting that people forget what happened, merely warning that he would cut off the

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18 'Transparency International data', available at [http://www.transparency.org/news/press\\_release/transparency\\_international\\_data\\_shows\\_ethiopia\\_suffers\\_from\\_high\\_levels\\_of](http://www.transparency.org/news/press_release/transparency_international_data_shows_ethiopia_suffers_from_high_levels_of) (accessed 27 February 2017).

19 Corruption Perceptions Index (2013-2016).

20 Transparency International's Global Corruption Barometer (2013).

21 Kaufmann & Kraay (2008) at 8-9.

22 Persson *et al* (2013) at 453.

23 *Ethiopian Review Article* 'Who stole 10,000 tones of Ethiopian Coffee on 5 February 2011', available at [www.ethiopianreview.com/index/31426](http://www.ethiopianreview.com/index/31426) (accessed 25 June 2017).

hands of those who steal coffee in future.<sup>24</sup> *Addis Fortune News* article reported that 145 federal offices, 294 weredas and city administrations and 27 branch offices of federal agencies badly mismanaged funds but no action was taken against them.<sup>25</sup>

Mere enactment of anti-corruption legislation cannot address properly the problem of corruption unless there is an effective anti-corruption institutional framework that can give life to the letter of the law.<sup>26</sup> Hence, an independent anti-corruption agency is a key tool in fighting corruption.<sup>27</sup> Mezmur & Koen, in a seminal critical assessment of the FEACC, rightly argue that the Commission must be judged in terms of the practical impact of its work in fighting corruption.<sup>28</sup>

The most recent development in the anti-corruption institutional framework in Ethiopia is the establishment of a multi-agency model in lieu of the previous FEACC. The new institution, established by the Federal Attorney General Establishment Proclamation, incorporates the Federal Attorney General (FAG), the Federal Police Commission (FPC) and the FEACC, each with specific anti-corruption responsibilities. The following factors led to the establishment of the FAG, as indicated in the Preamble to its Establishment Proclamation:

- (a) to have one strong public prosecution institution which can comprehensively protect public and government interest;(b) to re-organise institution which enforces rule of law and ensures government work are conducted in accordance with the law; and (c) to organise public prosecution institution governed by professional, institutional and public accountability that work with transparency, participation and serves with full institutional and professional independence and wins public trust.<sup>29</sup>

The FAG Establishment Proclamation gives power to investigate and prosecute all crimes, including corruption, to the FAG and it gives power to investigate corruption crimes to the FPC.<sup>30</sup> The FEACC has been stripped of its previous power to investigate and prosecute

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24 'Speech by Melese Zenawi', available at [www.youtube.com/watch?v=EgEiL7mjiY0](http://www.youtube.com/watch?v=EgEiL7mjiY0) (accessed 25 June 2017).

25 *Addis Fortune news* 'No Accountability as Gov't Agencies Mismanage Funds', available at <http://addisfortune.net/columns/no-accountability-as-govt-agencies-mismanage-funds/> (accessed 12 March 2017).

26 Shodhganga (2003)at 108.

27 Heilbrunn (2006)at 135. See also Olsen (2010)at 13-14.

28 Mezmur & Koen (2011)at 219.

29 Paragraphs 1, 2 & 3 of the Preamble to the FAG-Establishment Proclamation 943 of 2016.

30 Articles 8(b) & 22(3) of the FAG Establishment Proclamation 943 of 2016.

corruption crimes. It is left with the mandate of awareness creation and prevention activities.<sup>31</sup>

The FAG Establishment Proclamation is silent about the possibility of establishing Attorneys General at regional and city administration levels except for providing for the establishment of an Attorney General's Joint Council in which senior management of the FAG and regional public prosecution institutions work in collaboration.<sup>32</sup> Whereas the FEACC's power to investigate and prosecute corruption crimes are transferred to the FAG and FPC, the position at regional and city administration level has not changed.

## 1.2 Objectives of the Study

The general objective of this research paper is to appraise the new anti-corruption institutional framework in Ethiopia and its probable impact on the fight against corruption in the country, with emphasis on the FAG.

The study has the following specific objectives:

- to examine critically how the FAG is positioned as regards its institutional and functional independence;
- to understand by whom and how the Attorney General and the Deputy Attorney General are appointed;
- to understand how and by whom they are removed from office;
- to identify to whom they are accountable for their daily activities and overall performance;
- to consider critically what room is available to ensure their public accountability;
- to examine critically the structural arrangement among the FAG, the FEACC and FPC under the new anti-corruption institutional framework; and
- to consider the feasibility of an anti-corruption institutional framework for the regional states.

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31 Articles 8(b) & 22(3) of the FAG Establishment Proclamation 943 of 2016. Those sub-articles which state that the previous power of investigation and prosecution of the FEACC is given to FAG and the previous power of the FEACC to prosecute corruption crimes is transferred to FPC indicate that the FEACC is left only with those prevention and awareness creation activities which are not expressly transferred or taken away.

32 Article 20 of the FAG Establishment Proclamation 943 of 2016.

### **1.3 Significance of the Study**

There is a sparse body of literature on the Ethiopian anti-corruption institutional framework and that which exists is limited to the previous FEACC. The recent multi-agency institutional model is a new project which has not been subjected to critical analysis yet. This study, by examining the strong and weak sides of the new model, can contribute to an enhanced understanding of the Ethiopian anti-corruption institutional framework.

Depending on its findings, the study can contribute also to identifying any legal and policy modifications which may be needed for the effective discharging of their mandates by the new anti-corruption institutions.

### **1.4 Research Questions**

The study seeks to answer the following questions:

- What factors have triggered the reform of the anti-corruption institutional framework in Ethiopia?
- Are the new Ethiopian anti-corruption institutions equipped with the required anti-corruption tools to fight corruption effectively?
- What are the challenges that these new institutions are likely to encounter?

### **1.5 Chapter Outlines**

This paper is divided into five chapters. The remaining four chapters are sketched below.

The second chapter discusses and analyses the concept of an anti-corruption institutional framework in general. It explores the evolution, the legal background, reasons for establishment and models of anti-corruption agencies. Finally, it explains the indispensable elements of effective anti-corruption agencies.

The third chapter provides an overview of the status of corruption in Ethiopia. Then, it discusses the Ethiopian anti-corruption legal and institutional framework. It also explains the factors underlying the current reform of the anti-corruption institutional framework in Ethiopia. Finally, it assesses the adequacy of the anti-corruption tools available to the Ethiopian anti-corruption institutions to fight corruption effectively, with a particular focus on the FAG.

The fourth chapter contains concluding remarks to the study and recommendations drawn from the study.





## CHAPTER TWO

### SPECIALISED ANTI-CORRUPTION INSTITUTIONS

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#### 2.1 Introduction

The fight against corruption gained international importance in the late 1990s.<sup>1</sup> The multi-lateral anti-corruption agreements have called for putting in place both legal and institutional frameworks in order to fight corruption. This call is based on the understanding that corruption is a concern for all. For example, UNCAC obligates each state party to ensure the existence of a body or bodies to prevent corruption and to support such body or bodies.<sup>2</sup> In response, various anti-corruption bodies, agencies and commissions have mushroomed in the last few decades. Independent, strong and permanent anti-corruption institutions are believed to be at the very heart of any sustained fight against corruption.<sup>3</sup>

This chapter is divided into four parts. Part one discusses the evolution of specialized anti-corruption institutions in general. Part two examines UNCAC and the AU Convention as anti-corruption legal instruments advocating the existence of specialised anti-corruption institutions. Part three discusses the rationales for setting up specialised anti-corruption institutions. Part four identifies and explains some common models of the anti-corruption institutions. Finally, part five explains the elements indispensable for effective ACAs.

#### 2.2 Evolution of Specialised Anti-Corruption Institutions

In response to the complex and secret nature of corruption, it is advocated that a holistic approach be taken in the fight against corruption, via a national integrity system.<sup>4</sup>

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1 'Models of the Anti-corruption Institutions', available at <http://www.iap-association.org/NACP/Anti-Corruption-Models> (accessed 4 June 2017).

2 Article 6(1) of UNCAC.

3 Speech by PLO Lumumba 'The Role of Legislature in the fight against corruption', available at <https://www.youtube.com/watch?v=X-fBk787zbq&t=1106s> (accessed 4 June 2017).

4 Pope (2000) at vii.

The specialised anti-corruption institution is one of the many crucial elements of a national integrity system. It is a separate, autonomous organ with a primary function of providing centralised leadership and co-ordination in core areas of anti-corruption activities.<sup>5</sup>

Many forerunners of the specialised anti-corruption institution can be found in the form of parliamentary commissions, inquiry committees and anti-corruption leagues.<sup>6</sup> The first anti-corruption commission proper was set up in Singapore in 1952.<sup>7</sup> It was established because of the perceived inability of the British Colonial government to put in place mechanisms to control corruption. Malaysia and the Hong Kong followed suit, which makes Asia the “cradle” of anti-corruption agencies.<sup>8</sup>

Since the mid-1990s, ACAs have expanded from developing to developed countries, from societies in transition to consolidated democracies, due to the increasing impact of corruption on one side, and success recorded by early ACAs in Hong Kong and Singapore on the other side.<sup>9</sup> Thus, due to the perceived failure of the conventional law enforcement bodies, ACAs have proliferated as the ultimate institutional response to fight corruption.<sup>10</sup> International anti-corruption instruments call upon states parties to ensure the existence of ACAs. Although there are several international and regional anti-corruption instruments, the study intends to discuss only UNCAC and the AU Convention as regards how they provide ACAs as anti-corruption tools. They are selected due to their direct relevancy as Ethiopia has signed and ratified them.

### 2.3 United Nations Convention against Corruption

UNCAC is the only truly universal anti-corruption instrument. The Convention was adopted by UN General Assembly Resolution 58/4 in October 2003 and came into force 14 December 2005. It covers five main areas, namely, prevention, criminalisation and law enforcement,

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5 'Definition of Anti-Corruption Agency by USAID', available at [http://pdf.usaid.gov/pdf\\_docs/Pnadm208.pdf](http://pdf.usaid.gov/pdf_docs/Pnadm208.pdf) (accessed 5 June 2017).

6 De Sousa (2009) at 5-6.

7 'Fighting Corruption: The Role of Anti-Corruption Commission', available at [https://www.transparency.org/news/feature/fighting\\_corruption\\_the\\_role\\_of\\_the\\_anti\\_corruption\\_commission](https://www.transparency.org/news/feature/fighting_corruption_the_role_of_the_anti_corruption_commission) (accessed 5 June 2017).

8 De Sousa (2009) at 6.

9 De Sousa (2009) at 6.

10 De Sousa (2009) at 7.

international co-operation, asset recovery and technical assistance and information exchange.<sup>11</sup>

As a prevention measure, UNCAC requires each state party to have a specialised anti-corruption body or bodies tasked with implementing, co-ordinating and overseeing the implementation of the anti-corruption polices of a country.<sup>12</sup> It further requires a state party to grant such body or bodies the independence, resources, training and specialised staff needed to function effectively.<sup>13</sup>

Similarly, in relation to criminalisation and law enforcement, the Convention emphasises that each state party has a duty to ensure the existence of a special body or bodies or persons specialised in combating corruption via law enforcement.<sup>14</sup> It further obligates a state party to provide such body or bodies with the necessary independence, resources and training to operate effectively.<sup>15</sup> The Convention is silent about the pre-requisites that a state party needs to meet to ensure the independence of the body or bodies.<sup>16</sup> It provides, in rather general terms, that the level of independence granted should enable the body or bodies effectively discharge its or their responsibilities. For example, there should be no any undue influence.<sup>17</sup>

According to the *travaux preparatoires*, a state party may establish the same body to meet the requirements of both prevention and law enforcement.<sup>18</sup> While UNCAC requires a state party to have a special body or bodies for fighting corruption,<sup>19</sup> it refrains from imposing a particular form as there is no “one-size-fits-for-all” model to fighting

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11 Chapters 2-5 of UNCAC.

12 Article 6(1) (a) of UNCAC.

13 Wouters, Ryngaert & Cloots (2013)at 17.

14 Article 36 of UNCAC.

15 Olaniyan (2014)at 815.

16 Wouters, Ryngaert & Cloots (2013)at 17.

17 Article 36 of UNCAC.

18 ‘*Travaux Preparatoires* of the negotiations for the elaboration of UNCAC’, available at <https://www.Uno dc.org/unodc/en/treaties/CAC/travaux-preparatoires.html> ( accessed 7 June 2017). *Travaux Preparatoires* are the official record of a negotiation, often used to clarify the intentions of a treaty or other instrument. UNCAC’s *Travaux* allows the establishment of a single anti-corruption agency responsible for both preventing corruption as well as enforcing anti-corruption laws.

19 Gallo ‘UNCAC: Its Relevance and Challenges in its Implementation’, available at [http://www.unafei.or.jp/english/pdf/RS\\_No79/No79\\_17VE\\_Gallo.pdf](http://www.unafei.or.jp/english/pdf/RS_No79/No79_17VE_Gallo.pdf) (accessed 7 June 2017).

corruption.<sup>20</sup> UNCAC leaves as discretion of a state party to adopt a model of the anti-corruption institution appropriate to its context.

#### **2.4 African Union Convention on Preventing and Combating Corruption**

The AU Convention was adopted on 11 July 2003 and entered in into force on 5 August 2006. The Convention focuses on three main approaches to fighting corruption, namely, prevention, criminalisation and co-operation.<sup>21</sup> The Convention calls upon the states parties to establish, maintain and strengthen independent national anti-corruption authorities or agencies as an anti-corruption tool.<sup>22</sup> The Convention also requires the states parties to grant the necessary independence to the national authorities or agencies to carry out their duties effectively.<sup>23</sup> It encourages the states parties to assure that the authorities or agencies are specialised in combating corruption through training and other motivations.<sup>24</sup>

Corruption cases pose particular challenges to investigators and prosecutors due to their secret nature.<sup>25</sup> Under the criminalisation and law enforcement pillar, the AU Convention encourages the states parties to develop investigation procedures for corruption offences. Those procedures are aimed at keeping up with technology and increase the efficiency of those personnel or agency tasked with investigating corruption offences.<sup>26</sup> Investigation procedures may include special investigative techniques such as the use of undercover operations and electronic surveillance.<sup>27</sup>

Unlike UNCAC, the AU Convention does not provide details of the functions to be performed by the special agencies or authorities. However, the Convention has general objectives to prevent, detect, punish and eradicate corruption in public and private sectors, *inter alia*.<sup>28</sup> Hence, it is possible to make inference from

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20 UNDP (2005)at 4.

21 Arnone & Borlini (2014)at 250.

22 Article 5(3) of the AU Convention.

23 Article 5(4) of the AU Convention.

24 Article 20(5) of the AU Convention.

25 Hatchard (2014)at 148.

26 Article 7(3) of the AU Convention.

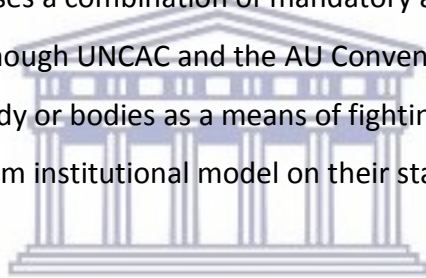
27 Hatchard (2014)at 148.

28 Article 2(1) of the AU Convention.

Convention's general purpose that ACA's responsibilities are to prevent, detect and eradicate corruption. However, like UNCAC's position, it is not a must for the AU Convention states parties to establish a separate ACA. It is sufficient to ensure the independence and capacity of the existing institutions to handle corruption offences.

## 2.5 Summation

Both UNCAC and the AU Convention, to which Ethiopia is a state party, unequivocally recognise a specialized anti-corruption agency as an anti-corruption tool. However, these instruments differ in scope, content, purpose and nature of the obligations that they impose on their respective states parties. UNCAC impose a clear mandatory duty on the states parties.<sup>29</sup> Moreover, it expressly provides for the possible leadership role that ACAs can play in the oversight and co-ordination of any anti-corruption activities that may take place in a country. AU Convention imposes a combination of mandatory and hortatory obligations to establish and equip ACAs. Although UNCAC and the AU Convention accept the need to have specialised anti-corruption body or bodies as a means of fighting corruption, they both refrain from imposing a uniform institutional model on their states parties as a context varies.



