



ANTI-CORRUPTION IN GHANA

AN ANALYSIS OF LOLAN KOW SAGOE-MOSES & 6 ORS. V. THE HONORABLE
MINISTER & ATTORNEY-GENERAL (SUIT NO. HR/0027/2015)

POPULARLY KNOWN AS THE BUS BRANDING CASE

Outline of Presentation

- ▶ Ghanaian laws on anti-corruption and international commitments
- ▶ Ghanaian codification of certain provisions of UNCAC
- ▶ Discussion of bus branding case



Overview of Anti Corruption Legislation

- ▶ Anti-Money Laundering Act, 2008 (Act 749)
- ▶ Anti-Money Laundering Regulations, 2011 (LI 1987)
- ▶ Anti-Terrorism (Amendment) Act, 2012 (Act 842)
- ▶ Anti-Terrorism Regulations, 2012 (L.I. 2181)
- ▶ Audit Service Act, 2000 (Act 584)
- ▶ Banking Act, 2004 (Act 673)
- ▶ Credit Reporting Act, 2007 (Act 726)
- ▶ Criminal Offences (Amendment) Act, 1993 (Act 458)
- ▶ Commission on Human Rights & Administrative Justice Act, 1993 (Act 456)
- ▶ Customs, Excise & Preventive Service (Management) Law, 1993 (PNDCL 330)
- ▶ Economic and Organized Crime Act, 2010 (Act 804)
- ▶ Economic and Organized Crime Office (Operations) Regulations, 2012 (L.I. 2183)
- ▶ Electronic Transaction Act, 2008 (Act 772)
- ▶ Financial Administration Act, 2003 (Act 654)
- ▶ Financial Administration (Amendment) Act, 2008 (Act 760)
- ▶ Internal Audit Agency Act, 2003 (Act 658)
- ▶ Internal Revenue Act, 2000 (Act 592)
- ▶ National Identity Register Act, 2008 (Act 750)
- ▶ Payment System Act, 2003 (Act 662)
- ▶ Political Parties Act, 2000 (Act 574)
- ▶ Public Office Holders (Declaration of Assets & Disqualification) Act, 1998 (Act 550)
- ▶ Public Procurement Act, 2003 (Act 663)
- ▶ Representation of the People Act, 1992 (PNDCL 284)
- ▶ Value Added Tax Act, 1998 (Act 546)
- ▶ Whistleblower Act, 2006 (Act 720)

Institutions responsible for Anti-Corruption



- ▶ Attorney General's Office
- ▶ Auditor General's Office
- ▶ Internal Audit Agency
- ▶ Public Procurement Authority
- ▶ Controller and Accountant-General's Department
- ▶ Bureau of National Investigations
- ▶ Financial Intelligence Centre (FIC)
- ▶ Ghana Police Service
- ▶ Commission on Human Rights and Administrative Justice (CHRAJ)
- ▶ Economic and Organised Crime Office (EOCO)
- ▶ Public Accounts Committee of Parliament
- ▶ Financial and Economic Crime Courts

Ghana's International Commitments to Anti-Corruption

Ghana has signed and ratified the following international agreements;

- ▶ United Nations Convention Against Corruption (UNCAC)
- ▶ African Union Convention against corruption (AUC)
- ▶ ECOWAS Protocol on the Fight against Corruption

UNODC Implementation Review Group Report, 2nd Feb 2015

- ▶ Reviewing countries- Swaziland and Rwanda
- ▶ Ghana's legal and institutional framework is substantially compliant with UNCAC
- ▶ UNODC report recommendation to adopt the National Anti-Corruption Plan has been implemented. The plan integrates anti-corruption measures into programs of state agencies and allows for sustained coordination between agencies and other stakeholders.
- ▶ Major challenge is need for capacity building for financial investigations, establishment of asset declaration system and better develop extradition laws to foster international cooperation.

Political Party Financing



- ▶ Article 7 (3) of UNCAC – weak provision encouraging states to regulate political financing

Codification in Ghana -Political Parties Act 2000 (Act 574)

- ▶ Only citizens may contribute in cash or kind to the funds of a political party. Non citizens may not directly or indirectly finance a political party and a political party shall not demand or accept same.
- ▶ A firm, partnership or enterprise owned by a citizen or company registered under the laws of Ghana at least 75% of whose capital is owned by a citizen is for this purpose is a citizen.

Public Procurement and Management of Public Finances

Article 9 of UNCAC

- ▶ State parties shall take institutional steps to ensure transparency and objective criteria in decision making, public distribution of information relating to procurement, accountability in management of public finances such as procedures of adoption of national budget, timely reporting on revenue and expenditure, system of accounting and auditing standards and related oversight.



