ROLE OF AN ANTI-CORRUPTION AGENCY IN THE STRUGGLE AGAINST CORRUPTION: THE CASE OF THE SERIOUS OFFICE IN GHANA

By

Sam K. ASIBUO

ABSTRACT

Corruption has become an endemic problem in Ghanaian society and successive Ghanaian governments have made various attempts to combat it. Indeed, corruption has played a debilitating role in not only denting the legitimacy of government, but also in retarding development in Ghana. The increasing complexity and sophistication of frauds and economic crimes have been recognized as posing a threat to the security of the Ghanaian economy. Additionally, these complex frauds cannot be adequately detected, investigated and prosecuted by the traditional mechanisms of the existing law. Thus, the inability of the existing accountability institutions to check especially financial impropriety which results in serious economic losses to the state necessitated the establishment of the Serious Fraud Office (SFO). This paper examines the effectiveness of the SFO as an institution for fighting corruption in Ghana. The functions, powers, limitations and difficulties of the SFO are also discussed. The paper concludes with some suggestions for improving the work of the SFO.

1. INTRODUCTION

Public service accountability and transparency in governance have become important global issues in governmental administration especially in developing countries where human rights abuses, misuse of power, nepotism, misappropriation of state funds and fraud have become the order of the day. A compelling reason for interest in accountability and most especially in the subject of corruption is the increasing demands by citizens on their national leaders and administrators to be accountable and transparent. The need for better public service accountability has also attracted the attention of the international community in recent times. This is partly due to the linking of transparency and public accountability to good governance. Indeed, good governance has become one of the most important considerations or conditions of the world's financial institutions and the donor communities for granting aid, loans and other forms of development assistance to developing countries. Reverend Leon Sullivan, delivering a speech on the terrible effect of corruption to participants, including some African Heads of State, during the African-American Summit held in May 1999 in Accra said as follows:

"I have been travelling all over the globe soliciting assistance for Africa but corruption on the continent is militating against this effort". (GHANAIAN CHRONICLE, 24th - 25th May 1999, p. 1).
This paper examines the effectiveness of the Serious Fraud Office (SFO) as an institution for fighting corruption in Ghana. It begins with background information to the establishment of the SFO. This is followed by a discussion on the powers and jurisdiction of the SFO. Thereafter, the paper discusses the role of the SFO, its limitations and constraints. Finally, it concludes with suggestions for improving its work.

2. BACKGROUND TO THE GHANAIAN SITUATION

Interest in public service accountability in Ghana can be attributed to the country's spousal of and admiration for democratic ideals. This can be gleaned from some statements in the preamble to the 1992 Constitution. It is stated inter alia that:

"... And in solemn declaration and affirmation of our commitment to Freedom, Justice and Accountability"

In addition to this, Article 35(8) under the Directive Principles of State Policy also states that "The state shall take steps to eradicate corrupt practices and the abuse of power" and Article 37(1):

"The State shall endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability".

It is significant to note that for constitution as the highest document that spells out the "dos and don'ts" of society to have profoundly expressed its commitment to accountability, signifies that the concept of accountability is so dear to the goals and aspirations of the government and people of Ghana. In Ghana, the objectives of the Government to develop and move from low income to middle income status through private sector participation and development as well as foreign investment requires an accountable public service.

Corruption has become an endemic problem in Ghanaian society and successive Governments have made various attempts to combat it. In fact, corruption has played a debilitating role in not only denting the legitimacy of governments but also in retarding development in Ghana. By 1981, Ghana had recognized the threat to her economic security posed by the increasing sophistication of society, which had been manifested by complex frauds and economic crimes such as over-invoicing, under-invoicing, falsification of accounts, embezzlement, over-pricing of contract and purchases. These frauds cannot be adequately detected, investigated and prosecuted by the traditional mechanism of the existing law.