## 2.6 Rationales for Establishing Specialised Anti-Corruption Agencies

The key rationale for establishing an ACA is that it will increase the effectiveness of anti-corruption efforts within a country.<sup>30</sup> In democratic societies, anti-corruption functions were available, although they may have been scattered across many institutions.<sup>31</sup> However, there was no single body to oversee and co-ordinate the proper implementation of anti-corruption policies and practices. The Organisation for Economic Co-operation and Development (OECD) provides for the establishment of a specialised anti-corruption institution in the belief that it:

- (a) will not itself be tainted by corruption or political intrusion;
- (b) will resolve co-ordination problems among multiple agencies through vertical integration; and

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29 Article 6 of UNCAC.

30 De Sousa (2009) at 8.

31 'Models of Anti-Corruption Institutions', available at <http://www.iap-association.org/NACP/Anti-Corruption-Models> (accessed 9 June 2017).

- (c) centralise all necessary information and intelligence about corruption and can assert leadership in the anti-corruption effort.<sup>32</sup>

UNCAC<sup>33</sup> and the Inter American Convention against Corruption<sup>34</sup> affirm the reasons provided by the OECD that an anti-corruption body be established to oversee and co-ordinate the implementation of the anti-corruption policies and practices.

According to De Sousa, anti-corruption agencies are established to:

combat corruption in an independent and knowledge-based manner, overcome the inadequacy of the traditional law enforcement institutions, lead the implementation of national anti-corruption strategies, fulfill obligations driving international conventions or respond to the pressure from external donors or international community without having political will and commitment.<sup>35</sup>

Further, while it is unlikely that ACAs are established with “witch hunts” as a stated purpose, once created they often are manipulated by the ruling party to attack or eliminate members of opposition parties or to punish members of their own party who are perceived as having stepped out of line.<sup>36</sup>

From the above mentioned reasons, it may be concluded that the specialised anti-corruption agency, with independence and adequate resources, enjoys preference as an institutional response for fighting corruption over the traditional law enforcement institutions. It is believed that the ACA is neutral and will take an overall co-ordination and supervision role to ensure that all anti-corruption activities and polices are implemented properly and coherently.

## 2.7 Models of Specialised Anti-Corruption Agencies

Neither the international nor the regional legal instruments calling for the establishment of specialised ACAs prescribe a particular ACA model. Also, there are various models of ACAs available, but there is no generally accepted model for states parties to follow.

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32 OECD (2007)at 35.

33 Article 6(1) of UNCAC.

34 Article 3(9) of the OAS Convention.

35 Barcham & Lambrides ‘Feasibility Study for the Creation of a Solomon Island Anti-Corruption Agency’, available at <https://dfat.gov.au/about-us/corporate/freedom-of-information/Documents/draft-feasibility-study-sol-island-anti-corruption-agency.pdf> (accessed 9 June 2017).

36 USAID: Anti-Corruption Agencies (2006)at 7.

### **2.7.1 Heilbrunn's Classification**

Heilbrunn has categorised ACAs into four models, based on the scope of their mandate and by the branch of government to which they are responsible.<sup>37</sup> They are the universal, the Investigative, the parliamentary and the multi-agency models.

#### **2.7.1.1 Universal Agency Model**

This model is also called a single-agency model, where one agency is given investigative, preventive, public outreach and education functions. In most cases, prosecution power remains separate from the agency to preserve checks and balances within the system, given that the agency enjoys broad powers already.<sup>38</sup> Hong Kong's Independent Commission against Corruption (ICAC) is usually referred to as the best example of the universal model.<sup>39</sup> The ICAC controls corruption through three functional departments, namely, an investigation/operation department, a prevention department, and a community relation department.<sup>40</sup>

#### **2.7.1.2 Investigative Agency Model**

This model is characterised as a small sized and centralised investigative commission with the power of arrest. It is exemplified by the Singapore's Corrupt Practices Investigation Bureau (CPIB). The CPIB has only three functions, which are to: "investigate complaints alleging corruption; investigate malpractice and misconduct by public officers; and prevent corruption by analysing government practices and procedures, and recommending modifications".<sup>41</sup>

#### **2.7.1.3 Parliamentary Agency Model**

This model includes commissions that report directly to the relevant parliamentary committee and that are directly accountable to the parliament.<sup>42</sup> Parliament exercises control over the agency by receiving its annual report, supervising it via a parliamentary

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37 Heilbrunn (2006)at 136.

38 De Sousa (2008)at 4.

39 Heilbrunn (2006)at 150.

40 Heilbrunn (2004)at 8.

41 Quah (2007)at 76. See also Coonjohn 'A Primer on Models and Strategies for Anti-Corruption Agencies: Preparing Afghanistan for Anti-Corruption Reform', available at [http://www.jicoonjohn.com/pdf/Primer\\_on\\_ACA\\_Models\\_and\\_Strategies.pdf](http://www.jicoonjohn.com/pdf/Primer_on_ACA_Models_and_Strategies.pdf) (accessed 10 June 2017). (Hereafter referred as Coonjohn(X)).

42 Heilbrunn (2006)at 153.

committee, and determining its budget allocation.<sup>43</sup> This model is reflected best by the New South Wales Independent Commission against Corruption (ICAC-NSW) and also by Iraq's Commission on Public Integrity (ICPI).

#### **2.7.1.4 Multi-Agency Model**

This model includes a number of offices that are autonomous but which together weave a web of institutions to fight corruption.<sup>44</sup> It is represented best by the United States, where anti-corruption bodies are spread widely across the government. In the United States, the Office of Government Ethics focuses on prevention and education and the Department of Justice conducts investigations and prosecutions. At the same time, many other entities conduct investigations or inspections such as various Inspectors General, the Government Accountability Office, and the Standards of Conduct Office. Although these bodies report to various branches of the government, working independently or together they form a net in which corrupt activities are detected.<sup>45</sup>

#### **2.7.2 OECD's Classification**

The OECD classifies the existing specialised ACAs into three categories, depending on their main functions or powers.<sup>46</sup> They are the multi-purpose agencies with law enforcement powers, the law enforcement type-institutions, and preventive, policy development and co-ordination institutions.

The multi-purpose agencies with law enforcement powers model refer to the institutions being empowered to investigate and arrest individuals engaged in corruption.<sup>47</sup> Those institutions have also the power to develop polices, monitor and evaluate programmes, and to initiate prevention programmes. Such agencies exist in Hong Kong, Singapore and Botswana.

Law enforcement type-institutions take different forms of specialisation, concentrating on investigations or prosecutions or a combination of the two. Sometimes they may possess also functions pertaining to prevention, co-ordination or research. This

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43 Heilbrunn (2004)at 12.

44 Quah (2007)at 75.

45 Coonjohn ( X)at 3.

46 OECD (2008)at 23.

47 OECD (2008)at 23.



model is the one most commonly followed in the OECD countries.<sup>48</sup> What makes this model different from the first one is its enhanced level of independence and the fact that normally it is located within the existing police or prosecutorial hierarchy.<sup>49</sup>

The preventive, policy development and co-ordination institutions model encompasses those institutions that focus on one or more corruption prevention functions. Compared to the first two, this is the broadest model.<sup>50</sup> It can take three different forms, namely, anti-corruption co-ordinating councils, dedicated corruption prevention bodies and internal integrity or ethics units in ministries or public bodies. Anti-corruption co-ordinating councils are bodies created for a temporary period to lead the anti-corruption reform efforts, particularly the development, implementation and monitoring of a national anti-corruption strategy. The dedicated corruption prevention bodies are permanent institutions created with a broader mandate to prevent corruption. This model has been adopted in France, Macedonia, Serbia and Slovenia.

### 2.7.3 Meagher's Classification

Meagher classify anti-corruption agencies broadly in terms of a single-agency model and a multiple-agency model.<sup>51</sup> A single-agency model is a centralised powerful agency that specifically focuses on anti-corruption responsibilities, and requires interaction with other public bodies.<sup>52</sup> Examples are the Singapore Corrupt Practices Investigation Bureau (CPIB) and the Hong Kong Independent Commission against Corruption (ICAC). By contrast, the multiple-agency model spreads anti-corruption mandates and responsibilities across different agencies, bodies or departments. Under this approach, for instance, the anti-corruption institution shares its responsibilities with Office of Ombudsman, Auditor General or Human Right Commission. This model currently is followed by the US, France and Brazil.<sup>53</sup>

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48 OECD (2008)at 23.

48 Coonjohn ( X)at 4.

49 OECD (2008)at 24.

50 'Models of Anti-Corruption Institutions', available at <http://www.iap-association.org/NACP/Anti-Corruption-Models>(accessed 9 June 2017).

51 Meagher (2004)at 4.

52 Meagher (2004)at 4.

53 Tamyalew (2010)at 2.

## 2.8 Factors Determining the Effectiveness of Anti-Corruption Agencies

The specialised ACA needs to be established because, firstly, the conventional institutions themselves are involved in corrupt practices and lack public trust and confidence and, secondly, the expected neutrality of the specialised institution enables it to focus on and co-ordinate the even handling of all corruption cases. Thus, ACAs are expected to combat corruption in an independent, knowledge-based manner by developing a specialised repressive, preventive and educational capacity.<sup>54</sup> Even though the specialised ACAs are established with a high expectation to fight corruption, the yield is not very satisfactory, save for the very few effective ones. The failures of ACAs are attributed to various external and internal factors influencing their effectiveness, given that they are not usually the sole executors of anti-corruption measures in a country.<sup>55</sup>

There is no universally accepted set of standards that has to be fulfilled to ensure the effectiveness of ACAs. The various international and regional anti-corruption instruments have refrained from providing an exhaustive list of criteria in this regard. Rather they require an institution to be effective in the fight against corruption by taking into account the specific country context and identifying certain indispensable criteria to be met, such as independence, adequate resources and specialised staff.<sup>56</sup> Those factors which appear from the literature to be crucial to the effectiveness of ACAs are discussed in more detail below.

### 2.8.1 Independence of ACA

Independence is a key element for the effectiveness of ACAs. Its indispensability is linked directly to the nature of corruption crimes. Cases of grand corruption invariably involve senior government officials who may influence the functioning of the agency or distort the proper administration of justice.<sup>57</sup> However, independence does not mean the absence of legally recognised accountability, as these bodies are required to be supervised by an external control mechanism.<sup>58</sup> Independence implies the ability of the ACA to discharge its mission free from undue influence and without political interference. The international and regional anti-corruption instruments require states parties to provide the necessary

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54 De Sousa (2009)at 8.

55 Tamyalew (2010)at 3-5.

56 Articles 6(2) & 36 of UNCAC, Article 9(2) of UNCTOC, Article 5(3) of the AU Convention.

57 OECD (2008)at 24.

58 Tamyalew (2010)at 11.

independence to enable the agency to perform its functions effectively and freely.<sup>59</sup> Such independence may be institutional or operational.

### **2.8.2 Institutional Independence**

Institutional independence refers to the independence of the agency from unnecessary influence and interference by the other conventional organs of the government, particularly the executive. It calls for the existence of legally circumscribed safeguards that enable the ACA to investigate or prosecute any corruption cases without fear of undue influence and pressure from the executive or any other government organ.<sup>60</sup> The necessary degree of autonomy can be achieved only by statutory enactments, and in some cases constitutional reforms even may be needed.<sup>61</sup> In the absence of such safeguards, the executive or legislative organs of government, having direct or indirect involvement in appointments, promotions, dismissals and budget allocation, may paralyse the overall functioning of the ACA. According to the OECD, the institutional independence of the ACAs can be evaluated on the basis of institutional placement, appointment and removal of the heads and vice-heads of the ACA and budget and fiscal autonomy.<sup>62</sup>

### **2.8.3 Institutional Placement**

Institutional placement is about where the ACA should be positioned to be effective. The agency that exists separately from government agencies has greater independence than those established as a unit or department within the institutional structure of a selected ministry.<sup>63</sup> Transparency International has indicated that the success of the Singapore and the Hong Kong agencies was due to their institutional positioning.<sup>64</sup> But the replication of such placement does not guarantee the success. A number of countries either have tried to copy the model or follow a similar structure but have not succeeded in the war against corruption. For example, Tanzania and Zambia have ACAs which reside under the president's office but which have failed to tackle corruption within national political

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59 Articles 6(2) & 5(3) of UNCAC & the AU Convention respectively.

60 Johnston (1999) at 219.

61 UNODC (2003) at 52.

62 OECD (2008) at 18.

63 Tamyalew (2010) at 11.

64 Pope (2000) at 96.

leadership.<sup>65</sup> Thus, in a country where grand corruption takes place in and around the executive branches of the government, placing the ACA under the executive may result in compromising its functioning.<sup>66</sup> In such cases, the ACA preferably should be placed under parliament rather than under the executive.<sup>67</sup>

#### **2.8.4 Appointment and Removal of the Executives of the ACA**

Executive officers are considered to be the pillars of the entire national integrity system. Appointing a person of integrity who enjoys independence from undue influence of other organs of government as an executive of an ACA is a major challenge.<sup>68</sup> The selection process for senior ACA posts should be transparent and should facilitate the appointment of properly qualified persons of integrity.<sup>69</sup> Transparency International suggests that a selection method which guarantees consensus support for an appointee via parliament, together with an external accountability mechanism, which can be a parliamentary select committee on which all the major parties are represented, can minimise loopholes for bias or abuse.<sup>70</sup> There must be multi-partisan and public review of key appointments, reports and other affairs of the agency.<sup>71</sup> That enables ACA to question and investigate higher executive organs without a fear of reprisal if they are involved in corrupt practices. Once the executive officers of the ACA are appointed, their security of tenure should be guaranteed and they should be protected by the law against unfounded dismissals.<sup>72</sup>

#### **2.8.5 Functional Independence**

Functional independence of ACAs refers to the power and responsibility to handle any corruption cases solely based on relevant laws and material facts. The agency's power to investigate or prosecute any corruption case, irrespective of who is involved, has to be guaranteed legally. In the functional independence, the agency not only should be free from external pressure or interference but also should avoid internal biases.

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65 Pope & Vogl (2000) at 8.

66 Mezmur (2009) at 28.

67 OSCE (2004) at 168.

68 Jennett (2007) at 1.

69 OECD (2008) at 26.

70 Pope (2000) at 97.

71 UNODC (2004) at 91.

72 OECD (2008) at 26.

Functional independence also refers to exclusivity or priority of jurisdiction to investigate and prosecute corruption cases, subject only to appropriate judicial review, and to determine which cases involve sufficient elements of corruption to invoke jurisdiction.<sup>73</sup> Moreover, the agency should be availed with appropriate immunity against accountability for damages caused as a result of performing its duties in accordance with the law.<sup>74</sup>

### **2.8.6 Budgetary and Fiscal Independence**

Adequate and predictable funding is of crucial importance to ensure the independence of the ACA. However, in the reality, it is very difficult to secure complete financial independence, given the fact that the budget of the ACA commonly is allocated by the executive and approved by parliament.<sup>75</sup> Lack of reliable and sufficient funding directly affects the effectiveness of ACAs. For example, in Argentina the economic crisis caused shortfalls in funding to the ACA, which resulted in underpayments to the staff and in diminished morale.<sup>76</sup> In Tanzania and Uganda also, lack of funding impeded the ACAs from performing day-to-day operations.<sup>77</sup>

A legal framework that allows ACA to submit a direct budgetary proposal to the parliament can be used as a mechanism to limit unfettered discretion of the executive over the ACA's funding.<sup>78</sup>

### **2.8.7 Accountability and Transparency of the ACAs**

Requiring independence for ACAs is not aimed at excluding accountability. Rather, it is meant to avoid unnecessary and unjustified interference by the other government organs. The explanatory report of the Council of Europe Convention against Corruption states correctly that:

the independence of the 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

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73 UNODC (2004)at 91.

