

Effectiveness of Anti-Corruption Agencies in West Africa

**Benin, Liberia, Niger, Nigeria,
Senegal and Sierra Leone**

**A review by Open Society
Initiative for West Africa
(OSIWA)**

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2016

**By Gilles Badet, Luc Damiba, Stéphane B Engueléguélé, Emmanuel Gaima,
Chijioko K Iwuamadi, Semou Ndiaye and Shine Williams**



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PREFACE

The first wave of nationally and internationally led efforts to fight corruption in Africa had, as their primary focus, the creation of dedicated government entities. That became the standard against which national constituencies and funders assessed the seriousness of progress in the fight against corruption. To date, a wide range of institutions solely dedicated to eliminating corruption – with varying degrees of independence, financing and power – are still being set up, either at the behest of international donors or based on political pledges made by politicians before they ascend to power or when seeking re-election. As a newer wave of citizen-led transparency and accountability movements emerge and are increasingly becoming catalysts for meaningful changes, anti-corruption agencies are under greater scrutiny and questions are being raised about their utility and efficacy.

Although several governance indices such as Transparency International, the World Bank Governance Index and the Mo Ibrahim Foundation's Ibrahim Index of African Governance (IIGG) show that there has been progress in containing the vice in some countries, sceptics still argue that progress has been modest and slow at best or that they have failed in reducing venality in the public sector. Various perception reports show that most people believe that corruption is more entrenched and deep-seated despite the existence of these institutions. Whilst most countries claim to have put in place improved anti-corruption systems, the paradox is that corruption seems to be becoming more endemic.

There are multiple factors as to why the fight against corruption is not yielding the expected results. These include, but are not limited to: the lack of open government where officials are not accountable to citizens; the persistent international vested interests and competition not only over natural resources, but over profitable market access in emerging economies in the region; the opaque and inefficient public finance management systems; the growing and pernicious effects of capital flight and illicit financial outflows; the inefficiency of legal enforcement of existing regulations to fight corruption; and the relative lack of independence of the judiciaries in the region. In addition, there is also the absence of political will and interest. This usually manifests itself in the form of interference (directly or indirectly) in the work of anti-corruption agencies, selective prosecution (usually of political rivals, and/or members of the opposition or previous governments), and poor budgetary support.

This research assesses efforts in fighting corruption in six countries in West Africa with very different governance, macroeconomic, socio-political and institutional characteristics. Similar research has been undertaken by the Open Society Foundation's Africa Regional

Office in Eastern and Southern Africa. The *raison d'être* was to carry out a comparative study which would examine the rationale underlying the successes and failures of agencies devoted to the prevention and combating of corruption, with the aim ultimately being to establish ways and means of strengthening anti-corruption efforts on the African continent.

This report reviews the efforts and performance of these agencies based on benchmark indicators contained in the Jakarta Statement on Principles for Anti-Corruption Agencies, which was agreed to by current and former heads of anti-corruption agencies, anti-corruption practitioners and experts. These can be summarised as including, *inter alia*, a clear mandate to fight corruption; permanence of the anti-corruption institution; neutrality and security of tenure of members; functional and financial autonomy; immunity from civil and criminal proceedings for acts committed within the performance of their mandate; power to recruit and dismiss their own staff according to clear and transparent internal procedures; and internal accountability and professionalism on the part of institutions. These core principles are aimed at guaranteeing the authority and safeguarding the function and operational independence of the anti-corruption agencies from outside interference in the same way as the Paris Principles defined the role, composition, status and functions of national human rights institutions. It is hoped that the Jakarta Principles or something akin to them will one day be adopted by the United Nations General Assembly.

All the countries studied for this research are parties to the United Nations Convention Against Corruption (UNCAC), and the African Union Convention on Preventing and Combatting Corruption (AUCPCC). The UNCAC requires states parties to create special bodies within their legal systems that are dedicated to the prevention of corruption. It further urges each state party to grant these bodies the necessary independence in accordance with the fundamental principles of its legal system, to enable the bodies to carry out their functions effectively and free from any undue influence. Article 5 of the AUCPCC includes a similar obligation for African states, making it mandatory for them to create anti-corruption agencies. It expounds that national agencies responsible for combating corruption and other related offences must enjoy the necessary independence and autonomy enabling them to carry out their duties effectively.

The legislative, regulatory and institutional framework as well as the independence and effectiveness of these national anti-graft institutions vary from country to country, and so does the political will and interests of the various governments. This study highlights some of the operational and political challenges they experience in meeting international standards and best practices. The report proffers recommendations in respect of each country.

Although this study only covers six West African countries, readers interested in corruption issues in particular and good governance in general, will find the report useful enough to trigger a similar probe into anti-corruption institutions in their own jurisdiction or in many other Africa countries. My considered opinion from reading this report and my work on governance is that corruption is a symptom of deeper governance problems. Many are quick to label the agencies 'toothless bulldogs' and to assess their independence merely

by the number of successful prosecution of 'big fish'. This test, in my view, is incorrect. Anti-corruption agencies are usually more successful when they are integrated into the general governance architecture and when they are well domesticated. They cannot fight corruption alone. There is much work to be done if we are to improve the record of effectiveness of these agencies. It is my hope that this research is a substantive contribution to advancing the conversation.

Abdul Tejan-Cole

Executive Director, OSIWA

Former commissioner, Anti-Corruption Commission of Sierra Leone

1

GENERAL OVERVIEW

Stéphane Bobé Enguéléguélé

Policies aimed at strengthening public governance and fighting corruption have flourished in West Africa and the Sahel region with the discovery of the very labile relationship between institutional underdevelopment, inefficient public policies and political instability. Beginning in the middle of the 2000s, a number of West African countries have created anti-corruption bodies more or less simultaneously. This marks the local implementation of a global dynamic, which Africa has been called upon to join under the sometimes shameful constraint of structural adjustment and the Heavily Indebted Poor Countries (HIPC) Initiative.¹

A. Corruption and endemic weakness of the state

Weak states, with virtually no capacity for action, have proved incapable of guaranteeing access to basic public services for the majority of their population, or of ensuring the security of their political centres. At the same time, natural disasters have revealed both the people's lack of security and their considerable vulnerability to serious, often climate-related risks. Corruption has risen sharply in most West African countries, linked to changes in the economic system, and deregulation has generally promoted opacity in transactions, despite the fact that the liberal rationale was meant to lead to transparency. As Yves Mény explains, 'the disruption of established situations, and even of the economic rents of the past, has laid the foundations for speculative situations that have allowed significant profits to be made without much work or capital'.² These speculative situations have developed due to the transformation of the link between the market economy and the political economy, and the emergence of new political entrepreneurs enmeshed in commercial affairs.³

1 The *Heavily Indebted Poor Countries Initiative* (HIPC Initiative) is a joint programme launched by the International Monetary Fund and the World Bank in 1996 to help the poorest countries in the world by making their international debts manageable. See <https://www.imf.org/external/np/exr/facts/hipc.htm>

2 Mény Y (1995) Corruption, politique et démocratie. *Confluences* No. 15/1995. p. 15. (Unofficial translation.)

3 *Ibid.*: 16.

Corruption has its roots in these disruptions, which have changed the nature of the state and its relationship to public service; there is also a phenomenon of subsistence corruption, petty corruption that challenges the access of the most humble to public services. In such a context, corruption tends to become operational in society, when the globalisation of the economy is accompanied by a new international division of labour, transforming peripheral states into prime production areas for illegal wealth generated through predation and the siphoning of public wealth and natural resources, which are converted into offshore assets. Bayart, Ellis and Hibou have conducted an in-depth analysis of these processes, defining them as the generalisation, within a state, 'of practices that are obviously criminal, either in the light of the national legal standards in force or, especially, according to the criteria of international law'.⁴

A certain number of concepts have been put forward to explain this phenomenon in a geopolitical study on drugs published in French under the title *Observatoire géopolitique des drogues*. For instance, 'narcostates' may have a variety of unique relationships with drug trafficking circles; in such cases, certain 'sectors of the state apparatus benefit directly from a large share, perhaps even an essential share, of revenue from narcotics trafficking'.⁵

The nature of these relationships varies from one geopolitical context to another: sometimes, revenue from trafficking contributes to enriching the state and therefore constitutes an essential factor in its economic policies or even its budgetary policies. In other cases, the multiplication of ties between politics and crime is linked to the failure of state power in certain areas. When states are deprived of the tools of power, traffickers may become rivals or partners. In some instances, crime may also be a private resource for politicians.⁶ Narcotrafficking interests may penetrate the mechanisms of politics, replacing the normal system of electoral competition. In narcodemocracies, whole sectors of the economy fall into the hands of private powers that draw most of their authority from trafficking and from their organisation as lobby groups and networks of influence.

We are currently witnessing the systematisation of de facto collaboration between criminal organisations and a portion of the political and administrative elite that sometimes belongs to those organisations, even though they are still defined as criminal according to law. Corruption and the absence of the rule of law have had absolutely catastrophic macroeconomic consequences in West African states. Corruption is clearly one of the first terms of a criminal logic that allows certain members of the political or economic elite to accumulate embezzled fortunes at the expense of poor countries' development. The cost to the international community, constantly at risk of being criticised for not doing enough to provide aid for development, is considerable. Through money laundering, corrupt elites become modernisers of criminal finance:

4 Bayart JF et al. (1997) *La criminalisation de l'État en Afrique*. Brussels. p. 36. (Unofficial translation.)

5 Observatoire géopolitique des drogues (1994) *États des drogues, drogues des États*. Hachette, Collection Pluriel Intervention. p. 12. (Unofficial translation.)

6 Ibid.

[T]oday's money launderers are pragmatic professionals who have the means to invest a portion of their dirty funds so that they are effectively recycled; they act rationally on the basis of constant trade-offs between goals and constraints; they have access to a range of tools that can be used individually or in combination to set up as many money-laundering operations as their imagination and resources permit.⁷

The economic shocks generated by massive flows of laundered money not only hit local systems very hard, but also disrupt the international economic system in time. The impact is greatest on peripheral systems, which are, by definition, less structured than the economies of developed countries and less well protected from the shocks necessarily generated by the criminal economy.

B. Organising the fight against corruption

This environment has laid the foundations for a new discourse on public governance reform, involving prevention and repression of corruption: this has marked the emergence of a 'moral anti-corruption police'.⁸ This new system of representation has entailed adjustments to perceptions of politics, in which corruption is analysed based on a discourse that goes beyond the usual political science and neopatrimonial posturing. By taking the analysis further, new approaches are made possible, which no longer focus on 'corruption and how it can define deviant behaviour and political situations ... but rather the conditions for generating new meaning from the notion so that it fits into a revised logic'.⁹

Corruption is perceived from the standpoint of how meanings are turned into discourse and representations. Until that time, 'corruption in Africa was viewed as part of an imaginary system that could be described as diurnal, in the sense that it could only undergo purification under the coming reign of transcendent thought, the advent of new political institutions that would sweep away the dross of a defunct world'.¹⁰ Modernising the state meant moving beyond neopatrimonial and clientelistic management of public affairs, to establish a system of 'rigour' that would engender a reformed brand of governance. Corruption is now perceived as a global threat, which, due to its crosscutting nature, justifies 'external governance, and a more urgent and more rigorous moral economy'.¹¹ This was the backdrop to the initiatives aimed at reforming public governance and inspiring reform processes based on regional and international legal instruments.

7 Dupuis M-C (1998) *Finance criminelle. Comment le crime organisé blanchit l'argent sale*. Paris: PUF. p. 4. (Unofficial translation.)

8 Vallée O (2010) *La police morale de l'anticorruption. Cameroun, Nigeria*. Paris: Karthala, collection Les Afriques. (Unofficial translation.)

9 Ibid.: 29.

10 Ibid.

11 Ibid.: 42.

These initiatives take two forms. In some cases, they proceed from non-governmental organisations, such as Transparency International, which has helped put the promotion of the rule of law and the fight against corruption at the top of the agenda of the states and international organisations. According to Transparency International, setting up a national integrity system is an indicator of effective anti-corruption policies. The idea is to equip societies with institutional pillars designed to reduce the influence of corruption to the fullest extent possible and ensure the rule of law. Governments should

adopt a global approach, both in terms of analysis and strategies. The solutions advocated, which are both realistic and concrete, link together to form a cohesive system. When all is said and done, the challenge consists of setting up a system of transparency and accountability with a twofold objective: preventing fraud by making corruption a high-risk, low-yield undertaking and by punishing it systematically wherever it is found, as impunity is not compatible with integrity.¹²

The promotion of a national integrity system is therefore intended to motivate the players to view the problem and its solutions differently, by adopting

a new system of accountability that is both vertical and horizontal. This would create a virtuous circle in which the different actors are accountable to each other and no single leader or institution is in a position to dominate the rest of the system. Links are formed and consolidated between the different parts of the integrity system. The circle is completed by the verdict of the ballot box, thereby ensuring that the system is accountable to the people.¹³

The equilibrium of the entire system hinges on accountability, a concept that has inspired reforms in the state apparatus and the creation of institutions aimed at guaranteeing integrity and accountability. According to the view of Transparency International, the national integrity system is based on institutional pillars (legislative and executive branches of government, the judiciary, the public sector, inspection and audit institutions, civil society, the media, and international organisations), whose solidity, independence, transparency and integrity must be guaranteed.

These initiatives may also proceed from regional and international cooperation organisations, which develop a relatively dense network of instruments aimed at inspiring government reforms, with a view to improving governance by neutralising corruption and promoting the rule of law. These regional and international conventions also organise the creation of institutions by the member states, which are engaged in technical harmonisation strategies for their anti-corruption mechanisms, within the framework of

¹² Transparency International (2002) *Combattre la corruption. Enjeux et perspectives*. Paris: Karthala. p. 64. (Unofficial translation.)

¹³ *Ibid.*: 65.

regional cooperation organisations such as the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). They develop a range of institutions to produce public policy frameworks and regulations, because reinforcing integrity entails setting up organisations at various levels to guarantee the reliability of the national integrity system.¹⁴

A legal network is being set in place from the international level to the local level to grasp and address corruption according to a homogeneous and unequivocal model. The United Nations Convention Against Corruption requires state parties to create special bodies within their legal systems that are dedicated to the prevention and repression of corruption and illicit enrichment. Article 6 of the convention states that:

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

Article 5.3 of the African Union Convention on Preventing and Combating Corruption (AUCPCC) incorporates a similar obligation for African states, making it mandatory for them to create anti-corruption agencies.

The instrument urges member countries to ‘set up independent national authorities or agencies tasked with combating corruption, ensure they are operational and strengthen them’. The Financial Action Task Force (FATF) recommends specialised agencies in the areas of money laundering and financing of terrorism, and urges the states to designate institutions to be placed in charge of the political coordination of strategies for the prevention and repression of economic crimes. The first of the revised FATF recommendations stipulates that:

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including

14 UNDP (2004) *Anti-corruption. Practice Note*, February 2004. p. 17.

designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively.

Such instruments provide strong incentives to develop anti-corruption institutions. A range of institutions are thus being set up and organised, becoming real hubs for the development of public policies on corruption and money laundering. Creating an anti-corruption agency allows countries to become part of the global dynamics of integrity, to show their credentials, and in any case to demonstrate that the problem of corruption may be effectively addressed. However, institutional development is not an automatic process: the establishment of anti-corruption agencies is affected by local issues, the political balance of power, and conflicts within the networks of players involved in the fight against corruption. Mathieu has showed how the instrumentalisation of anti-corruption mechanisms has developed into truly ‘customised anti-corruption strategies’.¹⁵ governments have adapted the type of response to suit the environment, using ‘ordinary’ mechanisms in routine situations, and resorting to ‘exceptional instruments’ in times of disruption. Thus,

under normal circumstances, permanent official bodies are supposed to allow the state to fight corruption with discretion. However, in times of crisis, state representatives are seeking legitimacy, which implies a media strategy that, while it may only be an opportunistic sham, may also be much more than that.¹⁶

The type of response selected will therefore depend on the environment, the balance of power in political situations, and above all on the power strategies of the governing elites. In routine situations, common-law mechanisms can be allowed to operate, more or less, independently and secretly. In a context of political crisis or change of government, ad hoc instruments sometimes express symbolic strategies or a will to neutralise political adversaries or rivals. Thus, ‘the fight against corruption may serve as a tool for authoritarian regimes as well as for democratic governments’.¹⁷ Luc Damiba demonstrates this masterfully in his report on Niger.

Anti-corruption agencies can take on a wide variety of forms. The OECD distinguishes three main models:¹⁸

- Multi-purpose agencies with law enforcement powers;
- Law enforcement type institutions; and
- Preventive, policy development and co-ordination institutions.

15 Mathieu M (2007) *La lutte contre la corruption au Bénin, au Niger et au Sénégal. Une approche historique.* In: G Blundo, J-PO de Sardan (eds) *État et corruption en Afrique*. Marseille-Paris: APAD-Karthala. pp. 321 et seq. (Unofficial translation.)

16 *Ibid.*: 322.

17 *Ibid.*: 328.

18 OECD (2008) *Specialised Anti-Corruption Institutions: Review of Models*. Paris: OECD, 2008; see also Chêne M (2012) Centralised versus decentralised anti-corruption institutions. *U4 Expert Answer*, 16 March 2012, No. 323.

In the latter case, the bodies created have limited functions and a relatively narrow scope of intervention, with prevention notably taking place through the development of national anti-corruption strategies corresponding to the model defined by Transparency International. Under the law enforcement model, agencies are in charge of detection, investigation and prosecution, but may also have functions including the prevention and coordination of the actions of networks of participants in the fight against corruption. The model of multi-purpose agencies with law enforcement powers combines prevention, education and investigation functions.

For editorial reasons, six countries with very different macroeconomic, sociopolitical and institutional characteristics were selected for this study. A comparison is heuristic only if it reveals convergences hidden by the heterogeneity of the frameworks of comparison. Benchmark indicators should be determined specifically enough to ensure that the report is not merely a series of unrelated monographs. In this regard, a decision was made to review each national situation from the standpoint of its conformity with the principles set forth by the Jakarta Statement of 26–27 November 2012 on Principles for Anti-Corruption Agencies. These principles recommend granting agencies clear mandates to fight corruption through crosscutting actions: prevention, education, awareness-raising, investigation and prosecution. They also state that the permanence of anti-corruption agencies should be ensured concurrently with collaboration between the different public and private stakeholders involved in the fight against corruption. Agencies should be designed so that their members are neutral and apolitical, the continuity of their leadership is ensured, and their heads have security of tenure and may only be removed through legally established procedures. Their codes of conduct should require the highest standards of ethical behaviour from staff while ensuring their immunity and adequate remuneration, facilitated by full financial autonomy. Anti-corruption agencies should also have authority over their own human resources. They should be subjected to a requirement of internal accountability, and strictly adhere to the rule of law and be subject to monitoring mechanisms designed to prevent the abuse of power. With a view to ensuring this internal accountability, they should develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimise misconduct and the abuse of power. Agencies should also make their progress reports available to the public and cultivate close relationships with all sectors of the population in order to maintain the highest level of public confidence in their independence.

Anti-corruption agencies emerge in countries with a variety of different characteristics. The adherence of the systems to the declaration of principles for the assessment of anti-corruption agencies is highly variable. Disparities in the development of anti-corruption agencies reflect the impact of the ongoing processes of institutional deepening in West Africa; these processes pertain to the differentiation of institutions, their empowerment, and their establishment as part of the flow of public action, in which they are becoming routine elements.

C. Disparities in empowerment of anti-corruption agencies

The studies contained in this volume describe the institutionalisation of anti-corruption agencies in six West African countries which, while very different, share similar characteristics in terms of their government trajectories. Their economic characteristics are diverse, as are their internal political and administrative dynamics, reflecting varying abilities to anchor the rule of law and convert public management to the creed of good governance. The sample countries are sufficiently diverse to allow us to identify those that seem to face similar challenges, based on a comparison of the main features of their anti-corruption agencies. The study authors have described the contexts in which the anti-corruption agencies were created. Beneath the mimetic dynamics¹⁹ imposed by the international community, since the states are expected to comply with what are basically imported, cookie-cutter institutional designs, there are local microprocesses. The institutional import/export transactions we are currently witnessing also generate local arrangements and global choices, ranging from the development of a national anti-corruption strategy to the restoration of the balance of power between state bodies (using a decree or law to create an agency, granting it a broad or narrow mandate, frameworks for budgetary allocation procedures, control over appointments, and the revocation and remuneration of agency personnel) are all indicators of the existence of underlying issues. As soon as they are created, anti-corruption agencies aspire to achieve independence from the state: the institutionalisation of anti-corruption agencies is therefore a focus of general political struggle running counter to empowerment. Compliance with the Jakarta prerequisites is top priority.

What are the local realities in the countries featured in the case studies appearing in this volume?

Benin

Since 2006, Benin has reinforced its legal and institutional framework with regard to the fight against corruption. Benin's Law 20/2011 of 12 October 2011 founded and set up the National Anti-Corruption Authority, ANLC (*Autorité Nationale de Lutte contre la Corruption*), which replaced the Observatory for the Fight against Corruption (OLC). It should be noted that the Beninese anti-corruption mechanism is made up of several different organs, thereby raising the issue of the coordination of their actions. This institutional system of typically Jacobin inspiration includes political/administrative organs placed under the control of the executive (inspection body), judicial organs without power to act on their own initiative (court of audit, high court of justice), and specialised bodies including the ANLC. The makeup of the latter body grants primacy to actors belonging to or dependent on the executive. As aptly noted by Gilles Badet, 'it turns out that at least six

19 Mény Y (1993) *Les politiques du mimétisme institutionnel. La greffe et le rejet*. Paris: Harmattan. (Unofficial translation.)

of the members are appointed by an organ of the executive. The number is actually eight if we include the state inspector general and the corps of inspectors.’ Although they are not irremovable, ‘the members of the ANLC are granted immunity from civil or criminal prosecution for any acts committed in the performance of their official duties’, and this contributes to securing their tenure in compliance with the Jakarta prerequisites. The ANLC has the power to sanction its members, and its control over the professional ethics of agency players is equivalent, according to Badet, to ‘a sort of irremovability’. The ANLC recruits its own support staff. The ANLC fits the multi-purpose model, as the functions of the agency include awareness-raising, education, prevention and investigation. In terms of independence, it is symptomatic that, as Badet points out, ‘the ANLC is under the supervision’ of the president of the republic, which implies a certain form of politicisation; however, in the opinion of the constitutional court, this position does not preclude the independence of the agency. The ANLC prepares a preliminary budget, which is then included in the budget of the state, but the regularity and amount of financial resources made available to the agency remains a major challenge for Benin.

The ANLC is tasked with operational duties, as it is in charge of detecting and investigating cases of corruption, although it does not have the power to prosecute the accused. The agency remains vulnerable, however, due to financial independence issues and its members’ accountability. Gilles Badet has shown that the ANLC, like the Observatory for the Fight against Corruption it replaced, had clear mandates that were effectively put in practice. However, the stumbling block of the Beninese system is the low level of independence in the justice system, such that the cases brought to light by the ANLC almost never lead to convictions by the judiciary. Similarly, the ANLC is vulnerable to ‘financial blackmail by the executive’, although its powers of investigation are residual. According to Badet, in order to modernise the fight against corruption, it is vital to liberalise the justice system, free it from the ascendancy of the executive, and reinforce the operational, budgetary and administrative capacities of the ANLC.

Liberia

In Liberia, after pacification and the restoration of the institutional capacities of the state in the wake of the civil war, it appeared that the new foundation for public management was to be ‘the establishment of fair, accountable, responsible and transparent governance, involving the transition from a political culture of impunity to a democratic culture based on respect for the rule of law’.²⁰ The LACC Act (2008) instituted and established the Liberia Anti-Corruption Commission (LACC). The LACC includes five commissioners, and is governed by a chairperson nominated by the president of the republic and confirmed by the senate. The appointment is then made by the president. This appointment procedure establishes a relative dependence on the executive on entering office. The same applies

20 Eliane Fontaine (undated) *Stabilité fragile au Libéria : Perspectives nationales et sous régionales pour une consolidation de la paix. Paix et sécurité internationales*. Available at <http://www.cms.fss.ulaval.ca/recherche/upload/hei/fichiers/liberia.pdf> [accessed 6 September 2016]. (Unofficial translation.)

to commissioners leaving office: the act stipulates that a letter of resignation shall be addressed to the president, but that it shall only be made effective by his or her acceptance. It also provides that the president may discharge commissioners in the event of serious misconduct or breach of duties. However, as Gaima and Shine have shown, the law does not specify the procedure to be followed by the president to dismiss the commissioners. This situation makes LACC officials vulnerable to arbitrary dismissals.

While the LACC has autonomy in terms of the management of its human resources, its funding through the national budget is insufficient or inadequate. However, it is supplemented by additional funds from technical and financial partners. The LACC is not empowered to undertake prosecution, which can only be initiated by the minister of justice. According to Gaima and Shine, the law instituting the LACC ‘does not authorise the latter to initiate prosecution in its own name’. The authors have noted that, on various occasions, the minister of justice has declined requests for prosecution submitted by the LACC. This constitutes a major weakness in the legislation, coming on top of operational weaknesses linked to insufficient human and material capacity. However, chapter XIII section 13(1) of the act establishes the institutional independence of the LACC, and section 13(2) institutes its financial independence. The Liberian anti-corruption agency is, like its West African cousins, faced with a crucial problem of operational and financial autonomy. This was the gist of the contribution by Emmanuel Gaima and Shine Williams, who also stressed the issue of the political will to equip the agency with all of the necessary resources to effectively fight corruption: there are real reasons to question the government’s will to facilitate the emergence of an independent anti-corruption agency. The authors also deplored the lack of coordination of the actions of the LACC with the justice system, the legislature and even the executive, since certain representatives refrained from communicating information that could facilitate ongoing investigations. The success of the fight against corruption calls for greater synergy between the public institutions belonging to the national integrity system, and the anti-corruption system also needs to be more open to non-governmental actors.

Nigeria

Located in the heart of the West African sub-region, Nigeria is distinguished by very poor economic performance compared to its national wealth. An analysis of the trend in income per capita between 1960 and 2010 reveals that the GDP progressed by nearly 90% over the period, for an annual increase of nearly 1%. However, since the beginning of the oil boom in the 1970s, per capita income has continued to decline. Total revenue from Nigerian oil between 1970 and 2000 is estimated at USD 400 billion. Unlike in East Asian countries, this absolutely massive revenue has not been invested in human capital. The explosion of wealth has not at all been reflected in terms of improved living conditions for the people. While in Asia, Indonesia – to take one example – has reduced the percentage of the population living below the poverty line, Lewis has shown that, over

the same period, the figures for Nigeria deteriorated very seriously.²¹ The lion's share of the wealth produced went to increase the fortunes of the political elite and its patronage networks.²² As Fukuyama wrote, 'Politics is the general route to riches in Nigeria; very little income has been earned through entrepreneurship and genuine value creation.'²³ In Nigeria, the corollary of corruption and poverty is a high level of violence, particularly in the Delta River region. When the federal government attempted to absorb this violence by investing in the region, the funds were diverted by the political players who organised their distribution.²⁴ Alternating dictatorial and democratic regimes were an obstacle to change in the characteristics of Nigeria's government institutions, lower levels of poverty, an increased supply of public health services, and less corruption.²⁵ Nigeria's development trajectory shows weaknesses of an essentially institutional nature: 'The roots of Nigeria's development problem are institutional; indeed, it is hard to find a better example of weak institutions and bad government trapping a nation in poverty.'²⁶ In this case, the lack of democracy is not the main problem. While the quality of democratic institutions is mediocre, political contests between competing political organisations and the potential for democratic change of government have existed since the end of the military regime in 1999. Indeed, the recent change of the head of state was hailed as a success in a country where post-electoral violence was feared, and the new team's anti-corruption agenda is extensive.

Nigeria has two institutions specialising in the fight against corruption: the Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crime Commission (EFCC). The ICPC is a central institution in the field of the fight against corruption. It was created on 29 September 2000, and its legal foundation is the Corrupt Practices and Other Related Offences Act. It has a threefold mandate of prevention, enforcement and awareness-raising on corruption. An institutionally and financially independent body, it controls its own operational strategy.

The EFCC was instituted by Act No. 50 of 2004. It plays a leadership role in preventing, investigating and prosecuting economic and financial offences. The EFCC is the focal point for the implementation of the 40+9 FATF recommendations in Nigeria. Coordination is a major issue in the Nigerian system. A lack of coordination between stakeholders in the fight against corruption inspired the government to create a Technical Unit on Governance and Anticorruption Reforms (TUGAR). There is no national anti-corruption strategy in Nigeria. The only existing coordination mechanism consists of inter-agency operational linkages organised by TUGAR in the framework of the Inter-Agency Task Team. Thus,

21 Lewis P (2007) *Growing Apart: Oil, Politics, and Economic Change in Indonesia and Nigeria*. Anne Arbor: University of Michigan Press. pp. 184 et seq.

22 Fukuyama F (2011) *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus and Giroux. pp. 166 et seq.

23 Ibid.: 167.

24 Campbell J (2103) *Nigeria: Dancing on the Brink*. Lanham, MD: Rowman and Littlefield. p. 63.

25 Ibid.: 168.

26 Ibid.: 170.

the institutional sphere comprises a juxtaposition of institutions, stacked one on top of the other, which may pursue their own goals and develop their own strategies in the framework of their mandate, without a strategic overview. The problem of means is acute in Nigeria as in the other sample countries. In the light of the Jakarta principles, the agencies still lack financial autonomy.

Niger

Niger presents similar weaknesses despite real reforms, which have, however, been frustrated by the politicisation of the institutions put in place. When the features of Niger's anti-corruption agency the High Authority to Combat Corruption and Related Infractions (HALCIA) are held up against the Jakarta prerequisites, Niger does not appear to be very accommodating.

Niger has created two institutions specialising in the fight against corruption: the first is the Information/Claims/Anti-Corruption and Influence Peddling Office (BIR/LCTI) also known as the *ligne verte* (hotline), tasked with informing and guiding public service users, receiving complaints about corruption in the justice system and implementing the fight against it, submitting investigation reports to the public prosecutor for action, and popularising the fight against corruption.

The second is the Haute Autorité de Lutte contre la Corruption et les Infractions Assimilées (HALCIA – the high authority to combat corruption and related infractions), which supervises Niger's national anti-corruption strategy. It is a standing body, established by Decree No. 2011-219/PRN/MJ of 26 July 2011. According to Luc Damiba, the country has opted for a multi-functional model, as HALCIA has a three-pronged mandate of prevention, detection – with no enforcement role, however – and cooperation, since HALCIA has developed partnerships with other monitoring and enforcement organisations, notably at sub-regional level.

Its low level of independence is evidenced by the mode of appointment of the members of HALCIA, on the discretionary authority of the head of state, by co-opting or recommendation. Thus, as Damiba writes,

selection criteria were not predefined [and] no specific skills were required for the body's membership. Representatives of civil society and the private sector, as well as certain specialised administrative bodies, were not appointed by the bodies they belonged to, as was the case with the members of the hotline.

HALCIA's financial independence is not very certain. The budget falls under the section of the office of the president of the republic, thus giving the executive a significant means of exerting pressure during budget arbitration. Furthermore, the financial resources placed at the disposal of the body are insufficient, as Damiba pointed out: 'HALCIA considers, however, that these government resources are insufficient, leading it to seek additional funds from foreign partners, although the state remains the main contributor to the

budget of HALCIA.’ The bodies have come in for criticism regarding their independence and autonomy, particularly in relation to the government. This was clearly shown by Luc Damiba, who noted that ‘the tension between the availability of resources and the independence of anti-corruption bodies remains one of the greatest obstacles to the fight against corruption in Niger’. According to the author, ‘HALCIA has been the focus of intense criticism over its lack of independence, which is readily apparent, both in its founding instrument and its mode of operation.’ HALCIA is financially dependent on the executive and its operational autonomy is relative.

Senegal

Law 35/2003 of 24 November established the National Commission for the Fight against Non-Transparency, Corruption and Misappropriation (CNLCC). This independent administrative authority, with no jurisdictional powers, was tasked with conducting studies aimed at improving prevention and formulating recommendations and opinions for public authorities. The explanatory memorandum to the Law 35/2003 of 24 November expressed all the paradoxes inherent in setting up institutions of this kind without granting them operational powers, whereas the fight against corruption requires investigative and enforcement powers.

It therefore appeared necessary to reinforce the existing legal mechanism for the repression of corruption by creating an independent administrative authority known as the [CNLCC]. This commission shall be autonomous in relation to the public authorities, thereby guaranteeing its complete independence. It shall have two essential roles. On the one hand, it shall receive complaints from private individuals regarding alleged acts of corruption. ... On the other hand, the commission shall be tasked with identifying the structural causes of corruption and related offences, and proposing any legislative, regulatory or administrative reforms of a nature to promote good governance, including in relation to international transactions.

In the performance of its duties, the commission could effectively receive disclosure of alleged acts of corruption or misappropriation. However, it was not empowered to refer them directly to the justice system nor to conduct legally binding investigations in follow-up to the disclosure of such acts. Article 3 of Law 35/2003 of 24 November stipulates that

when the commission feels that it has information that could justify the initiation of legal proceedings, it submits a detailed memorandum and recommendations to the president of the republic, specifying the identity of the persons or bodies that may be subject to prosecution.

Thus, the commission's contribution to criminal repression of corruption necessarily went through the executive, which was free to either prosecute or close cases.

The independence of the CNLCC was guaranteed by the irremovability and immunity of its members. However, its lack of autonomous powers made it vulnerable. For this reason, a law was passed in December 2012, creating the National Office for the Fight Against Fraud and Corruption (OFNAC), with powers to act on its own initiative and conduct investigations, as well as to initiate public action by referring potential criminal cases directly to the public prosecutor's office. This law also provided for the publication of OFNAC's reports, as those of the CNLCC were only submitted to the president of the republic. OFNAC is directly attached to the office of the president of the republic, as is the *Commission nationale de restitution des biens et de recouvrement des avoirs mal acquis, dissimulés*²⁷ (national commission for the restitution and recovery of concealed, illegal assets). While its investigative and prosecutorial powers make OFNAC an institution with real means of action, on the other hand, its dependence on the executive, notably through the appointment of its members, constitutes a weakness.

When the Senegalese framework is held up against the Jakarta mechanism, the weaknesses pointed out in the Senegalese monograph are readily apparent. To strengthen the institution, OFNAC should be enshrined in the constitution and its membership extended to magistrates, MPs and members of civil society. Neutrality could be better guaranteed by also enshrining the apolitical nature of OFNAC's membership. Enhanced monitoring of the professional ethics of OFNAC's members could be ensured through 'the development of rules on conflict between the functions of members of the office and any other public or private function', the establishment of declarations of wealth by all members, the creation of a monitoring body, increased budget allocations and the establishment of a minimum budget, as well as the payment of proceeds from the recovery of all stolen assets into the budget of OFNAC. Weaknesses in cooperation with other anti-corruption system players could be corrected by strengthening ties with civil society organisations and other public protagonists.

Sierra Leone

Despite relative macroeconomic stability, Sierra Leone remains a post-conflict country where the outlook for growth depends mainly on the reconstruction of infrastructure and an accessible financial system. Attempts at reconstruction and efforts undertaken since the end of the war to restore an efficient political and economic system are far from being completed, and the country still suffers from a lack of reliable infrastructure and institutions. The Anti-Corruption Commission was created in 2000, with a mandate to prevent, eradicate and repress corruption and investigate allegations. The mechanism

²⁷ See: *Décret N° 2012-1223 du 5 novembre 2012 portant répartition des services de l'État et du contrôle des établissements publics, des sociétés de l'État et du contrôle des établissements publics, des sociétés nationales et des sociétés à participation publique entre la Présidence de la République, la Primature et les Ministères. Article 1.*

established in 2000 did not allow it to prosecute corruption offenders on its own initiative. Cases handled by the agency could only be prosecuted if a decision to do so was taken by the attorney general and the minister of justice. The agency's limited operational capacity was another weakness that was stressed. The 2008 reform reinforced the prerogatives of the agency, which could thenceforth prosecute directly without having to go through the minister of justice. The new Anti-Corruption Act of 2008 ensured the permanence of the Anti-Corruption Commission. This legislation complies with the Jakarta principles protecting anti-corruption institutions from changes due to political influence. Within the framework of the country's normative architecture, this act is perceived as going further than the law of 2000, which, according to E. Gaima, was seen as limiting, since the agency had no power to prosecute corruption offenders on its own initiative. The new act also guaranteed the functional independence of the leaders of the commission, as they may only be removed from office for mental or physical inability to perform their duties, and their removal may only be decided by a tribunal following an investigation, at the request of the president. The legislation clearly defined the powers, mandate and functions of the commission, constituting, according to Gaima, an innovation compared to previous laws; it also organised a reporting framework by requiring the commission to submit progress reports to the president within three months following the end of each year of operation. Gaima, echoing certain observers, rightly asked whether the report should not be submitted to parliament. Section 16 of the act focuses on the financing of the commission, which is relatively limited and irregular, placing it in a situation of dependence and leading it to rely on considerable aid from technical and financial partners. The weak funding of the commission means that its apparent autonomy is something of a sham, and the independence granted to it in principle is only intended to reassure the donors.

The institutionalisation of anti-corruption agencies is an ongoing process, which should be reviewed as of now.

D. Creation and running of ACAs in West Africa: An ongoing institutionalisation process

Corruption remains prevalent in most African countries, where 58% of citizens feel that it has increased significantly,²⁸ leading them to perceive the fight against corruption as a 'lost cause'.²⁹ However, the initiatives taken by the states with a view to reforming governance and adopting legislative frameworks to fight corruption are often out of line with the requirements of the international commitments subscribed to by the countries, particularly the Jakarta prerequisites. Standards are established and institutions are created to combat corruption, and are continuously modernised. Yet corruption persists.

28 Afrobarometer, Transparency International (2015) *People and Corruption: Africa Survey 2015*. Global Survey 2015

29 Uwimana C (2015, 1 December) Corruption in Africa – A complex picture. *The Africa Confidential Blog*.

This is due to weaknesses in the state apparatus and failures in governance: ‘having a strong government with solid institutional capacities entails more than just controlling corruption, however, the most corrupt governments generally have significant difficulties delivering public services, enforcing the law and representing the public interest’.³⁰

These weaknesses have a historical origin that requires us to take account of the history of state underdevelopment in Africa in the analysis of anti-corruption policies. They are linked to the colonial legacy and the nature of African societies. African colonisation disrupted traditional sources of authority without managing to establish anything like a modern state that could survive the transition to independence.

Europeans discovered that they could extract very little from sub-Saharan Africa ... and found the climate of the tropics highly inhospitable. As a consequence they invested minimally in terms of settlers or resources in their colonies. Colonialism on the cheap left Africa with very little by way of modern political institutions when the Europeans decided to leave in the decades after World War II.³¹

During the second wave of colonisation, the interests of European governments were much more strategic than economic:

they wanted to make sure that they could protect existing dependencies and prevent new powers from outflanking them. They were much more interested in creating zones of influence or protectorates than ruling indigenous Africans directly ... and they did not want to spend a lot of state resources in the process.³²

Accordingly, the actual extension of colonial authority was often driven by actors other than national governments, as we can see from the examples of the French penetration of West Africa from the Upper Niger valley to Chad. Similarly, the Congo Free State was the creation not of the Belgian government but of King Leopold II. In exactly the same way, British expansion in West Africa came about as an accidental by-product of efforts to suppress the slave trade. Thus, as Fukuyama pointed out, Freetown was originally designed to be a haven for freed slaves. The surrounding areas were soon annexed to prevent traders from diverting goods to other ports.³³

These changes in colonial policy combined geostrategy and domination issues against a backdrop of ‘governments ... who were skeptical of the value of these new African possessions’.³⁴ On the other hand, in Singapore, the British created not just a trading post, but also a crown colony and an administrative structure designed to support their strategic

30 Fukuyama F (2011) *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Straus and Giroux. p. 81.

31 *Ibid.*: 218.

32 *Ibid.*: 222.

33 *Ibid.*

34 *Ibid.*

interests throughout Southeast Asia. In terms of institutional development, this laid the foundation for a strong national government later on, with real institutional capacities. In India, the British created an army and a powerful administration, institutions that would survive independence and support the new Indian state as of 1947.

In Africa, Europeans created a system of minimal administration that went under the title of ‘indirect rule’. In so doing, ‘they failed to provide postindependence African states with durable political institutions and laid the ground for subsequent state weakness and failure’.³⁵ The result is a rather particular form of government in postcolonial Africa: emergence processes culminated in the creation of weak states, which appear stable, although they are actually quite fragile.³⁶ The stability of the political entities is linked to the ability of charismatic leaders to organise the distribution of the resources of power among the members of a state bourgeoisie. Such entities are typical examples of neopatrimonial states. This history produces a dual state logic, in which patrimonial and bureaucratic features coexist, described by D. Bourmaud as a situation of dualism marked by ‘a phenomenon of patrimonialisation and bureaucratisation’,³⁷ such that the government order is legitimised by legal-rational processes, alongside patently neopatrimonial practices. Administrations may design public policies, but the reality of the exercise of power reveals archetypal neopatrimonialism, with generalised corruption.³⁸ All of the countries studied represented a form of ‘weak state’, in which apparent legal-rational legitimacy masked dysfunctional governance, largely due to corruption, which remained endemic, as revealed repeatedly in the rankings by Transparency International.

The hypothesis put forward is that, in the countries under study, a process of institutional reinforcement and consolidation is taking place through the adoption of anti-corruption policies. Institutional development dynamics have been observed and, although they face constraints, notably due to the conditions imposed for receiving economic aid, they are very real. Public policy design in such a context is a capacity-building opportunity for public administrations. It is plausible, however, that old, neopatrimonial practices will remain, although the culture of integrity and accountability being developed and disseminated provides players in institutional development with anchors for reforming the state.

The sample countries have generally adhered to regional and sub-regional anti-corruption instruments and created designated institutions for the fight against corruption. The depth and effectiveness of their national policies depend on a national style that can be – in reference to the notion of institutional development outlined above – pieced together on the basis of a number of variables:

- The degree of centralisation of the system, measured through the intensity of its ties to the state apparatus, and the autonomy of its

35 Ibid.

36 Médard J-F (1983) La spécificité des pouvoirs africains. *Pouvoirs* 25: 8. (Unofficial translation.)

37 Bourmaud D (1997) *La politique en Afrique*. Paris Montchrestien: Clefs politique.

38 For an application of this typology to Cameroon, see: Médard J-F (1995) État, démocratie et développement: l’expérience camerounaise. In: S. Mappa (ed.) *Développer par la démocratie? Injonctions occidentales exigences planétaires*. Paris: Karthala.

bodies from the material and financial standpoint and in terms of setting their own agenda. The most efficient systems are generally those that have set up anti-corruption institutions at a considerable remove from the state apparatus and its political centre. In this regard, Benin and Nigeria are typical examples of poorly integrated decentralised systems that develop independent policies. The actors are subject to a system of accountability.

- The degree of openness of the responsible communities and circle of stakeholders, measuring the participation of civil society organisations. The players' feeling that they belong to a public policy community (fight against corruption, promotion of the rule of law) reflects the effectiveness of the national strategy. The Beninese example is an illustration of such a consensus, as the fight against corruption was one of the themes of the debates in the run up to the democratic change of government in 1990. Liberia and Sierra Leone also have systems where the operation of anti-corruption agencies is backed by a strong consensus, shared by non-governmental stakeholders, regarding the strategies to be developed.
- The existence of shared legitimacy mechanisms between the stakeholders, which makes it possible to determine the depth of national consensus and to identify systems in which the fight against corruption is still a matter of political competition. Niger and Senegal are emblematic examples of the anti-corruption agencies' embedding in politics.
- The existence of internal and external audits of anti-corruption institutions and the extent to which they cooperate with international organisations.
- The organisational, operational and financial independence of anti-corruption agencies.
- These indicators can be used to distinguish countries on the basis of whether or not they have put into practice the recommendations of the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, and the Jakarta Statement.

E. Supranational dynamics and the quest for a regional framework

The next step is to attempt to understand the dynamics at work at the regional level. On this scale, independent normative development is taking place, and the enactment of conventions and protocols beginning in 1999 has led to the often chaotic ratification of

international instruments. As L. Damiba has shown, ‘within the economic community of West African States, the beginnings of awareness of the need to promote a regional anti-corruption instrument emerged very early in 1999’.³⁹ In the wake of the first anti-corruption movements in the 1990s, there was a growing awareness of the impact of corruption, leading to a proliferation of initiatives aimed at combating it. However, the process of putting anti-corruption cooperation on the agenda in West Africa is linked to a much broader dynamic:

This resurgence of regional organisations in Europe, America and Africa raises regional issues, but it also posits the equation of the efficiency of these regional networks and organisations at a time when global dynamics are being put in place through the United Nations Convention Against Corruption. Indeed, in 1996, the Organization of American States was the first organisation to adopt a convention on corruption, known as the Inter-American Convention Against Corruption. In 1999, the Council of Europe adopted two conventions: a Criminal Law Convention on Corruption and a Civil Law Convention on Corruption. The African Union convention on corruption was adopted in 2003, at the same time as the United Nations Convention Against Corruption. Other initiatives were undertaken at the sub-regional level, giving rise to the ECOWAS and SADC protocols, which were signed the same year, in 2001.⁴⁰

The ECOWAS Protocol, which did not enter into force until 2015, included 15 states (Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo). Focusing on cooperation and promoting action by civil society organisations, the protocol was implemented by the ECOWAS Community Court of Justice. In general, parties to the ECOWAS Protocol are also members of the United Nations Convention Against Corruption, the African Peer Review Mechanism (APRM) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). The Network of National Anti-Corruption Institutions in West Africa (NACIWA) was set up separately to facilitate the implementation of the protocol. The network was given a clear mandate to promote inter-institutional cooperation in the fight against corruption. NACIWA is a platform for collaboration and strengthening the fight against corruption in the ECOWAS zone. It was created following an observation that corruption led to inappropriate public policies, despite an economic fabric that seemed to lend itself to development and growth. According to Damiba, however, NACIWA seems to lack a true capacity for action, despite laudable goals. In his view, the situation is due to two main reasons. ‘The first is that, for many long years, the protocol had not officially

³⁹ Damiba L (n.d.) *Le Réseau des institutions nationales de Lutte Contre la Corruption dans les États membres de la CEDEAO (RINLCAO). A la recherche d’un cadre idéal pour une coopération régionale anti-corruption*, Unpublished, p. 9. (Unofficial translation.)

⁴⁰ Ibid.

entered into force, and the second reason is the lack of resources besetting the network, which is dependent on financial resources placed at its disposal by the Community of West African States.’ Thus, the goals of networking, capacity building for national anti-corruption agencies, and harmonisation of national anti-corruption strategies depend on ECOWAS. The dependency in which most national agencies find themselves vis-à-vis the state is therefore duplicated at regional level in the relationship between NACIWA and ECOWAS. Furthermore, although NACIWA is supposed to promote regional and international cooperation, deficiencies have been noted in this regard. According to Damiba, ‘in the absence of bilateral agreements, many agencies simply did not carry out regional cooperation activities. Study tours are rare and, when they are organised, they focus on seeking the best model and the agencies that produce the best results.’

Several actions should be undertaken to boost regional cooperation and guarantee a truly integrated anti-corruption policy for West African countries. First of all, it is indispensable, as Damiba has clearly shown, for ECOWAS to set up its own anti-corruption commission, and for NACIWA to be legally enshrined. Secondly, sufficient funding should be guaranteed to carry out specific actions on the regional scale. Over the long term, independent regional financing should make it possible to institutionalise regional policies, which should be distinguished from the national policies that crosscutting networks such as NACIWA are meant to influence. It is also necessary to formalise mechanisms of learning and experience sharing between anti-corruption agencies in West Africa. The crux of the matter is to ‘create a public policy community’ made up of anti-corruption policy stakeholders. This organisation of the stakeholders’ jurisdictions is a prerequisite for a unified response, and dynamic learning and experience-sharing processes.

Public policy communities are linked to the most stable, best integrated networks, as well as those that are the most resistant to the influence of interest groups⁴¹ and the constraints linked to socioeconomic influences. They are characterised by the highest level of integration among the stakeholders and the distribution of resources among them.⁴² They are crosscutting systems of interests and stakeholders whose membership is mobilised and takes action to successfully implement specific policies. They share values, beliefs, and ideas linked to legitimate goals and the means of achieving them. The functioning of a public policy community consists of institutionalising legitimate strategies⁴³ and developing ideas with a view to action. An anti-corruption community could thus be

41 Atkinson M & W.D. Coleman WD (1989) *The State, Business and Industrial Change in Canada*. Toronto: University of Toronto Press.

42 Marsh D & Rhodes RAW (Eds) *Policy Networks in British Government*. Oxford: Clarendon Press.

43 In this sense, Bressers H & O’Toole LJO (1998) The selection of policy instruments. *Journal of Public Policy*, 18: 213–239; Daugbjerg C (1998) *Policy Networks under Pressure: Pollution Control, Policy Reforms and the Power of Farmers*. Aldershot: Ashgate Publishing. See: Enguéléguélé S (2015) États, Corruption et Blanchiment. L’Harmattan. See also, on the cognitive dimension of the action of these communities: Hass P (1992) Introduction: Epistemic communities and international policy coordination. *International Organization* 46(1); Hass P (1997) *Knowledge, Power, and International Policy Coordination*. University of South Carolina Press. pp. 1–35; Enguéléguélé S (1998) Les communautés épistémiques pénales et la production législative en matière pénale. *Droit et société* 40: 563–581.

formed on the regional scale, similar to what exists on the international scale, where the institutionalisation process is more complete. At the international level, the anti-corruption system is organised around a relatively homogeneous group of players, who share their know-how, expand their knowledge and fine-tune their action strategies (Financial Action Task Force, Transparency International, International Anti-Corruption Academy, GOPAC, OECD, UNODC, etc.). United by a common goal – to design national and international responses – they constantly adapt those responses to present or future trends in economic crimes and corruption. They are deployed within international state or non-governmental organisations and meet at feedback and best practice forums. The regional scale is also a locus for learning, exchanges, reform and adaptation of public anti-corruption policies. It is conducive to the invention of new responses, and provides frameworks for assessing and upgrading national policies. It offers a vector for linking the actions of the more or less formal networks that are currently responding⁴⁴ to the issue of corruption in Africa:

- *The African Association of Anti-Corruption Authorities (Association des Autorités Africaines de Lutte contre la Corruption)*

The AAACA was founded in Accra, on 17 September 2013, at a meeting of African anti-corruption institutions organised with aid from UNECA, the African Union Advisory Board on Corruption, the African Development Bank and the Commission on Human Rights and Administrative Justice of Ghana. The mission of this new organisation is to enhance the independence of national anti-corruption institutions and improve African and international cooperation.

- *Network of National Anti-Corruption Institutions in Central Africa (RINAC – Réseau des Institutions Nationales Anti-corruption en Afrique centrale)*

This network was founded in 2012 during a workshop organised jointly by the United Nations Economic Commission for Africa (UNECA), the Economic Community of Central African States (CEEAC) and the African Union Commission Advisory Board on Corruption (AU-ABC). Its aim is to facilitate cooperation between national institutions in charge of combating corruption in the region, and exchange experience and information, thereby helping to boost efforts to fight corruption, especially in the region's post-conflict countries.

- *Observatory for the Fight against Corruption in Central Africa (OLCAC – Observatoire de Lutte contre la Corruption en Afrique Centrale)*⁴⁵

This was created in 2006 and includes members of civil society

44 Damiba L (undated) *Le Réseau des institutions nationales de Lutte Contre la Corruption dans les États membres de la CEDEAO (RINLCAO). A la recherche d'un cadre idéal pour une coopération régionale anti-corruption*, Unpublished. p. 9. (Unofficial translation.)

45 OLCAC has never really run properly since its inception, other than through its members' participation in international meetings and seminars.

and official agencies in Burundi, Cameroon, CAR, Chad, Congo, the DRC, Equatorial Guinea and Gabon, where it has national branches. Its goal is to fight corruption and its priority areas include: disseminating national and international legal instruments for the fight against corruption that are in force in Central Africa; promoting the ratification of such instruments; and encouraging the authorities to implement the instruments. Its operating methods include training workshops, conference debates and educational talks.