When the Provisional National Defence Council (PNDC) assumed the reins of government in Ghana in 1981, it discovered that the legal system it had inherited, was deficient and incapable of achieving the real objective of a valid judicial order. This deficiency had promoted indiscipline and lawlessness in the judicial administration of Ghana, enabling any corrupt people, especially public officials and businessmen to escape punishment in court as a result of legal technicalities (Asibuo, 199 1, Ayee: 1994). The PNDC Government therefore in 1982 passed two legislations, namely the Citizens Vetting Committee Law 1982 (PNDCL.1) and the National Investigation Committee Law 1982 (PNDCL.2). These laws were enacted to deal with the lifestyles of people and investigate and deal with economic crimes which generally retarded national development. The institutions created under these laws worked alongside the traditional law courts.
Under constitutional rule in 1993, accountability institutions such as the Judiciary, the Auditor-General's Department, Parliament (e.g. Public Accounts Committee), the Police etc. and more recently the Commissioner on Human Rights and Administrative Justice have not been able to live up to expectation due to several limitations and constraints. The Judiciary for instance, has been saddled with piled up cases, some of which have dragged on for several years (Amoah Owusu, 2000). In fact the Judiciary, is itself blamed for corruption. For example, the Ghanaian Chronicle reported a case in which a Judge was alleged to have received a bribe of US$ 9,000 and in return granted a bail to an accused person involved in drug trafficking (Ghanaian Chronicle 24th-25th May 1999, p. 1).

The Police Service has also been accused of corruption and has not escaped the upsurge in Media attack on corruption. The Daily Graphic (of 29th April 1999, p.1), reported a case in which five policemen armed with guns burst into the house of a Chinese businessman and demanded C500 million from him so that a case pending against him would be dropped. The Auditor-General's Department, too does not have jurisdiction over recovering state funds and the prosecution of culprits. In the case of CERAJ, while it may be commended for exposing corruption at high levels of administrative machinery, it can be described as a "toothless bulldog" that barks but cannot bite. Despite its ability to investigate and expose culprits, it does not have the necessary legal backing to prosecute.

Thus the inability of the existing accountability agencies/institutions to check especially financial impropriety, which results into serious economic loss to the state, necessitated the establishment of the Serious Fraud Office (SFO).

3. THE SERIOUS FRAUD OFFICE (SFO): POWERS AND JURISDICTION

The SFO was established under Act 466 of 1993 as a specialized agency of government to monitor, investigate and on the authority of the Attorney General, prosecute any offence involving serious financial or economic loss to the state and to make provision for connected and incidental purposes. The Minister of Justice and Attorney General is responsible for the SFO. The SFO has a governing board made up of seven members who are appointed by the President in consultation with the Council of State.

The functions of the SFO are to:

a) investigate any suspected offence provided for by law which appears to the Executive Director on reasonable grounds to involve serious financial or economic loss to the State or to any state Organisation or other institutions in which the state has financial interest;
b) monitor such economic activities as the Executive Director considers necessary with a view to detecting crimes likely to cause financial and economic loss to the state-
c) take such other reasonable measures as the Executive Director considers necessary to prevent the commission of crimes which may cause financial or economic loss to the state;
d) Co-operate with such international agencies as. the Executive Director considers appropriate for any of the above purposes; and
e) Collect, collate and disseminate information from state agencies and other public bodies.
The SFO has been given certain powers to enhance the performance of its assigned functions. In order not to hamper its powers of investigation, Section 11 stipulates that officers of the SFO and other Officers authorized by the Director of SFO have been covered by the immunities conferred on police officers under the provisions of the Criminal Procedure Code, 1960 (Act 30), the Police Service Act, 1970 (Act 350) any other enactment for the time being in force, in relation to a police.

Investigations and prosecution rights of the SFO are also spelt out by Part II of Act 466. It provides that the SFO in fulfilment of its duties is empowered by Section 13 to request any information and production of documents it may deem necessary for its work. Under the Section, various instances under which a warrant may be sought from a Chairman of a tribunal or a judge for a policeman accompanied by an official of the SFO to search such premises where the Executive Director may suspect documents of interest could be traced.

Other powers conferred on SFO under Section 13 (9) include freezing of assets and bank accounts of persons and organisations, when the Executive Director is of the opinion that doing so will facilitate an investigation. If freezing of such assets and bank accounts is to exceed seven days, the Executive Director shall apply to a High Court or Regional Tribunal for a confirmation of freezing of such assets and bank accounts.

Under Section 16, the Executive Director is further empowered to authorize any person employed in any branch of the public service as an investigator or a police officer who is not an officer of the SFO to exercise on his behalf all or any of the powers conferred by Part II of the Act.