74 UNODC (2004)at 91.

75 Tamyalew (2010)at 6.

76 Meagher (2004)at 8.

77 Meagher (2004)at 9.

78 OECD (2007)at 19.

required for these specialised services is the one that is necessary to perform their functions properly.<sup>79</sup>

Once the independence that enables the agency to discharge its responsibilities is provided, there must be a mechanism of accountability to make sure that said duties are discharged properly. Thus, ACAs have to be integrated into the system of checks and balances that is essential for democratic governance.<sup>80</sup> To garner public support and co-operation, the ACA has to build its goodwill and trustworthiness. Different forms of accountability, such as citizen oversight, submission of performance reports to higher executive and legislative bodies, external oversight committees, and public access to information on the ACA's activities, increases public trust and confidence.<sup>81</sup> Such accountability mechanisms prevent the agency personnel from abusing their power by injecting transparency into the agency's operations.<sup>82</sup> Recognising the importance of answerability by ACAs, several countries have adopted reporting lines and structures. For example, Hong Kong's ICAC has advisory committees on prevention, community relations and operation review,<sup>83</sup> with each one consisting of the prominent community members.<sup>84</sup> Its reporting hierarchy includes the special administrator, the ICAC Director, and three oversight committees. The Singapore CPIB's reporting system is also hierarchal, with the president at the top, followed by the Anti-Corruption Committee which receives reports from the Director, Deputy Director and CPIB Special Investigators.<sup>85</sup> On the one hand, it is argued that the current structure of the CIPB gives it great influence and shows high government commitment; on the other hand, it is said that having to report to the president reduces the agency's independence.<sup>86</sup> There are also countries that have shifted the reporting lines from either the prime minister or president to parliament, with the intention of subjecting the ACA's work to scrutiny by

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79 Paragraph 99 of the CoE Criminal Law Convention on Corruption: Explanatory Report.

80 OECD (2007)at 27.

81 Meagher (2005)at 94 &101.

82 Nwokorie &Viinamaki (2017)at 7.

83 Heilbrunn (2006)at 151.

84 Heilbrunn (2004)at 4.

85 Heilbrunn (2006)at 152.

86 Nwokorie &Viinamaki (2017)at 5.

different political parties.<sup>87</sup> For example, Zambia requires its ACA to report to parliament instead of to the head of the state.<sup>88</sup>

### **2.8.8 Adequate Resources, Training and Specialisation**

The international and regional anti-corruption instruments recognise the importance of adequate financial resources, and of specialised and properly trained staff for the effectiveness of ACAs. Hence, they require states parties to provide the needed material resources and staff training.<sup>89</sup> UNODC has indicated that ACAs have to be allowed to plan for their own human resource policies, determine specialised staff and incentives for effective functioning.<sup>90</sup> Setting up and sustaining a specialised ACA is expensive. But, after establishing it, to withhold the necessary resources and training is to hinder performance.<sup>91</sup> This, in turn, results in failure to obtain and maintain public trust in the ACA and, in particular, casts doubt in the public mind regarding the overall political commitment to fighting corruption.

The manner of committing corruption crimes is changing and becoming more sophisticated. Special professional in-service training on a variety of subjects should be provided to ACA staff periodically.<sup>92</sup> In addition to well-trained investigators and prosecutors, the fight against corruption requires forensic specialists, financial experts, auditors, information technology specialists and so forth.<sup>93</sup> Also, the courts should have the necessary knowledge and training to handle corruption.<sup>94</sup>

### **2.8.9 Cross-Agency Co-ordination and Co-operation**

The ACA does not exercise its duties in a vacuum. Again, the agency is not self-sufficient, as the fight against corruption involves multi-layered actions and processes. ACAs are expected to play a general co-ordination and supervision role as part of the overall national integrity system.<sup>95</sup> Co-ordination and co-operation amongst different stakeholders is crucial for the

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87 Mezmur (2009)at 21-22.

88 UNDP (2005)at 6.

89 Article 6(2) of UNCAC and Article 20 of the CoE: Criminal Law Convention on Corruption.

90 UNODC (2009)at 12.

91 'Specialised Anti-Corruption Institutions: Review of Models' (2008)at 28.

92 OECD (2008)at 28.

93 OECD (2007)at 19.

94 OECD (2007)at 20.

95 Article 6(2) of UNCAC.

agency to achieve its goals.<sup>96</sup> The importance of national authorities in fighting corruption can be inferred also from the duty of states parties to take measures to ensure that other government agencies co-operate with agencies responsible for investigating and prosecuting corruption crimes.<sup>97</sup> When ACAs investigate and prosecute public sector corruption cases, they rely on information from public authorities and public officials.<sup>98</sup> Such co-operation can be secured either by positioning the ACA at a point of maximum influence or providing other tools for encouraging—or extracting—help.<sup>99</sup> For example, Hong Kong and Singapore imposed stringent legal duties of co-operation on the government and the public.

#### **2.8.10 Co-operation with the Media and the Civil Society**

It is not possible to curb corruption effectively only by making good anti-corruption laws and establishing anti-corruption institution. Fighting corruption effectively requires a multi-dimensional and comprehensive approach in terms of which different stakeholders positively conspire together in the campaign against corruption. The international and regional anti-corruption instruments affirm this by calling for a “participatory form of prevention and fighting corruption”, besides the legislative and institutional measures.<sup>100</sup> Thus, the instruments require states parties to take appropriate measures to ensure the active involvement of civil society, NGOs and community organisations in the fight against corruption.<sup>101</sup> Moreover, they provide that states parties shall make sure that the media is given access to information and freedom of expression regarding offences relating to corruption, unless it interferes with fundamental rights.<sup>102</sup>

The media and civil society play a crucial and direct role in the accomplishment of the core mandates of the ACAs. They can report corruption incidents and prompt formal investigation by ACAs; create public awareness about the causes, effects and means of

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96 Hussmann *et al* (2009)at 17.

97 Article 38(1) of UNCAC.

98 Mezmur (2009)at 36.

99 USAID (2006)at 9.

100 Articles 13 & 12 of UNCAC & the AU Convention respectively.

101 Articles 13(1) & 12(1)-(3) of UNCAC & AU Convention respectively.

102 Articles 13(1) & 12(4) of UNCAC & AU Convention respectively.



curbing corruption and thereby change social attitudes towards corruption; and promote public accountability by disclosing improprieties by public officials.<sup>103</sup>

### **2.8.11 International Co-operation Networks**

The increasingly negative impact of globalisation and advancements in modern technology has made corruption a transnational phenomenon. For example, suspects often flee, looking safe haven after committing corruption. Also, stolen assets usually are hidden abroad. In these kinds of instances, the national ACA cannot be effective by confining itself to its national territory. Thus, countries have to co-operate in the fight against corruption. This is why the various anti-corruption legal instruments require states parties to co-operate with and assist one another in the fight against corruption.<sup>104</sup> Such co-operation could involve extraditing the suspect<sup>105</sup> or repatriating the stolen assets.<sup>106</sup>

International co-operation networks can play a prevention role also by removing the opportunities to launder the proceeds of corruption.<sup>107</sup> Again, such co-operation creates opportunities to share experiences and technical know-how that are essential for effective functioning of any anti-corruption institution.<sup>108</sup>

### **2.8.12 Government Commitment and Political Will to Fight Corruption**

Political will may be defined as the demonstrated credible intent of political actors to fight the perceived causes and effects of corruption.<sup>109</sup> Anti-corruption measures by a government can be either superficial and pretention or genuine and sincere. Kpundeh & Dininio suggest the following points as indicators of political will:

Internal or national initiation to fight corruption, high degree of analysis applied to understand the context and causes of corruption, high level of participation in the reform process, inclusion of prevention, education and sanctions in the reform

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103 OECD 'Putting an end to Corruption' (2016) at 11. See also Macdonell & Pesic (2006) at 113-115.  
104 Chapter IV of UNCAC and Article 19 of the AU Convention.  
105 Articles 44 & 15 of UNCAC & the AU Convention respectively.  
106 Chapter V of UNCAC.  
107 Article 14 of UNCAC.  
108 European Partners Working Group (2008) at 13-14.  
109 Brinkerhoff & Kulibab (1999) at 3.

strategies, dedication of adequate resources for the anti-corruption reforms and objective monitoring and evaluation of the reform efforts periodically.<sup>110</sup>

According to Mezmur, political will with regard to fighting corruption implies putting in place the necessary prerequisites, such as resources, independence and accountability mechanisms, to ensure the effective functioning of the ACAs.<sup>111</sup>

## 2.9 Conclusion

Specialised ACAs have developed overtime as anti-corruption tools. There are number of anti-corruption models that a country may adopt. However, the international anti-corruption instruments do not require a specific model to be followed by states parties. They are concerned with the effectiveness of the ACAs in the fight against corruption, rather than with the ACA model which states parties adopt. The effectiveness of the ACAs is dependent on several factors, including institutional, functional and budgetary independence, adequate resources and periodic professional training.



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110 Kpundeh & Dininio (2006)at 56-57.

111 Mezmur (2009)at 37.

## CHAPTER THREE

### ANTI-CORRUPTION LEGAL AND INSTITUTIONAL FRAMEWORK IN ETHIOPIA

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#### 3.1 Introduction

No country is immune from the impact of corruption. This does not mean that the vulnerability to and magnitude of corruption is the same in every society. The impact of corruption is stronger in countries with a low level of economic development, an unsettled political system and a short history of democracy.<sup>1</sup>

The universality, complexity and transnational nature of corruption have made it a concern for every state. Countries have come together to fight corruption via multilateral agreements having a world-wide, regional or sub-regional coverage.<sup>2</sup> Ethiopia has joined the international and regional community by signing and ratifying UNCAC and the AU Convention.<sup>3</sup> These instruments require states parties to adopt various anti-corruption measures, including legislative and institutional measures.

This chapter is divided into four parts. Part one provides a brief overview of corruption in Ethiopia. Part two highlights the anti-corruption legal framework in Ethiopia. Part three discusses the general anti-corruption institutional framework in Ethiopia. Finally, part four gives a detailed explanation and analysis of the FAG as anti-corruption under the overall multi-agency model.

#### 3.2 An Overview of Corruption in Ethiopia

Ethiopia has experienced three different regimes since the adoption of its first constitution by the Imperial Government in 1931. These are the Imperial regime (1930-1974), the Derg regime (1974-1991) and the Ethiopian People's Revolutionary Democratic Front (EPRDF) regime (since 1991). The Imperial and the Derg regimes adopted a highly centralised

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1 Warren (2004) at 328.

2 For example, UNCAC, the AU Convention, the OAS Convention, OECD and the SADC Protocol.

3 See §1.1 above.

political and administrative system.<sup>4</sup> Accountability was non-existent or minimal as the power was monopolised by Emperor during Imperial regime and by the one-man dictatorship of Mengistu under the Derg.<sup>5</sup>

During the Imperial regime, an increased monopoly with a large degree of discretionary powers and the absence of effective accountability mechanisms provided a breeding ground for corruption.<sup>6</sup> Corruption was practised from the gate-keepers to the top officials openly and glaringly.<sup>7</sup> A number of studies have revealed that various appointments were given only if the candidates provided a specified amount of money. For example, to be appointed as provincial administrator, district administrator or regional administrator, candidates were expected to provide 3000, 5000 and 10000 ETB respectively.<sup>8</sup>

During the Derg regime, the communist ideology eroded the accepted norms of ethics and morality in the civil service and in society as a whole.<sup>9</sup> The political interference by political cadres in the decision-making of the civil service left no room for professional leadership. Thus, corruption and inefficiency flourished.<sup>10</sup>

The EPRDF introduced a federal system consisting of the federal government, nine ethnic-based regional states and two city administrations of Addis Ababa and Dire-Dawa.<sup>11</sup> The regional states and city administrations have four tiers of government, namely, the regional, zonal, woreda and kebele. Under the EPRDF government, corruption has continued to be one of the serious bottlenecks undermining efforts to ensure societal transformations.<sup>12</sup> The first comprehensive corruption survey conducted in 2001 revealed that corruption is prevalent and has become a severe socio-economic problem hindering the country's development.<sup>13</sup> The survey indicated also that corruption in the public sector is the second most serious problem, after unemployment.

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4 Transparency Ethiopia (2011).

5 Ethiopian Second Corruption Survey (2012)at 25.

6 Klitgaard(2008)at 2.

7 Ayalew (2005)at 72.

8 FEACC(2008)at 13 and FEACC(2012)at 21.

9 Ayalew (2005)at 66.

10 Ayalew (2005)at 64.

11 FDRE Consitution(1995).

12 Institute of Educational Research (IER) (2001).

13 IER (2001).

A baseline survey conducted by Transparency Ethiopia revealed that corruption is the third most serious problem in Ethiopia.<sup>14</sup> Again, the second nation-wide Ethiopian Corruption Survey conducted in 2011 uncovered that corruption in the public sector is considered to be the seventh most serious national problem.<sup>15</sup> Transparency International's Corruption Perceptions Indices indicate that Ethiopia scored 33 percent from 2013 to 2015, and 34 percent in 2016.<sup>16</sup> Data compiled by Transparency International in 2013 show Ethiopia's citizens and institutions suffer from high levels of bribery.<sup>17</sup> Different studies indicate that corruption continues to be a threat to efficiency and integrity in the public service. Saying no to corruption is not embedded in the minds and practices of Ethiopians.

### 3.3 Anti-Corruption Legal Framework

Corruption in Ethiopia dates back to the formation of a modern state in the country.<sup>18</sup> Since then, corruption has been a serious problem in Ethiopia and the different regimes enacted laws specifically aimed at fighting corruption.

The Imperial regime enacted Administrative Regulations in 1942. These Regulations prohibited the traditionally accepted practice of receiving money (*Gubo*) and any other forms of corruption by public officials.<sup>19</sup> However, the Regulations were flouted widely and enforced only selectively.<sup>20</sup> In 1957, the Imperial regime also enacted the Penal Code of Ethiopia. The Penal Code criminalised breach of integrity or honesty and other corrupt practices by public servants.<sup>21</sup> However, the list of corruption offences was not comprehensive and their respective punishments were too lenient to ensure deterrence.<sup>22</sup>

In 1982, the Derg regime promulgated a Special Penal Code exclusively applicable to civil servants and military personnel.<sup>23</sup> The Special Code was meant to rectify the leniency of

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14 Transparency Ethiopia (2008).

15 Ethiopia Second Corruption Perception Survey (2011).

16 See §1.1 above.

17 See §1.1 above.

18 Solomon 'Ethiopia: Strengthening Anti-Corruption Struggle' in *The Ethiopian Herald*, available at <http://allafrica.com/stories/201601051056.html> (accessed 13 July 2017).

19 Solomon (2016).

20 Gould (1991) at 467.

21 Ethiopian Penal Code Proclamation 158 of 1957.

22 Articles 410-416 of the Penal Code of 1957.

23 Special Penal Code Proclamation 214 of 1981.

the punishments under the 1957 Penal Code.<sup>24</sup> It aimed at controlling the widespread corruption and at re-establishing ethical values in various government institutions.<sup>25</sup> The 1957 Penal Code was revised in 2005 with the aim of including other corruption-related criminal acts resulting from advances in technology and the complexities of modern life.<sup>26</sup> This revised Criminal Code contains comprehensive and detailed corruption offences.<sup>27</sup> In addition to public servants, it provides for criminal liability for councillors, arbitrators, jurors, trustees, liquidators and interpreters engaged with the public sector.<sup>28</sup> However, the Code does not cover foreign public officials and corruption in the private sector.<sup>29</sup>

Currently, there are the criminal procedure and general rules of evidence applicable to the prosecution of corruption offences. In addition, Parliament enacted an Anti-Corruption Special Procedures and Rules of Evidence Proclamation (ACSPRE Proclamation) in 2001.<sup>30</sup> This special law is aimed at:

ensuring the effective investigation and prosecution of the corruption offences, restraining, administering and confiscating property acquired through criminal offences and providing rules of evidence compatible with corruption offences.<sup>31</sup>

Although these anti-corruption rules and procedures have been criticised as being contrary to the general rules of procedure and evidence, such as the standard of proof and burden of proof, they are highly commendable in relation to the clandestine nature of corruption.<sup>32</sup> The Proclamation was amended later to make corruption offence non-bailable.<sup>33</sup>

In 2005, the 2001 ACSPRE Proclamation was revised with the view to:

regulating the definition of corruption, the procedural and evidential provisions dealing with investigation and prosecution of corruption offences in accordance with the Penal

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24 Ayalew (2005) at 66.