- *The African Parliamentarians Network Against Corruption (APNAC)*
This body was launched in 1999 in Kampala. Its aim is to coordinate, involve and strengthen the capacity of African parliamentarians to fight corruption and promote good governance.
- *The East African Association of Anti-Corruption Authorities*
This network, created in 2007, originally included five member institutions from the following five countries: Burundi, Rwanda, Tanzania, Kenya and Uganda. The mission of the network is to facilitate cooperation and exchanges of experience between the different institutions. It produces annual reports and has a series of evaluation tools that allow it to assess the efforts of its member institutions.

In the conclusion of its report on the governance situation in Africa in 2009,⁴⁶ UNECA stated that, to better address corruption in the framework of a governance reform, states would do well to take account of the following recommendations:

- Institutional development, by creating monitoring bodies with real institutional capacity, material and financial autonomy, and political and administrative independence in the framework of a democratic environment; real parliamentary oversight, an independent judiciary, and effective freedom of information are necessary prerequisites to achieve those goals.
- The promotion of cooperation between members of stakeholders' networks, including civil society and the media.
- Adjustment of civil servants' compensation.

The states do not share the same level of institutional development in terms of combatting corruption. While Nigeria and, to a lesser extent, Benin are examples of advanced systems, illustrating what we would describe as a deliberative and participatory national style, in the systems in place in Niger and Senegal, the institutionalisation of anti-corruption agencies

46 United Nations Economic Commission for Africa (UNECA)(2009) *African Governance Report II*. Addis Ababa: UNECA.

remains in the hands of politicians. Liberia and Sierra Leone are systems in transition, where the institutionalisation of the fight against corruption cannot be achieved, as things stand, without a strong international presence and greater South-South cooperation, which is the only type of cooperation tailored to the mobilisation and dissemination of autochthonous knowledge and strategies.

Table 1: A comparison of anti-corruption agencies in West Africa

	Benin OLC/ANLC	Liberia LACC	Niger HALCIA/Ligne Verte	Nigeria ICPC/EFCC	Senegal CNLCC/OFNAC	Sierra Leone ACC
Creation	Agencies created by the will of a politician, usually in a context of change of government. (Kérékou: CMVP 1996; Kérékou: OLC 2004; Yayi: ANLC 2012)	Agency instituted through a largely participatory and deliberative process. There is a national anti-corruption strategy	Agencies instituted at the behest of a politician, generally in a context of change of government. (Issoufou: HALCIA 2011 Marou Amadou: <i>Ligne Verte</i> 2011)	Agencies set in place by the will of a politician, mainly in a context of change of government or due to strong pressure from the international community. (Obasanjo: ICPC 2000; Obasanjo: EFCC 2003)	Agencies created at the behest of a politician, generally in a context of change of government, or due to strong pressure from the international community. (Wade: CNLCC 2003; M. Sali: OFNAC 2012)	Agency instituted through a largely participatory and deliberative process. There is a national anti-corruption strategy
Stability	Tenuous, as each agency instituted by a politician disappears at the end of his tenure in power	Relative stability linked to the configuration of the political landscape	Very relative stability, due to frequent changes of government	High. The agencies have become a part of the political/institutional landscape of Nigeria	Relative stability, linked to the configuration of the political landscape (the CNLCC ended with A. Wade's tenure in office)	High. The agency is now a part of the national political/institutional landscape
Administration of the agency	Members drawn from administrative bodies and civil society are formally appointed by the president	Members are appointed by the president of the republic and confirmed by the senate	Members are drawn from administrative bodies and civil society and are appointed by the president	Members are appointed by the president of the republic and confirmed by the senate The agencies are administered collegially	Members are nominated by professional bodies and formally appointed by the president	Members are appointed by the president of the republic and confirmed by parliament

	Benin OLC/ANLC	Liberia LACC	Niger HALCIA/Ligne Verte	Nigeria ICPC/EFCC	Senegal CNLCC/OFNAC	Sierra Leone ACC
Independence	Theoretically, the agencies are independent, but they are supervised by the executive and have no financial autonomy	Theoretical independence and financial autonomy	Agencies are structurally linked to the office of the president of the republic, with no financial autonomy	The ICPC has real independence but no financial autonomy The EFCC has real independence coupled with effective financial autonomy	Theoretically, the agencies are independent, but they are supervised by the executive and have no financial autonomy	Real independence and financial autonomy
Executive interference	High, through the office of the president of the republic	Attempts at interference on the part of the executives through instructions that undermine the autonomy of the agency	Agency tied to the executive.	Attempts at interference on the part of the executive, through members' appointments	Agency tied to the executive	The executive seeks to interfere with and undermine the independence of the agency, which attempts to fend it off with help from parliament, culminating in the resignation of two members of the commission
Powers	No powers of investigation No powers of prosecution Unclear accountability mechanisms	Powers of investigation No powers of prosecution	No powers of investigation. The agency is tasked with detecting cases of corruption No powers of prosecution Effective reporting powers through the Ligne Verte (hotline)	Very strong powers of investigation Real powers of prosecution	Powers of investigation not well clarified No powers of prosecution Accountability mechanisms not very clearly defined	Very strong powers of investigation Powers of prosecution as of 2008 Weak reporting mechanisms

2

BENIN

Gilles Badett



A. Executive summary

The first Beninese anti-corruption agency was the Public Life Moralisation Unit (CMVP) created in 1996. The Anti-Corruption Observatory (OLC) was set up in 2004 and reformed in 2008. Finally, the National Anti-Corruption Authority (ANLC) was set up in 2012, following the adoption of Law 20/2011 of 12 October on the fight against corruption and related offences in the Republic of Benin. Generally speaking, the country has never not needed a national anti-corruption agency within its institutional system and alongside the bodies controlling the administration and political mechanisms, involving the national assembly and the courts (of justice and audit).

It could even be said that when the OLC was replaced by the ANLC, it was perceived as the advent of an anti-corruption agency in response to international commitments and the Jakarta Principles; this is not entirely erroneous given the relatively satisfactory characteristics of the ANLC. However, the fact that the new agency no longer had the right to take legal action in cases of corruption (as the OLC had) quickly tempered optimism on all sides.

In reality, neither the OLC nor the ANLC are directly at fault. They have implemented or are implementing their mandates as recognised in the legislation.

The independence of the judiciary, the body that relays the actions of the ANLC, must be effectively restored. A political will must assert itself, and the justice system must be freed from the supervision of the executive. Furthermore, financial blackmailing from the executive must stop. These seem to be appropriate measures that would allow the ANLC to fulfil its mission efficiently and contribute toward the fight against corruption. Furthermore, the addition of a few legislative or organisational reforms to strengthen communications and the authority's powers of investigation would help in creating a fully satisfactory anti-corruption agency.

One point that should be emphasised here is the need for an anti-corruption agency and its incontrovertible usefulness. Even if we only consider the function of awareness-raising, training and education, it remains extremely useful. Even as is, it corresponds to an international commitment the country must fulfil. It is not only a question of respecting

international commitments, however. The OLC and ANLC both fulfilled their given mandates, but these agencies which cannot themselves issue sanctions due to the separation of powers, do not receive sufficient support from the other players in the fight against corruption, especially the legal system and the political players.

While, at the level of the justice system, there could be technical reasons for certain substandard performances, the main responsibility can be attributed to the executive branch owing to its level of influence on the performance of the ANLC and the courts. There is inertia on the part of the executive to institute and effect legal reforms aimed at improving the efficiency of these institutions.

B. Historical and political context

Efforts to create an institutional framework to fight corruption in Benin date back to 1996. At the time they were part of the first public policy measures decided on by former president Mathieu Kérékou.

In 1996, the government of Benin established a new anticorruption agency, the Public Life Moralisation Unit (CMVP) and placed it under the direct authority of the president of the republic.¹ This position raised doubts as to the independence of the body. But it also afforded it some insulation from external pressure, allowing it to take initiatives and immediately report to the president of the republic. The CMVP was composed of a multidisciplinary team of 17, including magistrates, criminal investigation officers, economists, financiers, management controllers, communicators and legal experts. It was headed by the technical advisor of the president of the republic in charge of civil service ethics, appointed by decree of the council of ministers as proposed by the head of state.² Headed by a woman throughout its subsistence, the remit of the CMVP was to:

educate citizens, prevent and detect corruption phenomena and energetically fight all manifestations of corruption in the broadest sense, while respecting the legal provisions...

and more precisely, to:³

- Prevent the emergence of corruption phenomena by setting up adequate mechanisms;
- Detect corruption phenomena with all their corollaries;
- Conceive and draw up strategies to combat the manifestations of corruption phenomena;
- Implement these strategies with the competent organisations;

1 Decree 579/1996 of 19 December, article 2.

2 Article 4.

3 Article 3.

- Monitor and control the effective execution and application of the decisions and instruments arising from such strategies through the regular and transparent operation of the inspection and investigation institutions;
- Periodically assess performance levels; and
- Make appropriate suggestions to the head of state with regard to cleaning up of public life.

Despite these measures, the CMVP did not create much impression on public opinion through its actions. This state of affairs was confirmed by a study published in 2007 by the World Bank and the African Development Bank.⁴

In 2004, President Kérékou created the Anti-Corruption Observatory (OLC), presented as an ‘organisation that is autonomous and independent of all state institutions’ and, unlike the CMVP, was a legal entity with financial autonomy.⁵ The OLC was officially established on 16 September 2004 by the ministers of finance and justice.

Despite the advent of the OLC, the Benin governance review, submitted within the framework of the African Peer Review Mechanism (APRM), made the following observation:

At the end of the review of the political, economic and social situation of Benin, there was general agreement that corruption, like a many-headed hydra, has spread its tentacles in all directions and is plaguing all the sectors of governance (public sector, private sector, and civil society). Corruption has become a culture and the instrument of a mode of governance. Since December 1990, corruption has been classified by the constitution among offences that are punishable under the law. However, the very law meant to facilitate the fight against illicit enrichment and corruption has yet to be adopted and enshrined. Many anti-corruption measures have been taken and instruments put in place, but they have failed to deliver. There is talk of ‘the distribution habits’ on the part of the public authorities who are not truly decided to tackle the scourge head on.⁶

A few months after the publication of this report, a new OLC decree was passed in 2008: Decree No. 2008-180 of 8 April 2008 on the establishment, remit, organisation and operation of the Anti-Corruption Observatory (OLC). The decree did not, however, make any significant changes in the way the body worked. For the most part, it concentrated on organisational re-arrangements. The Decree of 2008 also paved the way for the General State Inspectorate (IGE). Furthermore, the ministry of the interior, which was in charge

4 Republic of Benin, World Bank and African Development Bank (2007) Corruption and governance in Benin. Report of the results of the diagnostic survey (in French). p. 53.

5 Decree 221/2004 of 21 April, articles 1 & 3.

6 APRM (2008) Benin, Country Review Report, No. 6, January 2008. Chapter 7, paragraph 900.

of decentralisation prior to 2006 (the year President Yayi came to power) and which, therefore, was represented by a single framework at the level of the OLC, was split into two ministries. As the fight against corruption was of equal concern to the ministry of the interior and security, and to the new ministry of decentralisation, the 2004 decree had to be amended (or replaced) to allow each of the two ministries to maintain a representative within the OLC. It was this change which brought the number of OLC members up to 19 in the 2008 decree, compared to 18 in the 2004 decree.

Following the adoption of the law on corruption⁷ in 2011, the OLC was abolished in 2012 and replaced by another body, the National Anti-Corruption Authority (ANLC).⁸

The national assembly unanimously voted for the law on corruption and this was considered a personal victory for President Boni Yayi. The president considered the voting of an anti-corruption law to be one of the major reforms promised in respect of his second and last term of office.⁹ In his speech to the nation, on 30 August 2011, the president welcomed the initiative in these terms:

My dear countrymen, our parliament has just voted, early this morning, in favour of the law on the fight against corruption and related offences. This vote is an expression of the will and the determination of the people of Benin, through their national representation, to ensure better government and enhanced management of our limited resources ... Passing this law gives our people new hope and constitutes a preferential instrument in the fight against impunity, poor governance, the misappropriation of public funds, unlawful enrichment, and the list goes on.¹⁰

The creation of the OLC by presidential decree compromised the stability of the body. The decree was adopted by the president of the republic and as such could be modified at any time by the government. The 2004 decree, for instance, was replaced by another in 2008 and there was nothing to prevent the government from modifying or even withdrawing such an instrument. This fragility does not exist when a body has been established by law. The ANLC was created on such a firmer basis.¹¹

7 Law 20/2011 of 12 October.

8 Decree 336/2012 of 2 October.

9 Excerpts from the newspaper *Adjinakou*. Available at <http://www.construirelebenin.info/article-reformes-au-benin-la-corruption-et-le-vote-de-la-loi-anti-corruption-84975983.html> [accessed 19 July 2014].

10 Excerpts from the newspaper *Mutations* of 31 August 2011. Available at <http://www.nouvellesmutations.com/?p=6906> [accessed 19 July 2014].

11 Law 20/2011 of 12 October, article 5 stipulates that: 'In the framework of the implementation of this law, a body is established to fight corruption.'

C. Legal framework

Law No. 2011-20 of 12 October 2011 establishing the ANLC, specifies its nature, composition, the configuration of its board and essential operating rules. This piece of legislation can be said to be stable because it was adopted by different political parties in the national assembly.¹² The law makes provision for the promulgation of rules relating to: the nomination by different stakeholders of members of the ANLC to be confirmed by the president; financial regulation of the institutions; and procedural rules of operation. The ANLC's legal framework must be understood broadly, for it incorporates national and international standards and legislation as well as prevention tools as aspects of a comprehensive plan to fight against corruption.

International standards

Benin is party to several sub-regional, regional and international legal instruments. At the universal level, the United Nations Convention Against Corruption (UNCAC) of 31 October 2003, which came into force on 14 December 2005, was signed by Benin on 10 December 2003 and ratified by the president of the republic on 12 August 2004. The instruments for ratifying this convention were deposited with the secretary general of the United Nations (UN) on 14 October 2004. Benin signed the African Union Convention on Preventing and Combating Corruption (AUCPCC) on 11 February 2004, ratified it on 20 September 2007 and conveyed its ratification instruments to the African Union on 7 November 2007. The Economic Community of West African States (ECOWAS) Protocol A/P3/12/01 on the fight against corruption was signed by Benin on 1 December 2001 and ratified on 1 December 2005, but has not yet come into force due to the fact that ratification thresholds required to bring it into force have not yet been met.

Benin has signed other international conventions that are partially concerned with the necessity of combating corruption. First of all, there is the United Nations Convention against Transnational Organised Crime of 15 November 2000, which came into force on 29 September 2003.¹³ Benin signed this convention on 13 December 2000 and ratified it

¹² It should be acknowledged that some of the elected representatives of the opposition had some issues with the new legislation as voted. The main point was what they perceived a lack of independence. But, by Decision DCC 64/2011 of 30 September, the constitutional court appeased them.

¹³ The United Nations Convention against Transnational Organised Crime, adopted by Resolution 55/25 of the UN general assembly on 15 November 2000, is the principal instrument in the fight against transnational organised crime. It was opened for signature by the member states at a top-level political conference organised for the occasion in Palermo, Italy, from 12–15 December 2000, and came into force on 29 September 2003. The convention was complemented by three protocols, which are aimed at specific activities and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition. The states must become parties to the convention before they can become parties to one of the protocols. The convention represents major progress in the fight against transnational organised crime and indicates that the member states recognise the seriousness of the problems that result, as well as the necessity of creating and building international cooperation to gain a better understanding of the issues. States that ratify this instrument commit to taking a series of measures against organised crime, in particular to recognising certain offences as criminal (participation in

on 30 August 2004.¹⁴ The African Charter on Democracy, Elections and Governance¹⁵ was adopted on 30 January 2007 and came into force on 15 February 2012. Benin signed it on 16 July 2007 and ratified it on 29 June 2012. ECOWAS Protocol A/SP.1/12/01 on Democracy and Good Governance, and the protocol relating to the mechanism for conflict prevention, management, resolution, peace-keeping and security was ratified by Benin on 4 February 2005.

At the level of the community of the West African Economic and Monetary Union (WAEMU), certain legal instruments are binding on Benin and have a link with corruption. For example, the community-based legislation on public finance provides for specific standards of transparency in how member states manage their public finances. This is the case for WAEMU Directive 02/2000 of 29 June on the adoption of the Code of Transparency in Public Finance Management, replaced by WAEMU Directive 01/2009 on the Code of Transparency in Public Finance Management; WAEMU Directive 05/1997 of 16 December relative to budget acts; and WAEMU Directive 02/1999 of 21 December amending WAEMU Directive 05/1997 relative to budget acts.

Domestic standards and criminal sanctions

Article 35 of the Constitution of Benin of 11 December 1990 stipulates:

Citizens responsible for a public office or elected to a political office have the duty to fulfil it with conscience, competence, probity, devotion and loyalty in the interest and respect of the common good.

Failure to comply with this constitutional provision may constitute an act of corruption. Principal constitutional provision in favour of the fight against corruption, in particular in the public sector, article 37 of the constitution stipulates:

Public property shall be sacred and inviolate. Each Beninese citizen must respect it scrupulously and protect it. Any act of sabotage, vandalism, corruption, diversion, dilapidation or illegal enrichment shall be suppressed under conditions provided by law.

an organised criminal group, money laundering, corruption and preventing the course of justice); adopting different frameworks in terms of extradition, mutual assistance in criminal affairs, police cooperation; promoting training and technical support in order to build and improve the capacity of the national authorities. See <http://www.unodc.org/unodc/fr/treaties/CTOC/> [accessed 19 July 2014].

14 See http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XVIII-12&chapter=18&lang=fr#Participants [accessed 1 June 2014].

15 One of the 13 objectives referred to in article 2 of this charter is to 'Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003'. One of the 11 principles retained in article 3 is 'the condemnation and rejection of acts of corruption, related offenses and impunity'. The states party to the charter also undertake to 'improve the efficiency and efficacy of public administration and combat corruption'.

With respect to the law on combating corruption and proscribing criminal conduct, the principal legislation is Law No. 2011 of 12 October 2011 on the Fight against Corruption and Related Offences in the Republic of Benin. The law contains comprehensive provisions on different aspects of corruption.

Confirming legislation

Before the Law of 12 October 2011 was adopted, there were several domestic legislation provisions that provided a legal foundation for the prevention and repression of various types of behaviour identifiable as corruption in the broad sense. A number of the provisions in the 2011 legislation replicate what is already provided for in other pieces of legislation, for example Ordinance 79-23 of 10 May 1979, which penalises permanent members of the state (PMS) for acts of embezzlement, corruption, misappropriation and similar offences. Money laundering is already provided for and punishable by Law No. 2006-14 of 31 October 2006. Other offences proscribed by law include: fraud pursuant to article 405 of the criminal law code and Law No. 63-4 of 26/6/ 1963 and, cheating in examinations and in competitions provided for and punished by Ordinance No. 73-51 of 18 June 1973.

Pursuant to article 156 of the new law, all of the provisions in the new legislation devoted to infractions formerly recognised in Beninese law become applicable in lieu of the former legislation.

New criminal sanctions

The 2011 legislation widened the scope of behaviour related to corruption. Consequently, it is possible under Beninese law to sanction such behaviours as including: influence peddling, abuse of office, illicit enrichment, false statements, insider trading, corruption in the private sector, corruption in the awarding of procurement contracts, cybernetic and IT offences and unlawful acquisition of interests.

Prevention tools

In terms of preventative mechanisms to avert corruption among civil servants, the law has introduced *asset declaration*, which was hitherto only for members of the executive, i.e. the president of the republic and the ministers as per article 52 of the Constitution of Benin.

The law also introduced the prevention of *conflicts of interests*. In article 10, it is prohibited for any public agent to exercise personally or have another person exercise, professionally, a lucrative private activity of any kind whatsoever, unless otherwise provided for by law. Public officers should disclose any activity likely to create a conflict of interests with their personal interest. Further, former government officials who resigned or have retired are prohibited, for a period of five years, from engaging in professional activities directly related to the responsibilities they held in their previous position.

D. Institutional framework

The OLC and the ANLC are the two principal bodies specifically set up to combat corruption. However, there are other governance institutions whose remit is broader than the fight against corruption. These bodies are essentially technical in nature, and perform a control function that is necessary to anti-corruption strategy, such as oversight of public finance and the management of state departments. But they are all created by the executive and attached to it. The other key state institution is the national assembly, whose function is to provide checks and balances over executive power. Lastly, there are judicial bodies whose mission is to, among others, provide a platform for the adjudication of corruption cases.

Non-specialised bodies

Technical bodies attached to the executive

In terms of public finance, the fight against corruption in a broad sense is under the remit of the administrative bodies specially created for the purpose. This is an internal control mechanism to the administration. Since December 2006, the control bodies have been reorganised and their functional relations more clearly defined.¹⁶ The purpose of these control bodies is to carry out all verification, investigation and audit operations on the management of government agencies (state, local authorities and public establishments). Some of these control bodies have a national remit, while others have responsibility for a particular sector.

National control and inspection bodies are those whose activities cover all public departments and autonomous structures under the responsibility of all ministries and institutions of the state. These are the General State Inspectorate (IGE),¹⁷ the IGF and the General State Inspectorate of Public Services and Employment (IGSEP).¹⁸ The IGE is under the direct authority of the president of the republic. It has a general remit to control and inspect the normal and regular operating procedures of all state departments and local authorities; national and local public establishments; public bodies of a social nature; state-owned companies and offices; semi-public corporations; as well as any other legal entity receiving public financial resources.¹⁹ The IGF is placed under the direct authority of the minister of finance. It is generally responsible for the continuous control of the management of public funds. It is also in charge of all audits, investigations, opinions, studies and evaluations concerning the economic, budgetary, financial and socio-cultural policies, of the state, the local authorities and other public organisations.²⁰ The IGSEP is under the direct authority of the minister of the civil service. It is generally responsible

16 Decree 627/2006 of 4 December.

17 Which shall be replaced after the period covered by this study by the bureau of the auditor general. See Decree 394/2015 of 20 July.

18 Articles 6 & 7.

19 Article 8.

20 Article 9.

for controlling state human resources management and the application of the rules of administrative ethics.²¹

Sector control and inspection bodies control the activities of the administrative structures under whose auspices they are created. These are the general inspectorates of ministries (IGMs) and general inspectorates of financial administration services (IGSs). The IGMs are in charge of controlling, checking and inspecting the activities of central and decentralised services as well as those of public enterprises, offices or other entities under the supervision of their ministry.²² It should be specified that, besides their national remit, the IGF is also the inspection body for the ministry of finance and the IGSEP is that of the civil service ministry.²³ The IGSs of the financial administrations (treasury, customs and excise) are specific bodies whose field of competence is limited to the central and external services of said administrations.²⁴

Regarding the coordination of their activities, at a higher level, at the initiative of the IGE, the control body providing consulting and coordination support to all the other control bodies, and the administrative control bodies meet at least twice a year to harmonise their activity programmes and assess the results of the execution of their programmes.²⁵ On the one hand, the IGE coordinates all control activities in the country, making use of all the reports submitted by control bodies to the president of the republic with a view to action. On the other hand, it carries out any other harmonisation and support activities with respect to all the other control bodies which must submit their action programmes and mission reports.²⁶ At a lower level, two divisions are created under the coordination of the IGF and IGSEP respectively. Under the first division, the IGF coordinates, harmonises, assists, advises and supervises the IGMs concerning the control of the financial and accounting management of the ministries and adequate inspection and control methods for the purpose. Under the second division, the IGSEP does the same in the administrative sphere.²⁷

In addition, there is the sub-division of economic and financial affairs of the national police (former economic and financial brigade) and the central office for the repression of illicit trafficking of drugs and precursors (OCERTID). In application of a WAEMU directive, Benin has adopted a law against money laundering²⁸ pursuant to which it created, within the ministry of the economy and finance, a financial intelligence unit, the national cell for the processing of financial information (CENTIF).²⁹

21 Article 10.

22 Article 14 & 15; Decree 579/2011 of 31 August.

23 Decree 394/2015 of 20 July, article 16; Decree 579/2011 of 31 August, article 2.

24 Decree 394/2015 of 20 July, article 15, subparagraph 3.

25 Article 32.

26 Article 37.

27 Article 35.

28 Law 14/2006 of 31 October repeats the contents of WAEMU Directive 7/2002 of 19 September.

29 Decree 752/2006 of 31 December. The CENTIF is attached to the ministry of the economy and finance.

Legislative and judicial bodies

The national assembly and the high court of justice exercise oversight on the executive. In budgetary terms, there are three possibilities for allowing the legislative power to control the executive. The first of these is: examining and passing the annual budget act (the state budget). The vote on the budget act is an a priori control of the conventional means of controlling government action.³⁰ The vote on the budget settlement, however, is an a posteriori control. On this last point, article 112 of the constitution stipulates that

The national assembly settles the nation's accounts according to the terms and conditions provided for in the organic finance act. To this end, it is assisted by the audit chamber of the supreme court, which it charges with all investigations and studies related to the execution of public receipts and expenditures, or to management of the national treasury, territorial authorities, administrations or institutions of the state or subject to its control.

Parliament exercises this control through the budget settlement acts – article 99 of the constitution stipulates that they ‘control the execution of the budget acts, subject to subsequent final settlement of the accounts of the nation by the audit chamber of the supreme court’. Thus, in principle, each state budget voted on must have a settlement act to complete the process. It should be noted that at parliamentary level there is a local chapter of parliamentarians against corruption directed, under the sixth legislature (2011–2015), by the honourable Louis Vlavonou. This is called APNAC-Benin. The Network of African Parliamentarians against Corruption (APNAC) is a network whose aim is to coordinate, utilise and build the capacities of African parliamentarians to combat corruption and promote good governance. The network was created in 1999 in Kampala, Uganda, during a regional workshop on ‘parliament and good governance’. The participants realised that corruption could be better controlled by strengthening systems of accountability and transparency and by increasing the public's participation in the governance process of African nations.³¹

30 Article 113 of the Constitution of Benin stipulates that: ‘The government shall be obliged to furnish the national assembly all explanations which shall be demanded of it concerning its management and its activities. The means of information and control of the national assembly on governmental action shall be: The interpellation ...; the written question; the oral question with or without debate, and not followed by a vote; the parliamentary committee of inquiry. These means shall be exercised under the conditions determined by the rules of procedure of the national assembly.’

31 More on the objectives and roles of APNAC can be found here: http://gopacnetwork.org/Docs/APNAC%20Paper_EN.pdf [accessed 19 August 2016].

Box 1: APNAC-Benin BOT and requisition draft bills on their way to parliament

In response to a need for control and oversight of major national investments in social and community infrastructure and other publicly funded projects undertaken by the executive, APNAC-Benin has initiated the drafting of two bills on the regulation of public-private partnerships with technical and financial assistance from the parliamentary centre and the APNAC-Africa Secretariat, under the CIDA-funded Africa Parliamentary Strengthening Programme (APSP).

Two technical workshops were organised respectively in May and August 2012 involving a handful of APNAC-Benin members along with parliamentary experts (staff/technical) and representatives of civil society with the guidance of two high profile consultants (practising lawyers and specialists), Mr Serge Prince Agbodjan and Prof. Joseph Djogbenou, the two facilitators who widely explored the subject of 'build-operate-transfer (BOT) mechanisms and the requisition process'. The set objectives were to allow members and other stakeholders to familiarise themselves with the mechanisms and to develop an interest in BOT funding programmes with special focus on legislation and regulation. At the end of the process, the main result achieved was the consensual drafting of two bills, complete with explanatory statements, aimed at governing the financing, construction, operation, maintenance and transfer of infrastructure development by the private sector. The bills will be laid before parliament with a view to their enactment.

Mr Serge Agbodjan and Prof. Joseph Djogbenou, the two facilitators, made use of practical data with case studies from Burkina Faso, Guinea and Senegal, using an appropriate methodological approach. The deputy speaker of the Benin national assembly, Hon. Boniface Yehouetome (official guest of honour at the May workshop), added his voice to stress APNAC's unflinching efforts to contribute to capacity-building of members to ensure good governance in the country. His Excellency, Hon. Prof. Marthurin Coffi Nago, speaker of the Benin national assembly who participated fully in the August 2012 workshop, acknowledged the great work undertaken by APNAC-Benin since its revival (in September 2011) and urged members to be the defenders of this initiative once they returned to parliament, in order to avoid long and hazardous discussions, given that they are well informed on the subject and have been actors and initiators of the whole process of design and drafting.

After completing this process, the members attending both workshops recommended the finalisation and submission of the two draft bills as soon as possible to the house (i.e. one regulating public-private partnerships (PPP) in the Republic of Benin; and the other on requisitions) under the leadership of the speaker himself.

Source: See http://www.apnacafrika.org/index.php?option=com_content&view=article&id=109%3Aapnac-benin-bot-a-requisition-draft-bills-on-its-way-to-parliament&catid=1%3Alatest-news&Itemid=69&lang=fr [accessed 19 July 2014].

Under the terms of article 136 of the constitution,

The high court of justice shall be competent to judge the president of the republic and the members of the government for acts classified as high treason, of infractions committed in the exercise of or during the performance of their duties, as well as to judge their accomplices in case of a plot against the security of the state. The regular courts shall remain competent for infractions perpetrated outside the performance of their duties and for which they shall be criminally responsible.

Given that corruption is an infraction which can be committed by public officials as stipulated in the legislation, and that there is no other body competent to rule when this infraction is committed in the performance of their duties, this brings us to the realisation that the high court of justice is one of the most important anti-corruption bodies in Benin. Under the terms of article 135 of the constitution:

The high court of justice shall be composed of members of the constitutional court, with the exception of its president, and of six deputies elected by the national assembly and by the president of the supreme court.

The heterogeneity that characterises the composition of the high court of justice, as described above, reveals the political nature of the body. By the same token, the category of people who can be deferred before it (the president of the republic and members of the government), the types of cases it deals with (offences and abuses committed by politicians in the performance of their duties), effectively makes the high court of justice a political jurisdiction. The procedures for prosecution and indictment are left to the discretion of a qualified majority of the national assembly. For, under the terms of article 137, subparagraphs 2 and 3 of the constitution,

The decision to prosecute taken after the indictment of the president of the republic and of the members of the government shall be voted by a two-thirds majority of the deputies composing the national assembly according to the procedure provided by the rules of procedure of the national assembly. The investigation shall be conducted by the magistrates of the chamber of accusation of the court of appeals having jurisdiction over the location of the premises of the national assembly.

In practice, this court has never completely investigated and heard a case, despite the existence of referral applications.

The principal mission of the audit chamber of the supreme court is to ensure the sound management of public funds, but also their proper use – whether at the level of the centralised structures of the state, the decentralised structures, local authorities or any other structure that uses public funds partially or entirely.

Under the terms of the provisions of Law 7/2004 of 23 October on the composition, organisation, operation and remit of the supreme court, the audit chamber rules on public accounts. It audits the accounts that are submitted to it by the persons it has declared *de facto* accountants. It can sentence accountants to pay fines for lateness in producing their accounts and in responding to the injunctions formulated against them. It rules on appeals against final judgments handed down by the audit chambers of appeal courts. It has jurisdiction to rule on and sanction any management errors committed against the state, local authorities or bodies subject to its control.³²

Furthermore, the audit chamber assists parliament and the government in controlling the execution of the budget acts. In this respect, it checks the regularity of the receipts and expenditures described in the public accounts and ensures the proper use of loans, funds and securities managed by state departments and other public bodies. It establishes an execution report for each finance act as well as a general statement of conformity between the individual accounts of the accountants and the general accounts of the state. It issues a certificate of consistency regarding other accounting systems. It may carry out any additional enquiries requested by parliament on the occasion of the examination and voting of the settlement act.

The audit chamber provides for verification of the accounts and management control of:

- Public institutions, state companies, mixed-economy companies in which the state owns the majority of the equity capital;
- Social welfare or social security institutions, including private-law bodies that manage all or part of a legally compulsory welfare or social security regime; and
- Any body created by the state to resolve a matter in the public interest, temporarily or not, irrespective of the origin of the funds made available to such body.

It may also verify the accounts and management of:

- Any body in which the state or bodies subject to the control of the chamber (directly or indirectly, separately or together) hold a stake in the equity capital, entitling them to a decisive power of management decision; and

³² Law 7/2004 of 23 October, article 42.

- Any organisation that benefits, in any way whatsoever, from financial support or economic aid from the state or from public bodies that come under its jurisdiction.

The audit chamber can also exercise control of the expenditure account for resources collected from the public, in the framework of a nation-wide fundraising campaign conducted by any public or private body. The purpose of this control is to check that the expenditures made by these bodies are consistent with their stated aims as announced in the call on public funds. Where necessary, it may conduct checks with bodies who were beneficiaries of the resources collected by these campaigns.³³

The audit chamber of the supreme court may carry out investigations and formulate opinions at the request of the government or the parliament on any questions of a financial and accounting nature within its remit.³⁴ Lastly, it receives and controls the campaign accounts of the candidates in various elections. To this end, it ensures compliance with ceilings for expenditures incurred by the candidates. If these are exceeded, the candidates are punished with the penalties provided for in the electoral code.³⁵

The statute of limitations for infringements related to corruption is now 20 years for moderately serious offences.³⁶ This period runs from the moment the facts are discovered and not from the day they are committed, as is the case for other infringements. Similarly, if it is impossible to prosecute an official because of their capacity or office, prescription only runs from the time the official left office. The most serious corruption offences can be prosecuted without a time bar, since such infringements have been declared not subject to a statute of limitations.³⁷ The use of special investigation techniques (telephone tapping, electronic surveillance, undercover operations, freezing, seizure or confiscation, etc.) is organised in such a way as to give the judge exercising criminal jurisdiction every means to act in the framework of his or her mission.³⁸ The prosecution system for corruption offences affords whistleblowers protection (as well as witnesses, experts and victims).³⁹

International cooperation measures comprise provisions relative to prosecution (investigations, mutual judicial assistance, extradition, transfer), as well as to the recovery of assets and also technical support and information exchange.⁴⁰ All the acts proscribed in Law 20/2011 of 12 October on the fight against corruption and related offences in the Republic of Benin carry sentences of a fine and/or prison. Article 2, subparagraph 3 of Benin's criminal procedure code grants non-governmental organisations (NGOs) the ability to bring civil action pursuant to their statutory purpose. This represents significant

33 Article 44.

34 Article 45.

35 Article 46.

36 Law 20/2011 of 12 October, article 21.

37 *Ibid.*

38 Law 20/2011 of 12 October, article 27.

39 Articles 31–36.

40 Articles 142–154.

progress for NGOs involved in the fight against corruption, as they may now be party to legal proceedings against alleged perpetrators of corruption offences they have knowledge of.

Specialised anti-corruption bodies

The OLC and ANLC will be examined through their composition and structural organisation, functions, independence and the financial resources at their disposal, as well as their relationships with the other players in the fight against corruption

Composition and structural organisation

Article 5 of the Decree of 2008 on the OLC provided that it comprise 19 members from the following institutions: two from the national assembly; one each from the ministry of justice, the ministry of the economy and finance, the ministry public security, the ministry decentralisation, the ministry of administrative and institutional reform, the state inspectorate general, the judiciary, the corps of finance inspectors, legal professions and similar, among auditors, accountants and similar, and one from journalists specialising in investigating corruption; and two representatives each from the chamber of commerce and industry, NGOs, and the unions.

The decree specified that these personalities be designated by the organisations they come from and are appointed by decree of the president of the republic for a period of three years, renewable only once.

As previously noted, it turns out that at least six of the members were appointed by an organ of the executive. The number is actually eight if we include the office of the state inspector general and the corps of inspectors. But, not only should the members of these corps, like the judiciary, have been entitled to a presumption of independence, but what is more, persons who can be considered dependent on the executive are still in the minority within a body composed of nineteen members so that it can be said that the body has the means to ensure its independence by virtue of its composition.

The situation changed somewhat with the establishment of the ANLC. Article 6, subparagraph 1, indicates the composition of the ANLC as 13 members. These 13 people are all professionals with the following profiles: One state inspector, communicator, academic sociologist, banking inspector, magistrate, chartered accountant, tax official, customs inspector, and one specialist in procurement contracts; two judicial police officers, one of whom is a gendarme and the other a police officer; one representative of the employers' association, and one representative of the NGOs specialising in governance and fighting corruption.

While the majority of these professionals (seven) are appointed by their institutions,⁴¹ five persons are directly appointed by the government, to which should be added the

⁴¹ Communicator, academic sociologist, banking inspector, magistrate, chartered accountant, representative of employers association and representative of NGOs specialising in governance and fighting corruption.

inspector appointed by the IGE. This configuration brings the number of professionals appointed by the executive to six,⁴² which could infringe upon their neutrality. However, this risk is mitigated by the fact that the number of members appointed by their institutions exceeds, by one person, those from the executive.

The founding instruments of the ANLC do not expressly provide for protection from dismissal among the guarantees of independence of its members. However, the members of the ANLC are granted immunity from civil or criminal prosecution for any acts committed in the performance of their official duties. Article 15 on the ANLC decree provides that 'no member of the ANLC or its bodies may be harassed for acts accomplished in the performance or during the course of their duties'. Article 53 of the rules of procedure also deals with professional immunity, providing that 'the members of the ANLC are granted immunity for any acts committed in the performance of their official duties'. Furthermore, given that various sanctions, in particular those relative to loss of membership status, can only be handed down by the authority itself, there is a kind of irremovability. However,

In the event of a duly established serious offence ... by a member of the authority or when they lose the office to which they were appointed, their term of office is terminated and they are replaced.⁴³

A successor is then appointed under the same conditions as the previous office holder, for the remaining period. The successor can be appointed once more for another term of office of three years.⁴⁴

There are no specific rules for the loss of status of the president of the ANLC. Holders of that office are therefore subject to the same rules as their colleagues.

There is no code of conduct per se which sets the ethical obligations of the members of the ANLC. However, the texts organising the institution are quite precise on the duties expected of the members. On condition that they have at least 15 years' experience in their respective areas of competence and are of good character, the members of the ANLC are appointed for a term of office of three years, renewable once, which represents a maximum period of six years for each member.⁴⁵ We may therefore observe in this respect that the ANLC presents the qualities of stability, permanence and continuity required by the Jakarta Statement.

Even before they take up their positions, candidates for ANLC membership are subject to a background check conducted by the appropriate public prosecutor at the request of the minister of justice.⁴⁶ On completion of this check, the public prosecutor forwards the file

42 Tax administrator, customs inspector, specialist in public procurement contracts and the two criminal investigation officers.

43 Decree 336/2012 of 2 October, article 16, subparagraph 2.

44 Article 16, subparagraph.

45 Law 20/2011 of 12 October, article 7.

46 Article 8, subparagraph 3; Decree 336/2012 of 2 October, article 12.

to the minister of justice to make the appointment in the council of ministers.⁴⁷ Part of the duties incumbent upon the members can be heard in the oath they are required to swear before they take up their duties:

I swear that I shall faithfully and loyally fulfil, impartially and equitably, the duties conferred upon me, in all circumstances meet the obligations they impose upon me and hold secret the deliberations in which I participate.⁴⁸

The law specifies that, in the event of perjury, the members of the ANLC are subject to a number of criminal sanctions.⁴⁹

Advisors to the ANLC are also required to declare their assets to the audit chamber of the supreme court within 15 days of taking up office.⁵⁰ The same applies when they cease to hold office. They must make all provisions for fully participating in all the sessions and activities organised by or for the body.⁵¹ They are prohibited from invoking as a defence or making use of their position in financial, industrial or commercial enterprises; or in a liberal or other profession and, generally, from using their job title for purposes other than the performance of their duties.⁵² They are generally bound to scrupulously uphold statutory provisions and rules of procedure subject to sanctions such as a written warning, a warning noted in the minutes and suspension.⁵³

The ANLC has the power to recruit permanent or temporary support staff. The law obliges the state to endow its anti-corruption bodies with the requisite specialised staff and to provide such staff with the training they need to perform their duties.⁵⁴ In addition, the ANLC has the capacity to make use of

state bodies and/or resource persons, independent specialist consultants, or private structures, both to conduct investigations and to help define and implement its action plan in compliance with the code of public procurement contracts.⁵⁵

The permanent commissions of the ANLC can call upon any outside skills to assist them in accomplishing their missions.⁵⁶

47 Decree 336/2012 of 2 October, article 13.

48 Law 20/2011 of 12 October, article 8, subparagraph 1.

49 From one to five years in prison and a fine of one to five million francs; Law 20/2011 of 12 October, article 8, subparagraph 2.

50 Decree 336/2012 of 2 October, article 17.

51 Rules of Procedure of the ANLC 22 May 2013, article 55.

52 Article 54.

53 Article 50.

54 Law 20/2011 of 12 October, article 9, subparagraph 7.

55 Decree 336/2012 of 2 October, article 18.

56 Rules of Procedure of the ANLC of 22 May 2013, article 32.

In the days of the OLC, skills of its members and staff were boosted and improved by participation in numerous national and international seminars.⁵⁷ Notable examples, on the national level, include:

- A national magistrate's union (UNAMAB) seminar on the theme of 'justice-corruption and the rule of law' in 2004;
- A CMVP seminar on 'the draft law on the fight against corruption and related and similar offences in the Republic of Benin', held in Cotonou in 2006;
- An APNAC- Benin seminar on 'the moralisation of public life and the fight against corruption', held in Cotonou in 2005; and
- A seminar organised by the supreme court and the International Monetary Fund on 'money laundering and the fight against corruption', held in Cotonou in 2007.

With regards to their financial treatment, ANLC advisors are not paid a salary. According to the Rules of Procedure of 22 May 2013, article 48, they are entitled to indemnities and bonuses specified in the financial regulations. Throughout their term of office, ANLC members are entitled to a diplomatic passport.⁵⁸ The president of the ANLC is authorised to ask for the assistance of state forces when he deems it necessary for the protection of the advisors. For their security, advisors may request physical protection from the competent state departments.⁵⁹

Functions

The missions and remit of the ANLC are:

- To exploit, for all practical purposes, information on grievances or complaints relative to acts of corruption and related offences referred to it and forward them to the competent public prosecutor;
- To propose measures to correct any provisions or usages that favour corruption in the legislation and regulations, as well as in administrative procedures and practices;
- To dispense advice for the prevention of corruption to private individuals or public or private bodies;
- To educate the population on the dangers of corruption and the obligation of each citizen to combat it and rally the necessary support for this purpose;
- To make sure all the public institutions have procedures manuals that are effectively applied;

57 OLC, Rapport bilan 2005–2013, June 2013, pp. 43 et seq.

58 Rules of Procedure of the ANLC of 22 May 2013, article 52.

59 Article 49.

- To receive and conserve copies of declarations of assets from the officials referred to in Law 20/2011 of 12 October, article 3;⁶⁰
- To assist the judicial authorities when they so request;
- To cooperate with organisations that have similar objectives on the national, regional and international level; and
- To draw up periodic reports on the risks of corruption within the public administration.⁶¹

In other words, the ANLC has a mandate that allows it to intervene at any point in the fight against corruption; namely in prevention, awareness-raising, control, investigation or prosecution – although, regarding prosecution, the ANLC has no jurisdictional power and may only report cases to the public prosecutor.

The OLC had a mandate in terms of prevention, awareness and education of the public in terms of the fight against corruption. In this respect, it was tasked with:⁶²

- Backing and initiating educational and awareness programmes and encouraging anti-corruption campaigns;
- Publishing and popularising all instruments that penalise corruption;
- Building the operational capacities of associations engaged in the fight against corruption;
- Putting in place an information system on corruption and monitoring corruption cases; and
- Implementing a communications strategy for the fight against corruption.

In execution of this mandate, the OLC conducted several actions that it listed in the 2005–2013 stocktaking report published in June 2013. Among these actions were the following:

- Education and awareness activities for citizens on the harm done by corruption (organisation in February and March 2010 of awareness campaigns for the social body on the harm done by corruption in all the departments of Benin, organisation of awareness sessions for teachers, pupils and students in the colleges and universities of Benin);
- Dissemination of relevant policy papers and legal instruments (organisation in February 2006 of several seminars for the dissemination of the strategic national plan to combat corruption, in November 2006, several sessions to popularise the strategic plan to combat corruption in the ministerial departments, sessions to popularise the law on the fight against corruption in 20 communes chosen from all of the departments in the country); and

60 Law 7/2004 of 23 October, article 3.

61 Article 5; Decree 336/2012 of 2 October, article 10.

62 Decree 180/2008 of 8 April, article 4.

- Capacity-building for key players in the fight against corruption (organisation of training sessions for magistrates and judicial officers on the United Nations and African Union conventions on corruption in April 2009, organisation of training sessions for journalists on the law on the fight against corruption, etc.).

The ANLC also has a mandate in terms of prevention, awareness and education of the public regarding the fight against corruption. In this respect, its duties include:

- Dispensing advice for the prevention of corruption to private individuals or public or private bodies;
- Educating the population on the dangers of corruption and the obligation of each citizen to combat it and rally the necessary support for this purpose; and
- Drawing up periodic reports on corruption risks within the public administration.

When this report was being written, the ANLC had not yet conducted many actions since it was only inaugurated in 2013. However, several seminars have already been organised to popularise the law on the fight against corruption. For example, on 8–10 April 2013, with funding from the Open Society Initiative for West Africa (OSISA), the ANLC organised a workshop for its members to internalise Law 20/2011 of 12 October.

Under the terms of Decree 180/2008 of 8 April, article 4, ‘it is the mission of the OLC ... to inform state institutions as well as public opinion of the cases it has knowledge of with a view to appropriate action’. It emerges from this that the OLC has, inter alia, a duty to report offences to both public opinion and state institutions.

The prime mission of the ANLC, as stipulated in article 5 of the Law 20/2011 of 12 October and Decree 336/2012 of 2 October, article 10 consists in exploiting, for all practical purposes, information on grievances or complaints relative to acts of corruption and related infringements that are referred to it and denouncing them to the competent public prosecutor. It is therefore a question of the authority receiving complaints and grievances relative to corruption, examining them and then informing the appropriate public prosecutor of such offences.

In total, both have, at the centre of their remit, the mission to receive complaints relative to deeds that constitute corruption and refer them to the competent legal authorities.

63 Tchomakou A (2014, 6 June) Following a complaint from the ANLC: the public prosecutor demands clarification of a 1.444 billion affair. *Fraternité*. Available at <http://fraternitebj.info/societe/article/passation-de-marche-public-a-la> [accessed 6 June 2014].

Box 2: Public service contract with SONEB

Executives from the national water company of Benin (SONEB) involved in the awarding of the public procurement contract for the purchase of materials for drinking water hook-up in 2013 are in the hot seat. They have been summoned by the former economic and financial Brigade (BEF) for purposes of investigation on the instruction of the public prosecutor of the Cotonou Court of First Instance (class 1), we learn from sources close to SONEB. According to our information, certain managers at SONEB have been heard in the course of the week and others have been summoned for next week. According to the same sources, they each give their version of the facts regarding this affair revolving around the awarding of a public procurement contract worth 1.444 billion. The former BEF, a structure supervised by the Central Directorate of the Criminal Police (DPCI), is actively endeavouring to elucidate this thorny affair. But according to certain indiscretions, charges are weighing on certain SONEB executives and the director general of the state-owned company is proud of the referral to justice by the National Anti-Corruption Authority (ANCL). The police investigation triggered by the former BEF will therefore help to elucidate this 1.444 billion affair which dates back to 2013. We still remember the outburst of the president of the Front of National Organisations Against Corruption (FONAC) when the contract was awarded. In the next few days therefore, all of the officials concerned will be summoned by the public prosecutor of Cotonou court of first instance (class 1) to provide explanations.

Source: Adrien Tchomakou in *Fraternité* (daily), 6 June 2014, <http://fraternitebj.info/societe/article/passationde-marche-public-a-la> [accessed 6 June 2014].

The OLC's mission was to:⁶⁴

- Seek and analyse deeds of corruption and related offences at any level whatsoever;
- Take on cases of corruption or fraud and carry out investigations on them;
- Be a party to legal proceedings and bring legal action;
- Inform state institutions as well as public opinion of the cases it has knowledge of with a view to appropriate action; and
- Take the necessary measures to protect witnesses.

The OLC therefore had the power to deal with cases on its own initiative, to receive complaints relative to corruption, to conduct investigations (powers of investigation), and refer them, while making the necessary arrangements to protect witnesses. It received several complaints from citizens from 2004 to 2013, as summarised in its 2005–2013 report.⁶⁵ In 2008, for example, the OLC received and examined nine complaints concerning:

- Poor management of a case of fraud and fraudulent release of prisoners;

⁶⁴ Decree 180/2008 of 8 April, article 4.

⁶⁵ OLC, Rapport Bilan 2005–2013, June 2013, p. 32 et seq.

- Poor management of state resources at the ministry of agriculture, livestock and fisheries; and
- The ‘Chagoury and scanners’ case.

In 2009, it examined 15 complaints regarding:

- Injustice in the case of Mr Houndalo D Norbert at the public prosecutor’s office of the court of appeal of Abomey;
- Poor management at the Sainte Rita Daycare Centre;
- Case of the so-called ‘service providers’ of Benin’s national water company (SONEB);
- Denunciation of corruption and inhumane and degrading treatment;
- Denunciation of the commissioner of Djidja on the subject of the settlement of a social problem; and
- Complaint against the president of the constitutional court on the subject of the challenging of a decision of the court of Ouidah and the supreme court.

In 2010, the OLC received and examined 12 complaints concerning:

- Illicit sale of land, false accusations and attempted assassinations;
- Complaint of the president of the association of users of the autonomous markets of Cotonou against the autonomous markets management company (SOGEMA);
- Request for collection of a debt from Hotel PLM Aledjo; and
- Denunciation of forgery and use of forged documents at the state land department of the Cotonou municipality.

In 2011, three cases were examined:

- Finalisation of the dossier of Mr Mounirou Issiaka;
- Denunciation of the signature of the lease contract granted to the Atlas Parking company; and
- Complaint by Mr Gérard Noudeke relative to illegal investment funds, ICC Services and others.

In 2012, it examined 11 complaints including:

- From GASPAC-NGO (management, sanitation and security of Cotonou Airport beach) for denunciation of the sale and misappropriation of state-owned lands; and
- Complaint by Mr Agbessy Michel for denunciation of a state land fraud.

Apart from these complaint files, other specific cases were examined, including corruption in the awarding of public procurement markets and in public colleges.

The OLC was in such great demand that it had to leave 45 dossiers pending when its mandate ended in favour of the ANLC.⁶⁶ The OLC nonetheless deplored the nature of its powers which restricted its capacity to see the examination of the corruption cases through to the end. In its review, the OLC observed that:

Due to the separation of powers enshrined by Law 32/1990 of 11 December on the Constitution of the Republic of Benin, the OLC cannot replace judges in sentencing people involved in corruption cases. This task, which befalls judges who in turn obey procedures enshrined by the criminal procedure code, is not often completed within a short time frame to allow citizens to appreciate the efficiency of the work done by the institution. In this respect, almost 40 cases handled by the institution are pending investigation at the Cotonou court of first instance (class 1) while the accused go free.⁶⁷

It should be hoped that the new criminal procedure code and the specific procedures laid down by the law on corruption will make it possible to move on from this relative impotence.⁶⁸

Regarding the protection of informers, Decree 180/2008 of 8 April, article 4 allows for the necessary measures to protect witnesses without further details of the nature of such measures and their implementation. On the other hand, regarding the ANLC, there is a detailed system to protect informers, witnesses, experts and victims of corruption, which constitutes progress among the strategies implemented to facilitate the enforcement of the law on the fight against corruption. This system comprises mechanisms to encourage and protect any person who reports in good faith an alleged deed of corruption; any witness, expert or victim who communicates information or testifies in affairs of corruption. These mechanisms include the:

- Reintegration and/or compensation by the employer of any informer who has been harassed, reprimanded or fired for denouncing acts of corruption;
- Protection by the police services on instruction from the minister of security or defence, on referral by the public prosecutor, of any informer, witness or any other person having denounced deeds of corruption and having received threats to their safety; and
- Possibility of submitting or making reports anonymously and without specifying the real address of the informer if this information is likely to endanger their life or physical integrity as well as that of the members of their family or entourage.⁶⁹

66 *Ibid.*: 35–37.