Concerning the SFO's relations with other state bodies, Section 19 of the Act, stipulates that an officer in any government department, agency of the state or other public body shall cooperate fully with officers of the SFO in the discharge of their functions. However, where a public officer refuses or fails without reasonable cause to cooperate with an authorized officer, there may be taken against him such disciplinary action as is appropriate.

Section 20 stipulates that the Executive Director, in consultation with the minister, may determine a reward for a person whose voluntary information leads to financial or economic gain to the state or leads to detection and prevention of acts that may lead to financial or economic loss to the state.

4. THE ROLE OF THE SFO

This section discusses the achievements of the SFO in relation to its objective. The question, to be examined is how effective or beneficial has the SFO been to the state? Though the SFO bill was passed into law in 1993, the office did not really become fully operational till 1997. Despite its short duration in office, the SFO has made some positive gains.

The SFO has been vigilant in exposing and preventing fraud hot h in the public and private sectors. The SFO has waded into a multiplicity of fraud-related cases and has also been able to identify the principal types of fraud and prevalent corrupt practices in Ghana (Daily Graphic editorial, June 20, 2000). Investigations conducted by the SFO in 1999 uncovered the modus
operandi used by the purchasing officers in defrauding the government through procurement procedures (Serious Fraud Office Annual Report, 1999). This achievement can be appreciated in the light of the fact that public organizations would no longer hide behind sophisticated excuses to indulge in fraudulent activities. Beside, research findings by the SFO will enable the government review its policies, rules and regulations in order to remove existing loopholes.

The SFO has also conducted investigations into several cases in which the state has special interest. Frauds of serious magnitude never experienced in this country have occurred. Examples of such cases involved: A Life Supermarket, Capital Telecom, the State Enterprises Commission (See), SDC Investment Limited, Council for Indigenous Business Association (CIBA), Sabat Motors Limited, Impregillo Group of Companies, Pentrex (Gh) Limited, Ghana Airways Company Limited etc. These investigations have contributed immensely to unearthing the magnitude of fraud in the country. Cases which would otherwise have been classified are looked into further.

The following are examples of more serious fraud cases:

1. A Life Supermarket Case

The Managing Director of A Life Supermarket chain in 1997 swindled three state owned banks of more than one hundred billion Ghanaian cedis without any hope of repaying. The uncovering of the deal led to the retirement of the Managing Director of the Ghana Commercial Bank (GCB) and the freezing of her assets. So worried was the President that he publicly denounced the A Life Supermarket case during a parade at the Independence Square on 6th March 1997 and wished the worst possible punishment for the 'offenders'.

2. Ghana Telecom And Capital Telecom Contract

The SFO investigations of corruption in the award of a rural telecommunication contract, which accused the then Minister for Transport and Communications in its report to government, of involvement in manipulating estimates to the tune of US$45 million in a Ghana Telecom and Capital Telecom deal. The Minister has rejected the report of the SFO and accused the SFO of colluding with the outgoing Director-General of Ghana Telecom to prevent the take-off of the telephone project in rural Ghana. The basis for alleging fraud is that "There was no invitation to tender bids nor was the opportunity made public and transparent for (other) investors to consider" (The Ghanaian Chronicle, April 8, 1999). According to the Ghanaian Chronicle "The Capital Telecom project contract which was investigated by the SFO revealed nothing but political fraud involving people still holding political office in the country" (Ghanaian Chronicle, April 8, 1999).

3. Automobile Technical Services and Sabat Motors Deal

The SFO after thorough investigations, initiated court action to abrogate the divestiture of the former Automobile Technical Services to Sabat Motors by the Divestiture Implementation Committee on the grounds that the initial transaction was tainted with fraud.
The role of the SFO is also felt at the local government level as well. The monitoring and enforcement mechanisms governing the use of the District Assemblies Common Fund (DACF) have been found by the SFO to have some lapses. This has helped to inject some level of caution and vigilance in District Assemblies’ transactions. After discovering a payroll fraud involving the sum of C150 million as at September 1998, at the Bosomtwi-Atwima-Kwawoma District Assembly, both the Ministry of Local Government and Rural Development (MLGRD), and the Controller and Accountant-General's Department collaborated with the SFO to adopt correfective measures to prevent further erosion of the security payroll system (SFO Annual Report: 1998:18).