25 Ayalew (2005) at 67.

26 Paragraph 2 of the Preamble to the Criminal Code of 2005.

27 Articles 407-419 of the Criminal Code, Proclamation 414 of 2005.

28 Article 410 of the Criminal Code of 2005.

29 Gebeye (2012) at 111-112.

30 Anti-Corruption Special Procedures and Rules of Evidence Proclamation 236 of 2001.

31 Paragraphs 1-3 of the ACSPRE Proclamation 236 of 2001.

32 Gebeye (2012) at 107-108.

33 Article 2(2) of the ACSPRE Proclamation 236 of 2001, as amended by Proclamation 239 of 2001.

Code; and reconsider the right of bail of the accused or the suspect which is completely blocked in the previous proclamation.<sup>34</sup>

The revised law denies bail where the accused person is charged with corruption offences punishable by more than 10 years' imprisonment.<sup>35</sup> Further, the law recognises the right of asset recovery<sup>36</sup> and the civil standard of proof to determine whether the accused has benefited from criminal conduct.<sup>37</sup> Thus, the new Proclamation allows for non-conviction based asset recovery where the preponderance of evidence shows that the assets are the proceeds of a crime.

The revised 2005 law was amended further by Proclamation 881 of 2015. The amendment was aimed at: "including public organisations in the procedure and evidence laws; and ensuring speedy and effective gathering of information, investigation, prosecution of corruption offences, injunction and retrieval of property acquired therefrom".<sup>38</sup>

In 2010, the Disclosure and Registration of Assets Proclamation (DRA Proclamation) was enacted.<sup>39</sup> It is aimed at enhancing transparency and accountability in the conduct of public affairs and at preventing corruption.<sup>40</sup> The Proclamation is meant to avoid possible conflicts of public and private interests.<sup>41</sup> It is applicable to appointees, elected persons and public servants of the federal government and city administrations of Addis Ababa and Dire-Dawa.<sup>42</sup> These persons are obligated to register sources of income and assets under their private and family ownership or possession.<sup>43</sup> According to the Proclamation, family refers to spouse, dependent child under the age of 18, adopted children and spouse in an irregular union.<sup>44</sup> Such disclosure and registration are required to be made every two years.<sup>45</sup>

The effectiveness of this Proclamation has been criticised by different scholars. The accuracy of the information disclosed is questionable as the FEACC relies on what is

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34 Paragraphs 1 & 2 of the Revised ACSPRE Proclamation 434 of 2005.

35 Article 4(1) of the Revised ACSPRE Proclamation 434 of 2005.

36 Article 32 of the Revised ACSPRE Proclamation 434 of 2005.

37 Article 33 of the Revised ACSPRE Proclamation 434 of 2005.

38 Paragraphs 2 & 3 of the Revised ACSPRE Proclamation 434 of 2005, as amended by Proclamation 881 of 2015.

39 Disclosure and Registration of Assets Proclamation 668 of 2010.

40 Paragraphs 1 & 2 of the DRA Proclamation 668 of 2010.

41 Paragraph 3 of the DRA Proclamation 668 of 2010.

42 Article 3 of the DRA Proclamation 668 of 2010.

43 Article 4 of the DRA Proclamation 668 of 2010.

44 Article 2(8) of the DRA Proclamation 668 of 2010.

45 Article 7(3) of the DRA Proclamation 668 of 2010.

disclosed instead of verifying the details.<sup>46</sup> The law fails to prohibit a possible transfer of property to third parties<sup>47</sup> or to require proof that the property was acquired legally.<sup>48</sup>

In 2010, Parliament enacted a law to protect witnesses and whistle-blowers.<sup>49</sup> The 2010 Proclamation applies to those who testify or disclose grave corruption offences only. The threshold for gravity is that the offence must be punishable with rigorous imprisonment of 10 years or more or with death.<sup>50</sup> Moreover, the Proclamation sets two cumulative pre-requisites for protection, namely:

the information or testimony must be the only evidence which proves the commission of the crime, and there must be a threat of serious danger to the life, physical security, freedom, and property of the witness or whistle-blowers or their families.<sup>51</sup>

In 2015, Parliament enacted the Corruption Crimes Proclamation that criminalises corruption crimes comprehensively.<sup>52</sup> It is aimed at:

clarifying and amending some provisions of the Criminal Code of 2004 that are found to be unclear in the course of implementation; including similar corrupt acts committed in the private sector; categorising corruption acts committed in the private sector as provided in UNCAC and the AU Convention; strengthening the fight against corruption; and making the proclamation responsive to the fast-changing nature of corruption offences.<sup>53</sup>

In addition to the above laws, there are many others that are relevant to fighting corruption. Laws on Prevention and Suppression of Money Laundering and Financing of Terrorism;<sup>54</sup> Freedom of the Mass Media and Access to Information;<sup>55</sup> Ethiopian Federal Government

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46 Mesekele (2012) at 16.

47 Action Professional's Association for the People (2001) at 21.

48 Mezmur & Koen (2011) at 229.

49 Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclamation 699 of 2010.

50 Article 3(1) of the Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclamation 699 of 2010.

51 Article 3(1) (a) & (b) of the Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclamation 699 of 2010.

52 Corruption Crimes Proclamation 881 of 2015.

53 Paragraphs 1-5 of the Preamble to the Corruption Crimes Proclamation 881 of 2015.

54 Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation 780 of 2013.

55 Freedom of the Mass Media and Access to Information Proclamation 590 of 2008.



Procurement and Property Administration;<sup>56</sup> and Financial Administration of the Federal Government of Ethiopia<sup>57</sup> are some examples.

Moreover, UNCAC and the AU Convention are an integral part of the country's anti-corruption legal framework.<sup>58</sup> As Lumumba has stated rightly, "the problem of the fight against corruption in Africa has never been a shortage of legislation, rather Africa has forests of legislation".<sup>59</sup>

### 3.4 Summation

Corruption is deep-rooted in and accepted as a normal aspect of life by the majority of Ethiopian society. In response, various anti-corruption laws and policies have been adopted by the different regimes. Parliament has been amending, revising and enacting new laws to fill the legal *lacunae*. UNCAC and the AU Convention are also part and parcel of the domestic anti-corruption legal framework. However, law is simply a means to an end, not an end *per se*. Anti-corruption laws should be implemented in order to bring about positive changes in the fight against corruption.

### 3.5 Anti-Corruption Institutional Framework

#### 3.5.1 Before the EPRDF Government

The use of anti-corruption institutions is not a recent phenomenon in Ethiopia. It goes back to the reign of the Atse Thewodros. He established an organ called the Office of the Tear Watcher or Office of Complaints to regulate the abuse of public power.<sup>60</sup> However, the organ disappeared with Aste Thewodros.<sup>61</sup>

In 1981, the Derg established the Working People's Control Committee (WPCC) to serve as a watch dog over the performance of civil servants with the aim of fighting

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56 Freedom of the Mass Media and Access to Information Proclamation 649 of 2009.

57 Financial Administration of the Federal Government of Ethiopia Proclamation 648 of 2009.

58 Article 9(4) of the FDRE Constitution.

59 'Speech by PLO Lumumba at the Nigerian Legislature Conference on Anti-corruption: The Role of Legislature in the fight against corruption', available at <https://www.youtube.com/watch?v=X-fBk787zbq&t=1106s> (accessed 15 July 2017).

60 Belachew (2001) at 12.

61 Belachew (2001) at 12.

corruption.<sup>62</sup> Although the WPCC was given extensive powers to investigate, prosecute and punish alleged offenders,<sup>63</sup> it failed to address the problem of corruption due to:

politicisation and abuse power, lack of coherent and clear policy framework, the unpopularity of the regime, lack of holistic and inter-related approach and quality and commitment of the agency itself.<sup>64</sup>

### 3.5.2 Under the EPRDF Government

Under the EPRDF government, the foundation for the fight against corruption was laid in the 1995 FDRE Constitution. The Constitution stipulates that the conduct of government affairs shall be transparent and public officials are accountable for misconduct.<sup>65</sup> In March 1996, the government started the Civil Service Reform Programme (CSRP) with the objective of providing fair, transparent, efficient, effective and ethical civil service to the public.<sup>66</sup> The CSRP consisted of five components, of which the ethics component addressed corruption. In 2001, the Government commissioned a Corruption Survey to understand the full picture of the severity of corruption in Ethiopia. In the same year, the Institute of Educational Research in Ethiopia conducted research revealing that corruption in the public sector undermined growth and development in the country.<sup>67</sup>

In May 2001, the Federal Ethics and Anti-Corruption Commission (FEACC) was established as a central body to fight corruption at the federal level, with the objectives of raising public awareness about the causes, effects and means of combating corruption; preventing corruption and other improprieties; and investigating and prosecuting corruption offences and other improprieties.<sup>68</sup> The FEACC mandate resembles a single-agency anti-corruption model. Under this model, the anti-corruption institution has the responsibility to lead the country's anti-corruption activities, in such areas as community awareness, prevention, investigation and prosecution. However, the general trend in those countries that have adopted a single-agency model is to keep prosecution outside the anti-

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62 Working People's Control Committee Establishment Proclamation 213 of 1981. See also 'the Ethiopian Civil Service', available at [http://www.photius.com/countries/ethiopia/government/ethiopia\\_government\\_civil\\_service.html](http://www.photius.com/countries/ethiopia/government/ethiopia_government_civil_service.html) (accessed 17 July 2017).

63 Larbi (2000) at 4.

64 Larbi(1999) at 9.

65 Articles 12(1) & (2) of the FDRE Constitution.

66 Civil Service Reform Programme (1998).

67 Getahun (2006) at 5.

68 Paragraph 3 of the Preamble to the FEACC Establishment Proclamation 235 of 2001.

corruption agency's mandate, in order to avoid concentrating too much power in one organ and to ensure systemic checks and balances.<sup>69</sup> The mandate of the FEACC included the power to prosecute. The adoption of a single-agency model at that time was welcomed enthusiastically because traditional law enforcement organs were corrupt,<sup>70</sup> the public prosecution service and police were considered to be biased politically,<sup>71</sup> and inter-agency co-operation was underdeveloped.<sup>72</sup>

In 2005, the FEACC Establishment Proclamation was revised to make the FEACC focus on grand corruption and to extend its power over corruption in the private sector, *inter alia*.<sup>73</sup> The Proclamation was amended further in 2015 to vest the FEACC with the power to investigate and institute charges in respect of acts of corruption committed by public organisations.<sup>74</sup>

Different studies have revealed that the FEACC's efforts to combat corruption have improved over time. Legislative limitations such as a focus on the public sector, the absence of laws protecting witnesses and whistle-blowers, and the absence of laws requiring government organs to co-operate have been removed through the revisions and amendments.<sup>75</sup> As regards raising public awareness, for the period 2008-2015, the FEACC has provided training of a general kind to 204 488 individuals and training for trainers to 10 547 individuals.<sup>76</sup> In addition to such face-to-face training, it has disseminated 178 radio and television short messages, 14 dramas, and 20 television talk shows and radio teleconferences carrying anti-corruption messages.<sup>77</sup> The FEACC has prepared and distributed across Ethiopian society a total of 2 207500 booklets, brochures, flyers, posters, modules, stickers and newsletters carrying basic anti-corruption principles and strategies.<sup>78</sup> In the area of prevention, the FEACC has made good progress. In 2015, for example, the FEACC reviewed 83 working procedures and practices in the different public offices and

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69 See §2.10.1.1 above.

70 Global Integrity Report Ethiopia (2008).

71 Vibhute (2009) at 3.

72 Mezmur (2009) at 35.

73 Paragraph 5 of the Revised FEACC Establishment Proclamation 433 of 2005.

74 Paragraph 2 of the Revised FEACC Establishment Proclamation 433 of 2005, as amended by Proclamation 883 of 2015.

75 See §3.3 above.

76 FEACC (2015c) and FEACC (2012).

77 FEACC (2015c) and FEACC (2012).

78 FEACC (2015c) and FEACC (2012).

enterprises and proposed corrective measures.<sup>79</sup> In the same year, it managed to register the assets of more than 95000 elected persons, appointees and civil servants.<sup>80</sup>

However, the FEACC has not been effective in the investigation and prosecution of corruption offences. In relation to both its mandate and its time of establishment, it has not made noteworthy progress against actual corruption offenders. Trainees have challenged the FEACC awareness training as being characterised by too much talking and too little action, particularly in punishing the perpetrators of corruption.<sup>81</sup> Even though the revised FEACC Establishment Proclamation mandates the FEACC to focus on grand corruption offences,<sup>82</sup> out of nearly 1780 cases investigated and prosecuted in five years, the majority concerned petty corruption offences.<sup>83</sup> The FEACC has prosecuted only a few grand corruption cases involving senior officials, while corruption and rent-seeking remain a serious problem in the country. Many of the cases investigated and prosecuted by the FEACC have been criticised as being politically motivated.<sup>84</sup>

Negash rightly points-out the following reasons for the ineffectiveness of the FEACC in the investigation and prosecution of corruption: absence of an intelligence and surveillance unit within the Commission; poor support from government officials and unwillingness to co-operate and provide relevant information in detection, investigation and prosecution; scarcity of competent, diligent, experienced and skillful investigators and prosecutors; lack of independence of the Commission in practice; and presence of corruption within the Commission itself.<sup>85</sup>

### 3.6 Current Multi-Agency Model

Previously, the FEACC was the only agency mandated to fight corruption. In May 2016, Ethiopia shifted from a single-agency model to a multi-agency model. The Federal Attorney General Establishment Proclamation removed the powers of investigation and prosecution from the FEACC and transferred them to the Federal Attorney General (FAG) and the

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79 *Ethics Magazine* (2015) at 3.

80 *Ethics Magazine* (2015) at 3.

81 Negash (2016) at 73.

82 Paragraph 5 of the Revised FEACC Establishment Proclamation 345 of 2005.

83 Negash (2016) at 110.

84 'The T-TPLF's Corruption Prosecution Con Game', available at <http://ecadforum.com/2017/08/06/the-t-tplfs-corruption-prosecution-con-game/> (accessed 16 September 2017).

85 Negash (2016) at 90-97. See also Mezmur (2009) at 50.

Federal Police Commission (FPC). Accordingly, the FAG was given the power to investigate and prosecute corruption crimes while the FPC was given the power to investigate such crimes.<sup>86</sup> The investigation and prosecution powers of the FAG and FPC cover all criminal offences, including corruption.

### 3.7 Establishing the Federal Attorney General

The establishment of the FAG is not completely new in Ethiopia and some scholars refer to the “reinstating” or “re-establishing” of the FAG.<sup>87</sup> The Office of Attorney General is the oldest legal institution in Ethiopia.<sup>88</sup> Originally, the Office was formed as the Department of Public Prosecution in 1942. It was recast later as the Office of the Advocate General.<sup>89</sup> The latter includes the Office of Attorney General.<sup>90</sup> The Office has been an autonomous body within the Ministry of Justice, responsible for supervising and controlling criminal investigations, following up the prosecution of crimes, receiving and addressing petitions on violations by public institutions, their officials or any other person, and providing redress for violations of the legal rights of victims and suspects.<sup>91</sup>

Under the EPRDF government, the form of the state changed from unitary and centralised to federal and decentralised, and the law enforcement powers were divided between the federal and regional government bodies. At the federal level, the law enforcement functions used to be fragmented and disorganised. While the majority of the prosecutions were done by the Ministry of Justice, different departments were empowered to exercise the law enforcement power in their respective sectors, for example, the FEACC,<sup>92</sup> the Ethiopian Revenues and Customs Authority (ERCA),<sup>93</sup> and Trade Competition and

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86 See §1.1 above.