67 *Ibid.*: 73.

68 Law 15/2012 of 17 December; Law 20/2011 of 12 October.

69 Decree 122/2013 of 6 March, article 1 .

The contrast between the ANLC and its predecessor, is seen in terms of investigation and prosecution. The OLC, on the one hand, was expressly endowed with the power to seek and analyse deeds of corruption and related offences at any level whatsoever; it could also take charge of corruption or fraud cases and conduct investigations. The ANLC, on the other hand, has no express powers of its own in terms of the investigation and prosecution of deeds that constitute corruption. It may certainly receive grievances and complaints, and possibly carry out cursory investigations⁷⁰ to highlight elements likely to constitute offences; but, it must then denounce the deeds to the competent legal authorities as quickly as possible. This is doubtless a step backwards in terms of the ability of the anti-corruption agency to conduct investigations, or become legally involved in the investigations of the judiciary.

Independence

Although independent, the ANLC is a body under supervision. Pursuant to Law 20/2011 of 12 October, article 9, subparagraph 3, the ANLC is ‘under the supervision of the president of the republic’; the OLC was not. Mr Apol Emerico Adjovi, journalist and chief editor of the daily newspaper *Le Matinal* says:

Personally I shall wait and see, I am very doubtful and I don’t know if they’ll be able to rise to the challenges. I would have preferred the ANLC to be independent of all powers but, unfortunately, the ANLC is under the authority of the head of state and you who are in this country are well aware the regime of the current head of state is beset with scandals and i wonder if an institution operating under his authority can really publicise cases in which the head of state is involved. I think the supervision of this authority will be harmful.⁷¹

According to the constitutional court, however, this supervision does not pose any particular problem regarding the autonomy of the body. The court was called upon to answer the question of the conformity of article 9, subparagraph 4 of the law with the provisions of the ECOWAS, African Union and United Nations conventions on corruption, which require that the body or bodies designated to prevent and fight corruption be ‘independent’ and exercise their duties ‘free from any undue influence’. For the court,

the notion of supervision does not involve subordination between the controlling authority and the controlled body, unlike hierarchical control which is based on subordination between a higher authority and a lower body; ... supervision, which is only exercised in the cases and forms provided for by law, does not include the possibility of giving orders; rather it organises cooperative relationships and works

70 Decree 336/2012 of 2 October, article 18, stipulates that it ‘may have recourse to state bodies and/or private persons, either to conduct investigations or to help define and implement its action plan’.

71 Interview of 20 May 2014.

towards the preservation of the public interest, unlike control or hierarchical power which comprises the power to appoint, revoke and give instructions; ... the deliberations of the body under supervision are legally valid, even if their implementation requires the approval, within the framework of the defence of the public interest, of the supervising body; ... unlike hierarchical control, the body subject to supervision does not receive instructions from the supervising authority; ... in addition, subparagraph 2 of article 9 of the law stipulates ‘a real autonomy in relation to the institutions of the republic’; ... the method for appointing members of the national anti-corruption authority, the election of the board left to the discretion of the members, are so many elements that constitute the real autonomy of said authority in relation to the executive power; ... regarding the power of substitution evoked by the applicant, it is accepted that this power recognised by the supervising authority only intervenes to safeguard the public interest in case of inaction, failure or resignation of the body under supervision and after prior official notice from the supervising authority; ... the supervision in question therefore in no way leads to the subordination of the national anti-corruption authority to the president of the republic.⁷²

Financial resources

It was specified that the OLC operating budget was part of the general state budget and that the president of the OLC was the authorising officer. The accountant took care of preparing the draft budget, executing it according to the rules of transparency and preparing the financial statements as part of the presentation of the accounts.⁷³ Once the draft budget was prepared, it was approved by the finance department. In addition, in day-to-day management, this department had to make sure it placed resources at the disposal of the OLC in time, and, lastly, it is to this same department that the OLC had to report on expenditure. In these conditions,

As the institution operates on the basis of an annual work plan (PTA) it has had to renounce a certain number of relevant activities due to the budget allocated by the ministry of the economy and finance. This situation became particularly aggravated in 2012 when the institution’s operating budget was made available to it in the month of October! Which does not guarantee the institution sufficient independence.⁷⁴

The legislation seems to grant more autonomy to the ANLC,⁷⁵ but article 9 of the new law recalls that the authority is ‘under the supervision of the president of the republic and

72 DCC 64/2011 of 30 September.

73 Decree 180/2008 of 8 April, article 9, 12, 15.

74 OLC, Rapport bilan 2005-2013, June 2013, p. 74.

75 Law 20/2011 of 12 October, article 5 stipulates that: ‘a body is established to fight corruption, endowed with financial independence’.

draws up its budget which is integrated into the general budget of the state'. The same instrument specifies that 'the government fixes, by decree, the financial regulation of the ANLC', and this authority 'draws up its annual report and sends copies to the presidents of the administrative chamber and the audit chamber of the supreme court'. Although the ANLC draws up its own budget, the latter is integrated into the general state budget and the government fixes by decree the financial regulation the ANLC is obliged to respect in executing the chosen budget. The legal requirement on the executive to endow the body with a financial regulation to allow it to operate in compliance with applicable standards is thus indispensable to the execution of the expenditure that the body will undertake.

The OLC regularly benefitted from a budget allocation from the government from 2004 to 2012. The budgets were both operating and investment budgets and were presented as shown in the table below (at the exchange rate of USD 1 for 500 FCFA):⁷⁶

Table 1: OLC resources

Budget year	Amount allocated
2004	11 867 500
2005	135 000 000
2006	89 112 250
2007	200 000 000
2008	375 000 000
2009	375 000 000
2010	375 000 000
2011	300 000 000
2012	200 000 000
Total from 2004–2012	2 060 979 750

Support provided to the OLC was presented as follows:

- African Development Bank (AfDB): support through donations of equipment worth 71 000 000 FCFA in 2005;
- The embassy of the Kingdom of the Netherlands: made a donation of equipment (office furniture and computer equipment) in 2006;
- Danish International Development Agency (DANIDA): support of 17 387 528 FCFA for the dissemination of the strategic national plan to fight corruption in 2007; and
- French embassy: a subsidy from the priority solidarity fund for 72 770 700 FCFA from November 2011 to August 2013, mainly intended for investigations on the corruption situation, in particular

⁷⁶ OLC (2013) Rapport Bilan 2005–2013, June 2013. p. 15.

the production of a white paper on the state of corruption in Benin, for financial years 2010 and 2011.

Several months after it was set up, the agency had neither a financial regulation, nor resources from the state. Speaking to the press in January 2014, the president of the national anti-corruption authority was very explicit – see Box 5 on page 63.

Box 3: Eric Houndété puts pressure on Yayi

With a written question to the government, Deputy Eric Houndété keeps a close eye on President Yayi regarding the fight against corruption. Despite professions of faith by government officials and the passing of Law 20/2011 of 12 October on the Fight against Corruption and Related Offences in the Republic of Benin, there is nothing much to show in terms of concrete action. The National Anti-Corruption Authority (ANLC) introduced by Yayi on 15 May 2013, has no financial resources with which to carry out its missions. With respect to this deplorable situation and in application of article 111 of the rules of procedure of the national assembly, Deputy Eric Houndété asked the government to give the national representation answers to the following questions: is it true that the ANLC has no budget? What financial resources does it operate with to date? Why does the government not provide the ANLC with the necessary resources to operate? How much has the government allowed for the running of the ANLC in the 2014 budget? On which budget line are the provisions of resources reported? In which institution are the provisions pertaining thereto to be found? The problem with this situation is the supervision of the authority by the president of the republic who has always clearly stated his commitment to the fight against corruption. Even better, President Mathurin Nago has just been honoured as ambassador of Africa for the fight against corruption for the efforts deployed by the Beninese parliament. And against that backdrop, paradoxically, the authority has lacked the resources to track down the country's corrupt since it was set up and is in danger of having no funds next year either. And yet there is no shortage of corruption in the country. The letter was addressed to the minister of justice, legislation and human rights (MJLDH), on 29 November 2013.

Source: For having cut the authority for the fight against corruption out of the 2014 budget: Eric Houndété puts pressure on Yayi (2013) *La Presse du jour*. Available at <http://www.lapressedujour.net/archives/30159> [accessed 30 May 2014].

Relationships with the other stakeholders in the fight against corruption

The law on the fight against corruption obliges the ANLC to ‘cooperate with the organisations which have the same objectives on a national, regional and international level’.⁷⁷

Relationships with the police and the justice system: The legislation made no express provisions regarding relations between the OLC or the ANLC and the police or the gendarmerie. However, article 13 of the decree establishing the OLC allows for the possibility for the observatory to have recourse to state bodies to conduct investigations

⁷⁷ Law 20/2011 of 12 October, article 5.

and implement its action plan. This same possibility is afforded to the ANLC by Decree 336/2012 of 2 October, article 18. In this respect, the authority can cooperate with the units of police and gendarmerie within the framework of investigations. Such cooperation would not be possible without informing the public prosecutor, as director of all investigations taking place within their jurisdiction.

The OLC maintained close relationships with the officials in the legal system, from organising seminars for magistrates and legal officers, to advocacy with a view to accelerating procedures and presenting decisions within a reasonable time frame; what is more, the members of the OLC always included a magistrate.

The ANLC collaborates with the judiciary on the one hand, making denunciations to the public prosecutor and on the other hand assisting the legal authorities whenever they so request. This legal cooperation is stipulated in Law 20/2011 of 12 October, article 5, subparagraphs 1 and 7 and Decree 336/2012 of 2 October, article 10. These provisions are compliant with article 38 points a. and b. of the UNCAC concerning cooperation between national authorities.

The importance of the collaboration between the ANLC and the justice system was underlined in the following way by an important civil society operative, one of the most active in the fight against corruption:

If the government leaves the ANLC room to operate and provides them with resources, I believe they can rise to the challenge, become an effective institution, on condition that the legal system also helps them. When it receives the case files, it is obliged to forward them to the legal system and the legal system should be able to resolve the cases quickly so that the accused either pay for their folly or are cleared of suspicion. It will be the magistrates who will prove the efficiency of the ANLC, through their rulings on the cases submitted to them. The ANLC must also update the population on the status of the cases sent to the prosecutor, so that we can keep up with their progress. Then we will know that the ANLC is not asleep on the job and we will know to what extent their efficiency has been undermined. In other words, if they refer cases and the legal system is in no hurry to resolve them and they keep quiet about that, we will say the ANLC is inefficient when in fact the passed-on the cases are being held up by the legal system, but if they do not communicate with us, all the blame will be placed on them. Everyone must play their role at the right pace and within a reasonable time frame. This is the only way we can know how efficient the ANLC is.⁷⁸

78 Interview with Martin Assogba, President of the NGO ALCRER (Association de lutte contre le Racisme, l'Ethnocentrisme et le Régionalisme/Association for the Fight against Racism, Ethnocentrism and Regionalism), May 2014.

Relationships with parliament: Of the 19 members of the OLC, two were from the national assembly. The OLC therefore maintained collaboration with parliament to the extent that it also had to produce an annual report, a copy of which was made available to each of the state institutions. This collaboration also resulted from the fact that the OLC was advocating in favour of parliament voting on certain laws necessary to the fight against corruption. To this end, in June 2007, the OLC organised a parliamentary advocacy seminar with a view to adopt the law on the fight against corruption; then, in September 2009, a second seminar, again with a view to raising awareness among members of parliament on the need to adopt the law.

As for the ANLC, it may have recourse to state bodies, including parliament, to conduct investigations and help implement its action plan. Articles 18 and 22 of the rules of procedure also require it to notify the heads of all government institutions (including parliament) of the election returns of each president of the authority and to send copies of all notices, statements and claims to the institutions.

Relationships with civil society organisations: The OLC set up strategic alliances with civil society organisations involved in the fight against corruption. The largest of these organisations is the Front of Anti-Corruption Organisations (FONAC). According to one of its members,

Together with the OLC, FONAC organised a national anti-corruption day on 8 December of each year. We all met up at the conference hall of ADEGIP. I know that for the purposes of organising elections, the OLC calls upon FONAC's expertise to monitor the elections on national level. Sometimes, both structures were referred to for the same case, especially when the people involved were desperate: people who didn't know where to turn complained to both the OLC and FONAC. We occasionally conducted joint investigations which were successfully completed. Sometimes cases came to FONAC, but were purely administrative and had to go before the administrative chamber of the supreme court, so we would send them back to the OLC. As far as I know and regarding future plans at FONAC, the ANLC has approached FONAC for a certain degree of cooperation, which is not officially established, but they did wish to build a bridge between FONAC and the ANLC to be able to work in synergy on cases submitted to them to see how we could work in tandem. This is all I know. FONAC had created a coordination framework for civil society players fighting corruption so that, if there are corruption cases, we come together to analyse them and produce statements, generate fact sheets that we forward to the head of state with suggestions. This framework exists and is operational. These are the different anti-corruption mechanisms that exist.⁷⁹

79 Interview with Théodule Nouatchi, 20 May 2014.

Mr Martin Assogba, president of ALCRER, confirms:

We have excellent cooperative relationships because they, as a state or semi-state institution do not have branches, so we act as branches for the institution, be it the OLC or today the ANLC. So we work together, since they do not know the field as much as we do, we are already there on the ground with a lot of local sections. So they have to prepare basic education and awareness questions for us, and they do. The OLC also organised a lot of awareness sessions we took part in and the ANLC is currently doing the same thing, too. These semi-state institutions cannot work without us; we were there before them, and we know the grassroots population better. We are the ones who know and hold the needs of the population in the framework of the fight against corruption. So we are necessarily colleagues and partners and when they want to work on awareness, education and communication, they invite us to join in those activities. ... In the framework of collaboration, there are certain matters we pass on to the ANLC because it has more power than we do and so we have to transfer some of the case files we receive to them. We, civil society, are only those who know, there are cases we'll report because they are simple, and others we will send them because they are more complicated, and we ask them for their help in resolving those ones. Also, when we are going to organise awareness sessions, we invite them, because in the end, we are fighting for the same cause, the combat against financial delinquency.⁸⁰

Relationships with the media: Relations between the OLC/ANLC and the media seemed/seem quite harmonious.

According to Guy-Constant Ehoumi, journalist and president of the watchdog on media ethics and conduct (ODEM),

We have relationships with the OLC and FONAC. When we are aware of an affair, we discuss it with them to find out if they are aware of such and such a matter, or sometimes they are the ones who know about a case and they inform and enlighten us. We try to understand, as investigative journalists, we dig to find out what is going on. We also approach the alleged perpetrator to have their version and put the two statements side by side, but the work of the journalist stops there. A simple denunciation in the press must be able to serve as evidence for the ANLC or even the legal system, a simple denunciation must contribute to an investigation.⁸¹

80 Interview with Martin Assogba, May 2014.

81 Interview with Guy-Constant Ehoumi on 19 May 2014.

Mr Apol Emérico Adjovi, chief editor of the private daily newspaper *Le Matinal*, is more nuanced, but does not deny the existence of contacts between the media and the national anti-corruption agencies:

There was no special relationship between the journalists and the OLC, which is now the ANLC. Every time they hold a press conference, they invite us along with the other journalists to talk about it. In relation to the print media, when we are given a piece of information, we investigate to check the facts. When we receive information, we approach the perpetrator to discuss it with them if necessary. I did say if necessary. Because sometimes the facts have been so clearly established that there is no need to go and listen to Tom, Dick or Harry before laying out the facts, for example in the case of the NOCIBE [a cement company] affair, I was the first person to mention this dossier in Benin because I had access to the agreement that the gentleman signed with the Beninese state. I hope the ANLC will be able to take charge of the case because the Beninese state has a lot to lose.⁸²

Box 4: The president of the ANLC's New Year's greetings speech to the media, January 2014 (part 1)

I would like to thank you very sincerely, on behalf of my fellow members of the National Anti-Corruption Authority, and on my own behalf, for having responded to our invitation. I am aware that our initiative may have seemed unusual for some of you who believe, perhaps with good reason, that the ANLC should invite the media or organise this ceremony itself. But, when things can be done simply, why make them more complicated? The ANLC is aware that the media centre is a place where media players come together and dialogue and as we do not yet have premises as such or an appropriate setting to receive you, we preferred to come out to meet you. So thank you for hosting us!

That being said, in keeping with the republican tradition, I would like to extend my best season's greetings for the New Year 2014 to all of you, presidents of umbrella organisations and specialised media structures, members of the different boards, directors of media organisations and media professionals of every stripe, as well as to your families, friends and colleagues, in the year 2014 I would like to wish you fulfilment, excellent health, remarkable clairvoyance, peace of mind, prosperity and the joy of living and being useful to society and to our country, Benin.

The media, often called the fourth estate after the executive, legislative and judiciary, play a role that is perhaps more important than that of the other estates, to the extent that it is through the mass media that a nation communes with itself and with other nations. It is in this way that the authorities within a nation ...

82 Interview with the interested party on 20 May 2014.

become aware of the problems and aspirations of the people they are meant to serve. On the other hand, it is through this same mechanism that the people assess the ability and policies of the authorities. Based on this reality, I would like to wish that, throughout 2014, and even better than in the past, the media in Benin rally to fully play their part in this combat against the gangrene of corruption so that the different synergies concur to reassure the people and appease international public opinion, which is very sceptical, with respect to a certain amount of unsavoury behaviour in every sphere of society.

Regarding the National Anti-Corruption Authority, we in any case intend to count on you to fulfil the mission entrusted upon us by the people through Law 20/2011 of 12 October on the Fight Against Corruption and Related Offences, a mission which is described in article 5 of the aforementioned law.⁸⁶

Source: Excerpt from remarks by Guy Ogoubiyi, President of ANCL, in January 2014 at the Maison des Medias Thomas Mégnansan, <http://www.24haubenin.info/spip.php?article3177> [accessed 30 May 2014].

Relationships with the general public: Apart from the awareness and educational activities mentioned above, relations between the OLC/ANLC and the general public may also take other forms.

Under the terms of Decree 180/2008 of 8 April, article 4 on the establishment, organisation and operating procedures of the OLC, the institution was in charge of ‘publishing and popularising all instruments that penalise corruption’. In this respect, the OLC did not fail in its duties.⁸³ The following were published:

- 20 000 copies published of a brochure summarising the strategic national plan to fight corruption in 2007;
- In 2009, the publication of a collection of laws penalising corruption in Benin (2 000 copies), a collection of regional instruments on the fight against corruption (2 000 copies), a collection of international instruments on the fight against corruption (2 000 copies), a collection of legislative instruments on the controlling body in Benin (2 000 copies); and
- The production of various posters in different formats bearing messages of prevention, awareness and the fight against corruption intended for public officials, teachers, voters, judges and the general public.

Decree 180/2008 of 8 April, article 4 on the establishment, organisation and operating procedures of the OLC also provided that the anti-corruption body must, among other things, ‘produce an annual white paper on the state of corruption in Benin’. The OLC published white papers on the state of corruption at official launching ceremonies in 2007, 2008 and 2009. The 2010 and 2011 editions were also published later.

⁸³ OLC (2013) Rapport bilan 2005–2013. pp. 31 et seq.

The same obligations are now incumbent on the ANLC. Pursuant to article 56 of the 22 May 2013 procedure rules, the ANLC has an obligation to publish two annual reports: an activity report and a white paper. This document portrayed corruption in Benin: its progress or regression, methods, the main players, the scandals and the way they were handled.

Article 58 of the 22 May 2013 procedure rules also provides that the ANLC must set up and run a website which will not only give it visibility, but also enable it to provide the public with information through access to the results of its actions and all general information on corruption. The website of the OLC⁸⁴ played this role previously.

Lastly, it should be pointed out that, for the legislative and presidential elections of 2011, the OLC had set up a free hotline (81 00 00 08) to allow citizens to call the institution free of charge.

D. Critical assessment of anti-corruption efforts

The lack of political will is evident in the successive failures in the fight against corruption in Benin. The Millennium Challenge Account (MCA) wake-up call revealed that appearances and speeches only served to hide the real, unsatisfactory situation of the fight against corruption in Benin. Despite the legislation and institutions, the results are largely disappointing.

MCA wake-up call

At the end of 2013, the people of Benin learnt of the non-renewal of the American MCA programme signed on 22 February 2006 by the Millennium Challenge Corporation (MCC) and the Republic of Benin, under which the country had been the beneficiary of a donation agreement worth USD 307 298 million (approximately 147.50 billion FCFA), would not be renewed. This programme had enabled progress to be made in several respects in terms of reforms and infrastructure in the areas of land ownership, access to markets (improving the business environment), access to justice, etc. The programme implementation assessment had nonetheless recommended Benin's eligibility for a second compact. According to Jonathan Bloom, vice-president of the MCC in charge of operations to implement the compacts⁸⁵ for Africa, when Benin's file was reviewed by the MCC board of directors,

out of the required total of 50%, Benin was able to raise 49%. The only thing that made the country lose their eligibility for the 2nd compact was the corruption indicator.⁸⁶

84 Article 36 of the articles of association of the OLC.

85 The 'compacts' are the agreements signed by the MCC and the beneficiary states.

86 Daily newspaper *La Presse du Jour* of 17 December 2013, available at <http://www.lapressedujour.net/?p=30356> [accessed 19 July 2014]. Note that, in the end, thanks to the exceptional efforts deployed during the observation period, the country was able to obtain its second compact. But, these intermittent

The MCC's decision was announced at a time when, just a few months earlier in January 2013, cases involving five former ministers suspected of deeds likely to be qualified as corruption or similar offences, were referred to the national assembly for the purposes of prosecution proceedings before the high court of justice. These former ministers were:

- François Noudegbessi, former urbanism minister, and Soulé Mana Lawani, former finance minister, in the affair of the construction of the new national assembly headquarters;
- Rogatien Biaou, former foreign affairs minister, in the case of the sale of state-owned land to the USA;
- Soulé Mana Lawani, former finance minister, in the case on the preparation of the Community of Sahel-Saharan States (CEN-SAD) summit meeting in Benin;
- Former minister of the interior, Armand Zinzindohoue, in the fraud case of the ICC services companies et al.;⁸⁷ and
- Kamarou Fassassi, former energy minister, in the case on the purchase of electrical generators.

Perceptions versus reality

Benin's strategic plan to fight corruption is presented as a national anti-corruption programme, whose implementation is meant to boost the national integrity system. The strategy adopted for the implementation of the plan is built around nine fundamental points, which are:

- Demonstrating the government's political will;
- Promoting administrative and institutional reforms;
- Establishing an effective legal framework to fight corruption;
- Continuing to clean up public finances and increasing the return on public resources;
- Consolidating and strengthening the primacy of law;
- Cleaning up the transport sector;
- Boosting the action of civil society;
- Reinforcing the attitudes and ethics of civil servants and improving their pay; and
- Adopting a realistic approach to anti-corruption policy implementation.

Some of the activities listed in this strategic plan have begun to be implemented, such as: the promotion of administrative and institutional reforms (automation of operations and

efforts must not hide the lack of political will, particularly regarding certain major corruption cases where there was damning evidence against people close to the president of the republic. Though the files did not justify prosecution, parliament never had the opportunity to vote against their prosecution.

⁸⁷ The file investigation services at the high court of justice dismissed the case concerning him and also concerning his colleague Kamarou Fassassi, which means the facts were not established against them and did not justify a lawsuit.

creation of one-stop shops, the setting up – on paper for the moment – of a recruitment mechanism for senior government technical jobs); the generalisation of procedures manuals in the civil service; the adoption of laws in various sectors; raising of citizen awareness on the adverse impact of corruption on national socio-economic development; and sanctions imposed on state officials found guilty of acts of corruption.⁸⁸

The government even recently began a process to implement Law 20/2011 of 12 October by, establishing and setting up the ANLC;⁸⁹ appointing its members;⁹⁰ defining the terms and conditions of application of its provisions on asset declarations and conflict of interests;⁹¹ and the identification of measures to protect informers, witnesses, experts and victims of acts of corruption.⁹²

However, in spite of all these efforts, popular perceptions of corruption seem, at the very least, highly ambivalent. The corruption perceptions index of Transparency International (TI) measures the levels of perceived public sector corruption in a large number of countries. Benin ranked 94th out of 177 in the 2013 index. An analysis of the table below reveals an improvement in Benin's ranking. Benin was first included in TI's indicator in 2004. In ten years, Benin's score has increased tenfold, from 3.2 in 2004 to 36 in 2013.⁹³ This increase is a sign that the fight against corruption is moving forward, albeit slowly.

Table 2: Transparency International corruption ranking, 2004–2012

Year	Score	Rank/number of countries
2012	36.0	94/177
2011	3.0	100/183
2010	2.8	110/178
2009	2.9	106/180
2008	3.1	96/180
2007	2.7	118/179
2006	2.5	121/163
2005	2.9	88/158
2004	3.2	77/145

The latest report from TI on the corruption perception index was published on Wednesday 3 December 2014. In this report, Benin had once again slightly improved its score, and was listed as the 12th least corrupt African country. Out of 175 countries covered by the survey,

88 ANLC (2013) *La situation de la corruption au Bénin*, September 2013. pp. 6–8.

89 Decree 336/2012 of 2 October; Website: www.anlc.bj

90 Decree No. 2013-241 of 08 May 2013 on the appointment of the members of the National Anti-Corruption Authority (ANLC).

91 Decree 336/2012 of 2 October on the method of application of Law 20/2011 of 12 October, articles 3 and 10.

92 Decree No. 2013-122 of 6 March 2013 on the special protection conditions of informers, witnesses, experts and victims of acts of corruption.

93 See <http://transparency-france.org/>.

Benin stands in 80th position with an index of 39/100, behind Botswana (63/100), Cape Verde (57/100), Seychelles (54/100), Lesotho, Namibia and Rwanda (49/100), Ghana (48/100), South Africa (44/100), Swaziland (43/100); Sao Tome and Principe (42/100), Senegal (43/100) and Tunisia (40/100). Within the ECOWAS space, Benin has edged past Burkina Faso, Côte d'Ivoire, Togo and Nigeria respectively stand in 85th, 115th and 126th position.⁹⁴

This improvement does not obscure the pervasiveness of corruption in Beninese society, however, especially in certain business sectors. According to the people, the sectors most undermined by corruption can be ranked in decreasing order as follows: customs, police and gendarmerie, justice, tax, public procurement, civil service, city hall, treasury, health, media, education, water and forests.⁹⁵ In Benin, corruption is therefore a reality that affects the population daily.

These results are due to the difficulties encountered, which, according to the ANLC itself, are:

- Inadequate financial resources for the structures and institutions in charge of implementing the plan;
- Weak political will; and
- Lack of qualified staff, etc.⁹⁶

Benin cannot be accused of not adopting the necessary measures to equip itself with a legal and institutional framework to fight corruption. The OLC was able to hold its own by conducting a series of activities which gave the institution credibility. However, the organisation could have done much better if it had been given the appropriate support. For instance, it deplored:

- The low level of citizen awareness: notwithstanding the education and awareness actions conducted by the OLC, there was a notable lack of support for the institution from a section of the population. The low level of citizen awareness caused certain citizens to take intermittent stances that were almost akin to rooting for the corrupt in certain cases denounced by the institution.
- The slow pace of legal proceedings.
- Very weak political will, in particular the lack of reaction of the competent authorities in imposing sanctions on unsavoury officials, or even promoting them; the lack of willingness to adopt certain pieces of anti-corruption legislation; or the financial strangling of the body as was the case for the OLC, but even more seriously for the ANLC, especially in the early months of its operations.⁹⁷

94 See <http://www.africatopsuccess.com/2014/12/04/benin-12eme-pays-africain-le-moins-corrompu/>.

95 Observatory for the Fight Against corruption (2011) White paper on the perception of corruption in Benin. p. 41.

96 Ibid.

97 OLC (2013) Rapport bilan 2005–2013. pp. 73 et seq.

Weak political will

The lack of any sincere political will on the part of the government to fight corruption unfortunately seems to be the main obstacle to the success of the ANLC. How are we to understand the financial difficulties preventing it from working? When the financial resources made available to it were eventually released, the institution could not spend them due to the absence of financial regulations. The overall impression is very much that the body was set up to please the technical and financial partners. This is an observation shared by the majority of those interviewed.⁹⁸ It was also confirmed by the president of the ANLC in his speech presenting New Year's greetings to the media in January 2014. It is difficult not to share this point of view.

Box 5: The president of the ANLC's New Year's greetings speech to the media, January 2014 (part 2)

Despite ... the good intentions repeatedly displayed by his excellency, the president of the republic, the ANLC very early on appeared more like an ordinary body, set up mainly to keep the technical and financial partners happy and perhaps serve as a scarecrow for a certain portion of public opinion, rather than a structure in which the state, which nonetheless set it up, accords any real credit. In effect, after their swearing in, the members of the authority were disillusioned to find that there were no premises to host them and no budget allocated to them. The audience with the president of the republic on 12 July proved a reassurance for more than one of them.

But their hopes were short-lived, for all the requests to the ministry of the economy and finance, remained, for the most part, unanswered; and recourse to the secretary general of the office of the president of the republic did not move things forward either. Thus the ANLC operated without allocations, therefore on debts and requests for deferrals that were not always successful. The study in council of ministers of the draft financial regulation sent to the secretary general of the president of the republic since September is still pending. Meanwhile, public opinion and many other international institutions call upon the ANLC with various concerns in terms of governance. Following our last media appearance, we noted the releasing of the allocation granted to the authority for May–December 2013. This allowed us to pay off our debts, pay temporary staff, and pay an advance on the allowances of the members of the authority.

We also completed the drafting of certain project documents and work plans. 2014 must therefore allow us to take off and have a positive impact on the daily routine of all those for whom the fight against corruption is a leitmotiv. For this to be achieved, we would really have to have access to the necessary resources. According to the information we were able to gather through your publications on the state budget for 2014, there is nothing planned for the ANLC. That would truly be a pity, for we believe we have taken the necessary steps for our budget to be integrated into the general state budget. But far from being discouraged, we shall carry on, for no

98 Interviews with Guy-Constant Ehoumi, journalist, president of the Observatory for deontology and ethics in the media; Apol Emerico Adjovi, journalist, managing editor of the private daily *Le Matinal*; Théodule Nouatchi, legal expert, member of the NGO front for national anti-corruption organisations (FONAC); Martin Assogba, president of the NGO ALCRER; and Félicien Chabi Zacharie, MP, Cotonou, May 2014.

fight against corruption can prosper without an unshakeable political will, expressed in deeds by the provision of adequate resources and by fair punishment for unscrupulous officials.

The president of the republic is all the more aware of this as he has promised various social bodies on the occasion of several seasons' greetings speeches to a variety of social organisations that he would make the fight against corruption one of his major governance focuses during 2014, notably by placing resources at the disposal of the ANLC. We have high hopes that this shall be done, for by depriving the ANLC of the minimum means to operate and perform its activities, our government would be cutting down the tree it planted itself, and which could afford it some shade.

For also while we may deplore the unfavourable decision for the country regarding the second compact of the Millennium Challenge Account, we may affirm that all is not lost. We only have to pull ourselves together and take appropriate action to push back the gangrene of corruption. In this framework, the ANLC intends to engage several actions in various areas under its jurisdiction. Our body will facilitate the life of the most vulnerable members of the population, who end up becoming resigned when faced with the steamroller of corruption. Already, on the basis of the credit made available in 2013, in the coming weeks the ANLC will commence actions focusing on prevention and the appropriation of the law on corruption.

Some of our actions, which have become conditions for budgetary support for Benin by the World Bank, have been prioritised for this year. To this end, we ask the ministries and institutions that do not grant us their cooperation to take the issues at stake carefully into account for the well-being of our country.

Source: <http://www.24haubenin.info/spip.php?article3177> [accessed 30 May 2014].

It may seem surprising to speak of weak political will when former ministers have been brought before the high court of justice; numerous pieces of legislation have been initiated and adopted by politicians; and every day speeches and declarations are made concerning the relentless battle against corruption.

However, there is no point trying to deny that all of these actions are superficial. Objective facts show, for example, that for the technical and financial partners, a change in tone was necessary on several occasions before the legal instruments initiated by the political players came to be adopted. A law as important as the criminal procedure code, once adopted by the national assembly, was long delayed before being enacted and published in the government's Gazette. Even after publication, resistances of all kinds prevented and delayed its application in such a way that, in certain legal cases, the supreme court had to set aside the decisions of certain courts of appeal that had failed to refer to the new criminal procedure code. The lack of political will is also seen in the appointment of persons as members of cabinet who have widely been reported by the media as being corrupt. This compromises the fight against corruption as it renders institutions such as the courts of law helpless in effectively dealing with corruption cases involving presidential appointees.

In this context, certain persons are perhaps prosecuted, but it is either because they have no political cover or they end up being entitled to provisional liberties which, in fact, are final liberties, because the case never gets revised.

On the other hand, deeds of corruption are laid bare in investigations conducted by the IGE, but the confidential reports of this body are not forwarded to the ANCL nor to any other state body, such as the justice system. These reports are used to obtain the political fidelity of certain stakeholders, directors, deputies or businessmen. A minister was even humiliated by being held in custody for several days for having dared to forward the case of one of his predecessors to the courts, believing he was doing the right thing. A company director suffered the same fate, ostracised and held in custody for several days because he had resisted the whimsical requests of his board of directors regarding the fraudulent disbursement of certain funds. Certain precautions or denunciations taken or made by other boards of directors (to avoid the fraudulent use of funds by the general directors of public enterprises) were not respected. Even investigation reports by international firms chosen unilaterally by the government have established this, sometimes in contradiction with the conclusions of the IGE. Despite this, regular justice was never seized to clarify these behaviours in order to ascertain whether or not the suspicions weighing on the directors were grounded. Some who were forced to resign by union movements were appointed to the office of the president of the republic despite the cloud of suspicion hanging over their management; for example, a director in conflict with his board and whose management acts were publicly denounced, abundantly, continuously and repeatedly, never had the opportunity to defend himself in a court of law. He was nonetheless promoted to a position in the cabinet of the president of the republic.

The exchange of open letters and statements between a deputy from the national assembly and the office of the president shows the extent to which the question of the fight against corruption is taken hostage by the political players.

Box 6: Correspondence between a deputy and the office of the president of the republic on alleged cases of corruption: Letter to the president

My Dear President,

On 09 September 2014, I sent you a sealed, handwritten letter. I explained to you the reasons for this choice, especially my wish that the contents remain strictly between you and me for some time. It is true that I noticed you did not take it into account, apart from a few allusions you made to it during of your campaign which was active across the territory.

Today, I am penning an open letter to you, due to the seriousness of its contents, but also and especially because these contents need to be known by the people. Yes, if you yourself do not change your conception of power and the use to be made of public property, your entourage, in particular the 'powerful' ministers and your FCBE (Cowrie Forces for an Emerging Benin) henchmen will not be able to continue

casually exploiting public property, especially in this period of uncertainty where they do not know what will happen after 2015, and especially after 2016.

It is in accordance with the indignation aroused by their acts that I am addressing this open letter to you with information for all of our people. What is that information?

Since October 2014, I have had in my possession documentation on criminal offences committed based on the *Conseil d'Orientation et de Supervision* (COS)'s correction of the Voters List (*Liste électorale permanente informatisée* [LEPI]). I was waiting to complete the information before reacting, but due to the blocking of my sources both in France and in Benin, I have decided to give you what meagre information I have, meagre because apparently the scandal goes all the way to CPS/LEPI.

The people I am working with are afraid, and ask me to drop the matter. But as you may have realised, I am quite incapable of fear even though they went so far as to make allusions to the attempted assassination of Mr Martin Assogba, president of the NGO ALCRER. I understand them, but I don't want to be pessimistic at this point, perhaps they will turn out to be right in the end. *Que sera sera*.

As I was saying, I have in my possession some documentation, (reproduced and given to resource persons) which reveals troubling facts. BUSINESS ENGINEERING SARL, BP 213 Abomey-Calavi, IFU 3201100089819- received a transfer of funds from GEMALTO S.A, a technology operator recruited by COS/LEPI within the framework of the correction work. The shareholders of this company are:

- Mr Karimou Chabi-Sika, technical and electronics teacher residing at Abomey-Calavi, Quartier Agori, born in Tchaourou, Republic of Benin, on 12 February 1955, holder of diplomatic passport number 05 BD 09671, issued by the ministry of foreign affairs on 21 May 2007, a Beninese citizen, 60% shareholder;
- Mr Ayeshoro Mahmoud Amadou residing at Cotonou carré number 657 JERICH02, born in Parakou, Republic of Benin, on 4 March 1977, holder of national identity card number 200422465 issued by the urban constituency of Cotonou, a Beninese citizen, 40% shareholder.

Trade & Companies registry: RCCM no. RB/COT/07B1790.

The principal partners of the company are: GEMALTO et al. GEMALTO is established in France, and is notably the only partner of BUSINESS ENGINEERING SARL identified to date. The volume of business with GEMALTO SA is estimated at more than 200 000 000 FCFA, expected in the framework of the production of the LEPI. Mr Ayeshoro Mahmoud Adamou stated 'the shareholder, Mr Karimou Chabi-Sika, has a service contract with GEMALTO S.A based in France, a company which has a contract with the Beninese State to correct the computerised voters list (LEPI)'. BUSINESS ENGINEERING SARL opened a bank account at ECOBANK Benin under No. 0070121107206002. The account received a bank transfer for 105 390 525 FCFA from Paris on 13 June 2014. Note that this sum was withdrawn from the account before 18 June 2014.

Mr Tiamiou O.A. Waïdi withdrew the amounts of 50 000 000 FCFA, 39 075 572 FCFA and 1 000 000 FCFA by cheques no. 1000001, 1000002 and 1000003 respectively dated 13 June 2014 and 16 June 2014. Mr Amadou A Mahmoud withdrew the sum of 6 000 000 FCFA by cheque number 1000004 on 13 June 2014. Mrs Azave Moïbatou withdrew respectively the sums of 1 000 000 FCFA and 4 000 000 FCFA by cheque numbers 1000005 and 1000009 of 16 and 17 June 2014. Mr Agassoussi

Mathieu withdrew the sum of 545 000 FCFA by cheque number 1000007. The remainder of the money was then withdrawn in small amounts.

Subsequent to leaks in the investigations, I was not able to obtain the rest of the documentation. According to certain sources, the operation continued with cash being transported to Benin from a neighbouring country in which GEMALTO S.A allegedly has a branch. What is constant to date is that there are no transactions on the account, which was in fact opened solely for the purpose of this fund transfer.

But what is also important to remember is that, at COS/LEPI, two commissions were set up, one in charge of questions related to assessing human resources and staff recruitment needs, the second to deal with financial issues; the second commission, chaired by one Karimou Chabi-Sika, which, in a plenary meeting, had to back the hiring of technical operator GEMALTO S.A, and the key argument well articulated by the president of the commission that it was one of the companies who supported 'us' during the implementation of the LEPI and that they have better knowledge of this file.

Furthermore, it should be noted that Mr Karimou Chabi-Sika is the majority shareholder in the company BUSINESS ENGINEERING SARL as in the multiple shell companies he manages which hold most of the public procurement contracts with our ministries.

This, Mr President, is how your republic operates.

While COS/LEPI uses clever balancing tricks to keep stalling the communal actualisation commissioners (CCA), local actualisation agents (A.L.A) and other coordinators and local elected representatives involved in the tremendous task of fully reworking the LEPI, the most zealous citizens, the most deserving of your system organise the pillaging of public resources, in connivance with technology operators involved in the process, operators who created extreme difficulties for COS/LEPI, and offer their head on a platter by cutting a negative figure in the process.

Everyone also knows at COS/LEPI that it is in fact my colleague Karimou Chabi Sika who is your ambassador to COS/LEPI, and your last anti-COS/LEPI statement shamefully read by the secretary general of the government and calling for rebellion against the COS, the structures co-managing the process of restoring order in the calamitous document produced by your minister of foreign affairs and pompously baptised LEPI, perfectly betrays the positions adopted by this 'honourable' deputy. The CPS/LEPI apparently experienced the same predation, but slightly more successfully as the tracks have yet to be uncovered due to the relatively long time separating us from the event.

Cotonou, 27 January 2015

Comlan Léon Ahossi
Deputy at the national assembly
Porto-Novo

Source: <http://news.acotonou.com/h/37980.html> [accessed 27 January 2015].

Box 7: Correspondence between a deputy and the office of the president of the republic on alleged cases of corruption: Statement from the office of the president of the republic

The letter from Honourable Member Comlan Leon Basile Ahoosi of 9 September 2014 was received at the office of the president of the republic on 10 September 2014, opened and registered by the services of the presidency under No. 1842 in compliance with the security practices governing all envelopes destined for the president of the republic, which dictate that, even when closed, they must be systematically opened. This letter calls for a certain number of comments.

The first relates to the particularly irreverent nature of the terms in which the honourable member addresses the president of the republic who is, must we remind you, elected by the entire people of Benin. This vulgar language shows a real lack of respect for the people of Benin and at the same time it tarnishes the honour of the member himself.

Next, unfortunately we must note that Mr Ahoosi is accustomed to this hateful language every time that, out of a concern for the balanced and harmonious development of our country, the president of the republic goes to Mono/Couffo. ... One would think that the actions the government conducts to ensure the development of Mono/Couffo also, like the other departments, constitutes for the honourable member, a major embarrassment, a 'cause to stumble'. ... Regarding the letter of 9 September 2014, for the most part, it reminds us of the old story of the Kovaks affair, which goes back a long time, the CEN-SAD and ICC Services case files for which the government sent the ministers responsible to answer before the high court of justice. The honourable member mentioned the poor management prevailing at COS-LEPI due to two elected representatives close to the president of the republic, according to him, without giving their names. It is with astonishment that the president of the republic discovers at the same time as newspaper readers the recent accusation brought by Honourable Member Ahoosi against his colleague Chabi Sika Karim in certain publications on 27 January 2015.

On receipt of the letter of 9 September 2014, notwithstanding the unacceptable tone and contents which are profoundly irresponsible with respect to the country's chief magistrate, the president of the republic instructed the minister of finance and the general inspectorate of finances with a view to inspecting the management of COS-LEPI. This latter has not yet answered the questionnaires they were sent, pretexting a large volume of work. This prompts us to point out that the legal provisions organising COS-LEPI allow for a general audit at the end of its term of office. Thus, audits, whose findings are awaited, were conducted at COS-LEPI. Furthermore, it should be noted that special edition number 2816-2817 of the periodical *'Jeune Afrique'*, dated 28 December 2014 to 10 January 2015, alerted the opinion to two elected representatives supposedly in the sights of TRACFIN (treatment of intelligence and action against clandestine financial circuits), a French ministry of finance body in charge of combating money laundering. The president of the republic immediately instructed the minister of finance to contact this body through the intermediary of its departments, with a view to gathering more information. Benin is still waiting for the final answer on the revelations of TRACFIN.

It also appears useful to point out that the inspection by the minister of finance indeed noted the existence of problems of governance at COS-LEPI in relation to certain members renting their own cars at high prices at the expense of the tax

payer. Mr Ahoissi is not spared for it seems he rented a generator to COS-LEPI through Open-Vista Technology, a company run by his brother. This generator does not work and yet the rental payments are made regularly.

Moreover, the secretary general of the office of the president of the republic reminds everyone that, pursuant to Law 20/2011 of 12 October on the fight against corruption and related offences in the Republic of Benin, the National Anti-Corruption Authority has already been set up and enjoys the necessary independence to effectively exercise its duties free from influence. In this respect, he invites people to contact, depending on the nature of their concerns, the structures competent in the field. Despite this provision, the president of the republic triggered the investigation by the ministry of the economy through the general inspectorate of finance.

In addition, the secretary general of the presidency reminds the honourable member that the president of the republic is an institution of the republic and invites him from now on to address him with all the courtesy and politeness required as demanded by all our cultural values or to refrain from contacting him. In any case, the president of the republic seizes this opportunity to ask the honourable member to never again send him such an insulting letter full of gratuitous accusations. The office of the president of the republic shall take the necessary steps in the event of a repeat performance.

Lastly, the president of the republic, reassures the people of Benin that impunity, here as elsewhere, shall not prosper, for steps have already been taken to identify the case file the Honourable Ahoissi invoked against the Honourable Chabi Sika, in relation with the National Anti-Corruption Authority and with the assistance of the French authorities. Any deed of mal governance within COS-LEPI will not fail to be pointed out by the Inspection in progress and the general audit called for by the laws of the republic. Thus, no-one is above the laws of the republic, Chabi Sika or any other citizen, including the president of the republic, cannot escape the rigours of the law in the event of guilt.

Cotonou, 28 January 2015¹⁰⁰

Inès Aboh Houessou

Secretary general of the office of the president of the republic

Source: <http://bj.jolome.com/news/article/affaire-chabi-sika-basile-ahossi-la-presidence-repond-a-basile-ahossi> [accessed 29 January 2015].

E. Recommendations

Independence

There is need to enhance judicial independence and allow the courts to operate freely. To this end:

- The executive should not be part of the composition of the supreme council of the judiciary instead this should be left to the judiciary itself to handle administrative and management challenges;

99 At the end of 2015, no news had been given of this case. It is to be feared that, like many others, it has been purely and simply sidestepped.

- Continuously reinforce magistrates' training in anti-corruption techniques and strategies;
- There should be transparency and efficiency in dealing with corruption cases by the judiciary and any inordinate delays or allegations of impropriety by judicial officers should be handled by the supreme council of the judiciary;
- Complete the reform to legislation on the high court of justice to enable it handle corruption cases that implicate government officials;
- Create an independent public audit institution to be undertaking public financial audits on all state institutions and render reports thereon to an independent institution like parliament to enforce transparency and accountability in the handling of public funds.

Legislative, budgetary and bureaucratic constraints

Free the ANLC from the legislative, budgetary and bureaucratic constraints preventing it from effectively fighting corruption. To this end:

- Endow the ANLC with the power to prosecute corruption cases in the courts of law through civil law suits bypassing potential obstacles placed in the path of criminal proceedings when going via the public prosecutor, who is a magistrate placed under the authority of the executive;
- Empower the ANLC to hold public hearings on corruption cases while respecting the principle of innocent until proven guilty;
- Open communications around ANLC activities by giving media coverage to some of its work;
- Publish annual reports of all activities of the ANLC in the media and on its website;
- Enhance the system for receiving complaints through a free hotline and ensure the protection of whistleblowers;
- Make it technically possible for denunciations to be argued, proven (with documents or evidence to back them up) and anonymous; and
- Increase the ANLC's budget allocation by making financial administration officials and directors criminally responsible (especially for the non-payment of the whole of the annual endowment right from the start of the year) in order to free the ANLC from financial blackmail by the executive.

3

LIBERIA

Emmanuel AR Gaima and Shine Williams



A. Executive summary

The Liberian civil war and the destruction of state institutions has escalated and almost institutionalised corruption in Liberia. This situation is undermining the post-war reconstruction and rebuilding of critical national institutions and facilities more than a decade after the end of the war.

Corruption as a phenomenon in the country has contributed to and is sustaining the growing incidences of acute deprivation and poverty, despite the remarkable injection of financial aid from bi- and multi-lateral partners, as well as increasing cases of foreign direct investments. The country is experiencing grand corruption. There is a history of the executive arm of government colluding with the private sector as exemplified by the landmark indictments of Liberian officials over the illegal logging scandal.¹ This problem is exacerbated by little or no resistance from the legislature and judiciary, both of which fail to proactively support the enforcement of laws and regulations to stem corruption.

Liberia has a relatively good anti-corruption legislation, but it denies the Liberian Anti-Corruption Commission (LACC) the authority to prosecute allegations of corruption; instead, it entrusts the prosecutorial powers for corruption offences to the ministry of justice (which has the prerogative to prosecute or not). The incidences of non-prosecution as well as delayed actions have given rise to a frosty relationship between the ministry of justice and the LACC. There are also cases of tensions pertaining to the weak quality of investigations by the LACC (from the ministry of justice's perspective) and the ministry of justice's failure to respond to requests for prosecution by the LACC.

The LACC, on the basis of its current legislation, may require institutional strengthening to ensure that human resource management, adequate financial provisions, capacity building for commissioners and staff, and relevant organisational development support are in place for efficient functioning.

There are reasons to question the government's commitment to supporting the operations of an effective LACC. This study highlights the lack of cooperation from

¹ Global Witness Press Release (2014, March 7). Available at <https://www.globalwitness.org/archive/ngos-welcome-landmark-indictments-liberian-government-officials-attached-illegal-logging/> [accessed 16 September 2016].

the legislature and judiciary for the LACC. There are also a host of challenges from the executive; the most worrying of them being:

- Regular proclamations of executive orders from the government, which impede actions from the LACC; and
- The unwillingness of agencies and public officials to provide information to aid quality investigations.

These are issues which could be reasonably addressed with strong political will, but this is believed to be lacking.

There can be real progress in the anti-corruption campaign if there is meaningful strategic complementarity between and among the national institutions that have mandates to foster integrity in the public and private sectors of the country (legislature, judiciary, audit service, procurement agency). Non-state actors (NSAs) do have a major role to play in complementing the efforts of the LACC but their present involvement is quite marginal. It must be noted however that if support is provided, there is the possibility of active civil society organisation (CSO) engagement in the fight against corruption in Liberia.

The endemic nature of corruption in the country has reached such alarming proportions that it can no longer be the business of the LACC and arms of government alone; it should be made a national crusade cutting across all segments of the Liberian society, if meaningful progress is to be made. There is a mismatch between executive commitment to stamp out corruption and the actual performance of senior public figures in both the public and private sectors, and this needs to be to be urgently addressed.

Across sectors, there is no quantum or specific figure in terms of what is lost to corruption in Liberia. Determining accurate details will require sector diagnostic and forensic study across a wide field, with emphasis on corruption hotspots. Here again, there is no solid baseline of corruption mapping and trend analysis to measure corrupt practices, both in the private and public sectors.

Usually, Liberia relies on international anti-corruption studies like Transparency International reports as well as anecdotes, audits and media reports, which don't provide a full account of the extent of corruption. In a country where audit reports have become objectionable by the government (as in the case of the Ebola funds utilisation), it is challenging to derive precise figures. To haphazard a figure based on the recurrent GDP (estimated in the excess of half a million) and doing a sector performance audit will only lead to indeterminate millions of dollars. Until a forensic discrepancy audit trail is done between what is accrued and what is missing, we can only estimate. However, according to the Global Financial Integrity 2014 report: from 2003 to 2012, Liberia lost more than USD 900 million annually on average to illicit flows.²

2 Global Financial Integrity Report (2014) Illicit Financial Flows from the Developing World: 2003–2012. Available at <http://www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/> [accessed 16 September 2016]; see also <http://www.jubileeusa.org/press/press-item/article/countries-affected-by-ebola-lose-14-billion-annually-to-debt-corruption-and-tax-evasion.html>

B. Historical and political background

Liberia is a post-conflict country which experienced over a decade of civil conflict that damaged the country's institutions, infrastructure and national development potentials. The war was a result of years of governance deficit which exacerbated underdevelopment and poverty. Prior to the outbreak of the war, Liberian society was fractured with incidences of ethnic prejudices, nepotism, cronyism and the personalisation of the state by the political class. This class dominated both the social and economic spheres of society, often to the near-exclusion of the vast majority of the population. There was a dwindling quality of service delivery and, without political networks and influences, the space for growth and development for citizens was almost non-existent. Widespread and deeply entrenched networks of corruption and human rights violations sparked and sustained the civil war in Liberia, which left in its wake some 250 0000 people dead, displacing a million others in refugee camps and neighbouring countries.³

In the search for peace in Liberia, all warring parties and guarantors signed the Accra Comprehensive Peace Accord of 18 August 2003, which inter alia dictated power-sharing amongst warring factions. It marked the end of 14 years of hostilities, setting into motion a democratic trajectory that was presided over by a national transition government under the leadership of the late businessman-turned-politician, Charles Gudyé Bryant. It was a two-year tenure that terminated in 2005, to pave way for democratic elections. During Bryant's tenure, an Economic Community of West African States (ECOWAS) panel of experts on anti-corruption visited Liberia. It followed growing and alarming reports of acts of corruption within certain agencies of the administration. In addition, non-governmental organisations (NGOs) and the media had voiced widespread allegations of corruption that negatively impacted on the image of the Liberian national transitional government; this prompted an investigation by ECOWAS, which was closely monitoring efforts in returning Liberia to peace, security and stability after the civil war. In its report, the panel attested to the high levels of corruption with verifiable instances of fiscal and economic crimes committed by top ranking members of the interim government, to the tune of several hundred thousand US dollars.⁴

There were high expectations from the citizens and development partners of Liberia that the end of the civil war would signal the start of efforts toward national reconstruction of every facet of Liberian society. This period also led to increased levels of development support from multi- and bi-lateral agencies, in aid of national rebuilding efforts.⁵ Liberians since indicated preparedness to have a clean break from the past and rebuild

[accessed 16 September 2016].