Any discussion on the role and successes of the SFO cannot be completed without mentioning certain cases in which investigations conducted by the SFO have led to the retrieval of huge sums of money to the state coffers. For example, the Offenders of the A Life Supermarket case have so far refunded C21 million to the state (SFO Annual Report, 1998:12). In addition to this, the SFO has assisted the erstwhile Ghana Cooperative Bank to recover about C300 million. In the case concerning the Impregillo Group of Companies, C136.3 million, C107 million and C450 million were respectively repaid into government chest (Business and Financial Times, August 30 - September 5, 1999 , pp. 4 & 8). Table I shows some of the cases handled, amounts involved, retrievals made, and the status of cases. The Table is only to give an idea of some of the successes that have been achieved by the SFO. There are other cases under investigation or pending in court.

The investigations of the SFO has also drawn the attention of Government to the absence of appropriate procedures in the issuing of government guarantees for loans. The pre-eminent role of the Bank of Ghana and the Attorney-General in issuing government guarantees for loans granted by foreign institutions was reinstated after the SFO had conducted an investigation into a contract between the Ministry of Communications and the Capital Telecom (already referred to) for the provision of telecommunications in certain districts in southern Ghana (FSO Annual Report: 1998:12).

The role or the activities of the SFO also involve educational campaigns. Through, its strategy of creating awareness of possible commission of crimes, the SFO has been able to advise and re-orient public organizations to adopt reasonable measures to prevent the commission of such crimes. It has launched a brochure to educate the public about its objective and mission statement. The Executive Director and some officials of SFO undertook familiarization/educational tour of all regional capitals and interacted with regional, political and institutional heads.

Apart from this awareness creation activity, the SFO is also aware that since the increasing role of a market economy has led to rise in the complexity of corporate crime, there is the need for organizations that investigate and punish crimes to employ equally sophisticated methods and sound processes. To this end, the SFO has initiated plans to establish a database which will link both the SFO and the Registrar-General's Department and enable the SFO to access information relatively easily.
Having discussed the role and some of the positive achievements of the SFO, the next section will examine the limitations and problems facing the SFO.

5. LIMITATIONS AND CONSTRAINTS OF THE SFO

The creation of the SFO generated controversy between the government and its opponents as the institution is seen as a way of stifling the entrepreneurial abilities and freedom of the individual. The SFO has been criticized in the area of its power of investigation and prosecution. For instance, the Executive Director, if he considers fit, may conduct an investigation into the activities of anyone in conjunction with the Police or any other person.

Under Clause 13(9), upon the mere statement that someone is suspected of being engaged in an offence involving, allegedly serious financial or economic loss to the state, the Executive Director has the power to direct the freezing of his assets and bank account. This Clause, according to Justice Taylor (1993:2), is

"The most pernicious and dangerous provision which will destroy the rule of law and [perhaps] create a police state reminiscent of the secret police in communist and other non-democratic states".

Moreover, the SFO seems to exhibit a certain immoral feature bordering on its potential to promote corrupt practices and encourage the abuse of office. For instance, in the absence of any supporting evidence whatsoever, the Executive-Director, acting within his own discretion and subject to no legal institutional control has power to accuse any person he chooses of "Serious and complex fraud". Once this accusation lacking evidence is made, he has power to proceed to deprive the person so accused of his freedom of movement and of access to his property. The purpose of the deprivation can then be given by the Executive Director as necessary for him to search for evidence to support his premature accusation. Thus a person's freedom of movement and his other freedoms guaranteed in Articles 14 and 21 of the 1992 Constitution will then be infringed.

Clause 13 (9) also has implication for the economy. The devastating effect of the SFO on the economy, especially investments cannot be over-emphasized. It will unduly erode the development of a vibrant economy, based on the participation of private local capital and foreign capital. The reason for this is that no serious minded foreign investor will risk investing his money in an economy, where on an unsubstantiated accusation of "serious fraud", he stands to have his assets frozen and is denied access to his legitimate funds (Taylor, 1993:2).