87 Woldegebriel(2016) ‘Dilemma of Reinstating Office of Attorney General’, available at <https://addisfortune.net/columns/dilemma-of-reinstating-office-of-attorney-general/> (accessed 28 July 2017).

88 Woldegebriel (2016).

89 Woldegebriel (2016).

90 Article 3 of the Criminal Procedure Code of Ethiopia Proclamation 185 of 1961.

91 Woldegebriel(2016).

92 Articles 7-9 of the FEACC Establishment Proclamation 433 of 2005, as amended by Proclamation 882 of 2015.

93 The Ethiopian Revenues and Customs Authority Establishment Proclamation 587 of 2008 and Customs Proclamation 859 of 2014.

Consumers' Protection Authority (TCCPA).<sup>94</sup> There was no central body to oversee the uniform and proper implementation of laws.

In 2015, the evaluation report of the first Growth and Transformation Plan (GTP-I) revealed that good governance and effective public service were still at a shocking level.<sup>95</sup> In particular, the overall assessment study conducted on the issue of good governance indicated that in the areas of justice institutions, land administration and investment, the problem was worse.<sup>96</sup> The government decided to pursue good governance by enhancing the implementation capacity of public institutions and actively engaging the citizens, as one of the priority pillars in the second Growth and Transformation Plan (GTP-II). The government set a strategic direction of strengthening transparency and accountability and combating corruption and rent-seeking through the enhanced capacity of the civil service and citizen engagement.<sup>97</sup>

In the third national Anti-Corruption Coalition meeting held in December 2015, the Prime Minister, Hailemariam Desalegn, stressed that:

corruption, malpractice and rent-seeking have reached to the level where it needs immediate solutions. The government is ready to scale up the ongoing anti-corruption works as well as to take strong measures on corruption offenders.<sup>98</sup>

The establishment of FAG forms part of the overall government measures to ensure good governance. As appears from the preamble to the FAG Establishment Proclamation, the underlying reasons for its establishment are to:

- (a) establish one strong law enforcement public prosecution institution which can comprehensively protect public and government interest, and deliver uniform, effective and efficient service;
- (b) re-organise institution that enforces rule of law and ensures that laws are properly organised and government works are conducted in accordance with the law; and

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94 The Trade Competition and Consumers' Protection Authority Establishment Proclamation 813 of 2013.

95 GTP-II (2015) at 13.

96 'EPRDF higher officials held meeting on issues of good governance', available at <https://www.youtube.com/watch?v=c0FyLZjpwlw> (accessed 29 July 2017).

97 GTP-II (2015) at 44.

98 'The Ethiopian Government Prioritises Tackling Good Governance Problems', available at <http://www.fanabc.com/english/index.php/news/item/4711-qov%E2%8099t-prioritizes-tackling-good-governance-problems> (accessed 29 July 2017).

- (c) organise public prosecution institution governed by professional, institutional and public accountability, that works with transparency, participation and serves with full institutional and professional independence, and win public trust.<sup>99</sup>

The objectives of the FAG encompass: “respecting and enforcing the constitution and the constitutional order; ensuring rule of law; enforcing rule of law; enforcing criminal law and enforcing civil interest of the Federal government and the public”.<sup>100</sup>

The profit from corruption for the individuals engaged therein is very high. Awareness creation and other prevention mechanisms are not sufficient *per se* to deter and end corruption. The punitive measures such as criminalisation with a commensurate punishment reflected through effective law enforcement remain a crucial means for deterring and ending corruption.<sup>101</sup> It is with this understanding that UNCAC requires each state party to ensure the existence of a specialised anti-corruption body or bodies to combat corruption through law enforcement.<sup>102</sup> UNCAC calls further for improved co-operation of national and international bodies and civil society with anti-corruption bodies for the effective implementation of the anti-corruption laws and strategies.<sup>103</sup>

The FEACC has been less than effective in the fight against corruption, particularly with regard to its law enforcement mandate. Successive revisions of and amendments to the powers and responsibilities of the FEACC did not bring tangible progress. Except for some improvements in the prevention and awareness creation areas, corruption remains persistent. The establishment of a strong and centralised law enforcement organ that ensures an effective, uniform and efficient implementation of the law is desirable. Moreover, taking away law enforcement powers from the FEACC is in conformity with the majority of successful country models which did so intentionally to avoid a concentration of powers in one institution and to promote checks and balances.<sup>104</sup> Although the establishment of a strong and centralised law enforcement organ constitutes a step forward in the war against corruption, building its capacity and ensuring its effectiveness remain a crucial task.

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99 Paragraphs 1-3 of the FAG Establishment Proclamation 943 of 2016.

100 Article 5 of the FAG Establishment Proclamation.

101 OECD (2015) at 8.

102 Article 36 of UNCAC.

103 Babu (2006) at 25.

104 See §2.5.1 above.

### 3.8 Features of the Office of the Federal Attorney General

#### 3.8.1 Institutional Placement and Freedom from Interference

The institutional placement of the anti-corruption agency within the structure of government is one of the determinants of its independence. Structurally, the FAG is not subsumed under any governmental department or office. It is established as an autonomous federal government ministerial office having its own legal personality.<sup>105</sup>

Regarding its operational independence, the FAG Establishment Proclamation guarantees that the FAG is empowered to discharge its duties solely in accordance with the law, without any interference from any person.<sup>106</sup> The FAG and public prosecutors enjoy civil immunity for any damage that could result from their performing their duties in accordance with the law.<sup>107</sup> However, the FAG Establishment Proclamation contains provisions that cast doubt on the functional independence of the FAG. Article 16(2) provides that:

without prejudice to a directive issued by the FAG, public prosecutors shall perform their work based on the law.

And Article 6(3) (e) stipulates that the FAG is empowered to issue a “directive concerning the withdrawal of cases having national interest with consultation of the Prime Minister”.<sup>108</sup> As an autonomous office, the FAG is supposed to issue such a directive of its own accord,<sup>109</sup> and hence to require it to consult the Prime Minister limits the functional independence of the FAG.

#### 3.8.2 Appointment and Removal of Executives

The manner in which the higher executive officials are appointed or removed from office has a crucial impact on the independence of the anti-corruption institution. Often, the appointing organ decides the overall function of the anti-corruption institution. At the higher executive level, the FAG has two major positions, namely, the Attorney General (AG)

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105 Article 3(1) of the FAG Establishment Proclamation.

106 Article 16(1) of the FAG Establishment Proclamation.

107 Article 16(3) of the FAG Establishment Proclamation.

108 Articles 16(2) and 6(3)(e) of the FAG Establishment Proclamation.

109 Article 21(2) of the FAG Establishment Proclamation.



and the Deputy Attorney General (DAG).<sup>110</sup> The AG is appointed by the House of Peoples Representatives upon a recommendation from the Prime Minister and the DAG is appointed directly by the Prime Minister.<sup>111</sup>

The selection process should be open so as to facilitate the appointment of persons with high integrity and appropriate qualifications.<sup>112</sup> For example, appointment by Parliament or by a parliamentary select committee on which all the major parties are represented minimises opportunities for abuse or bias.<sup>113</sup> However, in the current Ethiopian context, it is hard to believe that the appointment process is completely free from political interference. The Prime Minister and the ruling party (EPRDF) have almost full control over the appointment process and the Ethiopian parliament is dominated by the ruling party of which the Prime Minister is a member. In addition, the FAG Establishment Proclamation does not provide objective qualification criteria for the executive appointments. This might defeat the ability of the anti-corruption body to maintain a check on the executive and the political party in power.<sup>114</sup>

The appointment of the DAG by the Prime Minister and his role in the appointment of the AG cast doubt on the independence of the FAG. The FEACC was blamed for being a tool used to attack political rivals because of a similar appointment process.<sup>115</sup> After the transfer of the previous Ministry of Justice to the FAG, the same person who served as the head of the Ministry of Justice has been appointed AG.<sup>116</sup>

The question of the tenure of FAG executives raises a serious concern. The law has to guarantee and protect them against illegal dismissals.<sup>117</sup> The FAG Establishment Proclamation provides that the AG and DAG may be removed “by the decision of the Prime Minister”.<sup>118</sup> The Proclamation does not prescribe any special grounds for removal of the AG and the DAG. By implication, the Proclamation allows the self-same grounds for dismissal of

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110 Articles 2(6) & 2(7) of the FAG Establishment Proclamation.

111 Article 7(1) of the FAG Establishment Proclamation.

112 See §2.11.4 above

113 Pope (2009 at 97.

114 Jennett (2007) at 3.

115 Dizardet *al* (2008) at 315.

116 *Addis Fortune*: ‘Ethiopia’s Former Justice Minister Appointed as the First Attorney General’, available at <http://allafrica.com/view/group/main/main/id/00043230.html> (accessed 31 July 2017).

117 OECD (2008) at 26.

118 Article 10 of the FAG Establishment Proclamation.

all public prosecutors to be applied to the AG and DAG.<sup>119</sup> Those include “low performance, ethical violation, medical condition, wish and retirement”.<sup>120</sup> Low performance is always relative and subjective and, hence, prone to manipulation. The FAG Establishment Proclamation does not provide for fixed tenure periods. This allows the Prime Minister to remove the AG or the DAG from office at any time.

The AG or the DAG may face a fate similar to that of Lema Argaw, who had been the Auditor-General. Lema was removed from his position by the then Prime Minister for releasing a report disclosing that 400 million US dollars were unaccounted for in the Federal Government’s funding allocation to the regional administrations.<sup>121</sup> Thus, the appointment and removal procedure of the FAG executives raises the fear that it hardly may be possible for the AG to investigate and prosecute officials whom the government wants to protect. In this regard, Lumumba observes correctly that “the history of anti-corruption crusaders is one and the same in Africa, i.e. their mortality rate in office is very short”.<sup>122</sup> That is due partly to the discretion of the appointing organ to dismiss the executive personnel of the anti-corruption institution.

In order to resolve legal uncertainty, Schutte suggests that the appointment and removal of executives of ACA have to be a shared responsibility entailing a broad consultation and/or approval by more than one branch of government, as well as consultation with civil society.<sup>123</sup> This offers more safeguards than direct appointment or removal by single power holder, typically the head of the executive. It also broadens support for the work of ACA and leads to a selection of a more effective head. Further, it avoids potential misuse of the agency by the government or a particular political group.<sup>124</sup>

### 3.8.3 Fiscal Independence and Other Essential Resources

The allocation of an adequate and predictable budget has a direct impact on the effectiveness of an anti-corruption institution. Although it is not possible to secure complete

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119 Article 2(8) of the FAG Establishment Proclamation.

120 Article 11(2) of the FAG Establishment Proclamation.

121 Smith (2007)at 15.

122 ‘Speech by PLO Lumumba at the 3rd Anti-Corruption Convention’, available at <https://www.Youtube.com/watch?v=4cbEuwgKKqE> (accessed 31 July 2017).

123 Schutte (2015)at 9.

124 Schutte (2015)at 9.

independence from the government in the budget area,<sup>125</sup> there is a need to minimise loopholes that might allow the government to paralyse the activities of the anti-corruption institutions. One way of limiting undue influence in budget allocation is to allow an anti-corruption institution to submit a direct budgetary request to Parliament and to guarantee that the budget be funded on a multi-year basis.<sup>126</sup>

The FAG has the power to prepare a strategic plan with a budget and to submit it for the approval of Parliament.<sup>127</sup> Giving the FAG ministerial status as an anti-corruption institution and arranging a scheme for it directly to submit a budget to Parliament is a step towards ensuring its budgetary independence. In this process, the executive organs have no direct control over the budget allocation. However, in Ethiopia, where Parliament is dominated by the ruling party and the separation of power is not evident in practice, it may not make a significant difference whether the budget is submitted to Parliament or to the Prime Minister. Moreover, there is no multi-year basis of funding to the FAG and it is too early to judge the adequacy of the budget allocated to the FAG in relation to its responsibilities.

The human resources issue also affects the independence and effectiveness of the anti-corruption institutions. Such institutions should plan their own human resources policies and determine the specialised staff and incentives needed for effective functioning.<sup>128</sup> The FAG has no separate human resources policy. It appoints, administers and dismisses public prosecutors according to “the regulation issued by the Council of Ministers”.<sup>129</sup> Likewise, it hires, administers and dismisses supporting staff “in accordance with the federal civil service laws”.<sup>130</sup>

### **3.8.4 Accountability and Transparency of the FAG**

The FAG Establishment Proclamation provides for two basic schemes of procedures to hold the FAG answerable, namely, accountability to the principal executive organs of the

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125 Article 14 of the FAG Establishment Proclamation.

126 UNODC (2009).

127 Article 8(2)(h) of the FAG Establishment Proclamation.

128 UNODC (2009).

129 Article 8(2)(d) of the FAG Establishment Proclamation.

130 Article 8(2)(f) of the FAG Establishment Proclamation.

government<sup>131</sup> and public accountability.<sup>132</sup> The former means that the FAG is answerable to the Prime Minister and the Council of Ministers. The AG submits periodic performance and financial report to the Prime Minister and Council of Ministers.<sup>133</sup> This form of accountability differs from the other commonly followed arrangements, namely, accountability to the Prime Minister or the President, to Parliament or to a committee comprising members drawn from the legislature, executive and judiciary.<sup>134</sup> What makes the current arrangement different is that there is the possibility of including individuals who are not part of executive organs under the rubric of “other officials to be designated by the Prime Minister”.<sup>135</sup> However, it is difficult to believe that the accountability arrangement adopted will be effective. Transparency International has suggested that “in setting the parameters for the establishment of the anti-corruption agency, a government must ask itself if it is creating something that would be acceptable if it were an opposition party”.<sup>136</sup> In Ethiopia, various studies and reports show that most corruption occurs in the executive departments of government.<sup>137</sup>

Making the higher executives of the FAG accountable to the Prime Minister and the Council of Ministers may enhance the effectiveness of the investigation and prosecution work of the AG. However, it also may open the door for shielding friends and allies while hunting political adversaries.<sup>138</sup> Practically, it may limit the possibility of the FAG investigating cases in which the Prime Minister or any member of the Council Ministers is suspected of being involved.

Making the AG directly accountable to Parliament will be less effective as the decision-making process in Parliament is time-consuming and there may not be a serious and fair level of scrutiny since Parliament is dominated by the single ruling party.

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131 Article 3(2) of the FAG Establishment Proclamation.

132 Article 13 of the FAG Establishment Proclamation.

133 See Article 6(14) of the FAG Establishment Proclamation as read with Article 10(7) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916 of 2015.

134 Sartet (2004) at 9.

135 Article 76(1) of the FDRE Constitution and Article 6(1) (a)-(d) of the Definition of Powers and Duties of the Executive Organs of the FDRE Proclamation 916 of 2015.

136 Pope (2009) at 97.

137 Africa Governance Report (2005). See also *Addis Fortune*: ‘Arrests Continue in Corruption Allegations’, available at <https://addisfortune.net/articles/arrests-continue-in-corruption-allegations/> (accessed 2 August 2017).

138 Mezmur (2009) at 40.

Accountability to a committee composed of members of the legislature, executive and judiciary remains the preferred option for the following reasons: it creates room for the performance of the FAG to be evaluated by all the three arms of government; it increases the level of acceptance and trust in the performance of the AG; and it consumes less time than if the same power were given to Parliament. This model still may face challenges if each of the three arms of government cannot stand on its own feet and the principle of separation of power is not implemented properly.

The FAG Establishment Proclamation also provides that the FAG is accountable to the public in discharging its duties.<sup>139</sup> Such public accountability is conducted through a public forum where representatives from various sections of society discuss the problems and gaps observed in the performance of the FAG.<sup>140</sup> After the discussion and comments, the FAG is required to investigate the facts and gaps in detail and take corrective action.<sup>141</sup> It is commendable to make the anti-corruption institution accountable to the wider public. However, its effectiveness is dependent on the inclusion of non-state actors such as civil society organisations, non-governmental organisations, community-based organisations and any interested individuals in the public forum constituted to hold the FAG accountable. The FAG Establishment Proclamation is less inclusive as it limits the sections of the society who can participate in appraising the performance of the FAG.<sup>142</sup> The possible participants are only business, charitable or community based organisations or individuals that are believed to be important and selected by the FAG.