- 3 Republic of Liberia (2008) Truth and Reconciliation Commission (TRC) Preliminary Findings and Determination Report. p.4.
- 4 ECOWAS (2005) Financial report of ECOWAS Team of Investigators into Economic Crime in Liberia.
- 5 Bruce B (2004) *Liberia: The Challenges of Post-Conflict Reconstruction*. Migration Policy Institute (online publication) September 2004. Available at <http://www.migrationpolicy.org/article/liberia-challenges-post-conflict-reconstruction> [accessed 16 September 2016].

the shattered institutions that underpin good governance, human rights, accountability and transparency and promote development. A fresh epoch of history then began, with rekindled expectations and hope. It was the beginning of rebranding the country's negative image as a rogue and pariah state, to that of a peaceful though fragile transitioning country espousing democratic values.

To approach the question of how to combat corruption in Liberia, it would be worthwhile to lay out a framework that brings together the economic and non-economic factors⁶ which highlight the difficulties of fighting widespread corruption. Mauro (2002) refers to strategic complementarity 'where if one agent does something, it becomes more profitable for other agents to do the same'. In the context of Liberia, we could talk about pillars of integrity that cut across state and non-state actors. These include the political class, CSOs and the media. Stretching this into specifics covers the judiciary, the security apparatus including the police, civil service, Liberian extractive industries, the Public Procurement and Concession Commission (PPCC), audit service, etc. The assumption is that effective anti-corruption strategies in transitioning countries must take an institutional approach; this requires a commitment from leadership, together with a strategy that includes a thorough diagnostic of the existing state of corruption in a country.⁷ Beyond that, we ought to acknowledge that corruption exists in every society, at different levels. The alleviation of such a phenomenon is not just the responsibility of the government but also of the whole society at national and international levels. Liberia is still struggling to manage a fragile democracy, largely fraught by the inequitable and unjust distribution of its resources and opportunities, exacerbating poverty. The vulnerable section of the citizenry (youth, women and children) are bearing the greater brunt of the corruption malaise. The manifestations of corruption in Liberia can be readily seen in the manipulation of procurement processes, falsification of contracts and seeking rent in lieu of performing official functions.

Even after the fresh, post-war start, corruption persists as the country's biggest challenge.⁸ The vision of human rights, accountability, and transparency seems threatened by what President Ellen Johnson Sirleaf termed 'endemic corruption'. The stability of the country's democracy is in flux; it is still a fragile state. President Sirleaf promised to confront the problem of national corruption on assumption of office on 16 January 2006 with a determination and vow to emphasise zero tolerance on corruption. She labelled it 'public enemy no. 1'. Based on the design and adoption of a national anti-corruption

6 Mauro P (2002) The persistence of corruption and slow economic growth. *IMF Working Paper* 02/213. pp. 15–21. Available at <https://www.imf.org/external/pubs/ft/wp/2002/wp02213.pdf> [accessed 16 September 2016].

7 Ruzindana A (1997) Corruption and the Global Economy. pp. 132, 145. Available at https://piie.com/publications/chapters_preview/12/7iie2334.pdf [accessed 2016]; Tanzi V (1998) Corruption and the budget: Problems and solutions. In: AK Jain (ed.) *The Economics of Corruption*. Boston, Mass.: Kluwer Academic.

8 Glencorse B (2013, 16 August) Liberia: Corruption and accountability remain biggest challenges. *African Arguments* (online publication). Available at <http://africanarguments.org/2013/08/16/liberia-ten-years-on-corruption-and-accountability-remain-countrys-biggest-challenges-by-blair-glencorse/> [accessed 16 September 2016].

strategy, in 2008 the president actualised her commitment by establishing the LACC as an independent body with the mandate of investigating and preventing acts of corruption, including educating the public about the ills of corruption and the benefits of its eradication.⁹

In the mixed bag of hope and dismal failure in the anti-corruption drive, it can be summed up that there is high prevalence of corruption in key sectors – the judiciary, police, legislature and education. A former LACC commissioner once confessed that they have ‘failed in the fight’. A classic case is one involving *Damen Shipyards Gorinchem vs. the National Port Authority*, where the executive failed to enforce the ruling of the PPCC in favour of Damen Shipyards.¹⁰ Many observers and experts¹¹ on governance and anti-corruption fear that this trend, if not addressed, might trigger the possibility of renewed rounds of violent conflict. There have been suggestions from CSOs for the LACC to return to the drawing board and hybridise with internationally domesticated instruments and best practices that have worked well in minimising corruption, and that have translated into economic advantages for the poorest of the poor in other countries.

The Liberia anti-corruption challenge is not very different from other countries within the sub-region, such as Sierra Leone, which is also a post-conflict nation. With the toll of the war on state institutions, it is not surprising that the corruption perception index has been very high, putting the country in the kind of heightened poverty associated with the malaise. In Liberia, principal manifestations of corruption are traceable in bribery, interest peddling, and rent-seeking, etc. This fits into a trilogy of grand corruption, legislative corruption and bureaucratic corruption. It is often highlighted by conflict theorists that transitioning countries have to pass through a phase of breakdown of integrity and high incidences of corruption before the maturation that leads to economic growth. This seems to be evident in contemporary Liberia.

C. Legal framework

The incidence of corruption in Liberia after the civil war reached alarming proportions during the regime of former President Charles Taylor; this posed serious challenges to post-war recovery, which influenced President Sirleaf’s government to enact legislation to effectively establish the LACC. The legislation also provides the legal framework which defines the structure of the commission as an agency of government with the responsibility to address corruption in all spheres of Liberian life. Apart from the requirement in the legislation for the commission to initiate prosecution through the ministry of justice, the legislation is relatively empowering and progressive, it ensures independence, and it clearly defines the mandate and functions of the commission.

9 LACC Act (2008).

10 PPCC (2014, 25 April) Complaints, Appeals, and Review Panel Report.

11 Ejigu M (2006) Post conflict Liberia. Environmental security as a strategy for sustainable peace and development. *FESS Working Paper* No. 3. p. 11. Available at http://www.fess-global.org/WorkingPapers/post_conflict_liberia.pdf [accessed September 2016].

The legal framework for the LACC is described in ‘An Act To Establish The Liberian Anti Corruption Commission’, with the legislation published by authority of the ministry of foreign affairs in Monrovia, Liberia on 8 August 2008. The LACC Act (2008) is complemented by international and regional conventions against corruption and various national laws aimed at fighting specific aspects of corruption through such technics as promoting freedom of information, fighting money laundering, ensuring integrity of the public procurement process, etc.

International and regional instruments

Liberia signed the AU Convention on Preventing and Combating Corruption (AUCPCC) on 6 July 2004 and the UN Convention Against Corruption (UNCAC) on 6 September 2005.¹² Both the UN and AU conventions were ratified on 31 May 2007.¹³

Liberia signed the ECOWAS Protocol on the Fight against Corruption on 16 December 2003, which has not been ratified. However, the protocol has not yet entered into force due to its failure to attain ratification from at least nine signatory states. Liberia has already completed the formalities surrounding the UNCAC comprehensive self-assessment checklist and submitted it to the UNCAC in preparation of the peer review of the country. The country was to be peer reviewed by Benin and South Africa, but the Ebola outbreak of 2014 disrupted the plan. The Liberian government is yet to domesticate the African Charter on Democracy, Elections and Good Governance. This charter contains principles dictating anti-corruption measures which are to be institutionalised.

The Liberia corruption and good governance balance sheet reflects subtle positive trends. Transparency International Corruption Perceptions Index ranked Liberia 75th out of 176, moving up 16 points since 2010 index. In 2011, the Corruption Perception Index ranked Liberia 91st out of 183 countries; 3.2 on a 0 (highly corrupt) to 10 (very corrupt) scale.

Complementary laws

There are a number of complementary legislations to the LACC Act (2008) such as: the Freedom of Information Act (2010) and a code of conduct for public officials and employees of government. Besides these, a number of UNCAC-related measures have been domesticated by the government in support of the anti-corruption agenda. These include the Anti-Money Laundering and Terrorist Financing Act (2012); Mutual Legal Assistance in Criminal Act (2012); the Act to Establish the Financial Intelligence Unit of Liberia (2012); and the Public Financial Management Act (2009).

Liberia was the first state in West Africa to pass the Freedom of Information Act (2010). Its wording is very impressive and highly regarded. However, what is on paper in the Freedom of Information Act (2010) has not translated into an accepted culture of disclosure,

12 See UN Press release L/T/4391. Available at <http://www.un.org/press/en/2005/lt4391.doc.htm> [accessed 16 September 2016].

13 Published by the Ministry of Foreign Affairs, Monrovia, Liberia, 7 June 2007.

owing to lapses in the freedom of information infrastructure and logistical limitations for its efficient roll out and operationalisation in the country.

The civil service code of conduct has been passed and efforts are underway; as is demonstrated by the commitment of the open governance partnership (state and non-state actors' synergy) in passing the whistleblowers bill into law, after it had been stalled for enactment for over seven years. This code deals with the minimal acceptable behaviour of public officials, addressing issues such as conflict of interest, assets disclosure, influence peddling, embezzlement, bribery, misapplication of entrusted property, etc.

On the Whistleblower Act, although the law has not yet been enacted by the legislature, the president used her executive powers to bring it into operation. Presidential Executive Order 43 was first enacted in 2013 and this was renewed by Executive Order 62 in 2015. An executive order is an instruction or directive by the Liberian president that cannot be challenged and has a one-year duration. Since the latest executive order expired earlier in 2016, the president has not renewed it. There has been limited or no discussion on renewal. This may very well suggest indifference on the part of the government. There is definitely a need to continue advocacy to ensure the bill is passed into law.

The Penal Code (1976) also captures some offences against public administration including bribery and interest peddling. It is important to note that despite all these shortcomings, the government has made substantial progress – through the adoption of a number of preventive and punitive measures – in fulfilling some of the requirements contained in the above treaties, particularly the UNCAC.

In 2009, a Public Financial Management Act was passed. It stipulates the public's access to financial records and the type of accounting system and method of reporting to be used by public entities. This has the potential to promote international fiduciary standards and discipline as well as transparency in public dealings. Another anti-corruption legislation, the Public Procurement and Concession Commission Act (detailing standards of procurement practices in the public and private sectors) has also been passed into law.

The judicious management of the country's natural resources remains an uphill task; this necessitated Liberia's rush in signing on to the Extractive Industry Transparency Initiative (EITI) rules governing the extractive industries. Liberia is the first country in West Africa to pass EITI legislation. The Liberian EITI (LEITI) regime mandates full disclosure of companies' revenue received from operations and taxes paid to the government of Liberia. In furtherance of international cooperation (including assets recovery, technical assistance and information exchange), in 2012 the Anti-Money Laundering and Terrorist Financing Act and the Financial Intelligence Act were enacted to insulate against illicit enrichment and facilitate technical assistance and information exchange respectively. Enforcement of what has been passed will require time to assess in the wider context of fulfilling anti-corruption measures and practices.

D. Institutional framework

Staff

The LACC has five commissioners. According to the LACC Act (2008), section 6(2), the president nominates the commissioners for confirmation by the Liberian senate:

The president may consult the civil society pursuant to the partnership of said civil society and the government in the fight against corruption. Upon confirmation by the Liberian senate, the commissioners shall subsequently be appointed and commissioned to their respective offices by the president.

To be qualified for appointment, section 6(3) states that one must be

a Liberian citizen of not less than 30 years of age, of good moral character, and with proven records in anti-corruption advocacy or professional training and/or experience in law, law enforcement, accounting, auditing or a related field.

Additionally, those nominated to the commission shall not be active members of any political party before confirmation by the Liberian senate. Each commissioner shall declare his/her assets and property interest. Also, a commissioner is required by the Constitution of Liberia to subscribe to a solemn oath upon assuming office.

Section 6(6) says that the chairperson and vice-chairperson are each appointed for a five-year term, while the other three commissioners are appointed for initial terms of four, three and two years; thereafter, each commissioner is eligible for one subsequent re-appointment for a full five-year period.

In terms of removal from office of LACC heads, section 6(7) has a provision allowing for voluntary resignation in writing to the president, which becomes official upon presidential acceptance. Section 6(8) stipulates removal conditions as follows:

A commissioner shall hold office with good conduct. A commissioner shall be removed from office by the president for any gross breach of duty, misconduct in office or any proven act of corruption.

An apparent weakness in this provision is that it failed to stipulate procedures which the president should follow in removing the head of the commission, such as investigations by a panel, demanding official explanations in cases of accusation of breach, etc. Though there has not been any unlawful or arbitrary removal of LACC commissioners and other staff by the government, the absence of a restraining provision exposes the head of the commission to arbitrary removal by the president when situation warrants.

The LACC has independence in the management of its human resources. It has authority under the legislation to ‘hire and fire’ its staff, cognisant of the labour law and relevant public service codes. Section 8(1) defines the head of agency and authority of the office holder: ‘The chairperson of the commission shall be head of the administration and management of the commission, and as such shall also be known and referred to as the executive chairperson.’

The administration and management sits in the commission’s secretariat which is also provided for in the legislation in section 8(3) which states: ‘A secretariat shall be established to render technical, professional, administrative and clerical assistance and support to the commission in pursuit of its mandate.’ In section 8(3)(a) the headship of the secretariat is defined as ‘headed by an executive director, appointed by the commission under a written contract to serve for a term of three years, subject to as many renewals’. The recruitment to this high position (executive director) comes with huge responsibilities that directly impact the effectiveness of the agency. That these are provided for in the legislation is commendable, especially the emphasis on making the recruitment competitive and subject to appropriate public vetting. The commission recruits and issues the executive director with a formal contract.¹⁴

In order to ensure division of labour and promote functional efficiency, the commission has divisions. In section 8(7), the legislation provides,

each of the three divisions in the commission (administration, enforcement and prevention) shall be headed by a line manager who shall be appointed by the executive chairperson, subject to the approval of the commission.

The commission is also empowered to hire and contract staff to provide needed services, investigators, consultants and experts. The role of the executive chairperson in the recruitment of staff to the divisions of the commission is an area that would require certain checks prior to consulting the other commissioners for approval. It is important to note that if such restraints cannot be written into the law, then efforts should be made to address them in the human resources management regulations or guidelines of the commission. The LACC has guidelines as well as a staff employment and development manual which must ensure that human resources management is based on best practice.

Regarding capacity building, the LACC reported that 15 of its personnel benefited from various trainings ranging from human rights and security, fraud and corruption to transparency and accountability issues in preceding years.¹⁵ According to the executive director of the LACC, training for staff is based on identified needs, not necessarily a training plan (given the commission’s budgetary constraints). However, a number of specialised trainings have been supported over the years by donors such as: United States

¹⁴ LACC Act (2008) section 8(6).

¹⁵ LACC Report (2013) p. 21 and 22.

Agency For International Development (USAID), the World Bank, the United Nations Development Programme (UNDP) and the Open Society Initiative for West Africa (OSIWA). These have been at the national, regional and international levels, particularly for investigators.

The commission is divided into three functional divisions: the administrative division, the enforcement division, and the executive and prevention division. The executive chairperson of the commission heads the administrative division responsible for running the day-to-day affairs of the commission, including the supervision of personnel and the logistical duties of the commission. The enforcement arm (split into a legal and an investigative unit) is responsible for investigating and handling all issues concerning legal mutual assistance in respect of acts of corruption as well as advise on and discharge legal activities, including programmes granted to the commission under the act. The education and prevention division works on programmes that will forestall corruption-related offences such as improvement in systems and controls of agencies of government that are corruption prone, as well as supporting research into various aspects of corruption and advise on actions to be pursued by the commission.

The selection of staff for trainings is based on recommendations from the head of a given division to the executive director, who has final say on the matter. However, it is difficult to determine how transparent the process is for meritorious promotion and trainings given the absence of an adopted standardised mechanism for staff selection such as vetting, etc.¹⁶

Funding

The primary source of funding of the LACC is an allocation from national budget. According to section 12(1) of the LACC Act (2008):

The work of the commission shall be financed through the national budget by legislative appropriation. It shall be the responsibility of the chairperson to ensure that the annual budget of the commission is prepared and submitted in time to appropriate agencies of government.

In the next section, the legislation also permits the LACC to mobilise funds from development partners of the country (bi- and multi-lateral). This is, however, made somewhat conditional to ensure that no terms are stated that will be inconsistent with the national interest of Liberia and its citizens.

The law places certain financial management obligations on the commission. It instructs that the commission's financial statement shall be prepared, audited and published within three months from the end of the preceding year. There should also be semi-annual unaudited commission accounts published for the attention of the commission's development partners. The commission is also subjected to the annual audits of the general

¹⁶ LACC Act (2008) pp. 11 and 12; Trainings: LACC Report (2013) pp. 21 and 22.

auditing commission (GAC) as well being legal for the commission to be audited by private firms, in addition to the mandatory audit from the GAC.¹⁷

In 2012, the commission's budget was reduced from USD 585 500 to USD 350 000 by the ministry of finance. In anticipation of obtaining approval of its submitted budget, the LACC scaled up staff recruitment by conducting interviews and presenting letters of employment, but the cut meant that critical staff such as investigators and lawyers, whose services the commission needs to propel its activities, could not be hired on time.

The inadequacy in the national budgetary allocation for the LACC was recognised during the drafting of the bill; in the case of any unforeseen shortfall, the legislation makes provision for external resource mobilisation. The obligation of presenting financial statements to partners could serve as an incentive for support to be provided, since an accountability clause is already written into the law. The chief commissioner's statutory obligation contrasts sharply with laws from some other countries, which loosely indicate that the commission should prepare its annual budget. According to the LACC Act (2008), the chief commissioner has accountability to ensure the commission's budget is prepared and submitted to the ministry of finance in a timely manner. Sections 12(1) and 12(3) state that the chairperson is responsible for budgetary planning of resources, which is done in collaboration with the commission's comptroller. It should be noted, however, that despite the safeguards for budgeting and the potential multiple sources of funding, budget inadequacies have largely contributed to the slow pace of the commission's work.

The commission has acknowledged that to rally the necessary support from international partners, the commission must be seen to be making serious attempts at winning the war on corruption.¹⁸

Funding from development partners

The United Nations Peace Building Fund (UNPBF), UNDP, USAID, OSIWA, and the World Bank have provided some level of technical and financial support to the LACC over the past years. The commission usually receives consistent annual funding from the UNDP through its annual work programme, which forecasts assistance to government ministries, agencies and commissions. The project aims at building both the logistical and human resource capacities of integrity institutions.

In 2009, the UNPBF provided USD 700 000 00 to the commission, which facilitated the implementation of such activities as:

- Conducting interactive nationwide forums, where the mandate of the LACC was explained to the participants in the 15 political subdivisions of the country;
- Producing information, education and communications (IEC) materials that were distributed during those discussions and placed at

¹⁷ LACC Act (2008), sections 12(4) and 12(5).

¹⁸ LACC Report (2013).

- public buildings and places in and around the city of Monrovia and other cities, for promoting the work of the commission; and
- Providing training for some personnel of the commission.

The UNDP also provides direct financial support to the commission.

USAID has been supportive of the work of the commission, mostly in building its human resources and logistical capacities through training LACC investigators, nationally and regionally, at the Liberia National Police Academy in Monrovia and in Ghana. It has also provided computer training for selected staff of the commission; fire proof safes that are being used to store income, assets and liabilities declarations filed by public officials; as well as six weeks of advanced training in economic and financial crime investigation in Switzerland. In-house lawyers have, over the years, benefited from short-term training in economic and financial crime investigations conducted in Accra, Ghana.

In the development of the commission's communications strategy, OSIWA facilitated the recruitment of an international consultant that drafted and guided the finalisation of the strategy.

Since 2013, the commission has been implementing a World Bank sponsored project entitled, 'Strengthening Governance-Improving Access to Justice and Enhancing Accountability'. The project is being jointly implemented by the ministry of justice and the LACC, with the commission implementing the 'enhancing accountability' component. This project is expected to end in March 2016.

Powers and functions

Section 4(1) of the legislation lists the powers of the LACC as follows:

- To sue and be sued in its own name;
- To enter into contracts and acquire, hold and alienate moveable or immovable property by lawful means;
- To issue citations in accordance with the law requesting the appearance of any person under investigation but not otherwise under arrest;
- To cause the arrest and detention of any person or persons in pursuance of its functions, provided that any such arrests or detention shall be based on probable cause and upon a prior warrant issued by a court of competent jurisdiction;
- To cause the freezing of assets of person(s) being investigated or prosecuted for alleged act or acts of corruption, provided the freezing of asset or assets of any accused person or persons is, at all times, authorised by a prior order or warrant issued by a court of competent jurisdiction;
- To cause the confiscation of assets of convicted person(s) upon a judicial determination that the asset or assets to be confiscated are the proceeds of the act or acts of corruption of which the person

or persons is convicted of, provided further that the confiscation is ordered at the end of all judicial proceedings, including if taken on necessary appeal to the supreme court of Liberia; and

- To establish counterpart or technical relationships with similar and other agencies, institutions and organisations in Liberia and abroad as may be necessary for the effective discharge of its functions.

The provisions relating to freezing and confiscating assets are empowering for the LACC and if exercised unhindered could promote a culture of deterrence, ensuring the recovery of funds and minimising loss to the state as a result of corruption. The powers are considered relatively comprehensive to start addressing corruption as a major setback to national development in Liberia. The LACC is, however, noting the strengths and limitations of its powers under the current statute and will make recommendations (where necessary) for any possible repeal in the medium to long term.

Investigation and prosecution of acts of corruption

Section 5(1) of the LACC Act stipulates the broad functions¹⁹ of the Liberia anti-corruption commission thus:

The commission shall have the broad mandate and functions to implement appropriate measures and undertake programmes geared towards investigating and prosecuting acts of corruption, including educating the public about the ills of corruption and the benefits of its eradication.

The functions are broad and flexible to ensure that the commission approaches the anti-corruption fight from several dimensions, allowing for partnerships and collaboration with a host of public sector ministries, departments and agencies (MDAs) in carrying out the listed functions in a manner that is consistent with its mandate.

On the basis of interpretation of the legal framework, the commission possesses wide ranging powers. In section 10(1), reference is made to its powers of jurisdiction: ‘A key function of the commission is to investigate any and all acts, information and reports of corruption brought to its attention’ and this is further reinforced in section 10(2):

Except as otherwise provided in this act, the commission’s power to investigate acts of corruption shall not be limited by any means, person(s) or processes except by the requirement(s) of law and to the extent of its available resources, provided, however, that the commission may from time to time coordinate with other investigative agencies of the government in the discharge of its investigative powers.

¹⁹ The specific (detailed) functions are stated in section 5(2)(a–m).

The legislation also empowers the commission to investigate acts of corruption within the public and private realm.²⁰ The authority to get into public and private sector corruption investigation creates opportunity for a comprehensive national strategy to fight corruption, since there are quite often incidences of close collaboration between both sectors. In Liberia, where cases of public and private sector collusion are rife, the legislation has been quite responsive in addressing normal challenges of the restricted mandate of the commission but with little focus on the private sector.

The LACC Act (2008) covers corruption in the use of public funds. There are private entities that are competing and winning contracts which invariably give them access to funds from the national coffers to do one thing or the other. Such private entities therefore fall under the jurisdiction of the LACC. Evidence abounds of some defaulting private entities that had been investigated in the past. In February 2011, in a matter involving *The State vs. Goodrich Construction Company*, the LACC charged the company with breach of contract and recommended to the ministry of justice that the company be made to restate the amount of USD 19 875 to the Liberia Telecommunications Corporation.²¹ In another case, *The State vs. Eugene Massaquoi (Liberian) and Ohzoo Kwak (Korean)*, where some three Korean businessmen and their companies were allegedly duped out of more than USD 3 million. Mr Eugene Massaquoi was charged with theft of property. However, the LACC and the ministry of justice-assigned investigator closed the case due to what they termed failure to establish a prima facie case. Meanwhile, Cllr Francis Johnson-Allison, former chairperson of the LACC, confirmed how the awarding of contracts to bogus companies by government officials is undermining the fight against corruption in Liberia.²²

The LACC Act (2008), section 11(1), doesn't allow the LACC to conduct prosecution in its own name. It provides that the prosecution of cases of corruption shall be carried out by the ministry of justice in coordination with the commission. The modalities of such coordination, however, give more authority for prosecution to the ministry of justice and hand it almost veto power over the LACC's determination of a case for prosecution. According to subsection 11(2):

In the event that an investigation reported by the commission: (a) finds that there is substantial evidence of corruption; and (b) recommends that the person(s) or entity(ies) involved be formally charged and prosecuted; the matter and records thereof shall be forwarded to the ministry of justice with a written request signed by the chairperson requesting that the case be prosecuted. The commission shall prepare and maintain a register of all cases forwarded to the ministry of justice

20 The LACC's mandate to investigate both public and private sectors is commendable as there are anti-corruption agencies in other countries even within the sub-region (such as in Sierra Leone) where the legislation is not explicit about its anti-corruption entity's authority to investigate corruption in the private sector.

21 LACC Annual Report (2011). p. 30.

22 Private sector prosecution. See LACC Annual Report (2011). pp. 30 and 10.

for prosecution along with details of those accepted for prosecution, those not accepted for prosecution and those actually prosecuted.

The ministry of justice has powers under the act to decline prosecution as indicated by the provisions in section 11(3):

The ministry of justice may decline to prosecute a case of corruption recommended for prosecution if it determines that the evidence adduced by the commission is manifestly inadequate or illegally acquired. In such case, the commission shall be given the opportunity to augment the evidence or to show that the evidence is in fact adequate and properly acquired.

The LACC's investigation actually lays the foundation for the ministry of justice to prosecute acts of corruption based on substantial evidence established during the commission's investigation. After the commission establishes proof of acts of corruption, it reports for prosecution to the ministry of justice. Those involved in acts of corruption should then be formally charged and prosecuted by the ministry of justice.

With this power enshrined in the LACC Act (2008), the ministry of justice has on occasions declined the LACC's call for prosecution. In 2011, the LACC received 21 cases, investigated 11 and recommended seven cases for prosecution with only one prosecuted.²³ In 2014, the LACC received 26 cases, investigated 11 and recommended seven for prosecution. For example, in 2014, the LACC submitted a list of 13 names to the ministry of justice for prosecution for various corrupt practices ranging from their role in a questionable contract and payment deal to private contractors, bribery and financial irregularities. Those charged by the LACC included Speaker Alex Tyler, Representative Adolph Lawrence, newly-elected Sinoe County Senator Milton Teahjay, chairman of the National Oil Company (NOCAL) Mr T Nelson Williams II and other officials at the ministry of finance. The minister of justice, however, cited 'inadequate evidence' to justify its decision not to indict the officials mentioned after the period of 90 days.²⁴ It is yet to be made known when these people will be prosecuted.²⁵ According to the report government officials are engaged in corruption with impunity.²⁶ These examples highlight the point that the prosecutorial power of the LACC is gravely undermined by the veto power of the executive through the ministry of justice, which retains discretionary power to rule on the quality of evidence assembled by the LACC.²⁷

23 LACC Report (2011).

24 LACC to bite: Speaker probe, Oil firm looms as 90 days end. *FrontPage Africa*. Available at <http://allafrica.com/stories/201501271164.html> [accessed 16 September 2016].

25 United States State Department (2014) Human Rights Report on Liberia for 2014. See <http://www.state.gov/documents/organization/236586.pdf> [accessed 16 September 2016].

26 See <http://www.state.gov/documents/organization/236586.pdf> [accessed 16 September 2016].

27 LACC Annual Report (2011).

There is, however, a window for the commission to seek prosecution without the concurrence of the ministry of justice. In section 11(4) it is stated that

the commission may directly prosecute acts or cases of corruption through the courts if (a caveat) the ministry of justice, for whatever reason(s) does not take action to prosecute a case of corruption forwarded to it by the commission within three calendar months of the receipt of the request to prosecute.

Case in point: Munah Sieh-Brown, former police inspector general, was charged for economic sabotage in the emergency response unit (ERU) uniform saga and recommended to the justice ministry for prosecution. The justice ministry declined to file an indictment against the inspector general on grounds of insufficient evidence. However, the LACC for the first time tested section 11(4) by prosecuting the inspector general in its own name. Meanwhile, the case was placed on the docket of the November 2012 term of court but again failed to get underway; the LACC Annual Report of 2012 didn't disclose why.²⁸ This provides more justification for the establishment of a specialised court on corruption.

The absence of an authority to prosecute directly in its own name is a major limitation in the current LACC Act (2008). There could be a very good investigation from the point of view of the commission but the quality of such investigation that can lead to prosecution is externally determined by the ministry of justice. This inadequacy in the current legislation has been cited as a major constraint. In the course of researching the effectiveness of the LACC, references were made to tension and conflict between the LACC and ministry of justice in terms of prosecuting high-profile cases (cases involving senior government officials), which were often frustrated by the ministry of justice on grounds of inadequate evidence to proceed from investigation to prosecution. This has resulted in an open power struggle between the two agencies. During the tenure of Cllr Francis Johnson-Allison, it became a sticky issue to define roles. The problem continued until her tenure expired on 16 September 2013.

The lack of complementarity between the LACC and the minister of justice has undermined the smooth prosecution of cases submitted by the LACC to the ministry, thus impacting negatively on the overall anti-corruption fight. In August 2013, during a two-day peer review workshop on the implementation mechanism of the UNCAC organised by the LACC, former Justice Minister Christiana Tah indicated that the ministry of justice was overwhelmed in fighting the war on corruption. She mentioned lack of personnel capacity and the need for more lawyers, public prosecutors and public defenders, including security protection for corruption fighters.²⁹ However, upon her resignation from the government in October 2014, Justice Minister Christiana Tah accused President Sirleaf of blocking her

28 Section 2.1.7 of the LACC Annual Report (2012). p.14.

29 See: Liberia's justice minister outlines challenges in corruption war. *Sengbeh's News Blog*. Available at <https://sengbeh.wordpress.com/2013/08/13/liberias-justice-minister-outlines-challenges-in-corruption-war/> [accessed 16 September 2016].

investigation into fraud allegations against the country's national security agency, which is headed by President Sirleaf's son.³⁰

Furthermore, perception is rife that the justice ministry is corrupt and predatory, a view corroborated by a number of studies.³¹ For an institution such as the ministry of justice that has over the years declined in integrity, it is likely that any effort to cooperate with an entity like the LACC (whose mandate it is to question their acts) would result in a collision. This is the predicament of an anti-corruption arrangement tied to the whims and caprices of a potentially corrupt justice ministry. The reality is one of subtle adversary. The 2013 US state department's report on Liberia noted: 'The most serious human rights abuses were those tied to a lack of justice: judicial inefficiency and corruption'.

But with the recent list of big-shot cases recommended to the minister of justice, citizens are yet to match Cllr Benedict Sannoh's words with a single indictment for prosecution. With the sudden departure of Madam Matilda Parker, the suspended head of the national port authority, and close friend of the president, it is clear that the war on corruption is selective and therefore far-fetched. Cllr James Verdier stated:

As in the case of Ellen Corkrum, former aviation authority managing director, it becomes even more complicated to prosecute such a matter with Madam Parker outside of the country.³²

Independence

Provision for the independence of the LACC is stated thus:

The commission shall be independent in all its operations. It shall enjoy financial autonomy and operational independence, and shall generally formulate policies and discharge its functions without regard to political, religious or other social concerns except to the extent reasonably necessary to further the commission's general mandate to combat corruption.

The independence is further underscored in section 13(2) in relation to the funding of the commission, with the provision stating:

In furtherance of the independence of the commission, the full amount of each annual budgetary appropriation made for the commission in the national budget shall be disbursed to the commission on quarterly basis.

30 James Giahue (2104, 7 October) Liberia justice minister quits, says president blocked investigation. *Reuters*. Available at <http://news.yahoo.com/liberia-justice-minister-quits-says-president-blocked-investigation-133940575.html> [accessed 16 September 2016].

31 For example, the 2013 US State Department report.

32 See <https://www.scribd.com/document/268102122/Tuesday-June-08-2015-Edition> p. 4. [accessed 16 September 2016].

The provision above suggests that the executive and legislature at the time of developing the bill were very thoughtful not to have the commission's independence undermined by actions such as slashing budgetary estimates or causing undue delays in the release of funds. This is a very strong provision to underpin autonomy where it is respected by giving it meaning and effect, especially for the budget department within the ministry of finance.

All undue pressure and interference could be disregarded as the legislation made a provision to guard against external pressure on key commission personnel in section 13(3), which states that 'the chairperson, executive director, managers and all staff and investigators of the commission shall be free of undue interference in the discharge of their duties'. In section 13(4), a crucial provision relating to the commission's investigators was made:

Each investigator shall enjoy independence in respect of the scope of his or her investigation including the findings and conclusions thereof. Neither the executive chairperson, nor the executive director, managers nor any commissioners or anyone else shall seek to influence the findings or conclusion of an investigation report. Only a supervising officer can contact an investigator in respect of the status of an ongoing investigation.

This is a remarkable provision, as the usual political interference from the executive arm of government, especially at the level of the head of state, can be eliminated thereby reinforcing real independence for the commission and its key staff, such as investigators, to execute their mandate leading to prosecution and, where successful, going on to conviction and sentencing.

E. Overall assessment

For many citizens, the LACC has largely failed to effectively put corruption at the top of causative factors of the failing of democracy. Very little has been achieved towards the objectives of the commission to investigate, prosecute and prevent acts of corruption since the passage of the act in 2008. Undeniably, lack of independence is the major challenge of the LACC. The act abounds in clauses which tend to insulate against interference in the function of LACC, but when it comes to the prosecution of cases investigated, the limitation becomes too glaring to ignore. As laid down on paper, the government's policy commitments are mismatched with enforcement actions to checkmate the scourge of corruption. There has been a mismatch of policy and enforcement, with the latter being a weak link. The problem has not been lack of legal frameworks to propel good governance and best practices geared towards fighting corruption in Liberia. What has been lacking, instead, is stern political leadership and the willingness of high-level officials to drive the implementation of the existing policies, including the national anti-corruption strategy, and laws that are designed to promote accountability, transparency and good governance.

Role of the president

The president's roles and relationship with the LACC are quite clearly indicated in the enabling legislation, including but not limited to the nomination and appointment of the commissioners.

The president has initiated some actions through executive orders, but this has resulted in the disempowerment of the LACC. An example is Executive Order 38 part 6 and sub-part 10(3) of the order to protect disclosure of asset declaration forms of ministers and deputies. This issue came to the fore when the Centre for Media Studies and Peace Building (CEMESP) filed a freedom of information request to the LACC, requesting disclosure of asset declaration forms of ministers and deputies. The LACC refused and subsequently presented to the independent information commissioner; Executive Order 38 was cited as the reason why they could not disclose the asset declaration forms.

The independent information commissioner that oversees the implementation of the Freedom of Information Act (2010), ruled in favour of the CEMESP, noting that the act has primacy above the president's executive order. Since nothing came out of that ruling, it buttressed the point of lack of political will to fight corruption from the chief executive of state.

Executive Order 38 tended to either contradict or confuse the intent and spirit of the freedom of information law and to some extent the order itself. The intent of the order was to establish a code of conduct for members of the executive branch of government. However, the order tends to subtract rather than contribute to the government's stated policies of transparency and openness in its dealings. Executive Order 38, Part VI speaks about confidentiality of information in sub-part 6(1):

A public servant shall use sensitive and confidential information that is in their possession or likely to come into her/his possession only in the performance of her/his official duties or responsibilities except where such information is criminal in nature or against public policy. A public servant shall be prudent in discussing sensitive information with any other public servant or others who are not directly concerned with the matter in hand.

However, it did not explain what constitutes confidentiality, and who defines what confidential information is. Nor is there any set procedure for declaring something confidential. What this executive order does, instead, is require that public servants take on the veil of secrecy contrary to the stated principles of the Freedom of Information Act (2010). The act is clear on the matter of confidentiality and exemption. It also provides sufficient clarity of purpose on the issue that

exemption must be justified not claimed: A public authority or private entity may not refuse access to or disclosure of information simply by claiming it as 'confidential or secret'.

Overall, it seems a contradiction when the LACC complained about ministries and agencies not cooperating with the commission's investigation by not submitting the requested information for the prosecution of cases.³³ Why then does the LACC need subpoena powers?³⁴ The support from the executive is at present more of pronouncement and less of concrete actions in support of the LACC. The presidential pronouncement of 'no sacred cows', which preceded the establishment of the LACC, is now considered more of a paradox than a commitment to action from the sitting chief executive of state as senior MDA operatives and close acquaintances are regularly protected using legislation and other tools of state authority.

Weak participation of non-state actors

The LACC legislation provides for the nomination of a representative of CSOs and NSAs to be members of the commission. This nomination should be done by the president, who *may* consult with CSOs/NSAs. There is little or no public information about President Sirleaf's consultation with key CSOs about their representation to the LACC. This is because the LACC Act (2008) does not obligate her to do so. Besides, the act does not clearly spell out how and when CSOs should be involved in the representation process. Hence, the president could consult with whatever channel she so wishes. There is no specific or recognised procedure used in consulting CSOs.³⁵ The current reality is that a proactive LACC legislation makes provision for CSO involvement in the anti-corruption fight in Liberia, but placing the initiation of consultation in the office of the president without providing defining clause(s) in the legislation has left the notion more of a wish.

Institutional reforms

Under President Sirleaf's stewardship, the government of Liberia has demonstrated substantive efforts at accelerating a series of reform measures to address the country's corruption problem. A host of institutional changes have led to the creation of integrity bodies (GAC, PPCC, LEITI, etc.) as well as policies and laws to combat corruption. The LACC has been innovating ways of improving its partnership and collaboration, but these are early efforts and it is too soon to have a full assessment of the contribution of these institutions to a successful LACC. The reforms are at varying stages of implementation and there are signs that they could bring about positive dividends if the government remains focussed and committed. Currently, there are a number of implementation

33 LACC (2013) Annual Report.

34 LACC Act (2008), section 11.3.

35 LACC Act (2008) Part VI: Composition, Appointment and Tenure. The five (5) Commissioners shall be nominated by the President. The President may consult the Civil Society to the partnership between the Government and said civil society in the fight against corruption. Upon being confirmed by the Liberian Senate, the Commissioners shall subsequently be appointed and commissioned to their respective offices by the president. Annual Message to the Third Session of the 53rd National Legislature of the Republic of Liberia. Theme: 'Consolidating the Processes of Transformation' By Her Excellency Mrs. Ellen Johnson Sirleaf. p. 40. Available at <http://www.emansion.gov.lr/2content.php?sub=55&related=24&third=55&pg=sp> [accessed 16 September 2016].

challenges around maintaining synergy and coordination of the various reforms, as well as the provision of adequate financial resources and overcoming the dearth of competent personnel to lead and roll out various initiatives.

Weak prosecutorial authority

Having set up the commission, the executive has largely chosen to ignore its recommendations for prosecution. This situation could have been mitigated by a stronger relationship with the court system. An effective justice system is critical to addressing a country's corruption problem and the courts often provide an important platform for harnessing strong relationships with anti-corruption agencies. Unfortunately, in Liberia, there hasn't been much collaboration seen between the LACC and the judiciary; particularly the courts. The popular view is that the government uses the LACC as a selective justice tool, going after people whose relationship with the president is strained and protecting those that are in good terms with her; hence, the LACC is commonly referred to as 'a toothless bulldog'.

Table 1: Successful and unsuccessful cases

Two successful LACC cases	Factors for success
<p>The case of <i>Albert Bropleh vs. the Government of Liberia</i> was tried in the 11th judicial circuit court in Tubmanburg, Bomi County and a verdict handed down in favour of the Liberian government. However, Mr Bropleh has taken an appeal to the supreme court.</p>	<p>The Liberian government, through the ministry of justice, indicted Albert Bropleh upon recommendation by the ministry of justice in a timely manner. Bropleh's indictment was robustly handled at the level of the courts that resulted in a guilty verdict. Though he has taken an appeal at the high court, the fact remains that the case has been tried.</p>
<p>Munah-Sieh Brown, former inspector general of the Liberia national police in the emergency response unit (ERU) uniform saga. She was charged with economic sabotage and recommended to the justice ministry for prosecution.</p>	<p>When the ministry of justice declined to file indictment against the inspector general on grounds of insufficient evidence, section 11(4) of the LACC Act (2008) was enacted for the first time, thereby prosecuting the case in its own name. The magisterial court heard the case and handed down a guilty verdict. However, the defendant made an appeal to the supreme court of Liberia. On 8 January 2015, the supreme court mandated the reinstatement of a unanimous jury verdict and confirmed defendant Beatrice Munah Sieh-Brown's guilty verdict.</p>

Two unsuccessful LACC cases	Reasons for being unsuccessful
Allegation of impropriety and violation of the Budget and Public Procurement Law involving Speaker Alex Tyler, Representative Adolph Lawrence and others.	Since the LACC recommended this case to the justice ministry for prosecution, neither the ministry nor the anti-graft group has prosecuted the accused persons. There is lack of political will to facilitate prosecution.
Allegation of Bribery at the National Oil Company of Liberia (NOCAL) involving Deputy Speaker Hans Barchue and other lawmakers (USD 100 000)	The case was never tried in court after the LACC recommended the individuals for prosecution. The investigation is believed to have been relatively good but there was a lack of both executive and judicial support to complement the efforts of the LACC.

The LACC could also handle its relationships with the media better than it has. The media, unlike political parties and the traditional arms of government (legislature, judiciary and executive), have assumed a whistleblower role assisting the government and the commission in releasing information of acts of corruption. For an example, *Front Page Africa*'s Rodney Sieh recently published information about possible acts of corruption involving former managing director of the Liberia airport authority, Ellen Corkrum, which led to her indictment along with a few others. Neither the LACC nor the government has provided encouraging words about the action of this paper. In retrospect, this was the same paper and editor-in-chief that was jailed on charges of character assassination of a then minister of agriculture, Chris Toe, who had been indicted by the GAC's report.

A more recent case provides a better illustration of the benefits of a closer collaboration with the media. On 23 April 2015, *Front Page Africa* published a leaked report from the LACC implicating the managing director of the national port authority, Ms Matilda Parker, and the comptroller, Christina Kpabar Paelay, for awarding contracts worth more than USD 800 000 in violation of the Public Procurement and Concession Commissions Act. President Sirleaf acted immediately by suspending the two national port authority officials. The president mentioned that she acted based on the investigation conducted by the LACC.³⁶ Subsequently, on 21 July 2015, the special grand jurors for Montserrado County indicted suspended Ms Parker and two others for economic sabotage, theft of property and criminal conspiracy.³⁷ The leaked report is what may have necessitated the indictment, otherwise the likely action was to suspend the suspects who could have

36 See Sieh RD (2015, 23 April) Liberia: Corruption Scheme – LACC hooks NPA boss, others for \$800 K. *Front Page Africa*. Available at <http://allafrica.com/stories/201504230624.html> [accessed 16 September 2016].

37 Johnson B (2015) Liberia: Suspended NPA managing director, comptroller charged. *Front Page Africa*. Available at <http://allafrica.com/stories/201507220879.html> [accessed 16 September 2016]. NPA suspended MD, others indicted for nearly US\$1M (2015, 22 July) *The Inquirer Newspaper*. Available at <http://monroviainquirer.com/2015/07/22/npa-suspended-md-others-indicted-for-nearly-us1m/> [accessed 16 September 2016].

been possibly reinstated after loss of public focus on the corruption allegation. In addition to lacking prosecutorial powers, there are other challenging issues such as inadequate political will in ensuring the anti-corruption commission is effective in Liberia.

The LACC is also mainly centralised in the city of Monrovia and is yet to be decentralised into counties. This centralisation has cost implications. If the commission is to move out into the counties, such costs should be captured in budgetary allocation from the central government, which is normally not the case.

Lack of adequate funding has been hampering the effective implementation of the commission's functions. The first head of the commission Madam Francis Johnson-Morris, made mention of such disempowering factors when she said that

one will know that Liberians are serious for the fight against corruption by the way they will support the effort of the LACC in the fight against corruption ... when you don't support the effort, then you can't be serious.³⁸

Another factor that equally buttresses this point is the evidently weak public education in terms of media supplements, jingles and programmes to challenge the public to play their roles in reporting, or joining the advocacy initiative.

Reporting obligations

There is a requirement under the anti-corruption legislation for the commission to prepare and submit annual reports. It is indicated in section 14(1):

The commission shall within three months after the end of a fiscal year, submit to the president and legislature, an annual report, indicating:

- Number and summaries of investigations carried out during the preceding year;
- The number of corruption investigated by the commission and forwarded to the ministry of justice for prosecution along with a number of indications of the number of cases that have been or are being prosecuted; and
- The monetary value of corruption cases investigated and prosecuted by the commission.

The commission should also report on its status, including financial position and matters requested by the legislature. In addition to the annual report, the legislation also obligates the commission to present quarterly reports to the president and senate on work being undertaken. The annual report should also be made public through publication. The reporting obligations on the LACC are quite enormous in the legal framework; there is,

³⁸ LACC boss: Liberians not serious to fight corruption (2012, 5 December) *Heritage*. Available at <http://allafrica.com/stories/201212050889.html> [accessed 16 September 2016].

however, a noticeable absence of any clause indicating corrective action in the event of failure by the commission to meet the reporting requirements.

There is no specific provision indicating how the commission should treat or respond to recommendations in the quarterly and annual reports that it should present to the president and legislature. The report could therefore be seen as a tool of informing its recipients and readership of what the commission is doing, but does not have any mechanism defined by law to address recommendations and there is a likelihood for the same issues to recur without any appropriate remedial actions being taken to address them. The reporting arrangement in the law also does not make provision for giving and receiving feedback, especially from the wider public; this also applies to the state institutions. On critical reflection and assuming the government is serious about fighting corruption, one could work on the assumption that the president and legislature can use other intra-governmental mechanisms to give feedback and demand responses within given timeframes.

There has not been any real action taken by the senate regarding reports from the LACC. In fact, in January and August 2011, a delegation from the World Bank visited the LACC and asked whether the three branches of government were cooperating with the LACC on assets disclosure. The LACC, in its report to the executive, informed the World Bank delegation at the time that except for the executive, the judiciary and legislative branches were not cooperating. The current reality is that members of the legislature and judiciary have not declared their assets as is required of them by law in Liberia. The president has been acting tough on people within the executive arm of government to comply with asset declaration provisions. In August 2012, President Sirleaf suspended 46 public officials for failing to declare their income, assets and liabilities.³⁹ This show of authority by the president facilitated action from public servants in that same year, with the commission receiving 654 declarations filed by public officials from the executive branch of government.

There is a very strong provision requiring asset declaration by commissioners and staff of LACC. This is good from ethical and principled perspectives, as it gives moral authority to the commissioners and staff to request declarations from the public, as well as indicate the seriousness and commitment to fighting corruption. There is, however, a concern as to who becomes the custodian of pre-office-entry asset declaration, and what the mechanism is for following up on office-exit asset declaration to determine whether the commissioners acquired assets disproportionate to their official emoluments (or recognised and permissible private endeavours). The LACC Act (2008) has no provisions for exit audits of commissioners. However, it can commission an audit to be carried out by an independent firm apart from the GAC.

39 Mass suspension – 46 recalcitrant officials frozen over asset declaration (2012, 21 August) *The Analyst*. Available at <http://allafrica.com/stories/201208210373.html> [accessed 16 September 2016].

F. Conclusion

Corruption in Liberia has been a national malaise for most of the country's existence, with incriminating evidence pointing towards the 'elite class of society' as mostly responsible for its perpetuation. Since 2008, the administration of President Sirleaf has taken the bold initiative to support the establishment of the Liberia Anti-Corruption Commission, but there has since set in a paradox, as the president who showed determination and drive has often been accused as being a source of frustration considering her use of executive orders.

The first hard steps have been taken to create the institution and give it an enabling legislation. What is missing is demonstrated political will, which could be ameliorated by strong citizen will to weed out corruption through abstinence, cooperation with the commission, and challenging all forms of protection of corrupt elements in the country. This is doable with dedication and commitment.

Liberia could be salvaged from failing in its anti-corruption drive if the international community could ensure that the various sub-regional, continental and global instruments to which it has signed up will play a watch dog role. The issue of peer review of the presidential effort also has the potential of placing the head of state's vision back on track, to support the LACC's delivery on its mandate and make Liberia a society where corruption can be minimised, if not totally eradicated.

G. Recommendations

To the LACC

- The LACC should be granted direct prosecutorial powers without limitation to deal with economic crimes and public sector corruption, with emphasis on 'white collar crimes' such as non-compliance with the PPCC regulations.
- The LACC should identify and sign up to the key regional instruments supportive of the fight against corruption within ECOWAS and AU.
- The LACC should work closely with other anti-corruption agencies in the West African sub-region through formal cooperation pacts and agreements.
- The LACC should explore possibilities of accessing regional assistance from international agencies in order to strengthen its investigative and prosecutorial capacity to address widespread corruption currently prevailing in the country.
- The LACC should robustly solicit external funding assistance to bolster the inadequate national budgetary allocation for effective execution of its wide anti-corruption mandate, as stated in its establishing and enabling legislation.

- The LACC should seek technical assistance to strengthen its investigation and legal infrastructure; this could be supported by various partners as well as sub-regional and continental organisations, especially ECOWAS and the AU.

To the government

- The executive should refrain from defending those officials of government accused of corruption and allow due process of law to take its course.
- The president should show restraint in the use of executive orders that hinder the work of the LACC.
- The government of Liberia should establish a fast-track court to exclusively handle corruption cases, as this could possibly lead to efficient prosecution of such cases, thereby ensuring the LACC's effectiveness.
- Through the Governance Commission, the government should consolidate all corruption offences across penal codes into a national anti-corruption statutory instrument in aid of the investigation and prosecution of corruption cases in the country.

Institutional cooperation

- The LACC should establish strategic coalitions and partnerships with sections of the media and other CSOs to help the process of whistle-blowing and ferreting for information at various corruption hot spots.
- There should be a strong effort on the part of the LACC to establish complementary relations with other probity-focused agencies such as the PPCC, the LEITI, the GAC, the media, and the open governance partnership. There should be regular consultation among the heads of these agencies and the LACC to discuss possible links for complementarity, collaboration and resolving potential conflicts. As a starter, a memorandum of understanding could be signed preceding the promulgation of regulations.
- The national integrity forum should be organised annually, aiming at jointly addressing challenges faced by integrity institutions in the preceding year and setting targets for the next year.
- The LACC should adopt a common core results (step-by-step) framework for joint response to corruption, This should include regular dialogue with national integrity bodies, international development partners and CSOs.

4

NIGER



Luc Damiba

A. Executive summary

There is consensus in public opinion in Niger regarding the scope of corruption and its extension in every sector of national life. Citizens and policy-makers seem to agree that corruption seriously undermines the foundations of peaceful coexistence in Niger, and yet divergences appear regarding the methods and efforts that should be deployed to reduce the scope of the phenomenon; one which has permeated every sector of national life. Public authorities have deployed strategies to combat corruption, but their successive efforts have sometimes smacked of desperation in the light of the growing contrast between the marshalling of administrative, financial and human resources and the dearth of positive results. Over the past decade, there has been no judicial response to any documented and proven cases of corruption.