Another criticism levelled against the SFO Act relates to reward for information. It can be argued that the creation of the SFO also seems to signify the institutionalization of corruption. The Executive Director is empowered to set up under Clause 20 of the SFO Act, an open market to apparently buy information that will be used to incriminate persons residing in Ghana. In exchange for the incriminating information, the Executive Director can grant such a reward as he may determine in consultation with the Minister for Justice.
The fact is that the majority of Ghanaians are poor and the salaries in the public sector are also meager. Thus the temptation offered here to the poor to tell on their neighbours, by using questionable means for the sole purpose of obtaining additional easy lump sum payment to supplement their low incomes, is alarming. The argument bandied about that informers exist in other countries and that Ghana should encourage their institutionalization seems myopic (Taylor, 1993). It should be noted however that in most countries, responsible security or police officers deal with informers in confidence and secrecy and with circumspection. The contact with informers is clandestine and it is not publicly flaunted. Under the SFO Act, however, it is significant to note that the principle of informers is promoted and given statutory effect, while its corrupt and immoral dimension has been glossed over. It should be pointed out, however, that under Article 35-8) of the 1992 Constitution, the state has mandatory responsibility to get rid of corrupt activities and abuse of power, instead of institutionalizing a disguised form of corrupt.

The proponents of the SFO contend that Zimbabwe, Zambia, Singapore and the United Kingdom (U.K.) operate a comparable system of SFO. The Opponents of the SFO, on the other hand, argue that such contention is specious and therefore not tenable. This is because it has not been demonstrated that the laws which established these offices in these countries could be faulted on constitutional grounds. In the case of SFO Act (Act 466), some of its provisions violate Ghana's Constitution and so they falter.

The SFO also started work with serious credibility problem because it took over not only some functions but also staff of the erstwhile National Investigation Committee and Office of Revenue Commissioner which where not particularly liked by a substantial number of Ghanaians because of the excesses under the Provisional National Defence Council (PNDC) regime. Recently the government directed the SFO to probe the Social Security and National Insurance Trust (SSNIT) for the misappropriation of whopping sums of workers' contributions. The Ghanaian Chronicle of October 25 - October 26, 2000, p.5) in an editorial, wrote:

"We also share the President's desire for the reorganization of SSNIT after a thorough enquiry. Our point of departure is the nature of the organization to do the enquiry. We do not believe in the Serious Fraud Office's (SFO) ability to do a good, honest job. The SFO might have been set up with the best of intentions, but it is yet to win the confidence of Ghanaians. The way the office bungled its very first enquiry - the report on the inquiry into capital Telecom over which its first Acting Executive Director was sacked amid acrimonious accusations, does not hold the SFO up for public trust".

The Chairman of the largest opposition party in Ghana, the new Patriotic Party (NPP) at a press briefing held on October 16, 2000 in Accra objected to the SFO conducting the investigations on allegations of corruption made against the Social Security and National Insurance Trust (SSNIT). This is because the NPP sees the SFO as an arm of the central government and would, therefore, not be in the position to make any effective investigation. The SFO investigations are also not open to the public. Beside, the N-PP said that on completion of investigations, the SFO submits its report to the Attorney-General and Minister for Justice who may or may not decide to prosecute (Daily Graphic, October 21, 2000).

The Ghanaian Chronicle therefore recommended that only Parliament, adopting the non-partisan approach to the SSNIT issue, could set up a competent Commission to probe SSNIT.
Quite recently, the former Acting Executive Director appeared before the Commission on Human Rights and Administrative Justice (CHRAJ), and dismissed the SFO as a terrorist Organisation. Certainly, development such as this, could cloud the minds of Ghanaians into believing that the SFO's position could be compromised.

Apart from these limitations, the SFO has also encountered some difficulties which have hampered the effective performance of its functions. A major problem is inadequate financial resources. This can be attributed to the acute financial problem of the central government which has also affected the amount of funds the SFO can obtain for the performance of its duties. The SFO has to undergo lengthy and cumbersome procedures to justify its budget estimates. More often than not, the Ministry of Finance cut the budget estimates the SFO has prepared to cover its activities within the year. Inadequate funding resulted in inadequate logistics such as computers, printers, recording gadgets, office accommodation and vehicles for its operation.