Ghana's Codification of Article 9 of UNCAC

- ▶ Public procurement Act, 2003 (Act 663)- administrative and institutional structuring for procurement and tendering procedures. **Publication of monthly Public Procurement Bulletin with information on** proposed procurement notices, notices of invitation to tender and **contract award information.**
- ▶ Financial Administration Act, 2003 (Act 654)- regulates financial management in public sector; Minister of Finance has financial oversight over use of public funds; established Financial and Economic crimes court by the Chief Justice.
- ▶ Internal Audit Agency Act, 2003 (Act 658)- supervision of internal audit activities of government agencies and institutions to ensure efficient use of state resources.

Public Reporting

- ▶ Article 10 of UNCAC [Article 9 of AUC] - enhance transparency in public administration through access to information
- ▶ Article 13 of UNCAC- effective access to information, right to receive information

Codification in Ghana

- ▶ 1992 Constitution- right to information
- ▶ Right to Information Bill- free access to information held by a Governmental agency subject to exemptions to protect public interest

Background of Bus Branding case



- ▶ In 2015, news reports from Parliament revealed that the Government of Ghana through the Ministry of transportation paid GHC 3.6 million (718,017 Euros) to Smarttys Management and Production Limited for the branding of 116 intra-city buses
- ▶ However the artist engaged for the branding in interview stated he charged GHC 185,600 (17,073 Euros)
- ▶ Public outcry on the exorbitant amount led to an investigation by the Attorney General (AG), requested by the Chief of Staff (administrative head of government employees)
- ▶ The Minister responsible for Transport resigned days after the scandal broke out
- ▶ In December 2015, the AG's report directed a refund of GHC1,548,608.08 (308,869 Euros) by the end of March 2016 and further investigation of public officials involved in the matter by EOCO

Potentially Corrupt Aspects gleaned from AG's Report

- ▶ The funds were taken from the Annual Budget Funding amount allocated for railway infrastructure development
- ▶ The average price quote from other local automobile companies for rebranding did not exceed GHC1.7 million (339,063 Euros)
- ▶ Excess payment of GHC1.9million (378,953 Euros)
- ▶ Public Procurement procedures were not followed
- ▶ Non compliance with conditions for sole sourcing
- ▶ Rebranding was done before a contract was concluded between Smarttys and the Ministry of transport
- ▶ The “2 page” Contract did not include a defects liability period, warranties nor mode of payment

Economic Effect

- ▶ Poor transportation infrastructure
- ▶ Diverted national resources
- ▶ Collapse of local industries due to unfair competition
- ▶ Unemployment or loss of prospective employment due to lack of funds for railway project
- ▶ Reduced foreign investment in industries due to lack of railway system and lack of transparency in procurement process



Human Rights infringed

- ▶ Right to Equality (Art 17(4c) of Constitution)
- ▶ Right to information
- ▶ Right to work (economic rights)
- ▶ Right to movement
- ▶ Right to social security

Other Laws potentially breached

- ▶ Public procurement Act, 2003 (Act 663)
- ▶ Financial Administration Act, 2003 (Act 654)
- ▶ Criminal Offences (Amendment) Act, 1993 (Act 458)

The Court Matter...

- Occupy Ghana, a civil society group dissatisfied with the outcome of the investigation through its individual members commenced a suit in the High Court requesting **full** disclosure of all details relating to the transaction.



Human Rights Aspects

Occupy Ghana sought to enforce the following human rights and freedoms;

- ▶ Civic duty to protect and preserve and expose and combat misuse and waste of public funds and property
- ▶ Right to information, subject to qualifications and laws as are necessary in a democratic society
- ▶ Right to protection of human rights by the courts

The Judgment (Legal Aspects)