Both external and internal factors have negatively impacted efforts to fight corruption in Niger. This was due, firstly, to the sub-regional environment, marked by insecurity and the rise of fundamentalist groups such as AQIM (Al-Qaeda in the Islamic Maghreb) and Boko Haram. This environment places Niger in a situation of institutional and financial vulnerability. Furthermore, famines and natural disasters are recurring events in the country. The proximity of Nigeria makes it difficult to combat political and economic corruption practised by bi-nationals and facilitated by the influence wielded by certain Nigerian political leaders in Niger.

The prominence of corruption can also be explained by the national context. Niger's historical trajectory has been marked by sudden political changes that hardly promote visibility in terms of the responsibilities and impact of numerous 'clean hands' or clean-up operations conducted in Niger over the last 15 years (1990-2014). Professions of faith and exceptional institutional mechanisms have had no impact on collective perceptions of corruption: citizens believe that nothing has changed in terms of anti-corruption strategy since the Seventh Republic began in 2011.

Changing political alliances are a handicap in the effective fight against political corruption, as illustrated by the slowness of the judicial system in dealing with the most

emblematic cases. The need for powerful political allies – whatever their involvement in acts of corruption – often trumps the will to destroy corruption networks.

Extensive media coverage of clean hands operations has created a dual image of Niger. From the outside, the country appears to be driven by a strong political will to combat corruption. Considerable efforts are being deployed to reduce the impact of corruption in public departments. From the inside, however, the fight against corruption appears to be merely an extension of partisan jostling for power between political personalities. In this regard, the initiative of allowing citizens to speak out through the *Ligne Verte* (hotline) is a positive signal, even though it is limited to the ministry of justice and its sustainability remains to be established. For instance, the *Ligne Verte* system lacks a mechanism to protect informers.

In Niger, anti-corruption bodies such as the High Authority to Combat Corruption and Related Infractions (HALCIA) and *Ligne Verte*, as well as administrative, financial and judiciary control bodies, are marked both politically and socially. Such considerations have often been used to justify their creation or their dissolution. Anti-corruption bodies are created by the political regimes in power. Governments differ little in their handling of corruption cases, and ACAs created by one regime are dismantled by the next, which sets up a new agency or agencies. The track record of the various anti-corruption programmes is mixed and disappointing. HALCIA and *Ligne Verte* are no exceptions: these bodies appear to be mainly acts of political symbolism. Their real focus is on obtaining immediate results to legitimise the regime and its stakeholders. Long-term vision and actions are cruelly lacking.

The fight against corruption within the judiciary – and the use of outside strategies – are the challenges facing the nation's justice system. The recent creation of a financial division in two of the country's courts could considerably reduce the number of bottlenecks between the justice system and HALCIA, to ensure the punishment of cases opened and referred by the latter to the office of the president of the Republic of Niger. It remains to be seen whether this heralds the coming of a new era in the repression of corruption in Niger.

The tension between resource availability and the independence of anti-corruption bodies remains one of the greatest obstacles in the fight against corruption in Niger. HALCIA in particular has been the focus of intense criticism over its lack of independence, which is readily apparent, both in its founding instrument and its mode of operation. At best, the lack of independence in the handling of cases weakens anti-corruption bodies and deprives them of financial means, particularly in the case of differences between the president of the republic and HALCIA commissioners. At worst, as has happened in the past, attempts to assert independence have simply led to the dissolution of the anti-corruption bodies in the guise of reforms whose real aim was to empty the organisations of their substance.

B. Historical and political background

Niger has a longstanding tradition of combating corruption ever since it achieved political independence in 1960. Looking back even further, to before independence in 1960, there are testimonials stating that Islamic societies acted as monitoring and warning groups by alerting public opinion to corruption in the political elite. During the post-independence period, political struggle and the fight against corruption were closely linked. When each new government enters power, it sets up a specialised commission to combat corruption and financial crime. Despite the existence of standing administrative bodies for the prevention of corrupt practices and despite the existence of a justice system to deal with offences of this kind, the creation of exceptional bodies specialising in the fight against corruption by the previous regime has been a common practice over the past 15 years (2000–2014). A legacy of years of struggle for independence and of the trade union movement's influence over the conduct of public affairs, the fight against corruption is part of a tradition in which political compromise and engagement are intertwined.

A tradition anchored in history

'Niger is rich, but poorly managed,' was the observation made by president of the republic Mahamadou Issoufou to justify his crusade against corruption from the start of his mandate in 2011.¹ The creation of bodies such as HALCIA is commonplace in Niger. Anti-corruption commissions have become a fashion, a custom that no government would want to do without. This is an exception typical of Niger, which has numerous commissions and an anti-corruption bureaucracy whose achievements and failings have long been neglected by political actors: some have continuously sought to start anew, building agencies that are favourable to them from scratch. Niger has had seven constitutional governments and five military juntas.² Correspondingly, it has had around seven ad hoc commissions specialising in matters of corruption, making it a highly experienced country in the field. From one commission to the next, however, the transmission of experience, lessons learned and errors made, as well as archives of cases and files, have not always been handled consistently.³

1 Excerpt from the inauguration speech of President Issoufou Mahamadou, on 7 April 2011 in Niamey. (Unofficial translation.)

2 Chronology of coups d'état in Niger: On 14 April 1974, Diouri Hamani, the first president of the Republic of Niger, was overthrown by Lieutenant Colonel Seyni Kountché; on 27 January 1996, Lieutenant Colonel Ibrahim Baré Maïnassara overthrew President Mahamane Ousmane; on 9 April 1999, Malam Wanké overthrew President Baré Maïnassara; and on 18 February 2010, Salou Djobo overthrew President Mamadou Tandja.

3 Interviews with former commission heads and members, notably: Aziz Mossi, president of the Commission on Economic, Financial and Fiscal Crime and the Promotion of Good Governance in the Management of Public Assets created in 2010 by the Supreme Council for the Restoration of Democracy (CSRD), on 5 April 2014; Abba Moussa Issoufou, president of the National Commission in Charge of Moralisation of the Management of Public Assets (1996), on 6 April 2014; Mazou Seidou, president of the commission on national anti-corruption strategy design and member of the national financial data processing unit (CENTIF), on 4 April 2014; Sanoussi Tambari Jackou, member of the Crimes and Abuses Commission, on 7 April 2014; and Abou Mahamane, president of the Crimes and Abuses Commission, December 2009.

Every military, political or civilian regime in Niger has left its mark on society. According to one of the most attentive observers of these commissions,

setting up special commissions tasked with moralisation or fighting crime, is an exception typical of Nigerien leaders, especially military ones Among the French-speaking countries neighbouring Niger such as Burkina Faso, Mali, Chad, Togo, Benin, etc., not one has experimented with ... any sort of investigative and monitoring commission after the collapse of a civilian government ... At most, proceedings were brought in Burkina Faso with General Sangoulé Lamizana and in Mali with General Moussa Traoré.⁴

As shown in Table 1, from 1974 to 2014, Niger had a total of seven specialised ad hoc commissions, created by decree, order, or act of the national conference. The common characteristic shared by the different bodies is that they bore names that often evoked a whole political agenda and included key terms such as: fighting crime and abuses, reform, or moralisation of public life. Most of the commissions were set up by military governments, but also, exceptionally, by civilian regimes.⁵

Niger experienced five military coups d'état and almost as many failed coup attempts between 1974 and 2012.⁶ The fight against corruption was a central focus throughout this tumultuous time, serving alternately as a justification for coups and as a platform for each new government. Specialised anti-corruption commissions have therefore played not only a positive role, but also a negative role in the political history of Niger. Their natural limitations due to their limited lifespans linked to that of the government that created them, and due to their political exploitation, have left a legacy in the collective memory of the people of Niger.

4 Sanoussi Tambari Jackou (2012) *L'assainissement en question au Niger: Commissions et comités d'enquête et de contrôle de 1960 à 2010*. Tome 1. p. 12.

5 The republican governments of the first, second and fifth republics did not set up ad hoc commissions on corruption. The third and fourth republics exceptionally set up ad hoc commissions.

6 Coup attempts that have been identified include: 15 March 1976: attempted coup d'état by Major Bayère Moussa and Captain Sidi Mohammed; 6 October 1983: attempted coup d'état by close collaborators of President Kountché; 5 August 2002: military mutinies in Diffa followed by an attempted putsch in Niamey, the capital city; 22 July 2011: arrest of ten members of the armed forces for attempting to overthrow and assassinate President Mahamadou Issoufou. Source: Available online at http://www.jeuneafrique.com/Chronologie-pays_69_Niger [accessed 14 May 2014].

Table 1: Ad hoc anti-corruption commissions from 1974 to 2014

Year and lifespan	Name of commission and political leaders	Political context, mandate and activities	Findings and follow-up
1974 (ten months)	Monitoring and investigation commission (by decree, under the government of Seyni Kountché)	<ul style="list-style-type: none"> Following a coup d'état by Seyni Kountché Monitoring accounting and financial management Conducting investigations on misappropriations by public officials 	<ul style="list-style-type: none"> Numerous seizures of senior officials' assets Creation of an economic policy by Order No. 74-12 1974 Commission dissolved in 1975 by President Seyni Kountché
1991 (16 months)	Commission on political, economic and social crimes and abuses (Act No. 5 of the Sovereign National Conference under the regime of Ali Saibou)	<ul style="list-style-type: none"> Pursuant to Sovereign National Conference Act No. 05 Investigating political, economic and sociocultural crimes and abuses from the last 30 years In the context of a structural adjustment programme Denial of human rights 	<ul style="list-style-type: none"> Report submitted to the prime minister The commission was dissolved at the end of the transition
1995 (12 months)	National commission tasked with producing a status review (By order of the prime minister, under the third republic, cohabitation government, president: Mahamane Ousmane)	<ul style="list-style-type: none"> Under political cohabitation, Third Republic Initiative taken by Prime Minister Hama Amadou A legacy of the report submitted by the crimes and abuses commission Monitoring all public services Verifying regulatory compliance and assessing the morality of public spending Reforming public services and ensuring they are operational through 'operation dumpster diving' Conducting an inventory of the moveable and real property assets of the state 	<ul style="list-style-type: none"> The commission may publish a report in the press

<p>1997 (11 months)</p>	<p>National commission for the moralisation of the management of public assets (By decree, under Ibrahim Baré Maïnassara)</p>	<ul style="list-style-type: none"> • Following a coup d'état in 1995 by Ibrahim Baré Maïnassara • Moralising the management of public assets and combating corruption and economic and financial crime among stakeholders in the Fourth Republic • Ending pilfering and slacking in the public administration • Faced with sanctions from traditional allies, striking up new alliances with neighbours such as Nigeria, Libya, and Burkina Faso • Education and repression of corrupt acts 	<ul style="list-style-type: none"> • The commission was dissolved by Decree No. 99-58 by Daouda Malam Wanké • Levies of 5% of all funds recovered • Pending cases and reports submitted to the state secretary general's office
<p>1999 (nine months)</p>	<p>Commission on economic and financial crime (by decree, under the regime of Daouda Malam Wanké)</p>	<ul style="list-style-type: none"> • Coup d'état in 1999 by Daouda Malam Wanké • Inherited the work of the national commission for the moralisation of the management of public assets under Baré • Establishing responsibilities and punishing those guilty of economic, financial and fiscal crimes • Processing inspection reports drafted by national, regional and local monitoring bodies • Recovering all sums due to the state and its departments • Formulating recommendations with a view to reforming and moralising the management of public assets • Bringing legal proceedings or having third parties issue opinions 	<ul style="list-style-type: none"> • Report submitted to the president • Levies of 10% of all funds recovered • Claims to have paid nearly CFA francs 5 billion CFA francs into the public treasury

2003 (six years)	National commission for the preparation of national anti-corruption strategies	<ul style="list-style-type: none"> • Set in place by Mamadou Tandja under the Fifth Republic • National consensus on the fight against corruption • Studying corruption phenomena in Niger • Defining strategies to fight corruption • Investigating and documenting the level of corruption in the following sectors: health, education, justice, transportation 	<ul style="list-style-type: none"> • Reports produced and submitted to the president in 2009
2010 (ten months)	Commission on economic, financial and fiscal crime and the promotion of good governance in the management of public assets, also known as the 'Mossi commission'	<ul style="list-style-type: none"> • Following a coup d'état by Salioou Djibo • Restoring democracy • Processing administrative, economic and fiscal investigation reports • Processing inspection reports by national, regional and local monitoring bodies • Reforming public finance and ensuring national reconciliation • Analysing ad hoc audit reports and handover reports • Recovering all sums due to the state and its departments • Formulating recommendations and proposing measures to reform and moralise the management of the assets of the state and its departments 	<ul style="list-style-type: none"> • Levies of 5% of all funds recovered • An estimated 6 billion CFA francs was recovered • Commission report submitted to the Head of State Salioou Djibo
2011	High Authority to Combat Corruption and Related Infractions	<ul style="list-style-type: none"> • Set up by presidential decree by Mamadou Issoufou • Inherited the reports drafted by the Mossi Commission during the military transition under Salioou Djibo 	<ul style="list-style-type: none"> • In three years, it is estimated to have helped save approximately 6 billion CFA francs from theft and embezzlement

Sources: Sanoussi Tambari Jackou (2012) *L'assainissement en question au Niger: Commissions et comités d'enquête et de contrôle de 1960 à 2010*. Tome 1; interviews with former commission heads, including Aziz Mossi (5 April 2014), Abba Moussa Issoufou (6 April 2014), Mazou Seidou (4 April 2014), Sanoussi Tambari Jackou (7 April 2014) and Abou Mahamane (December 2009).

A legacy with a high cost

Over the past four decades (1974–2014), Nigeriens have grown accustomed to living with a series of clean hands operations – some short lived, others more lasting – with the attendant political violence, imprisonments, settling of scores and, often, human rights violations. The lifetime of a specialised commission always depends on that of the political regime responsible for its establishment. A commission rarely survives when the regime comes to an end. The observation made in Niger, which also applies to other French-speaking African countries, is that these legacies, both in terms of documentation and the experience capitalised, have been improperly used from one regime to the next and this has had undesirable effects on the fight against corruption in Niger. Few commissions have made their reports available after their mission was over.

Settling of scores and political negotiations

The treatment of past commissions by new regimes and the work done by the commissions make them ideal tools for the neutralisation of political adversaries, or for realigning alliances at the top. The discourse spouted by political leaders to the general public on subjects such as ‘protecting public assets’ and ‘cleaning up’ are rarely followed by laudable action. In most cases, the initial motivations and missions underlying the creation of the structures were soon twisted. Indeed, the commissions rarely met their stated goals and, in the case of some that suddenly ended, no assessment is available. Sanoussi’s view of the subject was quite harsh:

Over the past 50 years of operation of the government of the independent Republic of Niger, mismanagement of public assets has only worsened from year to year ... financial malpractice to the detriment of the state ... was less prevalent under the First Republic than under the regime that followed it; the latter was replaced by another regime that was even worse ... The clean-up much touted by the various political regimes has not been successfully implemented.⁷

These tools used in situations of state crisis have, at times, served chiefly to bring political opponents to heel and defensively or temporarily side-line rivals by destroying their image in society.⁸ The use of exceptional ACAs to vanquish political rivals is exploited by the local media to grow their audience and perhaps even their bank accounts. At the same time, the opposition denounces such tactics as witch-hunts. Generally, these methods enable the regime that commissioned the work of the ACAs to find occasional allies within the political forces. Political transhumance, or crossing the floor, is quicker when there is a

7 Sanoussi Tambari Jackou (2012) *L'assainissement en question au Niger: Commissions et comités d'enquête et de contrôle de 1960 à 2010*. Tome 1. pp. 117–118. (Unofficial translation.)

8 Tidjani Alou M (2016) La petite corruption au Niger. *Les travaux et études du LASDEL*. Available at http://www.lasdel.net/images/etudes_et_travaux/La_petite_corruption_au_Niger.pdf [accessed 19 September 2016].

sword hanging over the heads of those targeted. This is facilitated by the unique features of politics in Niger where, according to certain observers, it is difficult for a president to achieve power and govern with his party alone. Political alliances must be struck with other parties and leaders before a president can come to power and, during his term in office, he must continue to make alliances and deal with political horse-trading. The political landscape abounds with reconfigurations; yesterday's allies are today's opponents and vice versa. Generally speaking, commissions have made significant contributions to these readjustments of political positioning, as certain actors change positions as soon as they feel threatened by potential legal action. There is therefore a tendency to prefer political handling of cases of corruption, particularly where senior public officials or influential businesspeople are concerned.

During the political cohabitation of February 1995 to January 1996, Mahamane Ousmane and Mamadou Issoufou shared power successively as president of the republic and speaker of the national assembly, while Hama Amadou was prime minister. Mahamane Ousmane and Mamadou Issoufou disagreed over how to deal with issues of corruption and poor management by the previous regime. According to Abou Mahame, 'Mahamadou Issoufou, as speaker of the national assembly, wanted stricter management and President Mahamane Ousmane was surrounded by all of the traders of Zinder. In their eyes, it was the first time that a Hausa from Zinder had reached power since independence; because they had supported him they felt they had a right to put pressure on the president. They said, now this isn't right, we aren't getting contracts'.⁹ In the end, to settle the political dissent between the president of the republic and the speaker of the national assembly, Prime Minister Hama Amadou, who was pursuing his own political strategy, took the initiative of creating a review commission. The fight against corruption always suffers from government alliances and cohabitation. The government of the Seventh Republic seemed to suffer the same fate, as it was undermined by compromises and alliances, often contradicting the values and principles affirmed in speeches and professions of faith.

Political compromises and impunity

The unceasing interplay of alliances of convenience described above has had a negative impact on the fight against corruption because the political treatment of corruption cases takes precedent over their legal treatment. As *Jeune Afrique* aptly summed up 'a fragile coalition based on political calculation, followed by a clash and reshuffling of alliances... And always the same faces: Hama Amadou, Mahamadou Issoufou, Mahamane Ousmane, Seïni Coumarou'.¹⁰ The International Crisis Group added: 'It is striking to note how many of the players in power during the stalemate in 1993-1995 are still there today'.¹¹

9 Interview with Abou Mahamane, December 2009.

10 Carayol R (2014, 28 October) Niger: 'Hama Amadou, profession opposant'. *Jeune Afrique*. Available online (in French) <http://www.jeuneafrique.com/135743/politique/niger-hama-amadou-profession-opposant/> [accessed 19 September 2016].

11 International Crisis Group (2013) Niger: Another Weak Link in the Sahel? *Africa Report* No. 208. p. 56.

Political alliances promote impunity and render the whole judicial sanction process ineffective. Political alliances and compromises also help us understand why waivers of immunity for political personalities, which are so common and such a deeply ingrained practice in Nigerien political culture, virtually never lead to prosecution. In Niger, there is a certain culture of waivers of immunity for deputies, ministers,¹² and presidents of the republic suspected of corruption. Although requests for waivers of immunity are generally granted in parliament, with only rare exceptions,¹³ this rarely results in legal action.

Initially, intentions were good, but witch-hunt accusations and numerous political compromises ultimately outweighed the need for justice. Instead, the focus was more on what Tidiani Alou called a ‘machine-gun effect’ of anti-corruption commissions seeking to neutralise their adversaries’ ability to do damage, but also that of their allies, who could also become potential adversaries.

It seems common for these practices to be undertaken in the heat of the moment, to appease social demands and project a positive image, but once the pressure ebbs and the accused are granted temporary release, cases seem to stagnate pending political negotiations that end up destroying any chances of prosecution. For example, in the case of Zackou (Zakai) Djibo, a businessman and former deputy accused of aiding and abetting misappropriation of public funds and corruption in the amount of approximately 1 billion CFA francs, it initially seemed that the political and judiciary authorities wanted to impose sanctions rapidly to set an example. He even resigned from his position as a deputy. Then, the procedure undertaken to waive his immunity was completed. Officially, it was said that he had reimbursed a significant portion of the funds in question. The reimbursement entitled him to temporary release. He was never imprisoned.

12 In Niger, ministers enjoy exemptions from jurisdiction and thereby benefit from immunity. A judge must request a waiver of immunity for them to be able to appear before a court, such as the high court of justice, or an ordinary court of law.

13 In February 2009 the national assembly rejected a request to waive the immunity of three deputies: Bonkano Maïfa and Intarou Hassan, from the National Movement for the Development of Society (MNSD) – the presidential party – and Raja Chaïbou, who belonged to the Democratic and Social Convention (CDS), a party allied with the party in power, led by Mamadou Tandja. The parliamentarians were suspected of having taken ‘fraudulent advantage’ of education-sector procurement contracts between 2000 and 2006. See http://www.pressafrik.com/Niger-le-Parlement-rejette-la-levee-de-l-immunite-de-trois-deputes_a1181.html [accessed 19 September 2016]. In June 1994 the supreme court overturned a resolution by the national assembly that waived the immunity of 33 deputies.

Table 2: Examples of waivers of ministers' and deputies' immunity in Niger

Timeline of waivers of immunity	Complaints made	Follow up/comments/sources
1994: waiver of the immunity of 33 deputies	Misappropriation of public funds	The supreme court overturned the waiver of immunity just weeks later ¹⁴
2008: waiver of the immunity of two ministers of national education	Accused of misappropriation of HIPC funds intended for the national education ministry	Cases pending before the court The accused benefitted from provisional release after their arrest
2009: Waiver of the immunity of former minister of justice Matthy	Accused of illicit enrichment	Case closed following a constitutional court ruling on the anti-constitutionality of the Order No. 92 on illicit enrichment
2010: The state court of Niger waived the immunity of deposed president Mamadou Tandja	Allegations of financial impropriety in the framework of spending for the organisation of the referendum in 2009	Prosecution was initiated 'following audits of various companies and organisations that revealed irregularities which officials from those companies attributed directly or indirectly to him' However, in a decision in November 2010, the Community Court of Justice of the Economic Community of West African States (ECOWAS) ruled that his arrest and detention were 'arbitrary' and 'ordered his liberation'
April 2002: waivers of immunity for eight national deputies	Accused of misappropriation of public funds and aiding and abetting misappropriation of public funds	They included Hamani Harouna, Lamido Moumouni Harouna, Ben Omar Mohamed, Albadé Abouba, Amadou Ali Djibo aka Max, Bassirou Ibo, Foukory Ibrahim, Lamido Moumouni Harouna and Halidou Badjé for the political opposition alliance ARN. ¹⁵ These deputies were not prosecuted although their immunity was waived
2014: another waiver of the immunity of former president, Mamadou Tandja	In the case of the 400 billion in funding for the Kandadji dam	Proceedings ongoing before the high court of justice

Source: Archives of the national assembly of Niger, rulings of the constitutional court, press reports.

¹⁴ The ruling can be seen here (in French) <http://www.juricaf.org/arret/NIGER-COURSUPREME-19940610-1994CS2JN> [accessed 14 May 2014].

¹⁵ See: <http://www.tamtaminfo.com/niger-assemblee-nationale-trois-03-autres-deputes-viennent-de-perdre-leur-immunite-parlementaire> [accessed 14 May 2014].

Democratic deficit and rate of corruption

A recurring debate in Niger has often been whether military or civilian regimes are more effective in fighting corruption. A democratic deficit may cause a worsening of corrupt practices. However, as K Amuwo pointed out, the impact of political instability on the fight against corruption lies in the ceaseless interruptions of the reform process that take place with each change of government.¹⁶ In addition to the political impact, there is a social impact, since citizens may eventually become disillusioned and stop believing in all the politicians' promises to fight corruption, particularly when the same politicians are 'recycled' in new alliances.

There is a broad consensus that Seyni Kountché's regime was among the least corrupt.¹⁷ Conversely, Ibrahim Barré Mainassara's regime was dominated by family management. Generally speaking, the following observation applies to all of the successive regimes:

every time a compatriot committed a crime, especially misappropriations of funds, there were always personalities who engaged in untimely interventions to remove the guilty party from the clutches of the executive and particularly of the economic police or the regular police force.¹⁸

Under the regime of Daouda Malam Wanké,¹⁹ which lasted nine months, Nigerien workers did not receive their salaries, although the anti-corruption commission set in place by Wanké and the tax authorities claimed to have mobilised 4 to 5 billion CFA francs in the case of the commission and 50 billion CFA francs in the case of the customs authority.²⁰ 'Why were certain state expenditures not honoured despite the revenue collected? Who could have squandered all that revenue in just nine months?'²¹

Furthermore, the Tandja regime, under the Fifth and Sixth Republics, undertook a real clean hands operation, instrumentalising the justice system. For example, in 2000 under the communalisation policy, 265 mayors were put in place, and five years later, in 2009, more than half were either in prison or in court²² due to the clean hands operation launched by Tandja's government.

16 Amuwo K (1996) Military-inspired anti-bureaucratic corruption campaigns: an appraisal of Niger's experience. *The Journal of Modern African Studies* 24(2): 285–301.

17 According to Abou Mahamane, director of the daily newspaper *Le Républicain*: 'Kountché died without leaving any known wealth and his family is not well off. He did not promote corruption, although in his day there were certain merchants who became extremely rich ... due to favours he granted at the time to create notables in various regions to support the regime,' interview, 19 December 2009.

18 Sanoussi Tambari Jackou (2012) *L'assainissement en question au Niger: Commissions et comités d'enquête et de contrôle de 1960 à 2010*. Tome 1. p. 49. (Unofficial translation.)

19 According to Sanoussi, 'Major Daouda Malam Wanké loved money above all ... He was named in the case of the Bahraini Dinar, in which real currency was manufactured in great quantities under a fraudulent order. The money, which was intended for another African country, ended up in part in Niger. The sharing of the money created a misunderstanding between Baré and Wanké.' *Ibid.*: 70.

20 Statement by a customs officer on national television after the fall of the Wanké regime.

21 Interview with Sanoussi Jackou, April 2014.

22 *Rapport de l'inspection général d'Etat*, 2009.

Box 1: Justice and the clean-up operation

In 2007, the president approached the union of magistrates to discuss his project of cleaning up and moralising public life and asked the justice system to commit to the undertaking. The magistrates laid down a certain number of conditions, including: a pay increase, guaranteed independence and equitable assignments for judges. Thus, for the first time, magistrates' salaries were increased from 200 000 CFA francs to 800 000 CFA francs. The judges launched a genuine clean hands operation that spared no one. Directors, ministers, and even Prime Minister Hama Amadou, and a number of deputies (who were subject to a motion of censure in the national assembly) were held up to the scrutiny of the justice system. In the affair of the ministry of national education funds, for instance, two ministers were removed from office and prosecuted by the high court of justice. On 2 June 2007, the government was overthrown by a censure motion voted on in parliament, followed, a few weeks later, by the arrest of then Prime Minister Hama Amadou on suspicion of misappropriation of public money. The case was decided by the supreme court in 2012. In 2009, nearly 186 deputies increased their salaries without going through the legal process. They were prosecuted by the Nigerien justice system during the rule of Mamadou Tandja. The case was dismissed following the coup d'état in April 2010. In all, 40 cases were prepared by various technical inspection departments and referred to the justice system.

However, once enemies had been dealt with, only friends remained, and the magistrates dared to investigate suspicions involving the president's son and a journalist in a matter of mining contracts. The magistrates who investigated the case were removed from their positions a few days later. And that is how the clean-up operation under the Tandja government came to a sudden end. The judges realised that Tandja had deceived them and used them to political ends, notably to force through a three-year extension of his term in office under the Hausa name *Tanzarché*. When all is said and done, it was realised that the benefits granted to the magistrates were actually a way of buying them off, and this discredited the justice system, as the only real justice is free justice.

Sources: Interview with AM, magistrate and union member, 5 April 2014. See also, Tandjan Jr dans la nasse (2010, 24 June) *Jeune Afrique*. Available at <http://www.jeuneafrique.com/Article/ARTJAJA2580p019.xml0/> [accessed 19 September 2016].

Obviously, the different commissions first sought to present positive assessments of the governments that created them, and it was their mission to paint a negative picture of the past regimes. Thus, we can conclude that the anti-corruption commissions had a dual role. The first was to serve as a self-justificatory tool in the eyes of international opinion, due to the harmful character of the corrupt acts committed by the previous regime. They also conferred legitimacy through their corruption-fighting activities, which rounded up a few black sheep and brought proceedings against them.

Niger has made undeniable progress in terms of the running of its mechanisms and institutions since the democratic reform following the overthrow of President Tandja in 2010. However, major dysfunctions continue to undermine democratic practices and weigh

negatively on efforts to fight corruption. Among the most remarkable of these dysfunctions, we can note the following, drawn from several critical reviews of governance in Niger:²³

In terms of governance of public administration:

- Nigerien public administration is faced with serious issues of corruption that compromise its performance and efficiency;
- The significant politicisation of the public administration has a negative impact on its performance;
- Hirings and promotions are not always based on merit, which makes efficient human resources management difficult to achieve;
- Access to public services is impacted by rent-seeking (racketeering, graft, favouritism);
- Public finance is subjected to various forms of predation (fiscal fraud as well as unauthorised and unordered payments) which undermine the credibility and transparency of the budget; and
- Public corporations are regularly criticised over transparency, shareholding and account audits, as well as their methods of recruitment and appointment of officials.

Regarding judicial governance, as a key driver in the fight against corruption:

- Limited access to justice services for the population due to corrupt practices, distant and poor external communication by stakeholders in justice, political and social interference in the functioning and activities of the justice system, slow individual justice, and the state's propensity to supervise the activities of the justice system;
- Various forms of external support for the justice system, such as the judicial reform support programme (PARJ)²⁴ have not yielded satisfactory results due to a certain weakness in the judicial apparatus with respect to long-term project and programme management; and
- Weaknesses in the organisation and running of the justice-related professions slow their work, generating latent impunity.

23 See in particular: Transparency International (TI), Corruption Perceptions Index (CPI) for 2006–2013; Transparency International, Global Corruption Report, 2006–2013; Transparency International, Global Corruption Barometer, 2010; World Bank, Global Indicators 2003–2014.

24 PARJ was launched in 2003 with a view to supporting the justice system through the involvement of a number of stakeholders.

Box 2: Figures and statistics on changes in perceptions of corruption in Niger

According to the Afrobarometer survey in Niger, round five, 2012, the perception of corruption is dominated by the citizens' lack of experience. The majority of the people surveyed (7/10) stated either that they had never had anything to do with the phenomenon of corruption or that they had never experienced it. Generally speaking, it was observed that the surveys reflected a low level of corruption. Of all of the sectors investigated, the highest rate of corruption (24%) was found in the area of electoral corruption. The other sectors showed the following rates: administrative papers or driving licences 10%, water 4%, healthcare 19%, police 13%, access to primary school 4%.

According to the 2013 Mo Ibrahim Index of African Governance (IIAG), since the year 2000, progress in governance in Niger has been particularly noteworthy in the category of human development. In the 2013 edition of the Mo Ibrahim Index of African Governance (IIAG), published on 14 October 2013, Niger ranked 28th out of 52 countries. IIAG 2013 also revealed an improvement in governance in Niger since the year 2000. IIAG 2013 assessed the performance of each country in four categories of governance: security and rule of law, participation and human rights, sustainable economic development, and human development. Since the year 2000, Niger has progressed most strongly in the category of Human Development, which notably evaluates the degree of social protection, education and health. IIAG 2013 indicates that 94% of the continent's population – including Nigeriens – now live in a country where the overall level of governance has improved since the year 2000.

According to Transparency International's Corruption Perceptions Index, the latest ranking places Niger in the 106th position out of 177 countries ranked, with a score of 34/100. In 2012, Niger was ranked 113th out of 176 countries with a score of 33/100. This has been deemed a mark of progress in the fight against corruption.

Sources: <http://www.afrobarometer.org/fr/resultats/resultats-par-pays-n-z/niger>; <http://www.moibrahimfoundation.org/fr/downloads/communiqués-de-presse/iiag-launch-niger.pdf>; www.transparency.org/cpi.

C. Legal framework

Niger's legal arsenal in the fight against corruption is rich and diversified. The fight against corruption in Niger is regulated by both domestic legislation and international legal instruments. However, their implementation is problematic. Niger also has a rich body of case law that should be capitalised on to enrich the practices that have been ongoing since independence. The legal framework defining the missions and goals of ad hoc bodies dealing with corruption cases, such as HALCIA and the *Ligne Verte* hotline, is very limited. The decree establishing HALCIA does not allow it to bring legal proceedings directly or monitor the implementation of its investigations and suggestions for follow-up. In addition, while the overall legal framework regulating and defining offences and procedures pertaining to the fight against corruption and related offences appears very complete, it is difficult to implement and sometimes contradictory or even confusing.

Constitution

In Niger, since the advent of the Seventh Republic, fighting corruption is mandatory under the constitution. Article 4 of the Constitution of 25 November 2010 states that ‘In the exercise of the power of the state, personal power, regionalism, ethnocentrism, clanism, nepotism, the feudal mentality, illicit enrichment, favouritism, corruption and influence-trafficking are forbidden, under threat of prosecution.’ It also lays down provisions and specific mechanisms for asset declarations for the president and the members of the government²⁵ and regulates conflicts of interests of members of the government and parliamentarians, particularly where the awarding of public contracts is concerned.²⁶

Laws and regulations

Among the principal legal instruments for the prevention and repression of corruption, the following should be cited:

- Law No. 61-27 of 15 July 1961 instituting the criminal code, amended by Law No. 2003-25 of 13 June 2003;
- Order No. 92-024 of 18 June 1992 on the repression of illicit enrichment, amended by Law No. 2013-18 of 19 April 2013;
- Law No. 2001-034 of 31 December 2001, determining the other public officials subject to the obligation of declaring their assets;
- Law No. 2004-041 of 8 June 2004 on money laundering;
- Order No. 2008-06 of 21 February 2008 on the Code of Public Procurement in Niger;
- Order No. 2011-22 of 23 February 2011, establishing the charter of access to public information and administrative documents;
- Law No. 2011-37 of 28 October 2011 establishing general principles, monitoring and regulation of public procurement and public service delegation;
- Law No. 2007-026 of 23 June 2007 on the general status of the civil service;
- Order No. 85-26 of 12 September 1985, amended by Order No. 88-34 of 9 June 1988, on the creation of a special court and its composition, remit and running;

25 Articles 51, 78 and 79. For instance, article 51 stipulates that: ‘After the ceremony of investiture and within a period of 48 hours, the president of the constitutional court shall receive a written sworn statement of assets from the president of the republic. The declaration shall be subject to annual updates as well as a final update on leaving office. The initial declaration and the updates shall be published in the Official Gazette and in the press. A copy of the declaration of the president of the republic shall be submitted to the court of audit and the tax authorities. Any discrepancies between the initial declaration and the annual updates must be duly justified. The constitutional court shall have full discretionary powers in this regard. The court of audit shall also be in charge of verifying the declaration of assets received by the constitutional court.’

26 Articles 52 and 80.

- Order No. 92-002 of 21 February 1992, amending the criminal procedure code;
- Law No. 2011-37 of 28 October establishing general principles, monitoring and regulation of public procurement and public service delegation;
- Decree No. 2011-686/PRN/PM of 29 December 2011, on the public procurement code and public service delegation; and
- Decree No. 2011-687/PRN/PM of 29 December 2011, on the remit, composition and operating procedures of the Public Procurement Regulation Agency.

These laws cover virtually all types of corruption and related offences. Thus, the Code of Criminal Law in Niger penalises graft (articles 124–128), corruption and influence peddling (articles 130–133), breach of trust (articles 338–340), extortion (article 343), interference with civil servants (article 129), and misappropriation of public funds (articles 121–123). Furthermore, illicit enrichment is penalised by Order No. 92-024 of 18 June 1992. The offence of illicit enrichment occurs when it is established that a person owns assets and/or enjoys a lifestyle that cannot be justified by his or her licit income (article 1).

The Nigerien electoral code strictly regulates donations and gifts in the framework of political activities (articles 59–63 and articles 106, 159 and 166). Order No. 2010-84 of 16 December 2010 establishing the charter of Nigerian political parties regulates public financing (article 30) and private financing (article 28) of the activities of political parties. Thus, for example, citizens of Niger are authorised to finance political parties in amounts up to 50% of the total own resources of the party, while foreign donations may not exceed 20% of the total amount of the party's resources. The order also forbids public corporations from financing political parties and particularly from supporting advertising on the activities of the political parties. Furthermore, the charter provides that the court of audit may audit the accounts of political parties that have received state subsidies (article 30) and establishes sanctions up to a maximum of denying any further subsidies (article 32).

Specific laws also regulate transparency in public life and the administrative and judicial treatment of offences related to corruption. Regarding declarations of assets, Law No. 2001-034 of 31 December 2001 on declarations of assets determines the other public officials subject to an obligation to declare their assets, after the constitution imposed such an obligation on the president of the republic, the prime minister and the members of the government. The general status of the civil service (Law No. 2007-026 of 23 June 2007) prohibited public servants from the following, *inter alia*: (1) soliciting, accepting, demanding or receiving, directly or indirectly, any payment, donation, gift or other benefit in kind, in order to carry out or refrain from carrying out their duties or obligations even outside of the performance of their duties but arising from them; (2) offering a gift or other benefit that could influence the judgement or actions of another person in their favour or in favour of a member of their family.

Niger also has regulations on public procurement and financial transactions, under the WAEMU Directives,²⁷ with a series of legislative provisions that contribute to prevention and the promotion of transparency in public procurement. These include the public procurement code and the law on public procurement²⁸ as well as Decree No. 2011-687/PRN/PM of 29 December 2011, on the remit, composition and operating procedures of the Public Procurement Regulation Agency. Another community directive that has been adopted into national legislation pertains to the fight against money laundering.

Denunciation to the public prosecutor is regulated in the Code of Criminal Law, which stipulates, in article 39, that when a body corporate or an organisation discovers an offence or crime, it must inform the state public prosecutor without delay and submit a report and all supporting documentation. Article 39 requires all official bodies involved in administrative, financial or judicial monitoring to submit a report and highlighted supporting documentation to the justice system as soon as an offence is discovered. The public prosecutor will receive the case and refer it to an investigating judge if necessary, or send it to trial. This is one of the key roles that make it possible to establish a working link and legal collaboration between official administrative, financial and judicial monitoring bodies.

Box 3: UNCAC review mechanism: towards the harmonisation of national legislation with international conventions

In 2010, Niger was one of the first countries to be subjected to the Mechanism for the Review of Implementation of the United Nations Convention Against Corruption (UNCAC). In keeping with the review mechanism procedure aimed at ensuring the effective implementation of the convention, Niger was chosen at random during the first meeting of the Implementation Review Group of UNCAC held from 28 June to 2 July 2010 in Vienna, Austria, to be one of the states reviewed during year one of the review cycle. The countries reviewing Niger were the Russian Federation and Mauritius. In August 2011, Niger finalised its review on chapters III and IV of the convention, respectively focusing on (1) criminalisation and law enforcement and (2) international cooperation. In order to prepare for the review, a group of 15 government experts were appointed by Order No. 00105/MJ/SG of 16 September 2010. The group was made up of civil servants and civil society representatives and the review report, to be submitted to UNODC, is still in the process of finalisation.

The review process began during the 2010 military transition, under Saliou Djibo, and continued in 2011 with the advent of the Seventh Republic under Issoufou Mamadou. This document has raised an issue of political backing. According to the experts from the ministry of justice of Niger, there are two reasons for the delay in the finalisation of the report: a delay in the translation of the Russian contribution,

27 Directive No. 04/2005/CM/UEMOA establishing procedures for the award, implementation and payment of public contracts and public service delegations within WAEMU and Directive No. 05/CM/UEMOA establishing procedure for the control and regulation of public procurement and public service delegations within WAEMU.

28 Law No. 2011-37 of 28 October 2011, establishing general principles, monitoring and regulation of public procurement and public service delegations in Niger.

and a lack of political will to assume responsibility for the continuity of the state and the contents of the report. The delay in the publication of the report also runs a risk of rendering its contents obsolete in terms of recommendations and the relevancy of some of the data. Reforms are already underway and the players involved have not been informed of the contents of the recommendations formulated in this regard. In order to ensure that the mechanism is useful it is necessary to release the report to all of the monitoring bodies and stakeholder organisations involved in the fight against corruption. According to certain official sources within the ministry of justice, the contents of the report do not include the actions of the new regime and therefore the data it contains is outdated in the current context.

Despite these criticisms, which have tempered enthusiasm for the publication of the report, it must be recognised that the review should enable Niger to assess the state of its legal and institutional mechanisms on corruption. According to one of the experts who participated in the review, ‘This state of the art review has revealed both the legislative and institutional progress achieved and the insufficiencies and inadequacies of the legal framework, which is not fully in compliance with the United Nations Convention Against Corruption. The review enabled us to identify priorities with a view to adapting the legislation and administrative procedures to comply with the provisions of the convention. In order to ensure that the legislative and institutional framework is operational, the preliminary review identified technical assistance requirements, particularly with regard to legislative reforms and stakeholder capacity building on the domestication process, as well as with regard to investigations.’ (Contribution to the practitioners’ guide.)

Source: Luc Damiba (coordinator) (2013) Guide des praticiens: Partage d’expérience et de connaissance sud-sud sur le mécanisme d’examen de la convention des Nations unies contre la corruption. Unpublished. PNUD.

Regional and international standards

Niger is a member country of the West African Economic and Monetary Union (WAEMU) and, as such, is bound to comply with WAEMU directives through a series of legislative provisions that contribute to the prevention of corruption and the promotion of transparency in public procurement. These include the Public Procurement Code, the decree on the establishment of the Public Procurement Regulation Agency, and the law on public procurement.²⁹ Niger is one of the first countries, with Senegal, to be up to date in its community commitments in terms of domesticating WAEMU directives into national legislation. In the area of financial transactions, a law has been passed against money laundering³⁰ and another against financing of terrorism. Niger has also established a charter on access to information, although there is no implementing decree for the law, which hinders its effectiveness. Niger is a party to UNCAC, the African Union Convention on Preventing and Combating Corruption and Related Offences Act, and the ECOWAS Protocol on the Fight against Corruption. Niger’s legal profile at regional level is as follows:

29 Law No. 2011-37 of 28 October 2011, establishing general principles, monitoring and regulation of public procurement and public service delegations in Niger.

30 Law No. 2004-041 of 8 June 2004 on money laundering.

Table 3: Niger's international undertakings

Legal instrument	Level of commitments	Remaining to be done
UNCAC	Signed in December 2003 Ratified in August 2008	<ul style="list-style-type: none"> • Domestication of the convention in national legislation • Implementation of the review mechanisms (Niger was chosen at random during the first meeting of the Implementation Review Group of the UNCAC held from 28 June to 2 July 2010 in Vienna, Austria, to be one of the states reviewed during the first year of the review cycle)
African Union Convention on Preventing and Combating Corruption and Related Offences (AUCPCC)	Signed in 2004 Ratified in August 2008	<ul style="list-style-type: none"> • Accession to the review mechanism • Self-evaluation questionnaire to be completed
ECOWAS Protocol against Corruption	Signed in 2001 Ratified in December 2009	Protocol entered into force in July 2015.
WAEMU Directive No. 07/2002 on the fight against money laundering	Adoption of a law on money laundering Establishment of a national unit for financial data processing	Evaluation by GIABA in 2008, validated in 2009
Directive No. 08/2002/CM/UEMOA on measures promoting access to banking services and the use of non-cash payment systems	Adoption of decrees to domesticate the WAEMU transparency code	Mutual evaluation to be carried out in the framework of GIABA.
WAEMU directive on the financial transparency code	Adoption of domesticating legislation	Assessment of conformity with national legislation

D. Institutional framework

Niger has a strong culture of continuous reform of ACAs. As administrative and judicial bodies have often shown their limitations, new political stakeholders are coming forward with new approaches to mitigate the problem. The greatest weakness of this type of reform is the constant change in the short-term and long-term outlooks. It should be noted that an attempt to look toward the future was undertaken in 2006, under Mamadou Tandja's Sixth Republic, with the establishment of a National Commission for National Anti-Corruption

Strategy Design (CNESLC), but its work fell into oblivion following the coup in 2010. The adventure of new anti-corruption institutions thus continued with the advent, under the Seventh Republic, of two ad hoc bodies: the High Authority to Combat Corruption and Related Infractions (HALCIA) and the Information/Claims/Anti-Corruption and Influence Peddling Office (BIR/LCTI). The institutional framework for the fight against corruption can be broken down into three main categories of bodies. The first category includes all administrative, financial, and judicial monitoring bodies that are part of the civil service administration. These are standing bodies; they change little or not at all when there is a change of regime or a democratic change of government. They are active both under states of emergency and under ordinary civilian governments. The second category includes ad hoc bodies that deal specifically with matters of corruption. These include HALCIA and BIR/LCTI. Finally, the third category covers the activities of stakeholder organisations, mostly non-governmental, that focus on anti-corruption activities, and particularly civil society organisations such as the Nigerien Association for the Fight against Corruption (ANLC), the Nigerien Parliamentarians Network Against Corruption, the Network of Organisations for Budget Transparency and Analysis (ROTAB), etc.

Standing administrative and financial audit bodies

Niger has a complex bureaucratic system that comprises legal and regulatory audit bodies under the rule of law, which contribute directly or indirectly to combating corruption. These include the office of the state inspector general (IGE), ministerial technical inspectors' offices, the office of the inspector general of finance (IGF), the public procurement regulation agency (ARMP), the court of audit (CC), and the national financial data processing unit (CENTIF). To these structures should be added the office of the inspector general of administrative governance (IGGA) and, since December 2014, a dedicated economic and financial division.

The office of the state inspector general (IGE)

The IGE has been in existence since 1962 and is one of the oldest administrative monitoring institutions in Niger, having survived a number of different political regimes. It is tasked with:

- auditing all public state departments on compliance with the laws and regulations governing their administrative, financial and accounting operations;
- evaluating the quality of the organisation and running of those departments, their management and their financial performance; checking the use of public funding and the lawfulness of the transactions carried out by the administrators, the authorising officers, all public treasury accountants of moneys and materials, superintendents and pay officers; proposing all useful measures to simplify and improve the quality of administration, decreasing operating costs and increasing efficiency; receiving and utilising copies of inspection reports generated by all monitoring units in the various ministerial departments; issuing opinions on draft

bills, orders, decrees, regulations and instructions, and carrying out studies as prescribed by the president of the republic, the prime minister or a minister.³¹

The IGE comprises 14 inspectors. According to a technical assistance report by UNODC, ‘the IGE conducts an average of close to 40 inspections yearly’.³² IGE reports are sent to numerous stakeholders, including the court of audit, the office of the prime minister and the office of the president of the republic. Unfortunately, the justice system is not a direct recipient. However, even when it is referred to indirectly, the justice system is slow and generally takes no action.³³ The IGE conducts missions both in Niger and abroad. It has a small team of inspectors, which makes it difficult to complete its monitoring schedule. The IGE faces a number of challenges:

- Concerns regarding its ability to cover the territory geographically, since IGE monitoring is generally restricted to the capital, Niamey, and a few major cities.
- The politicisation of state inspectors from one regime to the next. The fact that the IGE is attached to the office of the president can be politically exploited in the event of a political crisis by using its reports for political blackmailing.
- Career management for state inspectors; in some cases, members of specialised ACAs have received better treatment than inspectors in terms of salaries.
- Inspectors’ qualifications. A stakeholder in the fight against corruption made the following bitter comment in reference to the IGE: ‘My institution receives reports from the IGE, but I must admit the quality is not always very high in terms of investigative work, as more than 50% of state inspectors come from a customs inspection background, so that they are used to monitoring income, whereas the IGE is chiefly concerned with monitoring spending. In the end, certain reports are not always usable and we have to do the work over for them.’
- The lack of working relationships and formal cooperation between the office of the IGE and the justice system or the other monitoring bodies was deplored. Several organisations receive reports from the IGE without being legal recipients and this could affect their legal impact in the event proceedings are brought.

31 Decree on the operation of the IGE.

32 UNODC Mission Report (2013) *Evaluation des besoins de la HALCIA et Plan d’Action d’assistance technique en matière de la lutte contre la corruption au Niger*.

33 All of the specialised commissions referred to in Table 1 have, in one way or another, received and utilised reports by the IGE. Certain commissions have even worked intelligently with the IGE in order to capitalise on the experience of inspectors and benefit from the legacy of the institution in case referrals. This notably applied to the commission created by Saliou Djibo in 2010. It also applies to HALCIA, which inherited nearly a thousand case files from the IGE.

For a large sector of public opinion, the IGE is viewed as a sort of factory churning out reports; these reports are most often re-utilised by ad hoc commissions combating corruption and financial crime. It often happens that the reports produced by the IGE are dusted off and introduced into the judicial circuit or used for blackmail. This was observed under all political regimes. For example, under the regime of Seyni Kountché, there was a special court³⁴ that dealt rapidly with cases and reports issued by the IGE. Under the current regime of the Seventh Republic, IGE reports follow almost the same long and uncertain circuit: they are utilised by HALCIA first and then go to justice, if necessary.

Office of the inspector general of administrative governance (IGGA)

The IGGA was established by Decree No. 2011-499/PRN/PM/SGG of 12 October 2012, on the remit, organisation and operating procedures of the office of the inspector general of administrative governance. Headed by an inspector general and a body of inspectors, the remit of the IGGA was to conduct a critical review of the running of administrative services and report to the prime minister. To this end, it was tasked with: monitoring compliance with the laws and regulations governing the administration of public and para-public services, supporting departmental inspectors general with a view to improving their performance, and submitting to the secretary general directives and circulars to be issued by the head of government in order to correct the dysfunctions observed. It carried out its mission across the public departments of the state, whatever their management methods or geographic location.

Ministerial technical inspectors' offices

In each ministry, a preventive monitoring body was created to ensure compliance with procedures and regulations within the ministry. There is a total of 20 ministerial technical inspectors' offices. They regularly submit reports to the ministries and send copies to the office of the state inspector general. An independent assessment of the capacities of these bodies would help increase their efficiency and find a way to interlink them with a view to devolution and decentralisation of administrative monitoring. One of the problems of these inspectors' offices is that the reports they issue are rarely referred to justice.

National financial data processing unit (CENTIF)

Created in 2004, CENTIF is a financial monitoring body promoted by community organisations, particularly WAEMU. It works in conjunction with the Central Bank of West African States (BCEAO) supported by national services such as the office of the inspector general of finance and financial control. The staff of CENTIF is made up of six members, six administrative, financial and IT assistants and seven security agents. CENTIF disposes of an annual budget in the area of 100 million CFA francs.³⁵ CENTIF

34 Decree No. 85-159/PCMS/MJ of 9 October 1985 established the composition of the special court, this court was eliminated at the end of the Kountché regime.

35 GIABA second follow up report on 'Niger: mutual evaluation on money laundering and financing of terrorism', November 2011.

is equipped with an institutional development strategy and a national strategy on the fight against money laundering and terrorist financing (LBC/FT), adopted by the council of ministers through Decree No. 2013-220/PRN/MF of 14 June 2013. Its objectives include promoting the protection of public property, the emergence of a quality economic and financial system and promoting good economic and social governance. Based on these two documents, CENTIF intends to raise funding from technical and financial partners.³⁶ According to a UNODC evaluation report,

in terms of the results achieved by CENTIF, from 2012 to 2013, CENTIF received approximately 25 reports of suspicious transactions. Following preliminary investigations, eight cases were referred to justice. Considering the issues of misunderstanding and slowness in the judicial system, no positive action has been taken thus far in the eight cases referred to justice.

In 2011 and 2012, in keeping with ECOWAS commitments in the framework of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), Niger presented two mutual evaluation and follow-up reports on money laundering and financing of terrorism. According to the conclusions of those reports, while Niger has made considerable progress in several sectors such as insurance and the budgetary allowance of CENTIF, the establishment of an Interministerial Committee for the Coordination of Activities to Fight Money Laundering and Terrorist Financing (CNCALBCFT) will help strengthen collaboration between the various players involved in LBC/FT Niger.³⁷

State litigation and collections branch

In Niger, the state litigation branch was created under the Fifth Republic in 2005 and was placed under the authority of the prime minister. Its essential mission is to collect debts owed by third parties to the government of Niger and to diligently manage related government litigation. Is this branch the strong arm of criminal mediation? In Niger, there is no criminal mediation as exists in Senegal. It is not provided for under Niger's criminal procedure rules. Another hindrance to the implementation of criminal mediation by the Nigerien justice system is that it has no excise office, in contrast to common practice in neighbouring countries such as Benin, Burkina Faso and Senegal. One consequence of the lack of regulatory provisions is that court clerks and officers are regularly suspected of misappropriation of funds, according to a statement by a member of the independent union of Nigerien magistrates (*Syndicat Autonome des Magistrats du Niger – SAMAN*).³⁸ A second consequence is that the goods and assets seized by the justice system are abandoned on justice premises. As one justice official said:

³⁶ A somewhat abnormal situation, as CENTIF is above all an operational service whose running and therefore whose funding is guaranteed by the state.