The caliber or quality of the personnel of the SFO is commendable. The personnel are experts in fields such as Accounting, Finance, Marketing, Law, Insurance and Banking. Quantitatively, the manpower situation, however, is not encouraging. The SFO has not been able to reach out to every part of the country due to inadequate staff and logistics. Most of the Zonal and Unit offices are manned by one or two members of staff. This is due to the embargo on recruitment of staff in state institutions. Due to inadequate budgetary allocation, the SFO has not been able to embark on adequate training of its employees.

In addition, the SFO has not been able to deal with cases expeditiously due to the delays inherent in the judicial system and inadequate logistics. From discussions held with some SFO Officials, it became clear that it is often frustrating when cases involving huge sums of money wait for months, while minor cases involving thefts of fowls are handled. Moreover, there is the need to take into consideration the tripartite nature of the court system where there are the prosecution, the defence and the JUDGE, have been a problem. This is because cases continue to be adjourned whenever any one of the parties is absent, thus causing delays in handling cases. The use of the committee system by the tribunals has also hindered the effectiveness of the SFO by causing undue delays especially in circumstances where a member of a committee is transferred.

Finally, some individuals and companies have been implicated and specific recommendations by way of sanctions to ensure deterrence have been proposed by the SFO, but these recommendations are yet to be implemented. Thus the Daily Graphic of June 20th, 2000 in an editorial has this to say:

"We want to know what has become of these recommendations. Why is it taking appropriate agencies tasked with acting on these matters a year or more to take the requisite action to punish the wrong doers? Are the various foot-dragging acts calculated to buy time and if so whose interests are being served?"
6. CONCLUSION

This paper has discussed the functions, powers, role, limitations and difficulties facing the SFO. The performance of the SFO since its inception has been quite moderate. The work of the SFO is mainly geared towards minimizing or eliminating corruption and championing probity and accountability in governance. The SFO has been able not only to uncover loopholes in administrative procedures which encourage corruption but also retrieve huge sums of money into state coffers and bring some fraudsters to books. It is interesting to note that despite these laudable and modest achievements, corruption in the Ghanaian Public Service still persists.

The following recommendations are therefore put forward to help improve the work of the SFO:

The Commissioner for the Commission on Human Rights and Administrative Justice (CHRAJ) has stated that in order to achieve significant success in the crusade against corruption, sanctions should be imposed on public officials who engage in corruption, instead of the current practice of merely transfer-ring such culprits (Daily Graphic, October 31, 1998, p.11). A recent Daily Graphic editorial on the activities of the SFO also emphasized the need for more firmness and steadfastness in the imposition of sanctions against offenders caught in corrupt acts to serve as deterrent to others whose desire is to compromise the nation's interests. (Daily Graphic, June 20th, 2000).

With some financial support, educational campaigns of the SFO should be organized regularly to raise the awareness and consciousness of the public through durbars, lectures, seminars and media programmes on the dangers of corruption and its ramifications on national development. The awareness programmes should also focus on the objectives, mission statements and mode of investigations of the SFO. As already pointed out, the SFO is perceived by some members of the public not only as an arm of government but also as a witch-hunting institution targeted at certain individuals and institutions, perhaps opponents of the government. Such sensitization programmes would not only help to allay the fears of the public as well as the misconceptions about the SFO, but would also increase the people's confidence in the SFO as a credible institution serving the national interest. Above all, like the Independent Commission Against Corruption (ICAC) in Hong Kong, which has achieved fame because of its operational success (Doing, 1995), the SFO must be relatively freed from internal corruption and outside or governmental interference.

Another issue concerns the definition of "Serious and complex fraud". There is some ambiguity. The SFO Act does not define what constitutes "serious and complex fraud". On this, Justice Taylor has rightly pointed out that "Clearly the lack of prescription in a written law of the crimes which are to form the subject matter of the investigation reposed in the office makes the Act unconstitutional" (Taylor, 1993). The definition of "serious and complex fraud" must be unambiguously spelt out. With regard to constitutional and legal reforms to fight corruption, there is the need to abolish the laws of libel, sedition, the official Secrets Acts and the introduction of freedom of Information Act. Finally, the domineering position of the Attorney-General would have to be revisited since the Executive is likely to be an interested party in some of the cases that would come before the SFO.
REFERENCES