### **3.8.5 Powers and Duties Concerning Corruption**

The FAG is entrusted with the overall law enforcement functions in Ethiopia.<sup>143</sup> In addition, the FAG is empowered to exercise the criminal investigation and prosecution powers and duties that used to resort under the FEACC.<sup>144</sup> Thus, the FAG is given the powers and duties to:

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139 Article 13(1) of the FAG Establishment Proclamation.  
140 Article 13(2) & (3) of the FAG Establishment Proclamation.  
141 Article 13(4) of the FAG Establishment Proclamation.  
142 Article 13(2) of the FAG Establishment Proclamation.  
143 Article 6 of the FAG Establishment Proclamation.  
144 Article 8(2) (b) of the FAG Establishment Proclamation.

- 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 alleged perpetration of corruption offences specified in the Corruption Crime Proclamation, 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 the 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 the assets of any person who may be under investigation and cause the forfeiture of assets and wealth obtained by corruption or its equivalent, through court order;
- Provide for or facilitate the physical and job security protection of witnesses and whistle-blowers;
- Withdraw corruption investigation and charges as well as corruption cases pending before the court in accordance with the law;
- Terminate corruption investigation or corruption charges by ensuring the forfeiture of the advantages obtained from the crime;
- Follow up and ensure the enforcement of anti-corruption laws and give advice on the implementation of the same;
- Give immunity from prosecution for any person who has been involved in a corruption offence and who, before the case is taken to the court, provides substantial evidence as to the offence and the role of his partners; and
- Order the interception of correspondence by any devices where it is necessary for the investigation of corruption offence.

The above list implies that the FAG has wide law enforcement powers in respect of crimes in general and corruption offences in particular. To discharge its mandates, the FAG is structured as follows: AG and DAG; line divisions; Management Committee; Federal Public Prosecutors Administration Council; Public Prosecutors; and necessary staff.<sup>145</sup> Ethiopia has been striving to build a legislative framework by criminalising all corruption offences

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145 Article 7 of the FAG Establishment Proclamation.

specified by UNCAC and the AU Convention.<sup>146</sup> This will help the newly established FAG effectively to discharge its tasks without worrying about the availability of legislative support.

The FAG Establishment Proclamation transfers the power to investigate corruption crimes from the FEACC to the FPC.<sup>147</sup> Although the Proclamation is silent on the actual transfer, the general part dealing with the powers and duties of the FAG expressly states that the FAG exercises both investigation and prosecution powers over corruption crimes.<sup>148</sup> The Proclamation only states that the prosecution power is transferred from the FEACC to the FAG.<sup>149</sup> A close reading of the part dealing with the powers and duties of the FAG and the part dealing with the transfer of rights and duties shows some conflict between the two provisions. While the Proclamation provides that the FAG exercises both the investigation and prosecution powers that used to belong to the FEACC, it is silent on the transfer of investigation power from the FEACC to the FAG. Rather, it states that the investigation power is transferred to the FPC, whereas the prosecution power is transferred to the FAG.

These provisions can be reconciled through the literal or positive interpretation rule. This rule provides that the plain meaning of the law should be taken in such a way as to give effect to both provisions.<sup>150</sup> The rule is followed unless its application results in absurdity. The literal interpretation of the two provisions may mean that the FAG and the FPC can exercise investigation power over corruption crimes while the prosecution power is reserved for the FAG. This interpretation is in accordance with the overall objective of the FAG Establishment Proclamation, which is to have a strong law enforcement institution.<sup>151</sup> The law enforcement power commonly includes the investigation and prosecution powers. Usually, investigating a crime is a principal power of the police. However, it is a common practice at the international and national criminal justice levels for the federal attorney general or public prosecution office to conduct criminal investigations. For example, under the International Criminal Court, the Prosecutor has investigation and prosecution

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146 Negash(2016) at 109.

147 Article 22(3) of the FAG Establishment Proclamation.

148 Article 8(2) (b) of the FAG Establishment Proclamation.

149 Article 22(2) of the FAG Establishment Proclamation.

150 'The Rules of Statutory Interpretation', available at <https://www.translegal.com/lesson/statutory-interpretation-2> (accessed 18 September 2017).

151 Paragraph 1 of the Preamble to the FAG Establishment Proclamation.

powers.<sup>152</sup> In the United States of America, the Attorney General has investigation powers at the federal level.<sup>153</sup>

A negative interpretation is also possible, in that giving the investigation power to the FAG appears to go against the clear wording of the law. This is because Parliament did not transfer the investigation power expressly to the FAG as it did with the prosecution power.<sup>154</sup>

Adopting the positive interpretation that gives the investigation power to the FAG is desirable in relation to corruption offences. That is partly so because leaving the investigation of corruption offences exclusively to the FPC would not be effective as it is perceived to be highly corrupt.<sup>155</sup> This interpretation enables the FAG to perform an oversight function in respect of investigations conducted by the FPC. It also allows the FAG and the FPC to combine their staffs to ensure effective investigation of corruption offences. The FAG Establishment Proclamation should have stated expressly that it transfers the investigation power to the FAG. This would have clarified the mandates of the FAG and FPC. Allocating unclear or conflicting mandates to the different institutions can hamper the implementation of the anti-corruption policies.<sup>156</sup> The FAG Establishment Proclamation does not provide grounds for the FAG to conduct an independent investigation or a joint investigation with the FPC. This may lead to duplication, redundancy and waste of resources. It may create also uncertainty regarding the prevailing position when the FAG and FPC investigate the same crime with different results.

### **3.8.6 Engaging the Public in the Fight against Corruption**

Fighting corruption is a multi-faceted process requiring synergy among all sectors.<sup>157</sup> The government cannot combat corruption effectively by simply enacting anti-corruption laws and establishing anti-corruption institutions. The adoption of different mechanisms and

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152 Article 42(1) of the Rome Statute.

153 Coppolo (2006)at 2.

154 Article 22 of the FAG Establishment Proclamation.

155 'Ethiopia Corruption Report', available at <http://www.business-anti-corruption.com/country-profiles/ethiopia> (accessed 19 September 2017).

156 UNDP (2005)at 20.

157 Lashim (2014) 'Citizens are key in the fight against Corruption', available at <http://blogs.worldbank.org/arabvoices/citizens-are-key-fight-against-corruption> (accessed 4 August 2017).



approaches that streamline citizen engagement is crucial also.<sup>158</sup> Non-governmental organisations, such as Transparency International, are pressing hard for enhanced monitoring mechanisms, including active participation of civil society in reviewing the performance of anti-corruption institutions.<sup>159</sup> Thus, citizens in private organisations or in civil society organisations, the media and religious groups can take part in the campaign against corruption. They can participate in awareness creation, reporting corruption, giving testimonies and reviewing the performance of the institutions.<sup>160</sup>

The FAG Establishment Proclamation recognises the role of the public in the fight against corruption. It imposes a duty on the FAG to ensure public accountability and public participation in the course of discharging its mandates.<sup>161</sup> The community, businesses, charitable organisations, law schools of higher education institutions and stakeholders can participate in reviewing the performance, ethical defects, and annual plans of the FAG.<sup>162</sup> However, the FAG Establishment Proclamation limits citizen participation by giving a discretionary power to the FAG select participant organisations or individuals.

Any person is given a right to inform or present suggestions to the FAG if he believes that acts involving ethical and legal violations have been committed.<sup>163</sup> These persons collaborate with law enforcement agencies by testifying or exposing corruption offences and they are provided with legal protection against retaliation.<sup>164</sup> The legal guarantee is aimed at creating an environment to protect the public against direct or indirect danger and attack, while bringing criminal offenders to justice.<sup>165</sup>

The Department for the Co-ordination of Ethics Infrastructures under the FEACC already is tasked with co-ordinating and facilitating the partnership of various social groups in the fight against corruption.<sup>166</sup> In 2009, the National Anti-corruption Coalition, consisting of government agencies, the private sector, civil society and political parties, was formed to

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158 Lashim (2014).

159 Transparency International and UNCAC Coalition (2014).

160 Articles 13 & 32 of UNCAC.

161 Article 13 of the FAG Establishment Proclamation.

162 Article 13(2) of the FAG Establishment Proclamation.

163 Article 19(1) of the FAG Establishment Proclamation.

164 Providing Protection for Witnesses and Whistle-Blowers of the Criminal Offences Proclamation 699 of 2010.

165 See the Preamble to Providing Protection for Witnesses and Whistle-blowers of the Criminal Offences Proclamation 699 of 2010.

166 Menhgistu (2009) at 5.

enhance the co-ordination and monitoring of ethics infrastructures.<sup>167</sup> In this coalition, civil society has 48 percent of the seats, which is the largest number. The government, the private sector and opposition political parties take 31.79, 17.88 and 1.99 percent respectively.<sup>168</sup> Although recognition of the role of civil society in combating corruption is to be welcomed, there are legal and practical challenges to be addressed. Previously, the FEACC had been blamed for being selective in inviting civil society organisations because of concerns about their political agendas.<sup>169</sup> The FAG Establishment Proclamation allows the FAG to select or invite the organisations, stakeholders or individuals to participate in the appraisal of its work.<sup>170</sup> Thus, the right to participate in the public forum reviewing the performance of the FAG is not available to everyone. Moreover, the role of civil society organisations in the country has been weakened since the adoption of laws requiring the registration and regulation of charities and societies in February 2009.<sup>171</sup>

In principle, the FDRE Constitution guarantees freedom of expression, of the press and of other mass media.<sup>172</sup> However, the current World Press Freedom Index has revealed that Ethiopia is ranked at 150 of 180 countries.<sup>173</sup> Thus, the absence of press freedom is a great hindrance to journalists freely to investigate and expose corrupt practices. Moreover, the studies have disclosed that the enjoyment of the right to freedom of expression remains at an infant stage. This is due to lack of capable public relation officers, weak organisation of information by government institutions, and a tendency to give information only when it shows the government in a good light.<sup>174</sup>

### **3.8.7 Inter-Agency and Intra-Agency Co-ordination and Co-operation**

The co-ordination and co-operation of the anti-corruption institutions in the context of the multi-agency model is crucial in the fight against corruption. The communication channels,

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167 Negash (2016)at 78.

168 FEACC (2009).

169 Tamyalew (2010)at 27.

170 Article 13(2) of the FAG Establishment Proclamation.

171 US Department of State Report (2014)at 1. See also Article 57 of the Charities and Societies Proclamation 621 of 2009.

172 Article 29 of the FDRE Consitution.

173 Worldwide Press Freedom Index (April 2017), available at <https://ethsat.com/2017/04/ethiopia-ranked-150th-world-press-freedom-index/> (accessed 5 August 2017).

174 Negash (2016)at 80.

areas of co-operation and mandates have to be defined precisely.<sup>175</sup> The availability of an overall or sector-based anti-corruption strategy is also important to guide various government institutions in the fight against corruption. Experiences of other countries have indicated that effective co-operation can be secured by positioning the anti-corruption institutions at the point of maximum influence or imposing stringent legal duties of co-operation on government agencies and the public.<sup>176</sup> Establishing channels to ensure effective inter-agency co-ordination often involves setting up a new co-ordinating body or unit.<sup>177</sup> For example, South Africa has established the Anti-Corruption Co-ordinating Committee composed of agencies with anti-corruption functions.<sup>178</sup> This Committee is responsible for ensuring that there is co-ordination and integration of the anti-corruption initiatives, no duplication of efforts in the fight against corruption, and effective implementation of the anti-corruption strategy.

The FAG Establishment Proclamation provides mechanisms to address co-operation and co-ordination between the FAG, the FPC and the FEACC and with external government agencies. The FAG is established as one of the higher government agencies with the status of a ministerial office.<sup>179</sup> The FAG's accountability to the Prime Minister and Council of Ministers, although a likely threat to its independence, allows for easy access to the necessary co-operation and facilitation from any government institutions. The FAG Establishment Proclamation also imposes a duty on any person who is requested to co-operate with the FAG to do so as long as such co-operation is within his capacity and does not cause danger.<sup>180</sup> A person, either in a private or official capacity, is under a legal duty to co-operate with the FAG. Again, any police member is duty bound to respect and execute final and legal decisions of the FAG.<sup>181</sup>

Ethiopia lacks a comprehensive and binding anti-corruption policy at the national level. The draft anti-corruption policy submitted in 2009 and containing education,

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175 UNDP (2005) at 19.

176 See §2.11.9 above.

177 'Co-ordination Mechanisms of Anti-Corruption Institutions', available at <http://www.u4.no/publications/coordination-mechanisms-of-anti-corruption-institutions/> (accessed 20 September 2017).

178 DPSA 'Anti-Corruption Coordinating Committee', available at <http://www.dpsa.gov.za/dpsa2g/acc.asp> (accessed 20 September 2017).

179 Article 3(1) of the FAG Establishment Proclamation.

180 Article 23(1) of the FAG Establishment Proclamation.

181 Article 23(3) of the FAG Establishment Proclamation.

prevention and law enforcement as its core strategies, is not yet operational.<sup>182</sup> The absence of the policy makes co-ordination critical, especially in the context of Ethiopia where multiple anti-corruption institutions operate.

The FAG Establishment Proclamation recognises the collaboration between the FAG and regional public prosecution institutions and establishes the Attorney General's Joint Council (AGJC) to ensure effective, efficient and uniform performance.<sup>183</sup> The AGJC has the power to devise a joint plan on common matters of the justice sector between the FAG and regional public prosecution institutions.<sup>184</sup> But the Regional Prosecution Offices (RPOs) have no mandate concerning corruption as the single anti-corruption agency model has been retained at the regional level. The Regional Ethics and Anti-Corruption Commissions (REACC) have all the powers of awareness creation, prevention, investigation and prosecution of corruption in their regional states. In Ethiopia, the legal and institutional structures at the regional state level usually mirror the federal structure. Regional states are legally free to adopt any anti-corruption agency model.

Like the FEACC, the REACCs also suffer from deficit in the discharge their investigation and prosecution duties. A REACC sometimes is forced to outsource the investigation and prosecution of complicated corruption cases due to lack of expertise and financial resources.<sup>185</sup> It is common for corruption cases to be sent back and forth among the REACC, the police and the RPO during the investigation process.<sup>186</sup> Beyond the capacity issues, it is practically difficult for a single institution to perform all the required anti-corruption activities. Thus, it would be feasible for the regional states to transfer at least the law enforcement powers of the REACC to the RPO and Regional Police Commission (RPC). This can enhance the fight against corruption without adding an exaggerated cost for establishing a new regional attorney general. It also would reduce mandate-related barriers in the course of co-ordination between the RPO and the AGJC. Currently, corruption issues fall outside the common agenda of the FAG and the AGJC. The AGJC has no mandate to co-ordinate other agencies involved in the fight against corruption at the federal and regional levels such as the FEACC, the REACC, the FPC and the RPC. Effective co-ordination requires

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182 Negash (2016) at 51.

183 Article 20(1) & (2) of the FAG-EP.

184 Article 20(2) & (2) of the FAG-EP.

185 Lagide (2014) at 57.

186 Lagide (2014) at 54.

expanding the mandate and composition of the AGJC or establishing a separate body or unit with the mandate to co-ordinate those anti-corruption institutions.

### **3.9 Conclusion**

The FEACC was established in 2001 as a single anti-corruption agency with wide powers to combat corruption through public education, prevention, investigation and prosecution. Despite its wide powers, the FEACC has not been effective in combating corruption, particularly in the investigation and prosecution of the corruption crimes.

In 2016, the government established the FAG under its overall agenda of ensuring good governance and effective law enforcement. The FAG Establishment Proclamation changes the single-agency model to the multi-agency model by distributing anti-corruption mandates among three institutions. Accordingly, the FAG is given the investigation and prosecution mandate for corruption crimes.