³⁷ GIABA second follow up report on 'Niger: mutual evaluation on money laundering and financing of terrorism', November 2011.

³⁸ Interview on 4 April 2014.

Indeed, when moveable and real property assets are seized or frozen, pending trial, with endlessly long procedures, some perishable assets are lost and their owners do not receive compensation. It is not unusual to find seized vehicles on the lots of certain courthouses, where they may remain for years. Confiscated assets of no great value are thus abandoned and eventually deteriorate. Seized assets with a high value are rarely auctioned off by the justice sector before the end of a procedure.³⁹

The law does not authorise seized or frozen assets to be sold and the proceeds to be paid into a treasury account. In the courts, litigation is settled on a case-by-case basis.

According to a statement by a paralegal, ‘I have noticed that when you are arrested and indicted by an investigating judge, if you can pay back half, the practice is, according to a certain jurisprudence, that you will be granted temporary release. Those who can pay back the full amount practically go free.’

Finally, another consequence is that the void left by the justice system is currently filled by the state litigation branch. This administrative body, which cannot handle embezzlement cases in the courts, is filling the legal void in terms of criminal mediation. Thus, the state litigation branch conducts extrajudicial seizures, which are more effective than justice proceedings, thereby confirming the trend towards the decriminalisation of corruption/misappropriation of public assets: ‘Sometimes, if you agree to reimburse the money, you do not have to go to prison, since the current government prefers to obtain immediate results by recovering misappropriated assets through an exceptional mechanism,’ said a Nigerien legal specialist. The justice system has left a sort of legal void that is used by the state litigation branch and other agencies to recover funds. For example, this void enabled HALCIA to recover money in the case of the customs officials. According to the president of HALCIA, Boureima Issoufou, ‘we managed to freeze funds that we suspected were embezzled or the product of corruption, and we confiscated and restrained real estate assets. When HALCIA seized fungible goods such as tainted rice or wheat, it was surprised to note that the justice system removed the seals so that the goods could be returned to the parties involved. The consequences were that tainted food products ended up on the consumer market. Litigation is still being settled out of court; for example, HALCIA seized an amount equivalent to 7 million CFA francs in this case. We are not an excise office, so we do not know what to do with this money; HALCIA is not mandated to collect funds on behalf of the public treasury.’⁴⁰

Parliamentary control mechanisms

The Nigerien national assembly exerts control over the execution of the state budget by voting on budget acts. It also has the power to call in the prime minister and his or her

³⁹ Interview on April 2014.

⁴⁰ Interview with Boureima Issoufou on 29 May 2014.

ministers for questioning⁴¹ and even to sanction them through a censure motion.⁴² It can set up parliamentary inquiry commissions on cases of corruption that require particular mobilisation. The assembly has a right to information and thus a right of transparency regarding all government activities and it exercises that right through oral questions. There is an informal network of Nigerien parliamentarians against corruption, but it does not have a lot of influence over the parliamentary agenda in terms of parliamentary initiatives to prevent or detect corruption.

These past two years, parliament has been the focus of such extensive political battles it has been unable to properly fulfil its missions. Rumours spread through tracts⁴³ have made the rounds, reporting large sums of money paid to parliamentarians to cross the floor. These rumours have brought discredit to the deputies. In these times of political struggle to control parliament, no further internal investigations were requested to verify the rumours. Parliamentary commissions on cases of corruption are very rare, despite a number of affairs and scandals involving both deputies and ministers. Thus, parliamentary control appears to be ineffective. Parliamentary action has never yet lead to a trial ending with a guilty verdict.

Judicial control

In addition to administrative and financial control organs, there is also judicial control, which is carried out by the courts and specific bodies of the judiciary apparatus. Among the bodies that contribute to the prevention and repression of corruption offences, exist the court of audit, the constitutional court, and the punitive courts.

Court of audit

The court of audit, created by Law No. 2004-50 of 22 July 2004 and establishing the organisation and jurisdictions of the courts of the Republic of Niger, is a constitutional institution (article 141 of the constitution) in Niger, considered to be the highest jurisdiction for the control of public finances. Its composition, organisation, remit and operations are governed by Law No. 2012-08 of 26 March 2012. The court of audit has a threefold mandate, serving as a court of law, control organ and advisory body. Its sphere of competence includes the state, local government, public and semi-public corporations, public administrative organisations, the social security fund, development projects, political parties and any other body receiving financial assistance from the state or any other territorial collectivity. The court of audit, may, on the occasion of its controls of the management of public accountants and authorising officers, be called upon to hear cases of mismanagement rooted in corrupt practices. The subjects covered by controls implemented by the court of audit include:

- Detecting any irregularity or infraction relating to the legal or management standards in force, such that, in each case, the necessary

41 Article 98, Constitution of the Seventh Republic.

42 Article 107, Constitution of the Seventh Republic.

43 Tracts, available in certain political circles and among grassroots organisations, show a list of deputies with the amounts supposedly paid to them, ranging from 10 million to 1 billion CFA francs.

corrective measures may be implemented and the competent authorities referred to for appropriate follow up;

- Engaging the liability of the defendants, obtaining reparation or deciding on measures aimed at avoiding any reoccurrence of such conduct in future; and
- Promoting proper and effective use of resources, and promoting transparency in the management of public finance.⁴⁴

When criminal offences are discovered, the court refers the cases to the public prosecutor for follow up. The court also assists the national assembly in preparing public budget acts. On this specific point, budget acts are not up to date in terms of compliance with WAEMU directives, as the last budget act was passed in 2009. The court of audit has also repeatedly issued reservations on the conformity of the management account of the principal accounting officer, as well as the administrative accounts of the authorising officer as was the case in 2008.

Finally, the court is in charge of receiving and processing declarations of assets of members of the government, in keeping with the constitution and the law of 2001. The court has not been able to process declarations of assets so far, for two essential reasons: the lack of a model for how to process the data collected; and confusion regarding the legislation on how to use the documents, which are viewed as public documents since they are published.

The reports of the court are published regularly. Two types of reports are produced and published annually. These are: the general public report and the annual report on the activities of the political parties pursuant to the charter of political parties. This is a Nigerian innovation, because transparency in politics through the activities of the political parties is also a necessity.

Punitive courts

Nigerien justice, through its court system, has common-law jurisdiction over corruption offences and economic crimes. The public prosecutor has discretionary power to prosecute or not. In cases where the perpetrators are covered by the immunity of their position, the public prosecutor has the prerogative of requesting waivers of immunity, which are submitted to the minister of justice to be lodged with the council of ministers. On this point, the success rate in terms of the number of waivers of immunity seems very low according to the independent union of Nigerian magistrates (SAMAN), which has issued a statement observing that many requests for waivers of the immunity of members of the government and directors general were not approved because they were blocked or rejected by the council of ministers or the ministry of justice.⁴⁵ In addition, the creation in

44 Audit missions recorded on the Court of Audit website (in French) and available at http://www.courdescomptes.ne/index.php?option=com_content&view=article&id=55&Itemid=67 [accessed 19 September 2016].

45 Convocation du conseil de la Magistrature: Entre légalité et politisation (2014, 2 April). Available at <http://www.tamtaminfo.com/convocation-du-conseil-de-la-magistrature-entre-legalite-et-politisation/> [accessed 19 September 2016].

2014 of financial divisions in two prosecutors' offices (Niamey and Zinder) seems to be a new adventure for the justice system. Is this the panacea that will revive hope that trials will be held on corruption, or just another way of doubling up bodies and pitting them against each other? The operating methods of the people who will run these new judicial mechanisms in the years to come will write a new page in the history of Nigerien justice.

Box 4: Creation of specialised financial divisions

With plans to operate in two jurisdictions in Niger, these specialised offices will be tasked with investigating economic and financial crimes. These divisions are set up in the courts of appeal in Niamey and in Zinder (still in the planning stages). A law on financial divisions was adopted for that purpose in 2013, instituting financial investigation divisions in the form of courts dealing solely with economic and financial offences. This is an innovation in Niger, but Niger is actually coming into it late, since many countries, including certain African countries, already have specialised economic and financial divisions. The advantage is that they help clear the overflowing desks of the investigating judges and the senior judge, so that economic and financial offences, which weaken the state, are treated in a manner commensurate with their seriousness, and so that they do not suffer from the slowness of the justice system. The establishment of the divisions provides a good opportunity for the government to make a strong mark on the way such cases are handled and quickly define a policy to combat financial crime. In the collective memory of certain Nigeriens, this economic division is reminiscent of the special court created under Kountché to judge former dignitaries of the first republic. Hence the fear expressed by several stakeholders that these financial divisions might be used as tools by politicians to settle scores and once again discredit the justice system. Will there be overlap between institutions? According to the president of HALCIA,

I know a lot of people think there is overlap between the new divisions and HALCIA. But there is no overlap and there will never be, because their mandates, their methods and the instruments that established them are different ... In fact, there are collaborative ties between the two.

(Excerpt from an interview with Boureima Issoufou, president of HALCIA, in *Le Sahel*, 20 March 2014.)

Will the financial divisions be a godsend, bringing about faster treatment of cases from anti-corruption institutions that lack judicial power? The president of HALCIA replied that HALCIA could refer cases to the financial divisions because, in his opinion,

the Code of Criminal Law stipulates, in article 39, that when a body corporate or an organisation discovers an offence or a crime, it must inform the state public prosecutor without delay and submit a report and all supporting documentation. Article 39 stipulates that when an offence is discovered and documentation has been found, HALCIA may refer the case to justice; the public prosecutor receives the case and refers it to an investigating judge or, where applicable, sends it to trial. The public prosecutor, the investigating judge and the ruling judge all do jobs which can in no case fall within the remit of HALCIA; the purpose of the new

division is to identify certain magistrates and tell them they must only deal with economic and financial offences.

For the time being, corruption cases are handled by criminal trials in the courts pending the operationalisation of the new divisions.

Source: Interview with Boureima Issoufou, published in the government newspaper *Le Sahel*, <http://www.lesahel.org/index.php/invite-de-sahel-dimanche/item/4047-m-issoufou-boureima-pr%C3%A9sident-de-la-haute-autorit%C3%A9-de-lutte-contre-la-corruption-et-les-infractions-assimil%C3%A9es-halcia---les-p%C3%B4les-judiciaires-sp%C3%A9cialis%C3%A9s-viennent-renforcer-l'existence-de-la-halcia-en-ce-que-ses-dossiers-vont-trouver-le-traité> [accessed 4 May 2014] Interviews with HALCIA, SAMAN, ANLC-TI; Report on the National Consultation on Justice.

Specialised institutions: HALCIA

The High Authority to Combat Corruption and Related Infractions (HALCIA) was created by presidential decree. The Information/Claims/Anti-Corruption and Influence Peddling Office (BIR/LCTI) was established by a ministerial order. Both specialised institutions were set up in 2011.

HALCIA

HALCIA was created by Decree No. 2011-219 PRN/MJ on 26 July 2011. According to the decree, HALCIA is a standing administrative authority attached to the office of the president of the republic (article 2). HALCIA therefore fulfils international requirements and notably those of UNCAC, which makes it mandatory for states to set up one or more bodies to fight corruption.⁴⁶ HALCIA is a recent creation and has not really been evaluated yet, particularly in terms of its role in the fight against corruption. Indeed, there is as yet no existing research study on HALCIA. The first evaluation report was produced by the United Nations Office on Drugs and Crime (UNODC), in the framework of an anti-corruption technical assistance mission in Niger. It is difficult to find detailed literature on HALCIA. The findings of the interviews we conducted are therefore our principal sources of information on the body's activities. The analysis below is based on the presidential decree that was in force when we conducted our research for the present study, although reforms have been undertaken on HALCIA since that time, notably aimed at replacing the instrument that created HALCIA with an organic law.

Historical and political background

The origins and reasons for the creation of HALCIA were chiefly political. They are similar to those involved in the institution of other ad hoc commissions specialising in the fight against corruption. HALCIA is a product of the president's will to support and realise the 'renaissance programme' that was President Issoufou Mamadou's election platform in 2011. HALCIA aims to contribute to 'restoring the fiscal monopoly of the state by eradicating fraud and seeking efficiency in public spending by preventing misappropriation

46 See Articles 6 and 36 of the UNCAC.

of public funds'. Simply put, HALCIA was set up to meet the seven goals of President Issoufou's renaissance programme.⁴⁷ The president of HALCIA justifies that agenda: 'By clearly announcing the goals of HALCIA, it is also a way for the president of the republic to prepare for the end of his mandate, and his own accountability to the people'.⁴⁸ HALCIA is looking for immediate results. Official speeches and publicity campaigns have broadly disseminated this results-based approach.

Another source of inspiration for the creation of HALCIA lay in the work done by the CNESLC.⁴⁹ According to the president of said commission,

in 2008, the work of the CNESLC was intensified because then president, Mamadou Tandja wished to accelerate the establishment of an independent anti-corruption agency and his vision was to gather a wide range of opinions from political stakeholders and civil society in order to avoid the errors of the past. Certain members of the CNESLC visited neighbouring countries such as Burkina, Benin and Mali with a view to drawing inspiration from successful models and creating an institution adapted to the environment and realities of Niger. In 2009, we submitted a progress report to the prime minister. This report contained the proposals put forward by our commission, which already included an outline of the main components of HALCIA. Then, in 2010, the transition put the work of the commission on hold. Finally, with the advent of the Seventh Republic, under Mahamadou Issoufou, there was a clear will to establish a standing institution following the same logic as the CNESLC. Certain members of the commission were co-opted to brainstorm on the creation of HALCIA.⁵⁰

However, transmission was selective and, in the end, the version prepared by the CNESLC was not taken into account. That is why certain civil society organisations such as the Nigerien Association for the Fight against Corruption refused to take part in HALCIA, although it was approached from the start. HALCIA was born in this context of breaking away from a dynamic that was already in progress, and the will of the new regime to take control over the fight against corruption. The situation crystallised opinion for or against the various options presented. The president of HALCIA, Boureima Issoufou, recognised that initially there were effectively at least two different 'clans' working on the HALCIA project. One clan wanted HALCIA to be created through legislation and the other suggested a decree so that the president of the republic could rapidly get the fight against corruption off the starting blocks. The decree option prevailed, since

47 The goals of President Mamadou Issoufou's Renaissance Programme include the following: reinforcing and stabilising democratic and republican institutions; ensuring the security of national borders as well as people and property; Nigeriens feeding Nigeriens; equipping the country with infrastructure; educating and caring for children; ensuring that everyone has access to water and sanitation; and creating employment.

48 Interview with Boureima Issoufou, president of HALCIA, 20 May 2014.

49 Created by decree in 2003, the CNESLC was dissolved by decree in March 2013, 12 years after its original establishment. It was placed on hold during the transition of April 2010 to April 2011.

50 Interview with Aziz Mossi, 5 April 2014.

on returning from a visit to France where he gave interviews to the international media (RFI, TV5 Monde, etc.) the president made a statement that the fight against corruption would be one of his top priorities and that he would set up an anti-corruption agency within a month's time. From that moment on, the president had opted not to go through the national assembly to vote on legislation, which would slow him down and keep him from fulfilling his commitments.⁵¹

Finally, after four years in operation (2011–2015), a draft bill⁵² is in gestation and, according to certain observers of the political scene, the law may only be passed in the second legislature, under the Seventh Republic, due to the issues in the first legislature from 2011 to 2016. However, while the draft bill takes account of many of the weaknesses referred to below (particularly the permanent nature of HALCIA and its institutional autonomy) the reform still remains subject to the vagaries of politics for its adoption on the one hand as well as for its actual enforcement by politicians. In terms of its missions, virtually nothing has changed: prevention and the fight against corruption and related offences. The missions and mandate assigned to HALCIA are described below.

Missions and mandate of HALCIA

The missions of HALCIA cover three focuses: prevention, detection and cooperation. Under Decree No. 2011-219 PRN/MJ of 26 July 2011, it was granted a mandate to: monitor and evaluate the government anti-corruption programme; gather, centralise and utilise denunciations and offences referred to it pertaining to practices, cases or acts of corruption and related offences; conduct any studies or investigations and propose any legal, administrative or practical measures of a nature to prevent or curb corruption; disseminate and popularise legislation and other instruments on the fight against corruption; identify the causes of corruption and propose measures to the competent authorities to eliminate those causes in all public and para-public departments; and carry out any other mission assigned by the president of the republic. HALCIA has been working without a national strategy on the fight against corruption. It has therefore carried out an extremely high number of actions, many of them improvised, often with little impact and no added value. Its scope is limited by the decree that created it to the following focuses, regarding which concrete actions have been carried out.

Prevention. It is one of the most visible focuses of HALCIA, with a series of activities including conferences, training seminars, awareness and information campaigns,⁵³ and knowledge-production activities, particularly studies, some of which are currently ongoing.

51 Interview with BI, president of HALCIA.

52 The draft organic legislation on HALCIA establishes it as a permanent and autonomous body, an independent administrative institution whose attachment to another institution (executive, parliamentary or judicial) is no longer expressly mentioned.

53 HALCIA paid for the services of a publicity agency that produced gigantic billboards that it positioned along the main streets of Niamey, with awareness-raising messages such as 'HALCIA, pillar of the Renaissance' and 'HALCIA, pillar of Niger's development'. A Nigerien newspaper, *Monde d'Aujourd'hui* criticised the

Detection. HALCIA does not have a mandate to repress corruption, as that would pertain to the sphere of justice, however, it has been given a mandate to detect cases of corruption in the public administration. HALCIA conducts investigations, and media coverage of these investigations gives people the impression that HALCIA has law enforcement powers. Detection techniques are not formalised or codified within HALCIA and the work gets done thanks to the proactive approach of the president, as both a magistrate and president of HALCIA, and thanks to support from the highest echelons of state via the president of the republic.

Box 5: The National Commission for National Anti-Corruption Strategy Design

The CNESLC was created by decree under the Fifth Republic on the initiative of then prime minister, Hama Amadou, and attached to the office of the prime minister. Its mission was to study the phenomenon of corruption in various sectors, develop a strategy paper and propose fundamental legislation and a national institution to fight against corruption. The commission operated for nearly six years, with a lull during the military transition in 2010. The composition of the commission was based on national consensus in keeping with the proceedings of the national conference of 1992. Its initiators therefore chose a tripartite composition combining representatives of the state, civil society and the private sector. In its early days, the CNESLC was entirely supported by the state budget. The UNDP and USAID subsequently came in with financial support for its research and awareness-raising activities.

In 2011, with the creation of HALCIA, the CNESLC was dissolved by decree and the following motives were presented to the council of ministers: ‘after developing its strategic plan and numerous other policy instruments, it was supposed to extend its investigations to the revenue-collection departments but this was not done. Also, with the advent of the military transition in February 2010, which put the activities of the commission on hold, and with the recent creation of HALCIA, whose mission effectively included most of its remit, there was good reason to end the existence of the CNESLC to avoid unnecessary duplication of organisations and the conflicts of competence that could arise. The present draft decree therefore abrogates Decree No. 2003-256/PRN of 17 October 2003, on the creation, remit and composition of this commission’. Today, HALCIA has undertaken the same task of developing a national anti-corruption strategy for Niger. So then, what was the point of all the work done by the CNESLC, is it wasted? Or is use made of the output and results achieved by the commission?

Sources: Interviews with the ANLC and the president of the CNESLC and February 2011 Council of Ministers’ Report.

Cooperation. The mandate of HALCIA in terms of cooperation was developed both domestically and outside of Niger. On the domestic front, HALCIA maintains working relationships with the other monitoring bodies mentioned above, such as the IGE, CENTIF,

contents of the publicity messages in an article titled ‘*Lutte contre la corruption: Quand la HALCIA s’amuse avec des fonds publics*’ (in English: The fight against corruption: When HALCIA plays with public funds). The article stated that ‘we would understand better if the high authority had written the following sorts of messages on its billboards: “corruption is an obstacle to development”; “avoid corruption, it is bad for Niger” or a whole range of slogans that could raise awareness and convince more people to denounce and refuse to participate in corruption and related offences in keeping with the mission of HALCIA.’

the court of audit, the constitutional court, the state litigation branch and anti-corruption stakeholders' networks (ANLC, Network of Nigerien Parliamentarians against Corruption). HALCIA maintains working relationships and shares information with these different organisations on the domestic front. However, these working relationships are informal. While the president of the republic had taken the initiative of organising regular meetings of all monitoring bodies, the will to continue do so has worn a bit thin, and the meetings are no longer held, at least not on a regular basis. Abroad, HALCIA has managed to build up relationships with regional anti-corruption institutions. Several partnership agreements have been signed with ACAs in Nigeria and Burkina Faso, and working relationships have been established with other agencies, such as those in Senegal, Benin and Togo.

Composition and operation

Decree No. 2011-219 PRN/MJ of 26 July 2011 on HALCIA provided for a tripartite composition: 'the High Authority to Combat Corruption and Related Infractions includes representatives of the state, civil society and the private economic sector', however, the makeup and appointment of the members of HALCIA were determined on the discretionary authority of the president of the republic, by co-opting or by recommendation. As the selection criteria were not predefined, no specific skills were required for the body's membership. Representatives of civil society⁵⁴ and the private sector, as well as certain specialised administrative bodies, were not appointed by the bodies they belonged to, as was the case for the members of the hotline. Poor 'casting' even led to the choice of a political leader for the position of vice-president.⁵⁵

HALCIA members had a variety of skills that did not necessarily relate to the fight against corruption. The president was required to be a professional magistrate, an important asset for investigative work. Support staff was selected based on nominations by the president of HALCIA. Most of the staff was made available to HALCIA by various government agencies. A member of civil society with nearly 15 years of experience in the fight against corruption spoke as follows about the early days of HALCIA: 'At the beginning, the HALCIA commissioners did not know where to start. Civil society organisations, such as the ANLC, which refused to join the body, were called upon by

54 The national association for the fight against corruption (ANLC), which was asked to become a member of the institution, rejected the offer because HALCIA was created by decree, which did not take account of the recommendations formulated a few years previously in the work of the commission for national anti-corruption strategy design.

55 The first vice-president of HALCIA, Hamisou, who said he was an old friend and ally of Mahamadou Issoufou during the struggles of the vital forces of the nation and the political parties against 'Tazarché' (the continuity movement). Leadership conflicts between the president and this vice-president held up the work of the institution for months and even tarnished HALCIA's image of integrity, since the vice-president created a media bubble around negotiations over his resignation. He was eventually replaced by a member of civil society. However, foreign partners who wished to support HALCIA read about the events in the press and concluded that certain members of HALCIA had been convicted of corruption as implied by Hamisou's statements.

the various partners who wanted to support HALCIA, so that we could train them on the basics of the fight against corruption, which is what we did and continue to do.⁵⁶

HALCIA was handicapped by leadership issues during its first three months in existence. It then operated without a strategic plan, and without a clear national policy on corruption. It defined its own frame of action. For example, it decided to evaluate the skills of its membership and staff in the areas of criminal investigation, law or legal expertise, best surveillance practices, and knowledge of financing and supply systems and of vulnerability to corruption. The aim was to identify the types of capacity building required to enable the actors to successfully carry out their missions.

Financial and human resources

Because it is an administrative body under the aegis of the office of the president, HALCIA has a budget allocated by the state. Commissioners have the same rank, remuneration and benefits as ministers. Compared to the compensation scale of the members of past commissions and the standard of living of Nigerien civil servants, it can be said that the ‘new fashioned’ commissioners are extremely comfortable. HALCIA considers, however, that these government resources are insufficient, leading it to seek additional funds from foreign partners, although the state remains the main contributor to the budget of HALCIA as we can see in the table below.

Table 4: HALCIA budget 2014

Activities	State share in CFA francs	%	Share of TFPs	%
Operating budget	333 846 883	40	-	-
Specific spending on administrative investigations	100 000 000	12	-	-
Information/awareness	145 000 000	12	42 500 000	5
Research and consultancy	250 000 000	27	21 350 000	3
Participation in meetings on corruption	90 297 369	11	-	-
Total	828 846 883	92	63 850 000	8

Source: HALCIA, 2014.

This table clearly shows that nearly 90% of HALCIA’s activities are funded by domestic resources, i.e. the budget of the government of Niger. The volume of domestic funding reflects the reality of a certain political will. Even though budget execution is often affected by delayed disbursements, national resources are not lacking. HALCIA does not run any particular risk of interrupting its operations if foreign funding is suspended: this is a considerable advantage for a body involved in the fight against corruption.

Among the foreign partners that support HALCIA’s activities, we should mention in particular:

⁵⁶ Interview of 5 April 2014.

- The World Bank, which supports the efforts of HALCIA by providing support for the development of a national anti-corruption strategy;
- OSIWA, which finances awareness-raising activities;
- USAID, which supports HALCIA's institutional development and capacity building;⁵⁷ and
- Other partners, such as UNDP, UNODC and the European Union, plan to support HALCIA in the framework of technical assistance and capacity building for HALCIA staff through specialised training.⁵⁸

The table below shows some of the foreign financing targeting the fight against corruption in Niger over the last 15 years.

Table 5: External anti-corruption financing in Niger (2000–2014)

Donors	Amount promised in USD	Years covered	Activities financed and beneficiaries
United Nations Development Programme (UNDP)	USD 499 168	2005–2009	Research, awareness raising and institutional reforms (CNESLC, ANLC, network of parliamentarians against corruption, network of journalists against corruption)
Millennium Challenge Account (MCA)	USD 4 190 000	2007–2011	Extensive anti-corruption programme
Open Society Institute for West Africa (OSIWA) and United Nations Office on Drugs and Crime (UNODC)	USD 85 000	2014–2015	Awareness raising and information (HALCIA and civil society organisations)
World Bank (WB)	USD 42 700	2013–2014	Research and consultancies (HALCIA and <i>Ligne Verte</i>)
European Union			Institutional support for CENTIF
Danish International Development Agency (DANIDA)		2014–2016	Advocacy to parliament (by civil society) for reforms
USAID	USD 26 000	2013–2014	Institutional support and capacity building for HALCIA

NB: This table is not complete, but provides an indication of external aid and funding received by Niger over the past 15 years.

57 On average, HALCIA has only spent half of its budget every year for that reason. The average budget was 800 million CFA francs, which corresponds to more or less 50 CFA francs per capita, or nearly 10 cents per inhabitant of the country. There is nothing in the decree to guarantee that the budget will be maintained at that level. It depends entirely on the will of the government.

58 The UNODC technical assistance plan set to be implemented with participation from the UNDP and the European Union for an estimated total of USD 190 000 over the 2014–2015 period.

Evaluation

The only evaluation of HALCIA available so far dates back to late 2014. It was produced by UNODC. At the government level, no impact studies have as yet been conducted on the activities of HALCIA. The following table, combined with interviews with the players involved, reviews the main successes and limitations of HALCIA in the light of the 16 Jakarta principles.⁵⁹ According to this assessment, HALCIA is in compliance with only four principles out of 16. The comments and observations are a synthesis of interviews with HALCIA staff and other stakeholders belonging to organised anti-corruption bodies.

Table 6: HALCIA in the light of the Jakarta Principles

Criteria	Comments
	Criteria met
On its mandate	<p>Mandate focuses on prevention, education and investigation.</p> <p>However, education and prevention activities are predominant in HALCIA's activities.</p> <p>Law enforcement is not included in HALCIA's mandate.</p>
Collaboration or cooperation with other national and international institutions	<p>At national level, cooperation has been established with the office of the IGE and the domestic intelligence branch, CENTIF, the court of audit and the state litigation branch. For example, more than 25% of all of the cases investigated by HALCIA came from the IGE (60 out of 220 cases). HALCIA has also established a partnership with the Nigerien Association for the Fight against Corruption (ANLC).</p> <p>At international level, HALCIA works in synergy with the Economic and Financial Crimes Commission (EFCC) of Nigeria and the Higher State Control Authority (ASCE) of Burkina Faso. It has also made contact with ACAs in Senegal, Benin, Togo and Germany.</p>
Continuity of operations	<p>Article 11 of the decree creating HALCIA stipulates that the 'vice-president shall replace the president in all actions in case of absence'. However, in the absence of the president and the vice-president, continuity could be affected. Furthermore, continuity at the end of the commissioners' mandates could raise issues, since all nine commissioners are to be replaced after a mandate of three years.</p>
Immunity	<p>Article 15 states that the members of HALCIA benefit from immunity in the performance of their duties. However, they are not protected against malicious proceedings for acts committed outside the scope of their work. And their physical security is not guaranteed.</p>

59 The Jakarta Principles comprise 16 general principles developed by heads of anti-corruption institutions and international experts at Jakarta in 2012. Their aim is to promote and strengthen the independence and efficiency of anti-corruption authorities.

	Criteria not met
Permanence of the institution	<p>The president of the republic appoints all of the members of HALCIA by presidential decree and therefore has sole power over the selection and positions of all nine members.</p> <p>Article 6, which establishes arrangements for the replacement of the members at the end of their mandate, constitutes a risk of breakdown and paralysis of the institution in case of poor governance within the institution or a lack of political will. A lack of internal or external monitoring of the process of appointment of its members.</p> <p>Weaknesses in the background checks give free reign to rumours about members being suspected of corruption. HALCIA is therefore an administrative body that could be dissolved in the event of a change of government, or an excess of independence in its work.</p>
Removal of members	<p>Article 18 stipulates that any member of HALCIA may be removed from his or her position in the event of 'serious misconduct in the performance of his or her duties'.</p> <p>The members are at the mercy of the president of the republic. The judiciary and the legislature have no means of control over HALCIA.</p>
Code of ethics	<p>HALCIA does not have an internal code of ethics, although its members take an oath after their appointment and swear to perform their duties with probity, neutrality, integrity and transparency; to fight tirelessly against corruption and related offences and to keep the secret of all proceedings, even after their mandate has expired.</p>
Remuneration	<p>The scale of remuneration is established by a decree. It is aligned with the civil service pay scale both for support staff and commissioners.</p> <p>Commissioners receive compensation in keeping with the ministerial pay scale. However, certain categories of support staff find their compensation low compared to their previous situation.</p> <p>Staff pay is not attractive enough to interest qualified new human resources.</p>
Budget	<p>The operations of HALCIA and its programmes are covered by the general budget of the state. Disbursements take place quarterly, which limits the absorption capacity of the annual budget allocated to HALCIA.</p> <p>As a department attached to the office of the president of the republic, HALCIA has no financial autonomy.</p>
Internal accountability	<p>HALCIA reports solely to the president, through session reports, investigative reports, and an annual progress report. These reports are not made public. However, HALCIA may hold press conferences to report on its activities – although in three years of operation, it has only organised three.</p>

Our interviews generated data and information that provided a fairly comprehensive overview of the work done by HALCIA. However, given the absence of a clearly defined plan of action at the inception of HALCIA, it was difficult to compare expected results with results achieved.

Table 7: HALCIA achievements

Activities	Indicator checklist
Development of a national anti-corruption strategy	<ul style="list-style-type: none"> • National anti-corruption strategy • Studies on certain strategic sectors
Investigations in Niamey and in the interior of the country	<ul style="list-style-type: none"> • 28 citizens' complaints received by the <i>Ligne Verte</i> hotline • 220 case files processed by HALCIA • Eight case files completed and referred to the office of the president
Communication and awareness-raising activities	<ul style="list-style-type: none"> • Billboards on HALCIA • Stickers and brochures • Calendars • School notebooks
Membership in international anti-corruption networks	<ul style="list-style-type: none"> • HALCIA is a member of the following networks and organisations: <ul style="list-style-type: none"> • Network of National Anti-Corruption Institutions in West Africa (NACIWA) • African Association of National Anti-Corruption Institutions (AAINLC) • The International Association of Anti-Corruption Authorities and the Conference of the States Parties to the United Nations Convention Against Corruption
International cooperation	<ul style="list-style-type: none"> • 15 requests for cooperation on cases of corruption in Burkina Faso, Nigeria, Benin, Togo, Senegal and Germany • Three cooperation protocols signed with Nigeria, Burkina Faso and Senegal
Participation in meetings in the sub-region and outside the African continent.	<ul style="list-style-type: none"> • Approximately 100 such regional/international meetings were attended

Source: HALCIA and interviews with members of the ANLC, LASDEL and the Ministry of Justice.

A series of recommendations were formulated by the UNODC mission and another mission from Danish International Development Agency (DANIDA)⁶⁰ regarding independence, internal and external communication, and detection activities. Several workshops⁶¹ were

60 DANIDA conducted a mission to evaluate its assistance in 2013 and issued a series of recommendations, however, the support was never implemented, as it has shut down its offices and programmes in Niger.

61 According to our count, there were at least ten national meetings (including international experts) on reform of HALCIA.

held on HALCIA reforms. These consultations generated a reform dynamic that helped strengthen HALCIA and correct the weaknesses observed.

Anti-corruption hotline

The second anti-corruption agency is a body created within the ministry of justice, namely, the Information/Claims/Anti-Corruption and Influence Peddling Office (BIR/LCTI), also known as *Ligne Verte*, meaning ‘anti-corruption hotline’. This body is very different from the other mechanisms monitoring and dealing with cases of corruption, such as the office of the inspector general of the judicial branch and the high council of the judiciary. What are its objectives and mode of operation? What are the results of the actions carried out by this body?

Origins and mandate

The origins of the hotline reach back to 2008, when studies funded by the UNDP and the African Development Bank (AfDB), but commissioned by the government of the Fifth Republic under Mamadou Tandja, recommended a justice reform to make the system more accessible to the citizens and end the vicious circle of slowness and dysfunctions within the justice department.⁶² Concrete actions envisaged included setting up a mechanism for citizen information and recourse on the one hand and for judiciary accountability on the other hand. Initially, plans were made to set up such institutions in five pilot ministries, namely: health, education, justice, finance and higher education. In addition to these studies, similar conclusions were reached by the general assembly of the judiciary in November 2012. The process began under the Supreme Council for the Restoration of Democracy (CSR) and was made concrete under the Seventh Republic. Indeed, various other previous reports and studies⁶³ had pointed to the justice system as the soft underbelly of corruption, which penalises both citizens and judiciary players themselves: corrupt justice had created a culture of impunity. One of the most visible solutions among the measures implemented to heal the disease of corruption within the justice system was the establishment of a claims office in 2009, in the framework of the development of a national anti-corruption policy supported by the UNDP. The main task of the office was to enumerate the principal services delivered by the ministry of justice. In addition to this office, a unit was set up with funding from the Millennium Challenge Account (MCA). Thus, within the same ministry, there was the unit and the information and claims office. The ministry of justice was ahead. The original idea was not only to set up signs to inform the population about the fees charged by the justice system for certain types of documents, but also to warn the heads of the courts of any practices that could undermine the credibility of Nigerien justice.

62 The African Development Bank financed a study on corruption in the judicial system so that it could provide support for a judicial system support programme.

63 See in particular Tidjani Alou M (2005) *La corruption dans la justice au Bénin, au Niger et au Sénégal*. LASDEL 39.

With the advent of the Seventh Republic in 2011, with Mahamadou Issoufou, it so happened that the minister of justice, Marou Amadou, a civil society activist, had participated in reflection on reforms of the fight against corruption. On taking up his position in the ministry of justice in August 2011, he issued ministerial Decree No. 56/MJ/SG/PPG to create the Information, Claims, Anti-Corruption and Influence Peddling Office. Due to strong political will on the part of the minister and his past as an anti-corruption advocate, things then moved very fast. However, the beginnings were not easy, as the first battle came from the inside: the reaction of the actors in the judiciary was mixed. The members of the judiciary felt that the aim was to settle scores within the ministry of justice. Their apprehensions were justified, since it was the first time a public department had given public service users an opportunity to denounce public officials, and also to openly provide proof that, in their view, justice was not being properly done. However, after a few months of work, these fears were allayed. Furthermore, the majority of the people working in the office were magistrates.

The missions assigned to *Ligne Verte* were: to make the necessary information available so that litigants could understand the judicial system; to collect data to assess the integrity of the judicial system; and to inform, guide and advise citizens. Furthermore, the creation of this specific body was justified by the UNCAC, which stipulated in article 11 that ‘each State Party shall ... take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary’.

Organisation and operation

BIR/LCTI is a collegial body comprising 12 members whose makeup is defined as follows by ministerial decree: the inspector general of the judiciary, who is also the coordinator of *Ligne Verte*; a member of the court of appeal and a magistrate from the regional court (*tribunal de grande instance*); two magistrates belonging to the union of magistrates; representatives of court registrars and notaries and the bar association; and three civil society representatives. Members are nominated by their organisations and appointed by the minister of justice. Two plenary sessions are held each year to review citizens’ complaints and produce a report at the end of each session.

Citizens may also refer cases to the office by telephone or by email. The hotline is an initial point of contact between citizens and the coordination office. The line is free of charge and accessible to all citizens on Nigerien territory. Complainants call in and their complaints and denunciations are recorded. The initial data is sorted into categories. Statements are also taken from all those cited in denunciations, if they are parties to a legal case. Some go to the headquarters of the coordination, while others are visited on-site, even in the interior of the country, by teams of investigators. The data gathered is then re-sorted. If it is realised that the case denounced is not specifically a matter for the justice system, the information is passed on to HALCIA for possible action. In the case of denunciations involving players in the justice system, the coordination takes two types of action: The investigation is taken further, all of the parties are heard and a report is prepared. If a

criminal offence is involved, the cases are referred to justice. Certain complaints are closed with no further action, when they are unfounded, or are being dealt with by the justice system, if they have already been settled or if there is not enough information as to the identity of the complainant. The hotline provides an information and advisory service for the citizens of Niger. On the inauguration of the *Ligne Verte* hotline, the prime minister urged ‘everyone to call the hotline’. This is now the case. Since the inception of the hotline, 28 cases have been referred to HALCIA.

Four-year review

Looking back at the activities, the results achieved are statistically interesting, since in 16 months of operations, *Ligne Verte* has recorded some 17 614 calls from citizens, and of those calls, 455 complaints had been reviewed by the office and a total of 36 complaints had been referred to HALCIA by 31 December 2013. The impact of the hotline is dissuasive. According to one judge:

with the hotline, the phenomenon of corruption has subsided in the justice system. While corruption may still exist in the delivery of judicial services, the scope has been reduced compared to previous years. This is because there is a sword of Damocles hanging over the heads of judges and other actors in the justice system. The hotline is in fact a deterrent. To take the example of judges who accepted bribes, in a given case, where perhaps three out of five took bribes before, today only one judge does.⁶⁴

The reasons for the creation of the hotline were to restore the credibility of justice in Niger and to facilitate access to justice services for litigants. Once again, the findings of the review are mixed, given the statistics on the cases dealt with. So far, none of the complaints have led to the accusation, much less the conviction, of a player in the justice system. However, some positive points can be taken away from the hotline experience, if it manages to survive the departure of the minister who has been its principal promoter in the judicial environment. The main positive aspects can be summed up in three points:

- **A deterrent.** Judges are now aware that they are under the scrutiny of the citizens. This has the positive consequence of forcing them to be serious in their rulings, procedures and the drafting of their decisions. As procedures against magistrates are long and involved processes, this form of citizen involvement is conducive to a sort of social pressure on judges. For example, according to statements from the judicial environment, some magistrates have gone before the disciplinary council thanks to the work of the hotline. Furthermore, due to citizens’ complaints, certain magistrates who were cited have been brought

64 Interview with AC on 5 April 2014.

before the inspectorate general of judicial services.⁶⁵ Indeed, the principal problems reported by citizens were related to slowness in the delivery of judicial services, abuse of power and influence peddling. A magistrate belonging to the high council of the judiciary stated that the ‘reports produced by the hotline have often served as resources to guide decisions on magistrates’ assignments taken by the high council of the judiciary. The minister proposes assignments with the reports of the hotline under his eyes. Nowadays, no magistrates want a visit from members of the hotline in their court, they are afraid of that’.⁶⁶

- **Civic education on judicial services.** The fact that citizens are listened to, and that the accused are heard constitutes a framework for citizen education, firstly on denunciation procedures, since, from the start of the process, informers must state their identity and enter into confrontation. They are also informed about the risks run in case of false accusation, as indicated below. According to an impact survey, approximately 66% of the 17 000 people who used the hotline services stated they were very satisfied.⁶⁷ The recommendations issued by this impact study are addressed to the ministry of justice with a view to: ‘extending the hotline to all other sectors; continuing the fight against corruption; creating the conditions to bring the justice system closer to the litigants; providing BIR/LCTI with the necessary resources to allow it to receive citizens’ complaints and denunciations by email and text messages; providing BIR/LCTI with the means to conduct a campaign to raise public awareness about the mission of the Office and to produce communications materials to inform citizens about the benefits and services provided by the justice system; and equipping BIR/LCTI with a server to allow it to record and store verbal complaints and denunciations made by citizens’.⁶⁸ We wonder whether these recommendations will have a chance of being put into practice in the coming years.
- **External resource mobilisation for the ministry of justice.** The early results of the hotline against corruption have made it possible to mobilise other partners in support of the initiative. In late 2012, when the citizen satisfaction survey report on the services provided by the hotline was released, the minister of justice, Marou Amadou, announced that ‘our partners at the World Bank are ready to provide the anti-corruption unit with a server that would enable it

65 Interview with the coordinator of *Ligne Verte*.

66 Interview with AC on 5 April 2014.

67 Ministry of Justice and World Bank (2012) *Rapport du sondage d'évaluation de la Ligne Verte*. pp. 30.

68 Ibid.

to record and store verbal complaints and denunciations by citizens 24 hours a day. We can only welcome this very substantial support from the World Bank'.⁶⁹ The results achieved attracted other partners such as USAID, which is now providing funding for the sessions of the unit that is steering the work of the hotline.

Box 6: Citizen action to end racketeering of Niger's migrants

Agadez, July 2013. Floods of migrants are moving from Niger to Libya. Among these immigrants, Nigeriens are racketeered by the border police in the city of Agadez. The police officers demanded a sum of 5 000 CFA francs from each traveller of Nigerien nationality; 10 000 CFA francs for non-Nigeriens. The group managed to cross the Nigerien border, but unfortunately they were turned back as soon as they reach Libya. Back in Agadez, the Nigeriens contacted a representative of the Nigerien association for the fight against corruption (ANLC) to complain that Nigeriens had been racketeered by police officers in their own country. The matter was brought before the governor of the city of Agadez, who demanded that the police officers reimburse the sums. The ANLC representative therefore made a list with the numbers of their identity cards and asked the complainants to sign it. The governor also contacted the prosecutor and they agreed that a complaint would be lodged against the police officers. It was a first in the city. The victims were brave enough to appear before the prosecutor and confirmed the information provided. The prosecutor asked for two days to negotiate a compromise settlement with the police officers involved and, in the end, the complainants were reimbursed before witnesses such as the prosecutor and the police commissioner. After this action, for at least three weeks there was no longer any racketeering on that route and barriers were reduced. Unfortunately, a few months later the prosecutor was replaced and assigned elsewhere, although we do not know whether this was in any way related to his involvement in this civic act. It was the combined action of the hotline and the work of the ALAC that gave the citizens the courage to cross swords with law enforcement officers who formerly had every power over said citizens. The existence of the hotline is a baby step towards a certain culture of denunciation of public officials.

Source: Testimony gathered in Niamey on 11 April 2014.

Limitations

A legislative framework ill-suited to individual denunciations. In legal terms, the practice of denunciation by individual informers is not very well regulated by the law. The criminal code and the constitution do not make specific provisions for the protection and security of whistle-blowers. Retaliation against whistle-blowers is very common, given the positions of the accused – notably, judges and criminal investigation officers. Article 39 of the code of procedures recommends denunciation by public institutions to the public prosecutor. The principle of the *Ligne Verte* is that it places the citizen at the heart of the

⁶⁹ Quoted in an article published in *Le Sahel* (2012, 27 November) available at <http://www.nigeronline.info/actualites/detail.php?id=1139#.U2bU2YEhAg8> [accessed 5 May 2014].

process of monitoring the actions of the justice system. Whistle-blowers are, however, not protected physically or legally against retaliation. According to a member of the hotline:

errors sometimes happen. Once, a judge had someone arrested for false accusation. But we said no, because we suspected that the judge wanted to cover up the matter, since there was a possibility that he might be punishable for obstruction of justice. Upon investigation, however, it was found that the complainant was not credible, although the rules governing the *Ligne Verte* hotline made it possible to protect him until we obtained proof to the contrary of what the complainant claimed.⁷⁰

The hotline remains an internal monitoring tool with limited funding. The *Ligne Verte* hotline is designed by and chiefly made up of justice sector players, which means that it is an internal tool that just provides a space for listening to citizens. The responsibilities of the inspectorate general of the judiciary services and *Ligne Verte* are combined under the control of a single person. Furthermore, the budget for the activities of *Ligne Verte* is uncertain, since the ministry of justice contributes barely 30% of the budget. Despite the small amounts pledged by the state, it is still slow to disperse them. New partners such as USAID, the World Bank and OSIWA have been called upon for investigations and awareness-raising activities. Thus, the hotline remains dependent on external funding.

Exception in a low public service environment. For the time being, only the ministry of justice has a tool of this kind. This is an exception, as the other public services, although they have been identified as breeding grounds for corruption, are not equipped with this type of tool, notably the finance department (customs, taxes), transportation and security (police, gendarmes, etc.).⁷¹ The fact that justice stands alone could be a handicap to the sustainability of this initiative, if it does not spread to other departments. This is also proof that the hotline is holding up thanks to the will of the minister of justice alone, who initiated *Ligne Verte* and is behind its implementation.

Other organisational stakeholders

In addition to administrative and financial and judicial control bodies, and ad hoc anti-corruption bodies directly linked to the state apparatus, there are also non-state players that are specialised in activities aimed at preventing corruption. These include civil society actors, parliamentarians and the media. These actors make a contribution in terms of citizen mobilisation and awareness-raising for the promotion of transparency and the fight against corruption. Citizen movements and the media particularly act as relays in the prevention of bottom-up corruption practices originating in the people, and also exert pressure on the

70 Interview with DK on 4 April 2014.

71 ANLC and CNESLC reports on education, health and public finance show that corrupt practices are every bit as harmful in those sectors as in the justice sector.

government. In the case of Niger, four organisational stakeholders are more representative of the aspirations of pressure groups. These are the ANLC, the Network of Organisations for Budget Transparency and Analysis (ROTAB), the Nigerien Parliamentarians Network Against Corruption (APNAC-Niger), and the African Network of Journalists for Integrity and Transparency (RAJIT-Niger). There are naturally other players who occasionally take part in anti-corruption activities, as well, but not over the long term.

Box 7: The Nigerien Association for the Fight against Corruption – Transparency International Niger chapter (ANLC-TI)

The ANLC-TI was created in 2001 and recognised by Decree No. 039/MI/AT/ DGAPJ / DLP of the 2 February 2001. As of 31 December 2009, it had 50 members, including seven members of the executive committee. ANLC is an apolitical, non-confessional and non-profit association. Its aim is to fight corruption by the following means: promoting reforms to achieve transparency in public and private management; undertaking to denounce and combat all acts of corruption it becomes aware of in public or private management; fostering the emergence of an ethic that promotes moral integrity in all citizens; and promoting transparency and accountability in national and international trade transactions.

The ANLC has the advantage of having worked continuously for over 15 years and capitalising on its knowledge and skills in terms of prevention and whistleblowing of corrupt practices in Niger. It has carried out several actions that have contributed to greater awareness of the phenomenon of corruption in Niger, notably publications, mobilisation and awareness-raising campaigns. This civil society organisation seems to be a living memory and a sentinel for Nigerien citizens where the fight against corruption is concerned. It is, however, highly dependent on external funding, which supports up to 98% of its activities. Its role is restricted to consciousness-raising and citizens' watch over government undertakings. ANLC-TI maintains working relationships with official bodies while retaining its critical independence and remaining a creative force. Its contribution to the fight against corruption over the last 15 years has yet to be the focus of an independent evaluation. However, its leadership quotes testimonials according to which

not only is ANLC-TI the guilty conscience of politicians and heads of public bodies who fail to take vigorous action in the fight against corruption, it also serves as a platform for the complaints and the combats of both elite and ordinary citizens through the various communications tools and materials set in place.

Sources: ANLC portal, <http://anlcti.org/index.php?page=qui-sommes-nous>; interview with Wada Mahmane, secretary general of the ANLC.

E. Critical assessment

As mentioned above, the regulatory framework in Niger is detailed and covers numerous violations and offences stipulated under international conventions. However, there are diverse and even contradictory interpretations regarding its implementation, both

between members of the judiciary and between members of the judiciary and politicians. Legal voids and inconsistencies have appeared as certain cases of corruption have come before the courts. Justice, viewed as the 'last resort of the citizen', suffers from a number of weaknesses that were pointed out in the general assembly of the judiciary held in 2012. Despite the declaration of the separation of powers, the anti-corruption initiative seems to be a monopoly of the executive in Niger, and has been for many years. National financing predominates over foreign financing. A certain amount of national pride is taken in the ability to keep control in this area and many of the stakeholders would like the situation to stay that way for reasons of national sovereignty. However, significant change has been observed with the increasingly visible presence of foreign financial partners. Knowledge-production activities such as diagnostic studies, awareness and information activities, capacity-building and institutional reforms receive the most foreign support, to the detriment of investigation activities and support for initiatives aimed at bringing corruption cases to court. Although it is still limited, opening up to external funding can sometimes have negative consequences for the domestic democratic debate.

Weaknesses in the regulatory framework

Despite a detailed anti-corruption regulatory framework, some weaknesses and inconsistencies can be noted in relation to international anti-corruption conventions and regional instruments. In terms of criminalisation and enforcement of regulations, for example, statutes of limitation of five to ten years applying to the criminalisation of misappropriation of public funds are too short and do not leave prosecution authorities enough time to investigate offences known for their technical complexities. It is also unfortunate that there are no provisions for recovering the proceeds of corruption, which are confiscated or frozen by decision of the court, pending the end of the proceedings.

It should also be noted that, in cases of whistle-blowing by citizens, there is no legislative or regulatory framework on the protection of witnesses and informers or on discretionary prosecution. Only institutions have the right to inform or make denunciations to the public prosecutor under the terms of article 39 of the code of procedure, which grants the public prosecutor the right of discretionary prosecution on denunciation by public institutions. Even in such cases, a certain inertia was observed in the office of the public prosecutor in terms of prosecution of economic and financial offences based on simple denunciation, reports by HALCIA, or audits by the office of the state inspector general or the inspector general for public service. There is also a legislative void regarding the protection of experts, witnesses and informers. The provisions of the criminal code which assign the same sanctions to bribe-givers and bribe-takers do not make denouncing corruption phenomena an easy task. It can also be pointed out that, in the rare cases where prosecutions are brought, there is often a failure to adhere to procedures regarding police custody, investigation methods and methods for the collection of legally valid and credible evidence.

The legal framework is also characterised by a certain inconsistency and/or confusion in certain legislative texts on transparency in public life. For example, there is an inconsistency between the constitution of the Seventh Republic and the law of 2001 on declarations of assets, particularly concerning declarants other than the president of the republic. The roles are not very well distributed between the constitutional court and the court of audit, as, according to the constitution and the law, each institution is responsible for receiving a category of declarants. Thus, the court of audit never manages to exercise its prerogative of effective control of assets declared or not declared. Furthermore, it is rare for the other civil servants who are required to declare their assets to actually do so. Finally, there is a lack of clarity regarding the use and security of the data contained in the declarations of assets, which are to be published by law.