The High Court ruled that

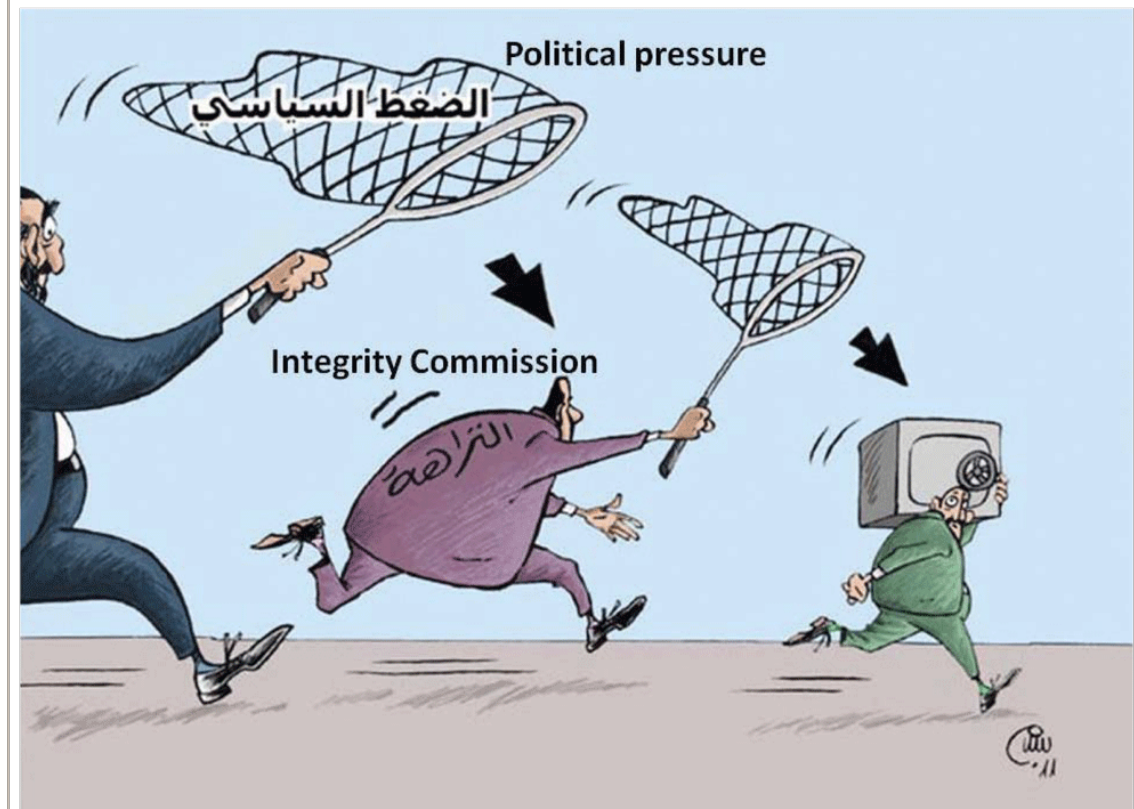
- ▶ As citizens, the applicants were entitled to apply to the court for enforcement of the 'public' right to information
- ▶ Citizens are entitled to access to public information (within the ambit of the law) in possession of the Government as this is an assurance of probity and accountability
- ▶ Full disclosure of the details of the contract was within public interest to enable citizens fully participate in the public debate, for private research or simply to enable journalists report on it
- ▶ The right to information and the freedom of expression are dependent on each other and as such the right to information includes the right to receive information to full participate in society
- ▶ Access to the information on the contract is crucial to the exercise of the civic duty to protect public property and expose and combat misuse of public funds

Significance of the Bus Branding Case

- ▶ Highlights the relationship between human rights and anti-corruption
- ▶ Interprets the right to information to include the right to receive information
- ▶ Contributes to the preventative approach to corruption
- ▶ Highlights the pivotal role of transparency in the fight against corruption
- ▶ Highlights the role of civil societies in anti-corruption

The Role of Civil Society in the crusade against Corruption

- ▶ Transparency International (Ghana Integrity Initiative)- publication of corruption index
- ▶ Occupy Ghana- bus branding saga
- ▶ Anas Aremeyaw- judges bribery scandal
- ▶ The Media- GYEEDA, SADA, CHRAJ



Case law developments resulting in convictions on corruption

- ▶ There are few court cases that have led to convictions of high ranking public officials or high profile private individuals for corrupt practices.
- ▶ This may be due to the failure of the Attorney General's department to actively prosecute matters of corruption.
- ▶ However, this is compensated by the activism of civil societies and the media which forces public officials entangled in corruption scandals to resign or be removed from office.
- ▶ In furtherance, commissions of inquiry are set up to investigate these allegations of corruption.
- ▶ Even though criminal charges are seldom brought against these high ranking officials, there is usually an institutional cleansing and more often the indicted institution is restructured to avoid future acts of corruption.

Possible solution?

Office of the Special Prosecutor

- ▶ The merged role of AG as representative of Government and criminal prosecutor may be a cause of low level of prosecution of corruption within the Government.
- ▶ An independent office of special prosecutor has been proposed by the current Government.
- ▶ Even though the special prosecutor will be appointed by the Government, the argument is that there will be security of tenure to ensure independence (similar to appointment of the Chief Justice and Electoral Commissioner)

Notable strides in Italy- *lessons for Ghana*

- ▶ Investigation of practices of Italian multinationals abroad
- ▶ Built in mechanism of continuity of projects involving impugned contracts
- ▶ Anti-corruption monitoring set up in individual regions
- ▶ Recent implication of President of Lombardy



The End

THANK YOU FOR YOUR ATTENTION