The main concern of the anti-corruption instruments such as UNCAC and the AU Convention regarding anti-corruption agencies is their effectiveness rather than the model in terms of which they are constituted. The FAG has the following strong dimensions that may contribute to its effectiveness, namely, a solid institutional set-up, a budget preparation and approval procedure, and public accountability. However, there are number of drawbacks that may affect the FAG's effectiveness. Its major weaknesses concern its independence, the appointment and removal procedure for its higher executives, its accountability and reporting structure, its opportunities for public engagement, lack of clarity in its mandates (including the focus areas) and lack of well-tuned inter-agency and intra-agency co-operation and co-ordination.

In general, the current multi-agency model is a workable anti-corruption institutional framework. However, sustained political will is required to capitalise on the strengths and rectify the weaknesses of the FAG to make it effective in discharging its tasks.

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

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#### 4.1 Conclusion

This research paper has appraised the Ethiopian anti-corruption institutional framework with a particular focus on the FAG. Anti-corruption agencies (ACAs) have proliferated since the 1990s, due to their supposed neutrality, the increased impact of corruption, the perceived failure of the conventional law enforcement institutions and the success registered by the ACA's of Hong Kong and Singapore. The paper has reviewed different anti-corruption instruments, such as UNCAC and the AU Convention, that affirm belief in ACAs as anti-corruption tools. Ethiopia is a state party to both UNCAC and the AU Convention.

The study has discussed various models of ACAs, as they are categorised by Heilbrunn, the OECD and Meagher. The classification is based either on their function or their reporting structure. Accordingly, an ACA may adhere to the investigative, parliamentary, single- or multi-agency model. There is no prescribed or one-size-fits-all model for ACAs as their local contexts vary. Individual states have the discretion to select a model that suits their national nuances. In this regard, the categories and the available practices can provide useful guidance for choosing an ACA model appropriate to the specific context of a country. However, the focus is the effectiveness of ACAs rather than the institutional form or model which they take.

The research paper has identified and explained factors which are crucial to the success of ACAs. These are independence, accountability and transparency, adequate financial resources and staff capacity, cross-agency co-operation and co-ordination, public engagement, international co-operation networks and political will.

The history of Ethiopia's anti-corruption institutions goes back to the time of modern state formation. These include the Office of the Tear Watcher, the Working People's Control Committee and the FEACC. Although the country has a long history of the ACAs, they have been ineffective largely. Despite its extensive mandates, the FEACC has been singularly

unsuccessful in fighting corruption, particularly as regards the investigation and prosecution of corruption offences.

The FAG was established in May 2016 as part of an attempt to ensure good governance. It aims to promote the public and government interest through effective law enforcement. The anti-corruption functions which were concentrated under the FEACC for the past fifteen years have been distributed amongst the FAG, the FPC and the FEACC. Accordingly, the FAG is mandated to investigate and prosecute corruption offences. This study has assessed the adequacy of the anti-corruption tools available to the FAG. Formally, the FAG is structurally independent as it is not subsumed under any governmental department. However, it would be misleading to assert that the FAG is institutionally independent as its status as a ministerial office makes it an executive organ of the government.

The FAG Establishment Proclamation provides for the FAG to discharge its duties independently and in accordance with the law. However, the Proclamation requires the FAG to consult the Prime Minister before issuing directives concerning the withdrawal of cases having national interest, and this brings the FAG's functional autonomy into question. Moreover, the recruitment procedure for appointing and grounds for vetting the Attorney General and the Deputy Attorney General give wide room for the executive to interfere indirectly in the affairs of the FAG. This diminishes the public trust and confidence in the independence and non-partisanship of the FAG.

The budgetary independence of the FAG from interference by the executive is guaranteed legally. The FAG is allowed to submit a budget request directly to Parliament. The concern here may be the adequacy of the budget allocated to the FAG in relation to its responsibilities, but it is too early to judge.

The accountability scheme of the FAG higher executives opens a door for the government to shield its allies and friends while pursuing its political opponents. Making the FAG accountable to the heads of the executive is awkward in a country where corruption is prevalent in the executive branch itself. The FAG Establishment Proclamation provides for the public accountability of the FAG but restricts the right of persons to participate in the public forum appraising the FAG. As ultimate victims of corruption, every member of the public should be allowed to take part in such a forum. Periodically, the FAG should publish

reasons for not prosecuting or discontinuing corruption cases as well as performance reports. Citizens should be allowed access to such information upon request, and should be able to give feedback on information so obtained.

The FAG is endowed with a wide range of powers to investigate and prosecute corruption offences, while the investigation power is also given to the FPC. However, there is a lack of clarity about its mandate and focus areas. This may lead to duplication of functions, waste of resources and poor implementation.

The FAG Establishment Proclamation recognises the vital role of non-state actors to the effectiveness of the FAG. However, there are legal and practical barriers that inhibit the contribution of civil society and the media in exposing corruption offences and monitoring the performance of the FAG.

The FAG Establishment Proclamation seeks to ensure inter-agency and intra-agency co-operation. The FAG is established at the ministerial level and subsumed under the Prime Minister and Council of Ministers. Though it is a serious threat to the independence of the FAG, this structure provides opportunities of ready access to co-operation. The FAG Establishment Proclamation also imposes a legal duty on persons and institutions to co-operate with the FAG. However, the issue of inter-agency and intra-agency co-ordination and collaboration remains problematic.

Finally, despite its imperfections, the FAG is a workable anti-corruption institution. However, sustained political will and commitment is indispensable to capitalising on the strengths and rectifying the weaknesses of the FAG to ensure its ultimate effectiveness.

## **4.2 Recommendations**

### **4.2.1 Ensuring the Independence of the FAG**

Independence is core to the effectiveness of the FAG. The FAG has to be guaranteed freedom from direct or indirect interference and influence. It should not be required to consult the Prime Minister before issuing a directive involving the national interest. Such a requirement amounts to direct interference in the affairs of the FAG. The FAG should issue its directive of its own accord. Alternatively, if the Prime Minister has to be consulted, the



provisions which give him an influence over the FAG via the appointment and removal of its senior executives should be changed.

The appointment and removal of the leaders of the FAG should be a shared responsibility and should be an open process entailing consultation with several stakeholders, such as the government, civil society and the public. This avoids potential misuse of the FAG by the government or a particular political party that dominates the political system. It also offers more security of tenure to the FAG executives. In this regard, the Prime Minister alone should not be empowered to remove the Attorney General and Deputy Attorney General. Again, Parliament alone should not appoint them if Parliament is dominated by a single ruling party. Moreover, the grounds for their appointment and removal have to be clear, objective and predetermined. Finally, their term of office has to be specified and guaranteed legally.

#### **4.2.2 Modifying the Line of Accountability**

The accountability vector of the FAG should shift from the Prime Minister and Council of Ministers to a board composed of members of the legislature, executive and judiciary. This arrangement subjects the performance of the FAG to evaluation by all the three arms of government. It also increases the level of acceptance of and trust in the performance of the FAG by reducing the politicisation of the institution. Moreover, it consumes less time as compared to the time it would take if the same power were to be given to Parliament. Finally, this line of accountability remains a viable avenue in the current context of Ethiopia where there is a *de facto* single-party system.

#### **4.2.3 Periodic Capacity Building Training for FAG Personnel**

The success of the FAG in its law enforcement functions largely depends on the capacity of its personnel. Investigating, gathering relevant evidence and prosecuting corruption offences are quite challenging.<sup>187</sup> Thus, the FAG personnel tasked with such responsibilities should be given ongoing capacity building training. They should be trained in, *inter alia*, special investigative techniques and in tactics and strategies to be employed in the course of doing their work.

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187 Hatchard (2014)at 149.

#### **4.2.4 Clarifying the Mandate and Focus Areas of the FAG**

A country adopting a multi-agency anti-corruption institutional model has to clarify and refine the respective institutional responsibilities in order to avoid duplication and waste of resources. The FAG Establishment Proclamation should stipulate clearly how the investigation power is to be exercised as it has been allocated to both the FAG and the FPC. The grounds for the FAG to conduct an independent investigation or a joint investigation with the FPC as areas of focus should be made clear. The FAG Establishment Proclamation should provide expressly for which position is to prevail in case the FAG and FPC investigate the same corruption crime, but produce different results.

#### **4.2.5 Strengthening Inter-Agency and Intra-Agency Co-operation and Co-ordination**

There are a number of anti-corruption institutions involved in the fight against corruption in Ethiopia. This is due to the federal and regional government structure and the multi-agency anti-corruption institutional model that the country has adopted. Works and initiatives of those different institutions should be co-ordinated and integrated properly to ensure effectiveness. Moreover, the Draft National Anti-Corruption Strategy has to be endorsed so that it becomes operational and thereafter serves as a compass to guide all the institutions involved in the fight against corruption. The FAG Establishment Proclamation made a good start by establishing the AGJC as a unit to ensure effective, efficient and uniform performance between the FAG and the RPOs. However, the mandate and composition of the AGJC should be expanded to encompass co-ordination of all the institutions involved in fight against corruption, namely, the FEACC, the FPC, the FAG, the REACCs, the RPCs and RPOs.

#### **4.2.6 Enhancing the Public Engagement and Participation**

The FAG cannot be effective in its law enforcement functions by relying solely on formal investigations. Civil society, the media and whistleblowers play an indispensable role in exposing corruption. However, the *de jure* and *de facto* conditions are paralysing the media and civil society instead of encouraging them to expose corruption. Hence, Parliament should create conducive legal environment for civil society and the media to contribute to the fight against corruption and support the FAG.

#### **4.2.7 Sustained Political Will**

The government should show a genuine and persistent political determination to advance the effectiveness of the FAG in combating corruption. In absence of such a dedicated political commitment, all those good anti-corruption tools at the disposal of the FAG will be rendered impotent.

Finally, the deficiencies in anti-corruption practices, particularly in the areas of investigation and prosecution, are in critical need of repair across the nine regional states. Despite its flaws, the FAG is a step forward as an anti-corruption law enforcement institution. Thus, the regional states at least should take steps to transfer the law enforcement powers from the REACCs to the RPCs and RPOs.



## BIBLIOGRAPHY

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### Primary Sources

#### International and Regional Legal Instruments

African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003 and entered into force 5 August 2006).

Council of Europe: Criminal Law Convention on Corruption (adopted 4 November 1998 and entered into force 1 July 2002).

Inter-American Convention against Corruption (adopted 29 March 1996 and entered into force 6 March 1997).

Rome Statute of the International Criminal Court (adopted 17 July 1998 and entered into force 1 July 2002).

Southern African Development Community Protocol against Corruption (adopted 14 August 2001 and entered into force 6 July 2005).

United Nations Convention against Corruption, General Assembly Resolution 58/4 (adopted 31 October 2003 and entered into force 14 December 2005).

United Nations Convention against Transnational Organised Crime (adopted 15 November 2000 and entered into force 29 September 2003).

#### Ethiopian Legislation

Anti-Corruption Special Procedure and Rules of Evidence Proclamation 236 of 2001, as amended by Proclamation 239 of 2001.

Assets Disclosure and Registration Proclamation 668 of 2010.

Charities and Societies Proclamation 621 of 2009.

Corruption Crimes Proclamation 881 of 2015.

Criminal Code Proclamation 414 of 2004.

Criminal Procedure Code Proclamation 185 of 1961.

Customs Proclamation 859 of 2014.

Definition of powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916 of 2015.

FDRE Constitution of 1995.

Federal Attorney General Establishment Proclamation 943 of 2016.

Federal Ethics and Anti-Corruption Commission Establishment Proclamation 235 of 2001.

Penal Code Proclamation 158 of 1957.

Revenues and Customs Authority Establishment Proclamation 587 of 2008.

Revised Anti-Corruption Special Procedure and Rules of Evidence 434 of 2005, as amended by Proclamation 882 of 2015.

Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation 433 of 2005.

Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation 433 of 2005, as amended by Proclamation 883 of 2015.

Trade Competition and Consumers Protection Authority Establishment Proclamation 813 of 2013.

Witnesses and Whistleblowers protection Proclamation 699 of 2010.

Working People's Control Committee Establishment Proclamation 213 of 1981.

## **Secondary Sources**

### **Books**

Arnone M & Borlini S (2014) *Corruption: Economic Analysis and International Law* Edward Elgar: Cheltenham.

Boersma M (2012) *Corruption: A Violation of Human Rights and a Crime under International Law?* Cambridge-Antwerp: Portland.

Brian Z (2006) *Law as a Means to an End: Threat to the Rule of Law* Cambridge University Press: Cambridge.

Hatchard J (2014) *Combating Corruption: Legal Approaches to Good Governance and Integrity in Africa* Edward Elgar: Cheltenham.

Heilbrunn R (2004) *Anti-Corruptions Panacea or Real Medicine to Fight Corruption* World Bank: Washington DC.

OECD (2007) *Specialised Anti-Corruption Institutions: Review of Models* OECD Publishing: Massachussts.

OECD (2008) *Specialised Anti-Corruption Institutions: Review of Models* OECD Publishing: Massachussts.

Olaniyan K (2014) *Corruption and Human Rights Law in Africa* Oxford and Portland: Oregon.

Olsen PW (2010) *Anti-Corruption Handbook: How to Protect Your Business in the Global Marketplace* John Wiley & Sons, Inc: Hoboken, New Jersey.

OSCE (2004) *Best Practices in Combating Corruption* OSCE Publishing: Vienna.

Pope J (2000) *Confronting Corruption: the elements of a national integrity system* Transparency International Publishing: London.

Tamyalew A (2010) *A review of effectiveness of the Federal Ethics and Anti-Corruption Commission of Ethiopia* European Commission and World Bank: Brussels.

Transparency International (2007) *Global Corruption Report: Corruption in Judicial System* Cambridge University Press: New York.

United Nations Development Programme (2005) *Institutional Arrangement to Combat Corruption: A Comparative Study* Keen Publishing Co. Ltd: Thailand.

United Nations Office on Drugs and Crime (2003) *United Nations Guide for Anti-Corruption Policies* United Nations Publications: Vienna.

United Nations Office on Drugs and Crime (2009) *Technical Guide to the United Nations Convention against Corruption* United Nations: New York.

### **Chapters in Books**

Ebbe IN (2005) 'Political Corruption in Africa' in Sarre R *et al* (eds) *Policing Corruption: International Perspectives* Lexington Books Lanham: Boulder, New York.

Heilbrunn R (2006) 'Anti-Corruption Commissions' in Stapenhurst R *et al* (eds) *The Role of Parliament in Curbing Corruption* The International Bank for Reconstruction and Development/The World Bank: Washington, DC.

Johnston M (1999) 'A Brief History of Anti-Corruption Agencies' in Andreas Schedler *et al* (eds) *The Self Restraining State: Power and Accountability in New Democracies* Lynne Rienner Publishers: Colorado.

Kpundeh S and Dininio P (2006) 'Political Will' in Stapenhurst R *et al* (eds) *The Role of Parliament in Curbing Corruption* The International Bank for Reconstruction and Development/The World Bank: Washington, DC.

Macdonell R & Pesic M (2006) 'The Role of the Media in Curbing Corruption' in Stapenhurst R *et al* (eds) *The Role of Parliament in Curbing Corruption* The International Bank for Reconstruction and Development/The World Bank: Washington DC.

Moran J (2000) 'The Changing Context of Corruption Control: The Hong Kong Special Administrative Region, 1997-99' in Doig A & Theobald R (eds) *Corruption and Democratisation* Frank Cass: London.

Nalla K & Kumar S (2005) 'Conceptual, Legal, Ethical, and Organizational Dimensions of Corruption in India: Some Policy Implications' in Sarre R *et al* (eds) *Policing Corruption: International Perspectives* (2005) Lexington Books Lanham: Boulder, New York.

Pope J (2006) 'Parliament and Anti-Corruption Legislation' in Stapenhurst R *et al* (eds) *The Role of Parliament in Curbing Corruption* The International Bank for Reconstruction and Development/The World Bank: Washington, DC.