Implementation of justice

Niger is unique in its treatment of corruption cases. Corruption cases and scandals are regularly referred to justice and proceedings are brought against personalities. However, judicial procedures in cases of corruption are systematically dropped, stayed or closed with no further action. Arrests followed by months or years in prison are quite common, but rarely culminate in due process. Once the pressure of the early hours has passed, cases sink into oblivion after Nigerien justice grants accused personalities temporary release. Indeed, in cases revolving around corruption or related offences, whether they are civil or criminal matters, once a suspect is temporarily released, judges no longer make completing the procedure an urgent priority. Cases are often forgotten, slipping through the cracks as they pass from one judge to another. A member of the judiciary made the following statement:

several different things can happen after temporary release is granted in major cases. Some are simply dropped, closed with no further action because, after several years, social and media pressure has abated. Others are settled out of court, to the detriment of judicial settlements. However, this worked better with the ad hoc commissions, which had exceptional, and often unconstitutional, powers. In such cases, when the justice system does not have a monopoly on the settlement of disputes, it becomes dangerous.⁷²

Another weakness in Niger's justice system lies in its limited ability to recover the proceeds of corruption. It lacks sufficient judicial and institutional resources in terms of seizure, freezing and confiscation of assets. The provisions stipulated in the domestic criminal procedure code are not sufficient to cover the country's needs in this area. They are not in conformity with the provisions of international conventions. For example, Nigerien law does not allow the justice system to sell perishable goods and keep the money pending

72 Interview with AC on 4 April 2014.

trial. Thus, in several courts, piles of seized vehicles and equipment can be seen lying abandoned.

Box 8: Chaotic enforcement of the law on illicit enrichment in Niger from 1992 to 2014

The order of 1992 on illicit enrichment was generated by a specific political environment in the spirit of the National Conference of July 1991, when the progressive forces of the day came head to head with the defenders of the old order, accused of having enriched themselves at the expense of the state. The transition government, which was a direct result of the National Conference, could only join in the general revolutionary dynamic, heralding a new political order in the country. Unfortunately, the order on illicit enrichment was not followed by an implementing decree. It became almost null and void when the constitution of the Third Republic was established in 2000, enshrining the principle of presumption of innocence as one of the fundamental rights of the citizen, whereas the order called for reverse onus. According to a witness of its drafting, the order ‘suffered from two handicaps: it was not overly repressive, and it was poorly designed, since it was inspired by Senegalese law and focused on the reversal of the onus of proof’.

None of the successive governments deigned to review the order on illicit enrichment to adapt it to the requirements of the rule of law and democracy, not because illicit enrichment no longer existed in Niger, but simply because the desire to get rich had become too widespread and corrosive, affecting every institution and paralysing any action against corruption. The Maty Elhadj Moussa case, named after the former Minister of Justice of the fifth Republic, revived the debate on the unconstitutionality of the order on illicit enrichment when the constitutional court handed down a ruling that said order was unconstitutional (Decision No. 07/08/CC/MC of 20 November 2008). The decision caused the order to be revised and enacted as a law in 2013. However, since then, no cases giving rise to the enforcement of the new law have been referred to any judge in Niger.

Source: Decisions of the constitutional court, interviews with judges and Justice ministry representatives; Interview with AC on 5 April 2014.

Institutional overlap

At national level, there is a veritable industry producing cases and complaints. A few institutions share almost the same information without proper coordination. For example, the reports of the IGE often take the following route: they are sent to the court of audit, then to HALCIA, and in-depth investigations are carried out by HALCIA, then analysed in a report by HALCIA, which is sent to the president of the republic. The president or the ministers have the right of discretionary prosecution, as they can refer the abovementioned case files to the courts. It would be simpler if the justice system were referred to directly and allowed to conduct its own in-depth and complementary investigations, as those carried out by HALCIA have no legal value, and are merely for information and administrative purposes since HALCIA is not a court. Case files could then be processed directly by the financial divisions. Indeed, it would be preferable for the various institutions that produce

administrative reports that might involve corruption and related offences, to refer directly to the judges of the financial division, even if copies are sent to line authorities such as the office of the president or the national assembly for information purposes, pursuant to the instruments regulating the monitoring bodies such as the court of audit or HALCIA or even the justice ministry's *Ligne Verte*.

For example, over the past five years, reports have been produced as follows: CENTIF recorded 25 cases of suspicious transactions (2004-2013), *Ligne Verte* received and processed 425 complaints of suspicion of corruption (2011-2013), HALCIA took in 783 complaints of corruption (2011-2014) through the Advocacy and Legal Advice Centre (ALAC) established by the Nigerien ANLC, and the court of audit produced four annual public reports (2009-2012). These figures show that data is gathered on a regular basis by a variety of institutions, unfortunately, they do not seem to be coordinated since the same case files can be found in the hands of several institutions at the same time and this makes monitoring procedures ineffective. What happens when a case makes its way to the court and has also been referred to bodies such as HALCIA or the ANLC? The overlap can be detrimental to the conduct of the case.

Risks in foreign funding

Niger has always maintained a relatively large degree of independence towards its foreign partners in terms of direct financing of anti-corruption activities. Only civil society organisations specialising in the fight against corruption and the promotion of integrity remain dependent on foreign funding to carry out their activities. In the majority of standing or ad hoc official bodies fighting corruption, funding comes from the state budget only or from the proceeds of the fight against corruption, collected exceptionally through recovery and exceptional criminal mediation. However, over the past two years, certain government actors have developed strategies to call on external funding to support anti-corruption programmes. HALCIA, *Ligne Verte*, the court of audit and CENTIF have all developed plans of action or programmes of activities for which foreign technical and financial partners are sought.

These bodies are even becoming dependent on such external financing to carry out their activities, as is the case with *Ligne Verte*. Opening up has benefits for both the donors and the government. It can create a space for dialogue between the two categories of actors on the progress achieved and the challenges remaining in the fight against corruption in Niger, although on that level there is no lack of friction and tension between donors and government stakeholders. Local government actors may sometimes feel there is interference from certain partners who, because they are funding certain anti-corruption actions, sometimes feel they have a right to orient their contents as they wish, very often to produce immediate results. In the minds of certain officials, on the other hand, the dominant feeling that is sometimes apparent is that receiving foreign financial or technical support is a badge of good governance. In the latter case, the space for dialogue opened

towards foreign partners is sometimes closed very abruptly to local civil society actors or check and balance institutions such as parliament.

It remains that Niger's donors are still waiting for concrete results and bold reforms that are slow in coming, although these expectations are included in the conditions of governance support programmes in Niger. For instance, in its Threshold Programme, in 2007, the Millennium Challenge Account (MCA) formulated a certain number of conditions including an anti-corruption component. Looking at the list of activities and the funds raised to implement them, it is an ambitious, multiple-year programme and Niger did not seem fully able to satisfy the conditions set by that programme. The results achieved after six years of programme implementation are disappointing and, in the opinion of the programme leaders, the actual achievements drowned in the political instability of 2010. Despite this relative failure, Niger has graduated from the MCC Threshold Programme to the Compact Programme, although the change was not the focus of a democratic national debate.⁷³

Conflicting relationships between openness to foreign donors and the national democratic space were fully revealed during negotiations over funding of anti-corruption activities in 2013 between DANIDA and the Nigerien government, regarding institutional support for HALCIA. The aim was to provide institutional support and capacity building for HALCIA. A Danish preliminary evaluation formulated a recommendation and a series of conditions that seemed virtually impossible for the Nigerien government to meet in 12 months.⁷⁴ In the end, the funding was not granted. This also coincided with the closure of the DANIDA office in Niger.

These two examples of financing of the fight against corruption reveal the presence of two opposing camps among the Nigerien players. On the one hand, certain state officials and leaders of civil society organisations are lobbying to capture this external income for the fight against corruption. On the other hand, the second group sees no need to accept

73 Niger was accepted into the MCC compact programme based on its performance in the ranking for the 2013 fiscal year. The ranking evaluates middle- and low-income countries in the following three areas: good governance, investment in human capital, and economic freedom. Niger scored 12 indicators out of 20, which allowed it to meet the minimum conditions of eligibility for MCC Compact financial assistance, since it met all three conditions, namely (i) the corruption indicator must be green; (ii) the indicators on democracy must be satisfied; (iii) passing scores must be obtained on at least half of the 20 eligibility indicators.

74 Preliminary evaluation report on the Danish support programme for Niger. The conditions included: (i) Political guarantees on a cause and effect relationship between the corruption prevention activities conducted by HALCIA (surveys and investigations, awareness-raising) and judicial follow-up on case files. This can be achieved through a political dialogue that will send a strong signal by dealing with two or three concrete cases of corruption in court, which could constitute a real deterrent for all stakeholders. (ii) Defining a programme with precise indicators on achieving a minimum level of results while clearly stating the prerequisites, notably (1) the adoption of a new law on HALCIA (2) the allocation of a budget under the finance law, and (3) a guarantee that HALCIA will not become politicised. (iii) Choose a holistic approach, taking account of the complete chain in the fight against corruption (prevention-detection-sanction) in such a way as to avoid doing a disservice to HALCIA by limiting it to a role as an information body, with a risk of harming and discrediting HALCIA and undervaluing the fight against corruption.

external financing if it is accompanied by a battery of conditions. The latter are calling for a certain Nigerien pride in preserving the country's sovereignty and keeping control over the decisive elements of the fight against corruption. According to this latter group, the fact that HALCIA depends on the office of the president of the republic guarantees that it will have substantial financial resources that very few so-called independent institutions enjoy, such as the national commission on human rights in Niger.

HALCIA and *Ligne Verte*: Scarecrows?

The primary criticisms on HALCIA focused more on the terms and methods of its creation and notably its founding decree. Despite this congenital limitation, virtually all of the stakeholders recognise that HALCIA has taken a number of initiatives, often proactively, in areas such as investigations and awareness raising. During the early months of its operation, HALCIA's office systematically referred cases to the justice system, which did not seem to have been very well appreciated by everyone, since, after this initial attempt, HALCIA's reports were submitted only to the president of the republic, who is the recipient of the reports under the terms of the decree. In its present form, even the leadership of HALCIA recognise that the organisation duplicates work that certain traditional institutions were already doing, notably the IGE, the court of audit and CENTIF. The most caustic criticism came from actors in the justice system. Certain members of the judiciary found that 'HALCIA overshadows the justice system with regard to certain cases. For actors in the justice system, HALCIA is more like a co-wife in law enforcement'.⁷⁵ It is also recognised that

the work done by HALCIA is a good foundation for justice, since certain people who have access to the work of HALCIA deem that the investigations are carried out by professionals from the national gendarmerie; the only issue is that the findings of the investigations are rarely or never used by the justice system.⁷⁶

The results achieved by HALCIA in three years of operations, at the end of the mandates of all nine commissioners in October 2013, were diversely appreciated. In the absence of a satisfaction survey and an impact evaluation on its visible and non-visible actions, it is difficult to make an objective assessment. However, the actors we met in the framework of this study had mixed feelings about the concrete results HALCIA had produced in three years. Furthermore, as the president of HALCIA said, the institution is misunderstood by the citizens because it is not the product of social demand, but rather the result of political will that is part of the policy agenda of the president of the republic. President Mahamadou Issoufou himself recognised that the commission's track record was not yet satisfactory when, in his address on its third anniversary, he observed that:

⁷⁵ Interview with judge AC, Niamey, 5 April 2014.

⁷⁶ Interview with MZ, Niamey, 6 April 2014.

despite our efforts, the fiscal monopoly of the state has not been entirely re-established, and tax fraud and corruption are far from having been eliminated ... Over the next two years, we must reinforce measures to clean up and reform the revenue-collection sector in order to further increase internal revenue.⁷⁷

This sums up a very mixed track record since, in creating HALCIA, the president had great hopes of restoring the fiscal monopoly of the state.

The president of HALCIA did not contradict this when he was asked by a journalist about Nigeriens' expectations as to HALCIA's concrete actions in the area of communication on cases, especially regarding arrests made and sums recovered. Boureima Issoufou provided the following lengthy explanation:

That is precisely where the misunderstandings start. Nigeriens, doubtless remembering organisations in the past that communicated the results of their work, expect HALCIA to behave similarly and tell all. But there needs to be a legal basis for any action in public life. No comparisons can be made between what existed in the past and HALCIA. The instrument that created HALCIA and gave it its remit and missions does not address these concerns that Nigeriens have and which can be conferred by a law. It should be remembered that, according to our remit, it is not our vocation to replace justice or to recover funds. We make denunciations and reveal the offences denounced when they are founded.⁷⁸

The fact that Niger's ranking improved in corruption perceptions indicators was hastily imputed to the actions of HALCIA or at least the government, which used it as an argument to promote its anti-corruption initiatives. From 134th in 2011, Niger rose this year in 2012 to 106th place in the ranking of the Transparency International Corruption Perceptions Index.⁷⁹ It is possible that the actions of HALCIA and other ACAs have helped improve Niger's scores and rankings, but it remains that the change is not readily perceptible in the everyday lives of Nigeriens who expect more than programming in macroeconomic and international indicators. However, the president of HALCIA consoled himself by observing that

after three years HALCIA has managed to produce a scarecrow effect ... in my opinion, even the instrument has been identified several times as a poor

77 Address by Mahamadou Issoufou, in *Le Sahel*, mardi 03 avril 2014, *Spécial An 3*.

78 Interview with the president of HALCIA, on international anti-corruption day, in *Le Sahel*, available at <http://www.lesahel.org/index.php/component/k2/item/4652-interview-du-pr%C3%A9sident-de-la-halcia-%C3%A0-l'occasion-de-la-journ%C3%A9e-internationale-de-lutte-contre-la-corruption--de-134%C3%A8-me-en-2011-le-niger-passe-cette-ann%C3%A9e-au-106%C3%A8me-du-classement-de-l'indice-de-perception-de-la-corruption-m%C3%Aame-si-le-rang-est-p> [accessed 19 September 2016].

79 www.transparency.org/cpi visited on 12 April 2014.

instrument, at HALCIA we console ourselves with the thought that, with such a poor instrument, achieving results was a great exploit and not at all easy.⁸⁰

F. Conclusion

Following numerous criticisms on the limitations of HALCIA – its founding instruments, its makeup and its mandate – the first line authorities of HALCIA formulated proposals for reform, which were submitted to the hierarchy. According to sources at the ministry of justice, the draft instrument on the reform of HALCIA seems to meet the needs of the executive but still contains weaknesses that should be improved. The draft bill on HALCIA has been sitting on a government desk for more than a year without managing to get to the stage of review in the national assembly. The chief aim is to reform HALCIA so that it is governed by a law instead of the existing decree. It remains that the primacy of decision-making lies with the executive, which is supposed to drive the fight against corruption.

At the time the research for the present study was conducted, the HALCIA reform bill had yet to be adopted by the national assembly. However, the proposals contained in the bill were very interesting and seemed to make a positive contribution to the reform process. In terms of the makeup and operation of HALCIA, the draft bill tabled in the national assembly would make HALCIA an independent administrative institution established by law. It would no longer be placed under the authority of the office of the president of the republic. HALCIA would also be streamlined by reducing the number of permanent commissioners from seven to three. Finally, in terms of operations, the reform calls for the setting up of two new advisory bodies. The first, known as the selection committee, would be in charge of supervising the selection of HALCIA's members, who would be 'chosen for their integrity and their competence by a selection committee established by order of the prime minister'. The members of the selection committee would include: a representative of the president of the republic; a representative of the speaker of the national assembly; a representative of the leader of the opposition; a representative of the chamber of commerce; and a representative of civil society. The second body would be a HALCIA advisory body, chiefly comprising representatives of the same organisations as the selection committee, which would act as a management board to supervise the quality of the work of HALCIA. The bill, at least in its version of late November 2015, does not stipulate whether the same people would make up both advisory bodies.

It is feared that this law could create new bottlenecks within HALCIA if the two bodies are to work separately and be made up of different people. HALCIA could then find itself with nearly a dozen representatives of various organisations with all that entails in terms of wastage and potential institutional deadlock.

⁸⁰ Interview with Boureima Issoufou, president of HALCIA, Niamey, 19 July 2014.

On the other hand, much more positively, the instrument extends the prerogatives of HALCIA to three new areas:

- Direct referral of proven corruption cases to justice, without having to obtain an opinion from any other body in the executive;
- The legal capacity to carry out recovery and freezing of assets acquired through acts of corruption; and
- HALCIA would receive a share on the recovery of proceeds of corruption through a special account of the state treasury department, 5% of which would be contributed towards its budget.

Whatever happens to the reform project, three challenges remain for HALCIA and *Ligne Verte*. The first is posed in the following terms: would the current anti-corruption bodies survive if there was a change of government, or if political problems arose due to the working methods of the bodies themselves? The latter challenge pertains to the satisfaction of citizens' expectations as to the need to fight corruption in Niger, particularly by breaking the cycle of impunity and protecting public assets while producing results that are immediately beneficial for the government and citizens. The third challenge pertains to the harmonisation and definition of working relationships between the institutions whose activities help deal with and reduce corruption in the administrative, judicial, and parliamentary orders.

G. Recommendations

Government and parliament

- Harmonise and popularise anti-corruption legislation;
- Identify all legal loopholes, inconsistencies and confusions in the enforcement of anti-corruption laws and harmonise national legislation with international undertakings; and
- Protect anti-corruption bodies and institutions from political instability; in particular:
 - Reform HALCIA to make it an independent and permanent administrative institution.
 - Update legislation to safeguard anti-corruption institutions and bodies by protecting them from changes in political leadership.

Specialised anti-corruption bodies

- Take action to improve their internal and external communications;
- Reinforce their working methods, particularly by making more use of modern tools that have proven their worth in other countries in the areas of investigative management, complaint processing and tracking of cases referred to the courts;
- Implement a capacity-building programme for technical staff; and
- Publish regular updates on their activities, particularly in the case of HALCIA, and make sure they uphold the presumption of innocence.

NGOs and other non-governmental stakeholders

- Produce regular alternative reports on the fight against corruption, following the example of Burkina Faso, with its national network against corruption, *Réseau Nationale de Lutte contre la Corruption* (RENLAC), which produces an annual report on the state of corruption in Burkina Faso. This information and whistle-blowing tool could serve as an aid for dialogue with the political authorities and civil society in Niger;
- Join government anti-corruption initiatives, notably through International Anti-Corruption Day, to show citizens that all stakeholders are working to achieve their common goals; and
- Organise advocacy campaigns on international themes linked to the enforcement of the various anti-corruption conventions, protocols and treaties by which Niger is bound.

Technical and financial partners

- Coordinate support in the framework of a clearly defined national policy or plan of action that has been adopted by the government. This will help prevent overlap and concentration of funding on similar actions, which has been seen in the past, regarding the justice sector, between the UNDP and USAID through the MCA programme; and
- Provide technical and financial assistance in activities geared to investigating and reinforcing repression of corruption, if national stakeholders express such a need, in addition to the targeted awareness projects and programmes favoured by donors.

5

NIGERIA



Chijioke Kelechi Iwuamadi

A. Executive summary

The character and evolution of corruption in post-colonial states has its root in colonialism, which created the structures of post-colonial states in Africa, and Nigeria in particular. The authoritarian structure of the colonial state encouraged accumulation without responsibility. This favoured co-option of corrupt behaviour as part of the political behaviour. Historically, among the earliest efforts by post-colonial state of Nigeria in the fight against corruption, was the Coker Commission of Enquiry of 1962. The Coker Commission was set up to investigate Chief Awolowo and some leading members of his political party charged with corruption and diversion of funds into private use. Other earliest efforts to tackle corruption can be found in two principal pieces of legislation on criminal law in Nigeria, the 1990 Criminal and 1963 Penal Codes which were applied in the southern and northern parts of Nigeria respectively.¹ A review of the two codes shows a serious attempt by the Nigerian state to arrest corruption. Despite these legislative efforts, corruption still persists.²

The phenomenon of corruption in Nigeria can be best described using three paradoxes: first, is the paradox of the strong but inefficient state – the fact that a seemingly strong

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- 1 Under the Criminal Code, offences relating to corruption and abuse of office in the public service can be found in sections 98-116. Section 98 has two subsections, while subsection (1) punishes abuse of official duty generally, subsection (2) penalises corruption by any person employed in the public service. In either case, the accused person is liable, if found guilty, to be sentenced to a maximum term of seven years imprisonment. Under the Penal Code, the relevant provisions on corruption can be found in sections 115-122 of the code. The provisions of the code on corruption are more lucid, wider and less technical than the Criminal Code provisions. Under section 115 the offence of gratification by public servants is created and violators are liable to a term of imprisonment ranging from seven to 14 years. Section 116 punishes any person who receives gratification in order to influence any public servant to do or forbear to do any official act, or in the exercise of his official functions, to show favour or disfavour to any person. Section 117 deals with the abetment by a public servant of the offence mentioned in section 116. Whoever offers or gives or agrees to give any gratification whatsoever, whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in sections 115 and 116 shall be punished with imprisonment which may extend to three years or with a fine or with both.
 - 2 See Inegbedion ND (n.d.) *Corruption and Anti-Corruption Legislations in Nigeria: A Critique*. See Cap. 77, *Laws of the Federation of Nigeria 1990*. See Cap. 89, *Laws of Northern Nigeria 1963*. See section 18. See also ss.119–122.

(authoritarian) state shows a notorious weakness in controlling corruption and financial crimes; second, is the contradiction between Nigeria's huge petroleum resources and a constantly underperforming economy – the fact that in the face of Nigeria's vast economic resources there is a phenomenal growth in the illegitimate accumulation of wealth; third, is the paradox of dual legitimacy – the fact that corruption is officially criminalised but communally and privately legitimised (the notion of stealing from the state and giving it to the community).³

On their part, Nigerians have a lopsided definition of corruption, which they predominantly see as something done by people in public office, but do not quite see their own role in its perpetuation and control, seeming to think the solution consisted largely in going very publicly after the 'big fish'.⁴ Nevertheless, there is still no universally accepted definition of what exactly corruption is, because the concept has been commonly but unofficially defined as the misuse of public office for private gain, thereby negating corruption at the private sector. The Transparency International (TI) defines corruption as 'the misuse of entrusted power for private gain'. The TI definition is targeted at accommodating the incidents of corrupt practices in the private sector. The Nigerian state also failed to define the concept of corruption in its legal framework.⁵ This legal framework is basically the operations of anti-corruption agencies (ACAs).

There have been debates on what constitute ACAs, what their activities are and how to determine the performance of ACAs. Members of the Nigerian Inter-Agency Task Team (IATT) on the domestication of the United Nations Convention Against Corruption (UNCAC) – and the creation of a National Strategy to Combat Corruption – classified the ICPC, EFCC and CCB as anti-corruption 'law enforcement' agencies, noting that many other government agencies perform preventive anti-corruption functions.⁶ The World Bank describes an anti-corruption agency as a body that reviews and verifies official asset-declaration; carries out investigations of possible corruption; and pursues civil, administrative, and criminal sanctions in the appropriate forums.⁷ The World Bank prescription of anti-corruption agencies seems to be the bedrock of the operations of ACAs in Nigeria, and virtually all the anti-corruption initiatives of successive governments have followed suit into this prescription.

The challenge of combating corruption in Nigeria has been a leadership test for successive regimes. The Nigerian governments' post-civil war interventions and initiatives

3 Key informant interviews, 1 April 2014, Nsukka; focus group discussion, 2 April 2014, Nsukka.

4 Excerpts from a major finding of the study by the Convention on Business Integrity: CBI (2008/2009) Public Perceptions of Anti-Corruption Agencies in Nigeria.

5 See Asobie HA (2012) Conceptual, theoretical and empirical issues on the interface between corruption, governance and development. In: H Mohammed et al. (eds) *Corruption, Governance and Development in Nigeria: Perspectives and Remedies*. Kano: Mambayya House.

6 Culled from the study by the Convention on Business Integrity (CBI) (2008/2009) Public Perceptions of Anti-Corruption Agencies in Nigeria.

7 Ibid; see Meagher P (2002) *Anti-corruption Agencies: A Review of Experience*. Washing DC: World Bank. Available at <http://www1.worldbank.org/publicsector/anticorrupt/feb06course/summaryWBPaperACagencies.pdf> [accessed 8 October 2016].

targeted at combating corruption are stated in the table in Appendix A. The table clearly shows different anti-corruption initiatives of the government of Nigeria and how these have impacted on combating corruption in the country.

The ineffective implementation of the initiatives captured in the table shows that, over the years, the Nigerian government has reasonably achieved insufficient desired positive results in combating corruption. Part of the challenge as argued has been lack of committed political will on the part of the Nigerian state in ensuring their effective implementation. The political leadership is usually seen as the driving force for the anti-corruption crusade. The moment the leadership failed to provide adequate funding and non-partisanship, and disregarded rule of law – among other failures – then the anti-corruption war was been jeopardised. Consequently, redeeming Nigeria's image in the global arena, and responding to international financial institutions (IFIs) demands for transparency and accountability, has remained a huge challenge.

Nigeria's corruption rating based on a perception⁸ survey by TI over the years witnessed an improvement in 2008 and thereafter suffered a steady decline up to 2013. Prior to 2014, Nigeria was ranked 142 of 163 in 2006, 147 of 179 in 2007, in 2008 it was ranked 121 of 180, in 2009 it was 130 of 180, in 2010 it was 134 of 170, in 2011 it was 143 of 183, in 2012 it was 139 of 174, in 2013 it was 144 of 175, and in 2014 it was 136 of 174.⁹ The seeming differences between 2006 and 2014 can be explained within the context of the legacy corruption cases that are yet to be resolved and also fresh investigations that have been launched into new cases. Overall, corruption remains a major threat to governance of Nigeria. Consequently, only sustained enforcement actions and extensive governance reforms over time will lead to improved results being registered in combating corruption.¹⁰

In recent times, actions by the Nigerian government have left much to be desired as these seem to portray the very opposite of what it proclaims to be its zero tolerance of corruption. Specifically, we note that the tempo of the prosecution of corrupt public officers between 2007 and May 2015 drastically reduced, and Nigerians raised serious concern about government not achieving people's desired result of prosecuting and jailing guilty offenders. There are further arguments that the gravest threat to anti-corruption campaigns in Nigeria often emanates from a combination of intra-elite rancour and political intrigues, based on corrupt practices that are reflections of deeper socio-political pathologies of a normal post-colonial state. Further arguments suggest that those pathologies are manifestations of the structures of political elite domination. For them,

8 Note: during the validation of the study report, Nigerians cautioned regarding the reliance on the TI index which is based on perceptions of previous years. The CPI index relies mainly on the opinions of business people and risk analysts because they are usually close enough to high-level incidents of corruption and may be in a better position to assess grand corruption. See Lambsdorff JG (1998) *Transparency International 1998 Corruption Perceptions Index: Framework Document*. Available at www.icgg.org/downloads/FD1998.pdf [accessed 8 October 2016].

9 See Transparency International (2015) *Corruption Perception Index 2015*.

10 Excerpts culled from the presentation titled, 'Responses to Emerging Corruption Trends In Nigeria' by the past secretary of the EFCC, Emmanuel Akamai, MFR, at the fifth ICAC Symposium, 9–11 May 2012, Hong Kong.

anti-corruption campaigns, by their very nature, pose a serious danger to the material basis of political elites and the possibility of their continued reproduction.¹¹

Prior to the 2015 elections in Nigeria, there were abundant criticisms from Nigerians, the public and political affairs analysts regarding the issue of corruption in all aspects of governance; insecurity across the country; poor social services and infrastructure; and weak democratic and military institutions, among others. This debate led to a national critical question that the leadership of Nigeria needs to ask: How and why has the situation deteriorated to such levels? The answer is not farfetched: when a country's developmental stride is laid on a faulty ground of corruption and indiscipline. Unfortunately, it has remained unabated among recent successive governments, and the wages are what the country is reaping in the form of Boko Haram insurgency and international scepticism. Another issue is the rotten civil service sector, where the practice which was not the case in the past, is that contracts and recruitment into the public sector are not based on merit but on personal relationships and bribery.

The problem of corruption has therefore been duly acknowledged by successive governments. More importantly, the incumbent President Buhari, during his acceptance speech on 1 April 2015, strongly acknowledged corruption as one of the many challenges causing economic decline in Nigeria. He describes corruption as another form of evil; one that is worse than terrorism. He further stated that corruption does the following to the Nigerian state: 'Corruption attacks and seeks to destroy Nigeria's national institutions and character; it misdirects into selfish hands funds intended for the public purpose; corruption distorts the economy and worsens income inequality; and it creates a class of unjustly-enriched people.' Thus he committed to combat vice, ensuring that it will no longer be tolerated.¹²

Consequently, on 12 May 2015, the ruling political party, the All Progressive Congress, transition committee submitted its report to President Buhari. The committee recommended the merging of the Economic and Financial Crimes Commission (EFCC) with the Independent Corrupt Practices Commission (ICPC) to tackle graft in a new way that would be prompt, fearless and decisive. Incidentally, this has been the view of Nigerian civil society as part of the measures to strengthen anti-corruption institutions in Nigeria. Nigerians patiently expect the outcome of this as the administration unveils its governance agenda in the area of fighting graft.

11 Ibrahim J (2008) 1999–2007: Deceptive Years of the Anti-Corruption War in Nigeria, a solidarity message delivered at the Nigerian Labour Congress, Civil Society Rally on the Intensification of the War Against Corruption, National Assembly, Abuja, 8 May 2008; Adebani W & Obadare E (2011) When corruption fights back: Democracy and elite interest in Nigeria's anti-corruption war. *Journal of Modern African Studies* 49(2): 185–213.

12 Excerpts culled from General Muhammadu Buhari's official acceptance speech. Available at <http://www.channelstv.com/2015/04/01/full-text-general-muhammadu-buhari-official-acceptance-speech/> [accessed October 2016].

However, among the key factors that frustrate the war against corruption in Nigeria is the absence of effective collaboration and coordination among government agencies,¹³ civil society and the business community. Global best practices suggest that partnerships supported by the coercive powers of government and its agencies often lead to better results or lead to changes in reducing corruption.¹⁴ Nevertheless, there has been some heightened visibility of anti-corruption efforts that have yielded positive results in the form of prosecutions, public awareness and assets recovery. But the lack of independence and effectiveness of the anti-corruption agencies and the enabling laws to combat graft remains a major challenge.

In general, the greatest obstacle to the activities of ICPC – and even EFCC – in eradicating corruption in recent times has been the incessant withdrawal of case files of criminal charges against very privileged persons and political class of the ruling political party by the attorney general and justice minister, Mr Mohammed Bello Adoke. Adoke, within eight months of his tenure, withdrew about 25 high profile cases eliciting criticisms from the human rights community.¹⁵

There are further suggestions that, in compliance with international standards (UNCAC and FATF), the anti-corruption fight in Nigeria must be guided by a legislative framework for transparent and accountable government; political will and commitment to fight corruption; a comprehensive strategy that is systematic, comprehensive, consistent, focused, publicised, non-selective and non-partisan; protection of whistleblowers; political reform to curb political corruption, especially election rigging; reform of substantive programmes and administrative procedures; mobilisation for social re-orientation; independent media; adequate remuneration for workers to reflect the responsibilities of their post and a living wage; code of ethics for political office holders, business people and civil society organisations (CSOs); independent institutions especially electoral, human rights and gender commissions; and a movement for anti-corruption.¹⁶

The establishment of the EFCC and ICPC and other initiatives is not adequate to tackle corruption; largely because there is no national anti-corruption law or anti-corruption strategy to tackle corruption in the country. Until these issues – and many others – are adequately addressed, the opportunity to win the war against corruption will not emerge. The fight against corruption cannot be achieved in an opaque society. There is an utmost need to exhibit openness and transparency in governance. The anti-corruption agencies like the EFCC and ICPC need to be well funded to be able to operate effectively; while

13 The government agencies include the ICPC; the code of conduct bureau and the code of conduct tribunal; the EFCC; the Nigerian Extractive Industries Transparency Initiative and the technical unit on governance and anti-corruption reform; the Bureau for Public Procurement; the Public Complaints Commission; the Nigeria police force; the judiciary; and the national assembly committees on anti-corruption, national ethics, values and ethics, code of conduct, and public petitions.

14 Excerpts from: *Anti-corruption Programming: A Practical Manual* (2008), a publication of Zero Corruption Coalition and Public and Private Development Centre in collaboration with OSIWA.

15 Nekabari JN & Oni AJ (2012) The institutional approach to anti-graft crusade: The case of Independent Corrupt Practices Commission in Nigeria. *African Journal of Social Sciences* 2(1): 116–129.

16 Otive Igbuzor (2014, 14 July) posted on <https://www.facebook.com/otive.igbuzor.1?ref=nf>.

the issue of limited jurisdictional power needs to be revisited so as to give them almost unlimited power to prosecute any accused person. There is also a need for the ACAs, in collaboration with similar agencies, to intensify public awareness campaign on the evils of corruption, while the penalties of corrupt practices should be intensified at all levels of governance.¹⁷

In the course of the field work for the study, our interaction with the CSOs working on anti-corruption shows that most of them are of the view that the fight against corruption in Nigeria cannot be taken seriously until there are fundamental changes, through constitutional or legislative amendments, that affect the powers of the president to appoint the heads of the anti-corruption agencies (the Economic and Financial Crimes Commission, Independent Corrupt Practices and Other Related Offences Commission, Codes of Conduct Bureau and other related anti-corruption agencies). They argued that the power should be taken back to the national judicial council, who will make recommendations to the council of states for approval. Until that is done, the fight against corruption will remain mere lip service.¹⁸

The CSOs on their part are expected to exhibit zero tolerance for corruption and to discourage society from celebrating and honouring corrupt people. In concrete terms, there are specific roles, as reiterated by the Zero Corruption Coalition (ZCC), which civil society¹⁹ has to play in the anti-corruption campaign.

B. Legal framework

The UNCAC is the first legally binding international anti-corruption instrument. This means that it represents the current international consensus on anti-corruption. Incidentally, the government of Nigeria has ratified the UNCAC.²⁰ Nigeria's global notoriety for being a highly corrupt nation prompted former President Olusegun Obasanjo, on assumption of office in May 1999, to present his first anti-corruption bill to the national assembly. This was passed in June 2000 as the Corrupt Practices and other Related Offences Act, 2000.²¹

17 Salawu B (2007) Towards solving the problem of corruption in Nigeria: The ICPC under searchlight. *European Journal of Social Sciences* 5(1): 83–92.

18 Key informant interviews, Abuja, 26 March 2014; focus group discussion, Abuja, 27 March 2014; Sotubo J (2015, August) 'President's government most corrupt in history', Dino Melaye says. *Pulse.ng*. Available at <http://pulse.ng/politics/goodluck-jonathan-president-s-government-most-corrupt-in-history-dino-melaye-says-id3762443.html> [accessed 8 October 2015].

19 Civil society in this context refers to every individual, group, community, organisation or business outside government.

20 The purpose of the UNCAC is to: promote and strengthen measures to prevent and combat corruption more effectively and efficiently; promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and to promote integrity, accountability and proper management of public affairs and public property (see CBI (2008/2009) Public Perceptions of Anti-Corruption Agencies in Nigeria.).

21 Duru EJC (2012) Nigeria's anti-graft agencies: The journey so far. In: D Mohammed, MT Aluaigba & A Kabir (eds) *Corruption, Governance and Development in Nigeria: Perspectives and Remedies*. Kano: Aminu Kano Center for Democratic Research and Training & the United Nations Development Programme (UNDP).

The act in section 3(14) provides for the independence of the commission, and this led to naming it Independent Corrupt Practices and other Related Offences Commission (ICPC). The ambiguous general legal framework of the ICPC and other ACAs is one of the germane issues confronting ACAs in Nigeria. This is in terms of not having a national strategy to combat corruption. As a result, Nigerians are yearning for an urgent revisit of the punishment for corruption in Nigeria. This need has been buttressed by suggestions, including those advocating for special courts for the trial of corruption cases.

To this effect, some judges have also argued that the light punishment for corruption is based on the existing laws and inadequate legal framework. A typical example of inadequate legal framework was demonstrated through the decision of Justice Abubakar Talba of the Abuja high court on 28 January 2013 in the police pension scam case involving John Yusuf, a director at the police pension office. Yusuf was charged with criminal misappropriation and stealing by the Economic and Financial Crimes Commission (EFCC) under section 309 of the Penal Code Act, Cap 532, Laws of the Federal Capital Territory, Abuja, Nigeria, 2007. Yusuf pleaded guilty to breach of trust and fraudulently converting N 2 billion of police pension funds to his private use. Upon conviction, the trial Judge sentenced him to two years' imprisonment with an option of fine in the sum of N 750 000 for the three offences to which he pleaded guilty; even though each of the three offences attracted a maximum of two years' jail term. The conviction was unarguably light and contrary to the weight of evidence, it is clear that the judge manipulated the inadequate legal provisions and the inherent weakness in the criminal justice administration system to abuse his discretion in favour of the accused. Section 309 of the Penal Code, under which Yusuf was sentenced, provides that 'whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to two years or with fine or with both'.

Until the law is amended to provide for stiffer penalties and the administration of criminal justice system reviewed, we will get to witness the results as in the Yunis case where the punishment is marginal in comparison to the crime. Where the law says that a person who steals should be sentenced to two years with an option of fine, this can be amended upwardly and the sentence can be increased while also making provision for restitution.²² Another related problem with the challenges of the legal framework is the undue delay in the judicial process. This is perhaps, the biggest challenge in the prosecution of political corruption in Nigeria. For instance, a former chief justice of Nigeria, Justice Dahiru Musdapher at the Second Annual Conference on the Reform of Criminal Justice Administration held in Asaba, Delta state, Nigeria, stated in June 2012 that almost every criminal trial, especially for serious charges of corruption, is now preceded by endless objections and applications to quash charges.

22 Excerpts from an article by the chief of staff to the EFCC chair, see Oladele K (2014, 19 March) Political corruption and governance problems in Nigeria: Understanding the critical issues. *Sahara Reporters*. Available at <http://saharareporters.com/2014/03/19/political-corruption-and-governance-problems-nigeria-understanding-critical-issues-kayode> [accessed 8 October 2016].

Musdapher further observed that: ‘some judges, wittingly or unwittingly, aid this process by failing in their duty to be firmly in control of criminal proceedings in their courts and allowing such gimmicks and delay tactics to go on unabated’. It is extremely challenging to prosecute accused persons, particularly in corruption and money laundering cases. It is now a brazen and unbridled art for many defence counsel to stall the prosecution of cases by endless – and most times, frivolous – interlocutory applications and appeals, blackmailing and intimidating judges who do not yield to their tactics thereby encouraging their clients to malingering and hide from the law.²³

Nigeria is party to some international conventions and protocols against corruption. These conventions and protocols include the UNCAC; the African Union Convention on Preventing and Combating Corruption (AUCPCC); and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption. These conventions and protocols enjoin the signatory states to, among other things, institute specific measures to prevent corruption, criminalise corrupt practices, prosecute and punish all who indulge in acts of corruption; and seize, confiscate and return stolen national assets to the state. Besides, the conventions and protocols contain elaborate provisions on measures that will facilitate the active participation of civil society in preventing and combating corruption. For instance, they embody provisions for the enactment of national freedom of access to public information acts as well as protection of whistleblowers acts.

The Commonwealth Anti-Corruption Framework expressly makes the requirement of independence a prerequisite to the effectiveness of anti-corruption institutions. Paragraph 21 of the framework provides that: ‘independent anti-corruption agencies such as ombudsman, inspectors general, and anti-corruption commissions can be effective if they are genuinely free from being influenced by the executive branch of government and where there is a strong judiciary in place’. On the other hand, the World Bank identified four different categories of anti-corruption institutions on the basis of their functions and the branch of government to which they are accountable, but the United Nation Convention Against Corruption (UNCAC) contains the most comprehensive provisions on the requirement of independence.²⁴

Article 6(2) of the UNCAC provides that

each state party shall grant (preventive anti-corruption body or bodies) the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff as well as the training that such staff may require to carry out their functions should be provided.

²³ Ibid.

²⁴ Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-corruption Institutions in Africa.

Also, article 36 of the UNCAC is largely repetitive in relation to anti-corruption law enforcement bodies. This part states that, each state party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the state party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.²⁵

Nigeria is a signatory to all the relevant international anti-corruption treaties²⁶ including the UNCAC. The UNCAC has been domesticated through the creation of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act, 2000 and the Economic and Financial Crimes Commission (EFCC) Act, 2004. There is also the Code of Conduct Bureau (CCB) created under the Constitution of Nigeria, 1999 to manage declaration of assets by public officers. Other complimentary anti-corruption bodies include the Nigerian Financial Intelligence Unit (NFIU) and the Bureau of Public Procurement (BPP), 2007; the Nigerian Extractive Industries and Transparency Initiative (NEITI) Act, 2007.

Furthermore, Nigeria has ratified the AUCPCC and deposited its instrument of ratification to the African Union Commission. It has also ratified the ECOWAS Protocol on Good Governance. All these anti-corruption instruments are collaboratively enforced by the national anti-corruption authorities in Nigeria.²⁷ Following the dictates of section 15(5) of chapter 2 of the 1999 Constitution (as amended) of Nigeria, which states that ‘the state shall abolish all corrupt practices and abuse of power’, the then President Obasanjo quickly sponsored the anti-corruption bill that was passed by the national assembly in 2000 which led to the establishment of the ICPC.

C. Independence and organisational structure

The Nigerian anti-corruption regime is regulated mainly by the Corrupt Practices and Other Related Offence Act of 2000 (CPA), while anti-corruption efforts in Nigeria are supported by other laws including the ICPC Act of 2000, the EFCC Act of 2004, and the CCB Act of 1999. The agencies were established by law, the national assembly provides oversight function, although the ICPC is perceived to be an independent agency because there is a clause in the act that requires that they take their report to the presidency. The

²⁵ See article 6(2) and article 36 of the UNCAC.

²⁶ None of the conventions constitute part of Nigeria’s substantive law. Nigeria does communicate on UNCAC and NEPAD on peer review and other issues of corporate governance. There is self-assessment in relation to the UNCAC but it is not known in relation to other laws. There is a specific provision against corruption in the constitution, section 15(2). The Proceeds of Crime Bill has been passed into law but it has not yet been signed off by the president. A witness protection law and a whistleblowers protection law pending before the national assembly. Civil society has demanded that these pending bills get passed into law.

²⁷ Key informant interviews, 27 March 2014, Abuja.

issue of appointment, removal, security of tenure and appropriation of funds implies there is no guaranty of independence among the agencies. The agencies cannot be disbanded by any individual, except through the national assembly.

Independence

The ICPC is an agency under the presidency, although its staff other than the board members are recruited through the supervision of the federal civil service commission, who ensures that federal character is maintained in the process. In terms of independence, ICPC Act, section 3(10)(14) guarantees the independence of the ICPC and its officers by providing that they are not subject to the direction or control of any other government authority in the exercise of their functions. In practice, section 3(10)(14) of the ICPC Act is observed to a large extent. The commission is also given significant autonomy in the appointment, dismissal, and setting of the terms and conditions of service of its staff. The ICPC's preventive and educational remit is amply provided for and represents a major thrust of the agency's anti-corruption strategy. Interviews with the agency showed a robust, informed and aggressive approach to prevention and education.²⁸

The EFCC is also an agency under the presidency, while the staff recruitment process is done to represent the federal structure that ensures every state or region in Nigeria is represented. However, in jeopardising the independence of the commission, the EFCC Act empowers the attorney general of the federation (AGF) to make rules or regulations with respect to the exercising of the duties, functions or powers of the commission under the act. Sadly, this provision gives the AGF sufficient latitude to interfere in the functioning of the commission. According to reports credited to one of the former chairpersons of the EFCC, the office of the AGF and the presidency interfered in the arrest and prosecution of some high profile corruption suspects. In response to the allegation, the AGF office noted that it insists only that the anti-graft agency takes suspects to court within 24 hours after arrest as provided in the Nigeria constitution. Perhaps this directive from the AGF is not working for the EFCC in terms of its readiness for prosecution after any arrest. However, assuming the allegation against the AGF office is true, the implication is that the AGF may, for political reasons, decide to interfere in the commission's affairs by invoking section 43 of the EFCC Act,²⁹ which states that the AGF 'may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the commission under this act'. As the Economic Commission for Africa (ECA) rightly opined in 2010:

A provision which constricts the independence of the EFCC is one which enables the president to remove any member of the commission for inability to discharge the functions of his office whether arising from infirmity of mind or body or

²⁸ Ibid.

²⁹ EFCC Act 2004 (see section 43); Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-Corruption Institutions in Africa; key informant interviews, 26 March 2014, Abuja.

any other cause of misconduct or if the president is satisfied that it is not in the interest of the commission or the interest of the public that the member should continue in office. The president's power to remove a member – which presumably includes the chairman – is considerable and may be for subjective reasons. What would satisfy the president that it is not in the interest of the commission or the public for a member to continue in office is nowhere defined.³⁰

The chairman and members of the ICPC constitute three committees that oversee the execution of the enshrined functions of the commission. There are five operational departments, two units and a special team in charge of the three broad functional areas as outlined below. The departments and units include: investigation; prosecution, whose primary responsibility is to work closely with the intelligence and legal teams and examine suspects, compile case files and prosecute culprits; the planning, research and review units that engage in exploring issues surrounding alleged corrupt cases, follow up and review debates on corruption, design the organisation's work-plan and strategic plan in collaboration with other units; education and public enlightenment departments focus more on sensitising the public on the dangers associated with corruption, and the media unit of the agency functions here too; chairman's special unit, special duties unit, publication unit and fast track team works under the directive of office of the chairman. The chairman has powers to control, supervise, and give general direction for the efficient and effective functioning of the commission. In that regard, he issues 'standing orders' as provided by section 7(1) of the ICPC Act. The secretary of the commission under the general direction of the chairman, is also responsible for keeping the records of the commission and the general day-to-day administration and control of the staff. Two support services are in charge of facilitating this function: administration, finance and accounts.³¹

Membership and staffing

The ACA members do not enjoy security of tenure. This is because the president (head of state) has the power to appoint and remove. The members do not enjoy protection by immunity from civil and criminal proceedings for acts committed in the exercise of their duties. The ICPC has been chaired by retired judicial officers who are neither known for their activism nor their strength to drive the anti-corruption initiatives. The civil service rule is now applied in terms of recruitment, promotion, punishment and human resources issues generally in ACAs. There is a code of conduct for all public officers, but the document is unfortunately now obsolete and needs to be reviewed to incorporate current realities. The UNCAC is clear on issues of undue influence, but due to the nature of appointments, the appointees are usually seen to take actions which appease the appointing authority. Articles 6 and 36 of UNCAC require the state party to ensure the existence of independent

30 Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-corruption Institutions in Africa.

31 Ibid.

body or bodies to prevent and fight against corruption: ‘Each state party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, ... to enable the body or bodies to carry out its or their functions effectively and free from any undue influence’. Furthermore, in article 11(2) of the UNCAC, regarding measures related to the judiciary and prosecution services, it is indicated that ‘states parties, bearing in mind the independence of the institution, shall take measures to prevent opportunities for corruption among members of the institution and to strengthen integrity’.³²

ACAs have benefitted greatly from international partners like the United Nations Office for Drug Control (UNODC) who provides specialised training for the agencies. In fact, most training for ACAs is provided by donors. Training deployments within ACAs are transparent and often used as reward packages and are sometimes tagged as beneficial to those loyal to their bosses. The salaries are relatively but not attractive enough, so there is a push to make the Central Bank of Nigeria (CBN) salary structure the model for staff of the agencies.

Appointment and administrative structure

The EFCC is a commission with a governing board headed by a chairman and members comprising ex officio heads of relevant government agencies. The chairman and members are appointed by the president and the appointment is subject to confirmation by the senate. The members of the EFCC board include the following: executive chairman, EFCC; governor of the Central Bank of Nigeria; a representative each of the federal ministry of foreign affairs, finance and justice; chairman, National Drug Law Enforcement Agency; director general, National Intelligence Agency; director general, department of state security services; registrar general, Corporate Affairs Commission; director general, Securities and Exchange Commission; managing director, Nigeria Deposit Insurance Corporation; commissioner for insurance; postmaster general of the Nigerian Postal Services; chairman, Nigerian Communications Commission; comptroller general, Nigeria Customs Services; comptroller general, Nigeria Immigration Services; inspector general of Police; four eminent Nigerians with cognate experience in finance, banking or accounting; and the secretary to the commission.

On the basis of appointment and criteria for recruitment, the tradition has been that the chairman of EFCC must be a serving senior police officer, while senior officials and other staff are recruited like other public servants, mainly from the Nigeria police force or other paramilitary agencies, and the general public. The appointment and recruitment process takes into account the non-political party affiliation, impartiality, neutrality, integrity and competence of the individuals that hold the board’s position, and senior officials of the agency.

At the inception of the EFCC, the appointments in the organisation were perceived by the public to be lopsided based on alleged nepotism and favouritism. As soon as Mallam

³² Culled from Comments on India’s Lokpal Bill 2010.

Nuhu Ribadu was appointed as the pioneer head of the agency by the president, he took over the appointment of other personnel of the agency. Immediately after removal of Ribadu, there was a brief interim period under former Ribadu deputy Ibrahim Lamorde (in acting capacity for a few weeks), thereafter, Farida Waziri took over in 2008 as the substantive boss, and replaced Ribadu. Critics allege that, under Waziri, the EFCC's anti-corruption work has grown timid and lethargic in comparison with Ribadu's tenure. Farida Waziri's tenure was a rocky one. Her many critics alleged that she was ineffective and incompetent and accused her of having close relationships with corrupt political figures. Further, it was alleged she went slow on sensitive cases against powerful political figures.³³ Her tenure abruptly ended in November 2011 when Ibrahim Lamorde was appointed to head the agency until 9 November 2015.

The ICPC has a chairman, five members of the board and a secretary appointed by the president. The senior officials and other staff are recruited by the board. The staff strength of the commission is over 300 who work in the ICPC offices across Nigeria. Members of the ICPC's board are selected and appointed from among reputable and credible Nigerians (no political party affiliation as stipulated in the ICPC Act), while the minimum requirement to be employed as staff of the commission is that he/she must be a graduate of any of the tertiary institutions in Nigeria. None of the members of the board and staff of the commission are immune from prosecution if found wanting. The ICPC has two structures.

The departments and units of the commission include: investigation; prosecution; planning, research and review; education and public enlightenment departments; chairman's special unit, special duties unit, publication unit and a fast track team.

The chairman has powers to control, supervise and give general direction for the efficient and effective functioning of the commission. In that regard, he issues standing orders as provided by section 7(1) of the ICPC Act. The ICPC Act also provides that the secretary of the commission under the general direction of the chairman is responsible for keeping the records of the commission and the general day-to-day administration and control of the staff. To facilitate execution of this function, there are two support service departments, namely: administration; finance and accounts.³⁴

Security of tenure

Apart from the chairman and secretary, other members of the EFCC board are part-time members. The chairman and members of the commission other than ex officio members hold office for a period of four years and may be reappointed for a further term of four years.³⁵ The senior officials and other staff tenures are based on the civil service retirement rule of 35 years of active work service or 65 years of age attainment. This also implies that agency members and staff abide by the code of conduct of the Nigerian public service, which incorporates ethical standards and regulates conflicts of interest.

³³ Ibid.

³⁴ See more at <http://icpc.gov.ng/icpc-structure/#sthash.8G3S20PE.dpuf> [accessed 8 October].

³⁵ EFCC Act 2004, sections 1(2), 2(1,2,3) and 3(1,2); key informant interviews, 25–27 March 2014, Abuja.

The tenure of office of the ICPC chairman differs from that of other members: five years for the chairman and four years for the other members. The chairman can be reappointed for another tenure, but is not eligible thereafter. The same principle applies to other members of the board. Notwithstanding, section 3(8) of the ICPC Act ensures that the chairman and members have considerable security of fixed tenure of five years and four years respectively and they cannot be removed by the president without two-thirds majority of the senate. The secretary of the ICPC is appointed by the president. The ICPC is granted the powers to appoint, deploy, discipline and determine the conditions of service of its staff. Section 3(14) of the ICPC Act enshrines its independence: ‘the commission shall in the discharge of its functions under this act, not be subject to the direction or control of any other person or authority’.³⁶

Support staff

As noted earlier, the support staff of the EFCC including the administrative staff in the operations is mainly drawn from the Nigeria police force, the Directorate for Security Services, the general public (that is graduates of different disciplines like law, psychology, sociology, criminology, political science, etc).