Rouso A & Steves F (2006) 'The effectiveness of anti-corruption programs: Preliminary evidence from the post-communist transition countries' in Ackerman RS (ed) *International Handbook on the Economics of Corruption* Edward Elgar Publishing Limited Glen Sand House: Cheltenham.

Shang y (2005) 'Corruption Control in Hong Kong' in Tarling N (ed) *Corruption and Good Governance in Asia* Rout ledge: Abingdon.

#### **Journal Articles**

Campbell L (2016) "Corruption by Organized Crime-A Matter of Definition?" 69 *Current Legal Problems* 115-141.

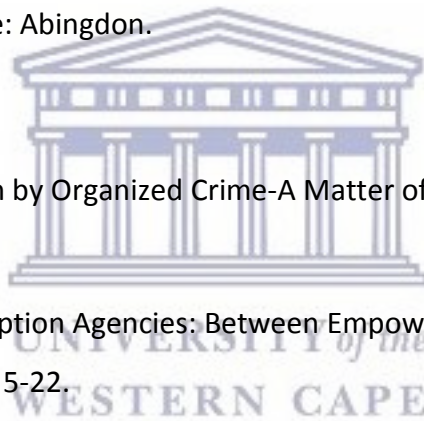
De Sousa L (2009) "Anti-Corruption Agencies: Between Empowerment and Irrelevance" 53 *Crime, Law and Social Change* 5-22.

Gebeye B (2012) "The Legal Regime of Corruption in Ethiopia: An Assessment from International Law Perspective" *Oromia Law Journal* 73-124.

Kaufmann D & Kraay A (2008) "Governance Matters VII: Aggregate and Individual Governance Indicators for 1996-2007" *World Bank Policy Research Paper No. 4654*, Washington, D.C.

Mezmur T & Koen R (2011) "The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment" 15 *Law, Democracy and Development* 215-243.

Obert C & Gabriel S (2007) "Institutional Working Definition of Corruption" *Southern Africa Working Paper Series Act* 1-7.





Persson A *et al* (2013) "Why Anti-Corruption Reforms Fail — Systemic Corruption as a Collective Action Problem" *Government: An International Journal of Policy, Administration and Institutions* 449-471.

Pope J & Vogel F (2000) "Making Anti-Corruption Agencies More Effective" 37 *Finance & Development* 1-9.

Quah J (2007) "Anti-Corruptions Agencies in Four Asian Countries: A Comparative Analysis" 8 *International Public Management Network* 73-96.

Sandgren C (2005) "Combating Corruption: The Misunderstood Role of the Law" 39 *Hein Online* 717-731.

Warren E (2004) "What Does Corruption mean in a Democracy" 48(2) *American Journal of Political Science* 328-343.

Wouters J, Ryngaert C & Cloots A (2013) "The International Framework against Corruption: Achievements and Challenges" 14 *Melbourne Journal of International Law* 209-280.

## **Theses**

Ayalew S "Corruption and Anti-Corruption in Ethiopia: A Case Study of the Ethiopian Custom Authority" (Unpublished LLM Thesis, Addis Ababa University, 2005).

Lagide K "Assessment of the Effectiveness of the Anti-Corruption Authorities: A Case Study of Achievements and Prospects of the Southern, Nations, Nationalities and Peoples (SNNPR) Ethics and Anti-Corruption Commission" (Unpublished LLB Thesis, Hawassa University, 2014).

Mesekele T "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law" (Unpublished LLM Thesis, University of the Western Cape, 2012).

Mezmur T “Institutional Responses to Corruption: A Critical Analysis of Ethiopian Federal Ethics and Anti-Corruption Commission” (Unpublished LLM Thesis, University of the Western Cape, 2009).

Negash B “The Effectiveness of the Anti-corruption Institutions in Implementing International Anti-corruption Instruments: The Case of Federal Ethics and Anti-Corruption Commission” (Unpublished LLM Thesis, Addis Ababa University, 2016).

### **Reports**

“Ethiopia Corruption Report”, available at <http://www.business-anti-corruption.com/country-profiles/ethiopia> (accessed 19 September 2017).

“Measuring Corruption in Africa Report”, available at [http://www.uneca.org/sites/default/files/PublicationFiles/agr4\\_eng\\_fin\\_web\\_11april.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/agr4_eng_fin_web_11april.pdf) (accessed 10 March 2017).

“Federal Ethics and Anti-Corruption Commission Annual Report (2012)”, available at <http://www.feac.gov.et/index.php/publications-en> (accessed 10 October 2017).

“Federal Ethics and Anti-Corruption Commission Annual Report (2015)”, available at <http://www.feac.gov.et/index.php/publications-en> (accessed 10 October 2017).

“Kilimanjaro International ‘Ethiopia Second Corruption Perception Survey Report’ (2012) Commissioned by the Federal Ethics and Anti-Corruption Commission, available at <http://www.feac.gov.et/index.php/downloadables-en> (accessed 28 October 2017).

US Department of States Report (2014) “Ethiopia Human Rights Report”, available at <https://www.state.gov/documents/organization/236570.pdf> (accessed 31 October 2017).

### **Online Publications**

“Co-ordination Mechanisms of Anti-Corruption Institutions”, available at <http://www.u4.no/publications/coordination-mechanisms-of-anti-corruption-institutions/> (accessed 20 September 2017).

“Definition of Anti-Corruption Agency by USAID”, available at <http://pdf.usaid.gov/pdf/docs/Pnadm208.pdf> (accessed 5 June 2017).

“Definition of corruption by Transparency International”, available at <http://www.transparency.org/what-is-corruption/#define> (accessed 2 March 2017).

“DPSA-Anti-Corruption Coordinating Committee”, available at <http://www.dpsa.gov.za/dpsa2a/acc.asp> (accessed 20 September 2017).

“Ethiopian Civil Service”, available at [http://www.photius.com/countries/ethiopia/government/ethiopia\\_government\\_civil\\_service.html](http://www.photius.com/countries/ethiopia/government/ethiopia_government_civil_service.html) (accessed 17 July 2017).

“European Anti-Corruption Conventions- Business Anti-Corruption”, available at <http://www.business-anti-corruption.com/anti-corruption-legislation/european-anti-corruption-conventions> (accessed 7 June 2017).

“Helping Countries Combating Corruption: The Role of the World Bank”, available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (accessed 15 September 2017).

“Models of the Anti-corruption Institutions”, available at <http://www.iap-association.org/NACP/Anti-Corruption-Models> (accessed on 4 June 2017).

“The Ethiopian Government Prioritises Tackling Good Governance Problems”, available at <http://www.fanabc.com/english/index.php/news/item/4711-qov%E2%8099t-prioritizes-tackling-good-governance-problems> (accessed 29 July 2017).

“The Rules of Statutory Interpretation”, available at <https://www.translegal.com/lesson/statutory-interpretation-2> (accessed 18 September 2017).

“The T-TPLF’s Corruption Prosecution Con Game”, available at <http://ecadforum.com/2017/08/06/the-t-tplfs-corruption-prosecution-con-game/> (accessed 16 September 2017).

“AU Convention on Prevention and Combating Corruption: Ratification Status”, available at <http://www.aucorruption.org/auac/about/category/status-of-the-ratification> (accessed 7 June 2017).

Babu R (2006) "The United Nations Convention against Corruption: A Critical Overview", available at <http://www.u4.no/recommended-reading/the-united-nations-convention-against-corruption-a-critical-overview> (accessed 1 March 2017).

Barcham M & Lambrides S "Feasibility Study for the Creation of a Solomon Island Anti-Corruption Agency", available at <https://dfat.gov.au/about-us/corporate/freedom-of-information/Documents/draft-feasibility-study-sol-island-anti-corruption-agency.pdf> (accessed 9 June 2017).

Brinkerhoff D & Kulibab N (1999) "Identifying and Assessing Political Will for Anti-Corruption Efforts", available at [http://www.msiworldwide.com/wp-content/uploads/2011/07/IPC\\_Political\\_Will\\_in\\_Anti-Corruption\\_Activit](http://www.msiworldwide.com/wp-content/uploads/2011/07/IPC_Political_Will_in_Anti-Corruption_Activit) (accessed 17 October 2017).

Coonjohn J "A Primer on Models and Strategies for Anti-Corruption Agencies: Preparing Afghanistan for Anti-Corruption Reform", available at [http://www.jjcoonjohn.com/pdf/Primer\\_on\\_ACA\\_Models\\_and\\_Strategies.pdf](http://www.jjcoonjohn.com/pdf/Primer_on_ACA_Models_and_Strategies.pdf) (accessed 10 June 2017).

Coppolo G (2006) "Attorney General – Duties and Powers", available at <http://cqa.ct.gov/2006/rpt/2006-R-0402.htm> (accessed 19 September 2017).

Transparency International (2013) "Corruption Perceptions Index (2013)", available at [https://www.transparency.org/cpi\\_2013/results#myAnchor1](https://www.transparency.org/cpi_2013/results#myAnchor1) (accessed 28 February 2017).

Transparency International (2014) "Corruption Perceptions Index (2014)", available at <https://www.transparency.org/cpi2014/results#myAnchor1> (accessed 30 February 2017).

Transparency International (2015) "Corruption Perceptions Index (2015)", available at [https://www.transparency.org/cpi\\_2015/results](https://www.transparency.org/cpi_2015/results) (accessed 30 February 2017).

Transparency International (2016) "Corruption Perceptions Index (2016)", available at [http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016) (accessed 30 February 2017).

De Sousa L (2008) "Anti-corruption agencies as a central pieces in a national integrity system" [http://www.idec.gr/iier/new/CORRUPTIONCONFERENCE/Anti Corruption Agencies as Central Pieces in A National Integrity System-Luis de Sousa\\_.pdf](http://www.idec.gr/iier/new/CORRUPTIONCONFERENCE/Anti%20Corruption%20Agencies%20as%20Central%20Pieces%20in%20A%20National%20Integrity%20System-Luis%20de%20Sousa_.pdf) (accessed 3 November 2017).

Fighting Corruption: "The Role of Anti-Corruption Commission", available at [https://www.transparency.org/news/feature/fighting\\_corruption\\_the\\_role\\_of\\_the\\_anti\\_corruption\\_com\\_mission](https://www.transparency.org/news/feature/fighting_corruption_the_role_of_the_anti_corruption_com_mission) (accessed 5 June 2017).

Gallo G "The UNCAC: Its Relevance and Challenges in its Implementation", available at [http://www.unafei.or.jp/english/pdf/RS\\_No79/No79\\_17VE\\_Gallo.pdf](http://www.unafei.or.jp/english/pdf/RS_No79/No79_17VE_Gallo.pdf) (accessed 7 June 2017).

Growth and Transformation Plan II (2015) "Part I Overview of Performance under GTP I (2010/11-2014/2015)", available at <http://dagethiopia.org/new/component/docstation/download.raw/149-english-version-of-gtp-ii-for-dps-co> (accessed 28 July 2017).

"Inter-American Convention against Corruption: Signatures and Ratifications Status", available at [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption\\_signatories.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp) (accessed 8 June 2017).

Lashim A (2014) "Citizens are key in the fight corruption", available at <http://blogs.Worldbank.org/arabvoices/citizens-are-key-fight-against-corruption> (accessed 4 August 2017).

Martsheza P "SADC Protocol against Corruption: Making It Work", available at [http://iacconference.org.s3-website-eu-west-1.amazonaws.com/documents/10<sup>th</sup>\\_iacc\\_workshop\\_SADC](http://iacconference.org.s3-website-eu-west-1.amazonaws.com/documents/10th_iacc_workshop_SADC) (accessed 8 June 2017).

Meagher P (2004) "Anti-Corruption Agencies: A Review of Experience", available at <http://www.u4.no/recommended-reading/anti-corruption-agencies-a-review-of-experience/> (accessed 18 October 2017).

Nwokorie & Viinamaki (2017) "OCED Global Anti-Corruption & Integrity Forum: Legitimacy Building of Anti-Corruption Agencies in Five Countries", available at <https://www.oecd.org>

[/cleanqovbiz /Integrity-Forum-2017-Viianam%C3%A4ki-Nwokorie-legitimacy-anti-corrup](#)

(accessed 23 July 2017).

OECD “Putting an end to Corruption”, available at <https://www.oecd.org/corruption/putting-an-end-to-corruption.pdf> (accessed 25 July 2017).

Shodhganga I (2003) “Institutional Framework and Corruption”, available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/8108/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8108/13/13_chapter%204.pdf) (accessed 18 April 2017).

Speech by PLO Lumumba at the Nigerian Legislature Conference on Anti-corruption “The Role of Legislature in the fight against corruption”, available at <https://www.Youtube.com/watch?v=X-fBk787zbg&t=1106s> (accessed 4 June 2017).

“Speech by PLO Lumumba at the third Anti- Corruption Convention”, available at <https://www.youtube.com/watch?v=4cbEuwgKKqE> (accessed 31 July 2017).

“Transparency International data”, available at [http://www.transparency.org/news/press\\_release/transparency\\_international\\_data\\_shows\\_ethiopia\\_suffers\\_from\\_high\\_levels\\_of](http://www.transparency.org/news/press_release/transparency_international_data_shows_ethiopia_suffers_from_high_levels_of) (accessed 27 February 2017).

Transparency International (2013) “Global Corruption Barometer (2013)”, available at <https://www.transparency.org/qcb2013> (accessed 2 March 2017).

“Travaux Perparatoires of the negotiations for the elaboration of UNCAC”, available at <https://www.unodc.org/unodc/en/treaties/CAC/travaux-preparatoires.html> (accessed 7 June 2017).

“United Nations Office on Drugs and Crimes: Signature and Ratification Status”, available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (accessed 7 June 2017).

Woldegebriel Y (2016) “Dilemma of Reinstating Office of Attorney General”, available at <https://addisfortune.net/columns/dilemma-of-reinstating-office-of-attorney-general/> (accessed 28 July 2017).

“Worldwide Press Freedom Index (April 2017)”, available at <https://ethsat.com/2017/04/ethiopia-ranked-150th-world-press-freedom-index/> (accessed 5 August 2017).

### News Paper Articles

Anonymous “Arrests Continue in Corruption Allegations” *Addis Fortune News*, available at <https://addisfortune.net/articles/arrests-continue-in-corruption-allegations/> (accessed 2 August 2017).

Anonymous “Ethiopia’s Former Justice Minister Appointed as the First Attorney General” *Addis Fortune News*, available at <http://allafrica.com/view/group/main/main/id/00043230.html> (accessed 31 July 2017).

Anonymous “No Accountability as Gov’t Agencies Mismanage Funds” *Addis Fortune News*, available at <http://addisfortune.net/columns/no-accountability-as-govt-agencies-mismanage-funds/> (accessed 12 March 2017).

Anonymous “Who stolen 10 000 tones of Ethiopian coffee (2011)” *Ethiopian Review Article*, available at [www.ethiopianreview.com/index/31426](http://www.ethiopianreview.com/index/31426) (accessed 25 June 2017).

Solomon D “Ethiopia: Strengthening Anti-Corruption Struggle” *The Ethiopian Herald*, available at <http://allafrica.com/stories/201601051056.html> (accessed 13 July 2017).

The Ethics Education and Communication Affairs Directorate of the Federal Ethics and Anti-Corruption Commission (2015c) ‘The Anti-corruption Intervention is not a time bound project rather lifelong fight’ 15 *Ethics Magazine* 15 35-44.

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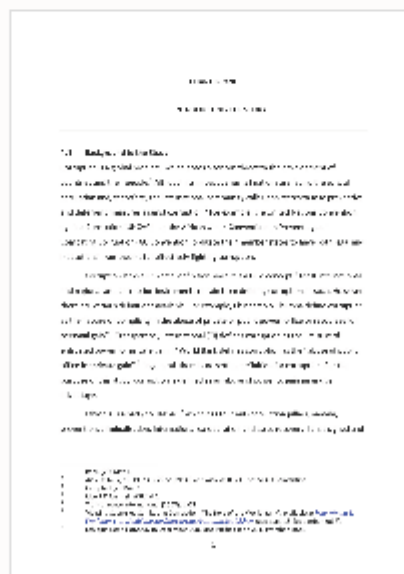


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