In terms of remuneration, we were unable to ascertain the exact wages of ACA staff because they are not really disclosed³⁷ unless through the complexity of applying the Freedom of Information (FOI) Act³⁸ request to the Revenue Mobilisation and Fiscal Commission (RMFC). The fact is that the process of getting their salary information is frustrating and classified as secrecy. However, from the focus group discussion held in Abuja with CSOs working on anti-corruption, there is a general consensus that the salaries of ACAs are far better than other public servants, but there is no evidence to establish this.

Meanwhile, in 2012, operatives of the EFCC were reported condemning the deductions from their salaries and allowances, describing it as adversely affecting staff morale. It was gathered then that over 40% of EFCC staff allowances were deducted from their salaries without explanation.³⁹ Also, it was shocking to the presidential committee on the re-organisation of the Nigeria police that the salary of the inspector general of police (IGP)

36 Ibid.

37 During the fieldwork, when I posed the question of remuneration to ICPC and EFCC senior officials, they gave me the same response saying, ‘No. It is classified. You can only get it from RMFC or ICPC head office’ (Anonymous, key informant interviews, Abuja, 2014).

38 Two separate assessments by the Public and Private Development Centre (PPDC) and Right to Know (R2K) shows that public institutions in Nigeria have remained unresponsive to freedom of information (FOI) requests, separate assessments by two organisations have shown. The FOI Act, signed into law in 2011 by then President Goodluck Jonathan, was enacted to allow access to public records and information. But institutions have continued to ignore the provisions of the law. In an assessment by R2K, all 39 government institutions assessed failed to comply with proactive disclosure – records made available without requests, a statutory obligation under the FOI Act. No Nigerian institution obtained ‘even a 20% compliance rating’, according to the survey which was carried out between February and December 2014 (*Premium Times*, 30 September 2015).

39 Mutum R (2012, 31 January) Nigeria: EFCC Operatives Condemn Deduction of Allowances. *Daily Trust* newspaper.

is very meagre, when compared to that of the Economic and Financial Crimes Commission (EFCC). While the inspector general of police earns N 711 498 (approximately USD 3 500) per month, the executive chairman of the Economic and Financial Crimes Commission earns N 1.5 million (approximately USD 7 500) per month. This disparity in salary does not reflect the higher responsibility attached to the office of the inspector general of police. Whereas, in the hierarchy of the Nigeria police force, the EFCC chairman's (a serving police officer) rank is below that of the IGP.⁴⁰

The ICPC structure – as provided for in section 3(3) of the ICPC Act 2000 – consists of a chairman and 12 members selected from each of the six geo-political zones of the country.⁴¹ However, from the focus group discussion and the interviews conducted, it was confirmed that, in reality, the ICPC team consists of seven members: the chairman, the secretary and five members on the board.⁴² The appointment of members of the ICPC is drawn from the following categories of Nigerians as spelled out by the act:

- A retired police officer not below the rank of commissioner of police;
- A legal practitioner with at least ten years' post-call experience;
- A retired judge of a superior court of record;
- A retired public servant not below the rank of a director;
- A woman;
- A youth not less than 21 or more than 30 years of age at the time of his or her appointment; and
- A chartered accountant.

The ICPC Act provides that the chairman and members of the commission, who shall be persons of proven integrity, shall be appointed by the president upon confirmation by the senate and shall not begin to discharge their duties until they have declared their assets and liabilities as prescribed in the constitution of the Federal Republic of Nigeria.

The ICPC Act section 3(5) further specifies that the remuneration of the members of the ICPC⁴³ shall be determined by the national Revenue Mobilisation and Fiscal Commission (RMFC). Section 27(3) of the CPA empowers the ICPC to act on its own in initiating an investigation upon receipt of any report which gives an officer reasons to suspect that an offence under the CPA has been committed.⁴⁴

The ICPC has attempted to raise the stakes in the fight against corruption in Nigeria in recent times with the establishment of an anti-corruption academy known as the Anti-Corruption Academy of Nigeria (ACAN). This institution is the training and capacity building arm of the commission. The establishment of the ACAN is one of the bold

40 Key informant interviews, 5 March 2015, Abuja.

41 See more at <http://icpc.gov.ng/icpc-structure/#sthash.Xnrwr7IO.dpuf> [accessed 8 October 2016].

42 Visit <http://icpc.gov.ng/icpc-board-members/#sthash.BWLHtkT.dpuf> [accessed 8 October 2016].

43 The ICPC staff salary is relatively very good (same applies to the EFCC, unlike the CCB) compared to other civil/public servants that work in government ministries departments and agencies (focus group discussion, Abuja, 2014).

44 Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-corruption Institutions in Africa; key informant interviews, 28 March 2014, Abuja.

steps taken by the ICPC in recent years to step up the fight against corruption in a more structured, determined and concerted onslaught. It is also partly a fulfilment of Nigeria's commitment to the global initiative to rid the world of the menace, as the academy is a key enabling instrument required for the successful implementation of the UNCAC in the country. The ACAN began operations in November 2014, two years behind target due to funding constraints. The ACAN is designed to reach and educate not only the critical stakeholders in the anti-corruption fight, but also the general populace. This desire is underscored by the global shift of emphasis to preventive mechanisms for fighting corruption through proactive sensitisation and education of all stakeholders on ethics and integrity issues as well as compliance with established rules. The mandate of ACAN is captured in the following five key areas:⁴⁵

- Its primary duty is to train ICPC staff to meet contemporary challenges of anti-corruption fighting, to enhance the operations of the ICPC. By doing this, it will build the capacity of staff to effectively deliver the strategic plan of the ICPC in its areas of operations including investigation, prosecution, asset recovery, public education and enlightenment;
- To engage ministries departments and agencies (MDAs) in the public sector as well as organisations in the private sector, such as corporate entities, professional bodies and others to address issues of corruption within their own areas of operation. This involves running seminars and workshops to address areas where they are prone to corrupt practices. The academy is already working on the training of anti-corruption units (ACTUs) in the MDAs;
- To run special courses that will lead to the certification of anti-corruption professionals. To actualise this, the academy will collaborate with some universities and other relevant academic institutions both in Nigeria and abroad to run post graduate programmes up to masters degree level for practitioners in the field of anti-corruption to enhance their knowledge and skills;
- The ACAN will engage in knowledge production and dissemination. It has a research unit which is already developing a research policy on corruption related issues. This will make it easy to access information on such issues. The ACAN is backed by state of the art e-learning facilities; and
- The ACAN will network and establish linkages with institutions engaged in specialised training of professionals in both the public and private sectors. These include institutions related to the banking and finance industry, media and legal professions; and public service, among others.

45 Excerpts from the *Nation Newspaper*, 1 March 2015.

Staff training

The staff of the EFCC undergoes periodic training both in-house and externally. Opportunities exist for external or overseas training where staff are sent abroad to acquire more knowledge and skills that will improve their performance. Unfortunately, these training opportunities can be abused: most of the beneficiaries are those in the good books of their employers and not necessarily the most deserving. Some agents trained – in a particular aspect such as forensic investigation – are transferred to another unit or location where the training has no relevance. In fact, there was a story of some trainees who left Nigeria for the United States and spent three weeks without locating the venue and apparently did not receive any training before they returned. They were not penalised because of the protection from their bosses. However, these training opportunities are often supported by international development partners like the United Nations Office of Drug Control (UNODC).

To a large extent, the UNODC-EU support upgraded the knowledge and substantive capacity of the EFCC, particularly in the following key units of the agency: the information technology (IT) unit; the Nigeria financial intelligence unit (NFIU); the training and research institute (TRI) of the EFCC; the investigating unit; and the media and publicity unit. Some of the training benefits include:

- IT expertise was developed among the agency staff to maintain the IT-Component in the EFCC. The project also provided the EFCC with a state-of-the-art IT system and helped in developing and implementing custom-made specialised database applications, including goAML, goIDM and goCASE⁴⁶ used in case-management and financial intelligence analysis and donor coordination respectively;
- The UNODC project built the EFCC Training and Research Institute. The achievement here is that EFCC now have an institute where operational capacities of the agency will be strengthened to provide specialised training for staff and management;
- One of the key project interventions includes the creation of a forensic laboratory and the mentoring of its staff. The project started a forensic mentorship programme for the forensic and science laboratory that became the model for other mentoring services for the EFCC investigation unit;
- The project also strengthened the EFCC staff capacity in investigative techniques through the development and implementation of a training curriculum and the recruitment of experienced investigators to work with and mentor EFCC personnel; and

⁴⁶ goAML means government office anti-money laundering software; goIDM means government office infrastructure and data centre model; and goCASE means government investigation & intelligence case management software.

- The media and publicity unit is well equipped with the required facilities needed for executing its functions effectively.⁴⁷

The ICPC staff also receive trainings locally and internationally. As part of the efforts to improve the human capacity base of the agency, the UNODC in collaboration with the European Union (EU) supported the setting up of the ICPC anti-corruption academy of Nigeria. In the academy, experts are brought to build the capacity of ACA staff in their various skills and units of operations. The agency staff are also exposed to opportunities for external or overseas training, where they are sent abroad to acquire more knowledge and skills that will improve their performance and service delivery.

Code of conduct

The Constitution of the Federal Republic of Nigeria 1999 contains some anti-corruption provisions governing the conduct of public officials. These provisions are located in the code of conduct for public officers in part I of the fifth schedule of the constitution. Breach or violation of any aspect of the code of conduct is not regarded as a criminal offence; nevertheless, being a violation of the law, it attracts some penalties and sanctions. In general, a public officer is prohibited from putting himself in a position where his personal interest is in conflict with his duties and responsibilities. A public officer shall not be paid for a public office at the same time as he is receiving remuneration for another public office. A full time public officer shall not engage or participate in the management or running of a private business, profession or trade; but can engage in farming. A public officer shall not ask for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties.

It is equally an offence for any person to offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties. Some aspects of the code apply only to certain categories of public officers. For instance, high-ranking public officers, occupying political positions, are debarred from accepting a loan or benefit of whatever nature from a private company, contractor or businessman. This provision applies to the president or vice-president, governor or deputy governor, minister of the government of the federation and commissioner of the government of a state. It applies to any other public officer who holds the position of a permanent secretary or head of any public corporation, university or other parastatals. Retired public officers are also bound by the code. For example, a public officer shall not, after his retirement from public service, and while receiving pension from public funds, accept more than one remunerative position as chairman, director or employee of a company owned or controlled by government or any public authority. It is however, the duty

47 Excerpts from Du Plessis P, Iwuamadi CK & Omotoso B (2010) Support to the Economic and Financial Crimes Commission (EFCC) and the Nigerian Judiciary. Final Evaluation Report on the EU-UNODC project NGS08. Available at http://www.unodc.org/documents/evaluation/ProEvals-2009/ProEvals-2010/NGA_S08_Final_Evaluation_Report_complete_rev.pdf [accessed 8 October 2016].

of the anti-corruption agencies concerned (like the ICPC, CCB) to ensure the compliance of this code by public office holders. They are also expected to prosecute defaulters and institutions who condone its staff that do not comply with the code.

Breach of the code is subject to enforcement by a special institution, the Code of Conduct Tribunal (CCT). The sanctions include, but are not limited to: vacation of office or seat in any legislative house; disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; seizure and forfeiture of any property acquired through abuse of office or corruption. These sanctions are without prejudice to the penalties that may be imposed by any law where the breach is also a criminal offence.

The weakness of anti-corruption agencies in terms of achieving positive results in the sight of Nigerians have led to lack of confidence in these agencies. For instance, the views of most of the focus group discussion participants (the academic community) point to the fact that anti-corruption institutions in Nigeria are not properly established and organised, even though the agency's staff seems to have some capacity to fight corruption effectively, but there is usually speculation as to what happens to the funds recovered. According to public opinion, the fight against corruption has already been defeated in Nigeria due to the multiple anti-corruption agencies that exist. However, the number of these agencies must be trimmed down to at least one functional anti-corruption agency.⁴⁸

D. Powers and functions

The multiple corruption agencies in Nigeria are usually seen to be either checkmating or conflicting with each other. Nevertheless, ACAs have a clear mandate in terms of prevention, sensitisation and education of the public in the fight against corruption. Although there is need for ACAs to sensitise the public to the fact that they are more than just financial anti-corruption agencies. Since 29 May 2007, the Nigerian government has consistently proclaimed the respect for the rule of law and due process as its anchor point. Specifically, we note that the tempo of the prosecution of corrupt public officers from the previous regime has slowed down since 2011.⁴⁹ There have been further arguments from erudite scholars that the gravest threat to anti-corruption campaigns in Nigeria emanates from a combination of intra-elite rancour and political intrigues, based on corrupt practices which are reflections of deeper socio-political pathologies of a normal post-colonial state. Some other scholars have also argued that those pathologies are manifestations of the structures of domination by the political elite.⁵⁰

48 Focus group discussion, Nsukka, 2 April 2014.

49 Ibrahim J (2008) 1999–2007: Deceptive Years of the Anti-Corruption War in Nigeria. A solidarity message delivered at the Nigerian Labour Congress, Civil Society Rally on the Intensification of the War Against Corruption, National Assembly, 8 May 2008, Abuja.

50 Adebani W & Obadare E (2011) When corruption fights back: Democracy and elite interest in Nigeria's anti-corruption war. *Journal of Modern African Studies* 49(2): 185–213.

The CPA established the ICPC with a mandate to, among other things, investigate and prosecute persons suspected to have committed an offence under the CPA or any other law prohibiting corruption; to examine the practices, systems and procedures of public bodies with a view to directing and supervising the review of same where they aid or facilitate corruption, and to educate the public and enlist their support in combating corruption. The CPA provides that the chairman of ICPC and other members of the commission are to be appointed by the president upon confirmation by the senate, and may be removed by the president acting on an address supported by two-thirds majority of the senate.⁵¹

On the other hand, the EFCC has the mandate as the designated financial intelligence unit (FIU) in Nigeria which is charged with the responsibility of coordinating the various institutions in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes. The EFCC is established by law, and the act establishing it gives the commission enough authority to intervene in the investigation and prosecution of corruption offences.

The judiciary in Nigeria is most often accused of being biased when handling corruption cases during prosecutions. According to the retired president of the federal court of appeal, Abuja, Justice Ayo Salami, corruption in the Nigerian judiciary is real and undermined the system. It must, however, be noted that not all judicial officers are corrupt and dishonourable.⁵² Meanwhile, there is a clear mandate in terms of investigation for ACAs. The processes are to be governed by deadlines, but they are not respected. In terms of the relationship between parliament, constitutionally, there is a collaboration, but in reality, it can be conflictual with weak oversight by parliament. The relationship between the ACAs and the police exists but it has been very tense. There have been tensions particularly between the police and EFCC since its establishment because some activities of the EFCC are similar to that of the police fraud department.

Other responsibilities as provided in the constitution

The EFCC is empowered by law to investigate, prevent and prosecute offenders who engage in:

Money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking, and child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes, and prohibited goods.⁵³

51 Section 3(6) of the CPA. Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-corruption Institutions in Africa. See also ICPC Act (2000).

52 Statement by retired president of the court of appeal, Justice Ayo Salami, cited in an article by Success Nwogu (2014, 9 April) Salami accuses judges of aiding corruption. *The Punch Newspaper*.

53 Section 46, EFCC Establishment Act, 2004.

The EFCC is also responsible for identifying, tracing, freezing, confiscating, or seizing proceeds derived from terrorist activities. At the EFCC, there is a unit known as the Nigerian financial intelligence unit (NFIU), vested with the responsibility of collecting suspicious transaction reports (STRs) from financial and designated non-financial institutions, analysing and disseminating them to all relevant government agencies and other financial intelligence units all over the world.⁵⁴

In addition to other laws relating to economic and financial crimes, including the criminal and penal codes, EFCC is empowered to enforce all the pre-1999 anti-corruption and anti-money laundering laws. Punishment prescribed in the EFCC Establishment Act ranges from a combination of payment of fine, forfeiture of assets and up to five years' imprisonment, depending on the nature and gravity of the offence. Conviction for terrorist financing and terrorist activities attracts life imprisonment.⁵⁵

In reality, the smooth operations of the EFCC and achieving positive results are somewhat hindered by judicial processes. For instance, in June 2007, an ex-governor was granted leave by a state high court to enforce his fundamental right to personal liberty and fair hearing. The leave was made to operate as a stay of action pending the determination of the application. However, upon the conclusion of investigation into the complaint of his involvement in serious economic sabotage, the ex-governor was arraigned at the federal high court on a 107-count charge by the EFCC. The defendant's lawyers reported the anti-graft agency to the then attorney general of the federation and justice minister, Mr Mike Aondoakaa (SAN). In his response to the petition the justice minister stated that the charge filed against the ex-governor was contemptuous since leave was made to operate as a stay of action in the application for the enforcement of the latter's fundamental rights. Convinced that the minister's opinion was subversive of the rule of law Femi Falana advised the EFCC to proceed with the criminal case. His advice was anchored on the case of *Nzewi & Ors. v. Commissioner of Police* (2002) 2 HRLRA 156 where it was held that:

It is clear that what the court intended in that order is that the applicants should not be arrested unless there is a legal basis or justification for it. It cannot be said to mean that the order granted to the applicants a general bill of immunity or insurance from legal processes or redress in appropriate cases.

The order was not meant, or could not have intended, to make the applicants – or any of them – an institution or a person above the law. It was implicit in that order that while they carry on their lawful business peacefully and while they continue to be law abiding, their fundamental rights as enshrined in our constitution remain inviolate and guaranteed.

54 Raimi L, Suara IB & Fadipe AO. (2013) Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at ensuring accountability and corporate governance in Nigeria. *Journal of Business Administration and Education* 3 (2): 105–122.

55 Ribadu N (2006) Economic and Financial Crime Commission (EFCC). A presentation to United State Congressional House Committee on International Development, 18 May 2006, Washington DC.

No court of law can make an order capable of turning a citizen into an outlaw. There is nothing in the court order which forbids the police from performing their normal duties, and no court will do that as that can lead to a state of general break down of law and order. Both the trial court and the court of appeal have dismissed the preliminary objection of the ex-governor on the grounds that no contempt of court was committed by the EFCC at the trial court. The legal battle has now shifted to the supreme court where the interlocutory appeal may not be determined for several years to come. Such gross abuse of judicial process is encouraged under the criminal legal system when it is trite law that the police and the anti-graft agencies are not precluded from investigating even public officers who are clothed with immunity by the constitution.⁵⁶

The mandate of the ICPC in line with the act setting it up was to prohibit and prescribe punishment for corruption, fraud, embezzlement, bribery and forgery perpetrated by Nigerians at home and abroad with impunity. The ICPC Act 2000 targets all Nigerians, in the private and public sectors and even those political office-holders with constitutional immunity. Section 6(a–f) sets out the duties of the commission as paraphrased in the following:

- To receive and investigate complaints from members of the public on allegations of corrupt practices and in appropriate cases, prosecute the offenders;
- To examine the practices, systems and procedures of public bodies and where such systems aid corruption, to direct and supervise their review;
- To instruct, advise and assist any officer, agency, or parastatal on ways by which fraud or corruption may be eliminated or minimised by them;
- To advise heads of public bodies of any changes in practice, systems or procedures compatible with the effective discharge of the duties of public bodies to reduce the likelihood or incidence of bribery, corruption and related offences;
- To educate the public about and against bribery, corruption and related offences; and
- To enlist and foster public support in combating corruption.

E. Financial resources

A budget committee is responsible for budgetary planning of the agency's financial resources. The ACAs enjoy managerial autonomy, especially the ICPC, which has more autonomy than the EFCC. The relationship between the attorney general's office and the EFCC has been strained, with a great deal of tension that affects their managerial autonomy.

⁵⁶ Falana F (Senior Advocate of Nigeria) How Courts Frustrate Corruption Cases. Paper presented at the 2014 Law Week of the Aba Branch of the Nigerian Bar Association (NBA), Abia State.

EFCC funding

When the EFCC was established in April 2003, it had neither budget nor office space or staff. It merely existed on paper. The pioneer President Nuhu Ribadu, had to build the organisation from scratch, starting with a loan of N 100 million and office space that he claimed he got from a federal agency,⁵⁷ the Bureau of Public Enterprise (BPE), headed then by Nasir El-Rufia. Availability and control of financial resources by any agency is usually one of the indicators for measuring the level of independence with which the institution operates. According to section 35 of the EFCC Act, funds of the commission are stipulated as follows:

- (i) The commission shall establish and maintain a fund from which shall be defrayed all expenditure reasonably incurred by the commission in the execution of its functions under the act;
- (ii) There shall be paid and credited to the fund established pursuant to subsection (1) of the section, such monies as may in each year be approved by the national assembly for the purpose of the commission; and
- (iii) The commission may accept gifts of land, money or other property (whether within or outside Nigeria) upon such terms and conditions, if any, as may be specified by the person or organisation making the gift provided that the terms and conditions are not contrary to the objectives and functions of the commission under the act.

ICPC funding

The ICPC is independent by its nomenclature and establishment, but its officers are appointed by the president, while the federal executive provides for its funding through budget proposals. This has not been helpful for its independence and people are of the view that the ICPC will be more independent if they have financial autonomy.

Examining both agencies, the performances of the EFCC and the ICPC have largely been questioned by Nigerian citizens and international development partners. Despite the years of investment in the activities of these anti-corruption bodies, corruption in the country has continued to surge. Table 1 below shows the breakdown of the recurrent and capital expenditure of the anti-corruption agencies (ICPC and EFCC) in Nigeria. Here, it is obvious that much more money is spent on running costs and operations than long term assets and structures. This also confirms why the EFCC headquarters in Abuja and some of its regional offices still operate in rented apartments.

57 Details about the loan could not be ascertained during the research, however, ACAs are not constitutional mandated to obtain loans rather they can seek for financial or technical support or for additional funding through the annual budget process.

Table 1: EFCC and ICPC recurrent and capital expenditure for the year 2014

ACA Agencies	Recurrent	Capital	Total
ICPC	N 4 542 989 874	N 132 897 643	N 4 675 887 517
EFCC	N 8 838 694 493	N 1 406 674 677	N 10 245 369 170
Total (Naira)	N 13 841 913 791	N 1 592 012 962	N 15 433 926 753
Total (USD est.62)	USD 81 million	USD 10 million	USD 90 million

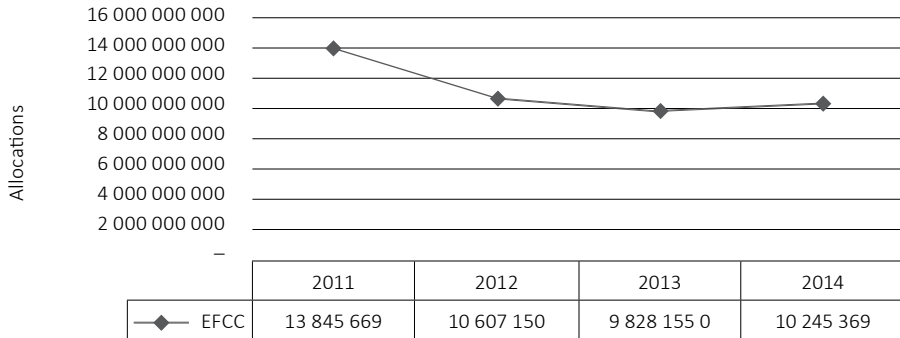
Sources: Extract from 2014 FGN appropriation bill, cited in Partners for Democratic Change (United States), CLEAN Foundation (Nigeria), Budget and Institute for War and Peace Reporting (United States).

Note: Estimate of N 160 per USD during May 2014.

Further analysis in the graphs below (figures 1 and 2) presents the nature of the budget allocations to the budget appropriation and allocations the anti-corruption agencies received from 2011–2014. The budget appropriation to some extent implies that the resources put into anti-corruption has not really translated into tangible results that can equate the given resources. For instance, in 2011 and 2012, the ICPC received approximately N 3.5 billion and N 4 billion respectively, EFCC received approximately N 14 billion in 2011 and a reduction to 10 billion in 2012, while the CCB had an increase from N 1.5 billion (USD 8.8 million) in 2011 to N 4 billion in 2012. As at 2013, the EFCC received approximately N 10 billion, the ICPC got N 4.5 billion while the CCB received N 3.5 billion as budget allocations respectively. These allocations totalling over N 18 billion in 2014 shows what the government spent on the fight against corruption. This excludes other supports from non-governmental agencies and international development partners. The appropriations indicate a serious decline in the monies the EFCC received while the ICPC shows a significant increase. This scenario apparently confirms that part of the challenges faced by the anti-corruption agencies include poor or inadequate funding.

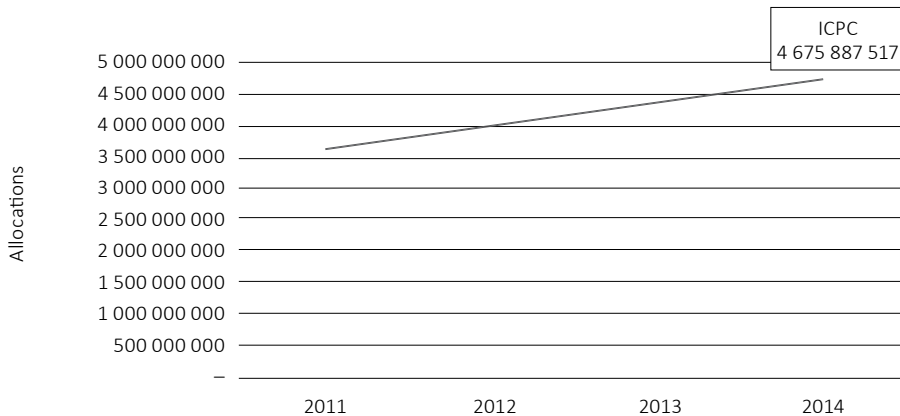
Figures 1 and 2 explain how the government is funding the anti-corruption agencies in terms of yearly appropriation from 2011 to 2014 in billions of naira and millions of dollars. The fund is estimated to be USD 22.5 million in 2011, USD 23.7 million in 2012, USD 26.2 million in 2013 and USD 28.7 million in 2014. It is important to note that the budgets of these entities are proposed by the agencies and then submitted to the ministry of finance who then forwards it to the national assembly (the parliament). The parliament deliberates on it, calls on the agencies to defend its budget before final approval is sent to the president for its approval. After the approval, it is then the duty of the parliament to perform its oversight function on the agencies and ensure that the monies are appropriated as disbursed by the finance ministry monthly or quarterly as the case may be, and that funds are used judiciously. Regarding auditing of the agencies, there has never been any public audit report on any of the agencies under study. However, the EFCC under its former chairman, Lamorde, commissioned an international audit firm KPMG to carry out a comprehensive audit of exhibits and forfeited assets of the commission from 2003 to 2015. The report of the audit as noted by the commission will be made public once it is ready.

Figure 1: Fund appropriated to the EFCC from 2011–2014 by the Federal Government of Nigeria



Source: Partners for Democratic Change (United States), CLEEN Foundation (Nigeria), Budget and Institute for War and Peace Reporting (United States). Note: Figures in the graph are in billions of naira. Estimate of N160 per USD during May 2014.

Figure 2: Fund appropriated to the ICPC from 2011–2014 by the Federal Government of Nigeria



Source: Partners for Democratic Change (United States), CLEEN Foundation (Nigeria), Budget and Institute for War and Peace Reporting (United States).

According to the commission, the decision to commission KPMG⁵⁸ for the audit was inspired not only by the fact that institutional memory had become an issue with the exit of most seconded staff over the years, but by a burning desire to benchmark its assets record keeping with best international standards. The commission further noted that, over

⁵⁸ KPMG International is a global network of professional services firms providing audit, tax and advisory services. KPMG is also represented in Nigeria offering audit, tax and advisory services.

the years, unfounded allegations of misappropriation of assets against the commission has become an attractive weapon in the hands of blackmailers of the leadership of the commission in particular and the commission in general. While the report of KPMG is being prepared, the commission observed that it has decided to set the record straight as far as the management of recovered assets is concerned and forestall further misrepresentation by mischievous elements.⁵⁹

Meanwhile, the budget appropriated to the ACAs is usually seen to be not enough for the agencies work, thus the need for support from other donor partners. Due to inadequacy of budget provisions for the ACAs, international development partners render some assistants to the agencies. There has been great monetary and technical support (trainings, equipment, etc.) provided by donor agencies like the European Union (EU) to the EFCC that is being implemented by the United Nations Office of Drug Control (UNODC). For instance, the NGS08 project of EU-UNODC support to the EFCC was in the region of USD 32 million. In terms of donor support coordination, we observed that the UNODC coordinates well with other development partners (World Bank, UNDP, the Department for International Development [DFID], USAID and the EU) who are involved in providing support to the federal government of Nigeria (FGN) on issues related to corruption and this ensures that duplication of similar support is prevented as far as possible.

As observed earlier, there is no public audited report of the agencies. Nevertheless, there are internal and external mechanisms put in place following the national Public Procurement Act, which guides every public establishment. The bureau of public procurement oversees the compliance of government agencies, while the internal procurement processes of the agencies are equipped to follow the due process. However, in terms of relationships with external donor agencies support, it is the National Planning Commission (NPC) that has the mandate to check and monitor compliance in terms of the national agreement between the donor and government of Nigeria. Unfortunately, the NPC has failed in this responsibility.

F. Relationships with stakeholders

The relationship of the ACAs with CSOs is complementary. Religious and traditional rulers help in communicating the message of ‘saying no to corruption’ to the people. The relationship of the ACAs with private sector organisations – especially the financial institutions – has been collaborative and with development partners, complementary. The structural relations existing between the ACAs and other countries and regional bodies have been very good; they are members of the international networks like the Association of Anti-Corruption Agencies.⁶⁰ The ACAs are under obligation to communicate the results

59 Media & Publicity unit of EFCC, 24 August 2015. See more at <http://efccnigeria.org/efcc/index.php/news/1466-the-n1tn-mischief> [accessed 8 October].

60 In 2011, the Commonwealth Secretariat brought together the heads of anti-corruption agencies of African Commonwealth countries to establish an association of anti-corruption agencies. The association promotes

of its activities or investigations to the public, and therefore should endeavour to do so more often rather than not communicating at all.

EFCC stakeholder relationships

The EFCC Act contains provisions on collaboration with government agencies locally and internationally; maintaining data, statistics, records and reports on persons, organisations, proceeds and properties involved in economic and financial crimes; and also on carrying out and sustaining rigorous public enlightenment campaigns against economic and financial crimes within and outside Nigeria. The act further provides extensively for seizure and forfeiture of assets suspected to be and those established as proceeds of crime. The act provides for the designation of high courts, both federal and state, to hear cases brought under the EFCC Act. Such courts are obliged to give such matters priority over other matters pending before them. The EFCC Act gives considerable independence to the commission in its funding. It provides that all the monies approved for it annually by the national assembly must be credited to a fund established for the purpose of receiving the funds.⁶¹ In reality, this practice is in existence such that the commission directly expends its budget.

The ineffective implementation of anti-corruption policies in countries like Nigeria is largely because the conventions (UNCAC) and protocols (AUCPCC and ECOWAS) that were designed to oblige member countries to set up institution(s) that shall be responsible for the coordination, dissemination and enforcement of the policies are yet to be taken seriously by political leadership. The conventions and protocols provide that if the institutions are set up, they should be independent and equipped with human and material resources required to undertake its task. However, in response to this in Nigeria, agencies like TUGAR was set up. Unfortunately the organisation is yet to achieve desired results based on its mandate, and coordination has also remained a challenge for the institutions and, by extension, for donor agencies who support anti-corruption works. A major problem associated to the Nigeria situation is the non-existence of an officially gazetted national anti-corruption strategy.

Cooperation among the ACAs, civil society, the media and other relevant stakeholders in combating corruption has generally been complimentary. The key personnel of the anti-corruption agencies interacted with during the study attested to the supportive role of media in most of the corruption cases which were investigated by the agencies.⁶² For instance, the media played a critical role during the missing controversial oil money

collaboration and learning throughout the region through the sharing of good practices. Members benefit from inter-agency support and exchange information on innovative projects. An annual meeting provides a forum for agency heads to review each country's progress in anti-corruption. Collaboration has resulted in bilateral agreements between countries, for example an agreement between Ghana and Nigeria which has helped the two countries combat trans-border crimes. See more at: <http://thecommonwealth.org/anti-corruption#sthash.I6D7FDaM.dpuf>.

61 ECA (2010) op cit; EFCC Act, sections 6(J,P), 19(3,4), 20–26, 35(2).

62 Key informant interviews, 26 March 2014, Abuja.

(USD 20 billion) as alleged by the immediate past governor of Nigeria's Central Bank, Mr Sanusi, who courted a stormy end to his tenure by accusing the state oil company, the Nigerian National Petroleum Corporation (NNPC), of failing to remit USD 20 billion in revenues to government accounts. Meanwhile the ministry of finance puts the figure at USD 10.8 billion.⁶³ The media has provided evidence required for further investigation by the parliament through their oversight functions.

The Nigeria media enjoys relative freedom of the press, especially the soft sell magazines and tabloids that frequently publish scoops of corruption in high places. Where such stories may be true, little or no investigative follow up is done, giving credence to the allegations of 'buy-off' stories and/or extortion.⁶⁴ The relationship between the private and public media and ACAs is cordial, especially with the media unit of the ACAs, particularly the EFCC who has a functional public and media unit. However, much work is still needed to strengthen and improve on the operations of the ACAs, especially in creating more visibility and awareness on the workings and progresses made by the agencies.

The media and the public unit of the EFCC appear inactive now, unlike before (especially during the Ribadu and Waziri eras) when they issued press statements on their work. There is a grossly inadequate and ineffective feedback mechanism. This has become a major worry for Nigerians, who usually rely on the public media for feedback whenever culprits are either taken to court or questioned/arrested. In other words, transparency is greatly needed in the operations of the ACAs. Transparency in this regard is a function of reporting, public communications and opportunity provided for public scrutiny, feedback and oversight of the work of an ACA. The more an ACA did not routinely share information on its operations and progress in a manner that citizens found accessible, the more it tended to be perceived as selective in the cases it took on, its methods perceived as not following due process and accusations of bias (even corruption) in the selection of targets raised.⁶⁵

Nevertheless, CSO relationships with the EFCC could be improved. The lack of credibility of some CSOs as perceived by the commission is a major issue. There was the anti-corruption revolution (ANCOR) programme of the agency which was meant to galvanise civil society groups to drive anti-corruption crusades among citizens particularly the youth. Similarly, the ICPC inaugurated the Students Anti-Corruption Vanguard in the College of Education Technical, Enugu. The Students Anti-Corruption Vanguard is a club for students of all tertiary institutions in Nigeria and operates purely as an agent of corruption prevention by civil actions. The ICPC explained that the essence of the Students Anti-Corruption Vanguard is to tap into the active energies of the youths who possess enormous power that could be effectively deployed in the non-violent fight against corruption. The idea is based on the notion that in order to curb the menace of corruption,

63 The president's decision to get rid of the Central-Bank Governor is bad news (2014, 1 March) *Economist*. Available at <http://www.economist.com/news/middle-east-and-africa/21597896-presidents-decision-get-rid-central-bank-governor-bad-news-now> [accessed 8 October 2016].

64 ECA (2010) op cit.

65 Culled from Convention on Business Integrity (CBI) (2009) Public Perceptions of the Anti-Corruption Agencies, 2008/2009.

youths must contribute their quota towards the enthronement and institutionalisation of integrity, transparency, accountability and sound moral values in tertiary institutions.⁶⁶

Unfortunately, the EFCC ANCOR programme collapsed because of what the commission viewed as the fault of overzealous CSOs abusing the privilege of partnership and venturing outside the original mandate (public awareness and advocacy) given to them. However, the observation from CSOs involved in the failed enterprise is that ANCOR was just a smoke screen aimed at trivialising and dismissing criticism against the agency.⁶⁷

The EFCC has six operational offices across the six geopolitical zones, including the federal capital territory, Abuja, which also serves as the headquarters. There are offices in Enugu for the South East, Lagos for the South West, Yola for the North East, Kano for the North West and Port-Harcourt for the South South. These offices are functional at regional level; unfortunately they can only act on the directive from the centre. Most times cases reported to the regional offices are delayed due to bureaucracy and at times receive less or no attention, unlike cases that are reported to the Abuja office directly. In other words, there is still ineffective communication between the regional offices and the headquarters at the centre.

There is a cordial relationship between the EFCC and regional and/or international institutions' anti-corruption frameworks, such as ECOWAS, the African Union (AU), United Nations (UN), European Union (EU), the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA); Nigeria is also an associate member of the Egmont Group,⁶⁸ among others. At the time of finalising this study report, the EFCC is making arrangements to upgrade the facilities at its academy in Karu, near Abuja, to be able to train anti-graft agencies for member nations of ECOWAS. The EU member states and the UN through its agencies like the UNODC have been major development partners of the EFCC since the establishment of the agency. The support has been in the form of technical capacity and equipment support, especially in provision of technology.

ICPC stakeholder relationships

On the other hand, as at 2014, the ICPC achieved outstanding results in its outreach efforts. For instance, as part of a holistic intervention in the education sector, the ICPC in collaboration with the National Universities Commission (NUC) closed down 21 illegal universities, and those arrested are currently being prosecuted. Similarly, the ICPC in collaboration with the Technical Unit on Governance & Anti-Corruption Reforms

66 See Uzondinmae E (2013, 4 November). ICPC inaugurates Students Anti-corruption Vanguard in Enugu. *Daily Post*. <http://dailypost.ng/2013/11/04/icpc-inaugurates-students-anti-corruption-vanguard-in-enugu/> [accessed 4 April 2016].

67 Focus group discussion, 27 March 2014 Abuja; key informant interviews, 24 March 2014, Abuja.

68 The Egmont Group of Financial Intelligence Units is a major Anti Money Laundering Combating of Terrorism Financing (AML/CFT) stakeholder. It promotes the development of FIUs and cooperation especially in the areas of information exchange, training and the sharing of expertise. Source: *The Guardian* newspaper editorial, 17 June 2015. See also <http://guardian.ng/business-services/giaba-gets-special-recognition-from-the-egmont-group/> [accessed 8 October 2016].

(TUGAR), United Nations Development Programme (UNDP) and the Bureau of Public Procurement (BPP) certified 69 corruption risk assessors. This is an international certification. Beneficiaries were drawn from the federal, state and public services and CSOs. As a follow up, corruption risk assessments in Nigeria ports were conducted by the commission in collaboration with BPP, TUGAR and the Movement Against Corruption in Nigeria (MACN).⁶⁹

In the area of public enlightenment and education, the commission engages with professional bodies like the Nigeria Union of Teachers (NUT), Teachers Registration Council and the Nigeria Union of Journalists (NUJ) on incorporating integrity in their professional code of ethics. Even though there is no formal arrangement with the media, people get to know about the workings of anti-corrupt agencies through the information they make public through the media or their websites. Another avenue through which people get to know about corruption is via whistleblowers. Even though there is no law protecting them, a bill to do so is currently pending in parliament. Non-governmental organisations (NGOs) are greatly impeded in carrying out their whistleblowing duties as a result of factors including lack of funding.⁷⁰

The relationship among the ACAs, NGOs, faith-based organisations (FBOs) and community-based organisations (CBOs) in the fight against corruption gives rise to concerns. It is usually the NGOs at the national level who engage in anti-corruption activities when the funding is available, but the CBOs at the local level are seriously handicapped in the crusade against corruption. These CBOs often lack the capacity and resources to demand accountability and fight or expose corruption. The issue of not having whistleblower protection laws poses a challenge for – among others – media, civil servants, and even private sector operators, to engage in anti-corruption campaigns.

At the sub-national level, the ICPC has regional offices in each of the six geo-political zones where they collaborate with agencies at the state level. The regional offices oversee corruption cases within its jurisdiction and transmit to the national level. The ACAs release of reports on their activities is not regular but usually happens annually and publicly. The websites of the agency are not regularly updated either. The reason for this is attributed to the bureaucratic and civil service nature of working that slows the processing of cases.

For maintaining external relations, the commission collaborates with international organisations such as the United Nations Office for Drug Control (UNODC), the DfID and Justice for All (J4A) to improve and bring the commission's processes in line with international standards and best practices.⁷¹ One of the recent achievements in this external relation is the setting up of the ACAN.

69 Key informant interviews 26 March 2014, Abuja; Excerpts from end-of-year briefing by ICPC chairman, barrister Ekpo Nta, 20 December 2013.

70 Fasakin A (2012) Non-Governmental Organisations and Corruption in Nigeria's Public Space. In: D Mohammed, MT Aluaigba & A Kabir (eds) *Corruption, Governance and Development in Nigeria: Perspectives and Remedies*. Kano: Aminu Kano Center for Democratic Research and Training & the United Nations Development Programme (UNDP).

71 Ibid.

The leadership of the ICPC has benefited in their relationship with international and regional institutions like the UN, AU, and GIABA, etc. For instance, the ICPC participated at the conference of the state parties to the UNAC in Panama in 2013. The ICPC in 2009 started partnering with the Association of Certified Anti-Money Laundering Specialists (ACAMS), a global organisation of professionals dedicated to controlling and preventing money laundering and terrorist financing. The commission works with other international bodies such as the UNCAC, TI and the AU Convention against Corruption.

G. Strengths and weaknesses

The ACAs have prosecuted more cases, but with few or no successes recorded. Generally, Nigerians are not pleased with the inadequate performance of the ACAs. Stakeholders are concerned that there is no system in place that is known to the public by which to evaluate the performance of the ACAs. Such a system would include a complaints reception mechanism in the fight against corruption and a guarantee of protection of informers. Though social media activists and advocates suggest use of social media outlets like Facebook, Twitter, etc., this is yet to be taken seriously by the ACAs. There is a general sense that they are not performing and not making the desired positive impact in the fight against corruption. There have been alleged reports of members of the bar and judiciary compromising and frustrating the entire judicial process of anti-corruption. More importantly, the non-existence of special courts for corruption related cases has contributed to the lingering cases over the years.

Unlike the EFCC, the ICPC, which took a more judicial approach to the investigation and prosecution of corrupt practice, is largely perceived to be ineffective. Barely a year after the ICPC was created in 2000 as a result of Nigeria being a signatory to the UNCAC, Nigeria was included in the list of non-cooperating countries by the Financial Action Task Force (FATF).⁷² Although Nigeria was added to the FATF list in 2001, the Nigerian government was officially unaware of it (basically because of non-existence of budget monitoring and price intelligence agency) until it was brought to the president's notice in 2002 by Mrs Oby Ezekwesili, the then head of the budget monitoring and price intelligence unit of the presidency, and co-founder of TI. It was actually Ezekwesili's explanation of the implications of FATF's action that led to the creation of the EFCC.⁷³

The work of the EFCC, as explained by its pioneer chairman Nuhu Ribadu, would not have been possible without the FATF, which de facto forced Nigeria to develop new anti-money laundering laws and spurred the creation of the EFCC. However, the FATF lost its

72 The FATF was created in 1989 at the G-7 Summit in Paris. The FATF is an inter-governmental organisation that develops and promotes national and international politics to combat money laundering and terrorist financing.

73 Adebawo W & Obadare E (2011) When corruption fights back: Democracy and elite interest in Nigeria's anti-corruption war. *Journal of Modern African Studies* 49(2): 185–213.

original might and importance and there is a need to strengthen it, empower it, and provide the necessary framework for international financial regulations. Stronger global standards against money laundering can force Nigeria and other countries to accept that the old way of doing business will cost them dearly. For an efficient implementation of anti-corruption policies, the conventions and protocols oblige member countries to set up institution(s) that shall be responsible for the coordination, dissemination and enforcement of the policies. The convention provides that such a body, when established, should be made independent and provided with human and material resources required to undertake its task.

As observed above, it was in response to this that the ICPC and EFCC, and other anti-corruption agencies and enabling laws emerged. Between 2009 and 2014, there was a general consensus that corruption in Nigeria thrives because of the weak institutional checks and oversights.⁷⁴ In Nigeria, corruption appears endemic and there is no gainsaying the fact that it pervades every facet of the country's social, political and economic system. Nigeria being a signatory to Jakarta Principles does not help matters much thanks to the country's failure to implement said principles. Among the principles are permanence and immunity, which are expected to shield the ACAs from efforts to weaken the institution. By permanence, the Jakarta Statement stipulates that the anticorruption agencies shall be established by a proper and stable legal framework, such as the constitution or a special law to ensure its continuity. Unfortunately, experience has shown that, if the EFCC arrests a corrupt public officer for stealing millions of naira and the courts release such an individual after paying back a token amount, who is to be blamed? Political corruption and governance are shaped by institutions, and it is these institutions, through the individuals that operate them, that implement the rules of the game.⁷⁵

The trend of governance in Nigeria shows the clear position of corruption. Speeches by political office holders have not translated into action. If we look at trends and activities in recent times, it can be said that the CSOs and media have been at the front line in taking issues of corruption and keeping it on the front burner. The credit rating of the country has also not improved if we look at the company we keep throughout a decade on the corruption perspective index from TI. We have not moved from the bad company we keep on the index. The Global Competitive Index shows that Nigeria has a bad rating. The same goes for the Mo Ibrahim and Afrobarometer. The most affected sectors are the oil and gas sectors, financial services sectors and the administration of justice sector. The recruitment, promotion and retirement into public sector also provide a veritable avenue for corruption.

Parliamentary oversight over ACAs is weak in Nigeria. There is a need to strengthen this and to ensure that the oversight is not commercialised; that is, parliamentarians do

74 Key informant interviews and focus group discussion, 26–29 March 2014, Abuja and 2 April 2014, Nsukka; key informant interviews, 7–9 April 2014, Enugu.

75 Oladele K (2014, 19 March) Political corruption and governance problems in Nigeria: Understanding the critical issues. *Sahara Reporters*. Available at <http://saharareporters.com/2014/03/19/political-corruption-and-governance-problems-nigeria-understanding-critical-issues-kayode> [accessed 8 October 2016].

not enjoy any personal benefits from their oversight functions. The seeming inability to secure conviction for high profile cases of corruption against political actors in Nigeria remains a worry and undermines the anti-corruption posturing. There is need to give the anti-corruption fight a boost through citizen engagement in anti-corruption initiatives. Administration of the criminal justice bill can also be used to help ensure that cases continue to run irrespective of interlocutory applications that seek to stall corruption cases in court. There is need to revisit and strengthen collaboration between CSOs and ACAs on strengthening the anti-corruption campaign. However, the two agencies have underperformed within their different capacities and there is urgent need for improvement in their operations and delivery.

Challenges for the ICPC

The year 2013, as reported by ICPC, was fraught with challenges, especially on funding of its activities. However, the commission was able to overcome the challenges of paucity of funds and other logistics, especially through the technical support it received from international development partners. This support as observed earlier is in the form of strengthening the capacities through staff training support programmes. The success the commission recorded in 2013 was said to be a result of capacity building, impacting positively on productivity. In addition, the ICPC strengthened its collaboration with many ministries, departments and agencies (MDAs), groups, international organisations and notable individuals. The ICPC recorded more convictions, especially in 2013, than in any other single year since the inception of the mission. These convictions focused on tertiary institutions, MDAs, visa racketeers, fake National Youth Service Corps members, false land speculators/agents, etc.⁷⁶ Between 2014 and March 2015, there was no record of cases won; rather, most of the cases are either still in court or dismissed by the court (see Appendix B).

As observed earlier, in 2013, according to the ICPC, the commission prosecuted some individuals on corruption and civil matters. The number of cases the commission prosecuted in the courts was 58, out of which it secured eight convictions of corruption and 16 for civil matters.⁷⁷ A critical look at what was recorded for other years shows that the agency is not really functional, suggesting the need for serious improvement in the operations of the agency.

In terms of improving public enlightenment and education of the citizenry on anti-corruption campaigns of the commission, the ICPC embarked on placing public awareness jingles on radio stations across the 36 states of the federation and the federal capital territory and also on television stations in 12 states covering the six geo-political zones. The commission also acquired five toll-free lines that are opened 24 hours a day to enable the public to report cases of corruption and other related offenses, without any cost. Likewise, three magazines (8 000 copies each) and an online version of ICPC news

⁷⁶ Culled from the end-of-year briefing by the chairman of the ICPC, barrister Ekpo Nta on 20 December 2013, and key informant interviews, 26 March 2014, Abuja.

⁷⁷ Key informant interviews, 26 March 2014, Abuja.

are produced to sensitise the public, in addition to physical copies distributed to tertiary institutions, MDAs and foreign missions in Nigeria.⁷⁸ All these were achieved despite the challenges faced by the agency within the period.

Challenges for the EFCC

Mallam Nuhu Ribadu observed that between 2003 and 2007 the commission secured convictions in over 275 of the near 1 000 cases in the courts. The point is that the achievement was modest but revolutionary, especially since the convictions were from cases against high-ranking officials such as the leadership of the Nigeria police, a number of state governors, ministers, legislators and top bureaucrats. The symbol of these convictions to ordinary Nigerians had more impact than envisaged, because for the first time, they saw those living unlawfully and with impunity being called to task, and this allowed them to hope that a new Nigeria, where the fruits of their labours would finally be enough to prosper, may be coming.⁷⁹

The efforts made by the EFCC at inception have been described an amalgamation of two forces: standards set by external relations and domestic or national policy and programme. The adoption of international instruments of the Financial Action Task Force [FATF] led to necessary reforms, which provided the commission the platform to build a strong local programme to clean up Nigeria's financial institutions and prosecute those who sought to undermine them. This ultimately paved the way for a far-reaching banking reform in the country, famously described as the consolidation of about a hundred mushroom banks into 25 strong institutions. Some of these banks are now seen as credible financial institutions with continental reach; indeed, some of them are stepping in to fill the gaps left by decreased activity of Western banks during the financial crisis.⁸⁰

The anti-corruption policies and initiatives in Nigeria are geared towards the use of all the right rhetoric, speaking of the need for rule of law and the fight against corruption, to cover up the real campaign to completely undo the reform efforts of the previous government and so thoroughly confuse corruption and anti-corruption that no one can tell the difference between the two any longer. This is why at some point in recent time, many of the law enforcement agencies that used to work hand-in-hand with the pioneer EFCC team are no longer willing to partner with the EFCC or the Nigerian justice department. The issue of integrity, which is paramount in such relationships, is seriously lacking.

Several other factors have been identified as challenges that frustrate the performance of anti-corruption agencies towards achieving positive desired results. Aside from infrastructural difficulties that may extend trial time, there are constitutional provisions that allow appeals on interlocutory issues and which may lead to a stay of proceedings

78 Ibid.

79 Mallam Nuhu Ribadu, former executive chairman, Economic and Financial Crimes Commission of Nigeria, 'Capital Loss and Corruption: The Example of Nigeria' Testimony presented before the House Financial Services Committee, 19 May 2009 at the Centre for Global Development, St. Anthony's College, University of Oxford.

80 Ibid.

while the issues are being appealed. In this situation, the EFCC Act sought to remedy the situation by providing that an application for stay of proceedings in any matter brought by the commission before a court could not be entertained until judgment is delivered. The complexity of some cases of embezzlement or money laundering sometimes also creates delays. Special courts for corruption cases have, to a certain extent, helped to remedy this situation. Under the ICPC and EFCC laws, some courts in different states are specially designated to take on corruption cases brought under the respective statutes. This has really helped in giving greater priority to disposing of corruption cases.⁸¹ In spite of this laudable effort in facilitating corruption cases, the feedback we received is that most of these court judges are overwhelmed by their workload so the idea is not really achieving much. As a remedy there is the suggestion of having special courts and judges solely dedicated to corrupt cases.⁸²

The EFCC, in the last five years, secured 465 convictions out of the 1 610 cases filed in various courts across the country. The EFCC said it recorded an impressive 126 convictions in 2014 (see Table 2). According to the EFCC, the figure was a marked improvement over the 117 convictions that it posted in 2013. That also surpassed the 87 convictions recorded for 2012.⁸³ For the EFCC, the fact that 99% of the convictions were secured by lawyers in the legal and prosecution department of the EFCC has buoyed the determination of the leadership of the EFCC to strengthen the department and de-emphasise the use of private solicitors for the prosecution of EFCC cases. The EFCC noted that it achieved this result despite the onerous challenges it faces in prosecuting economic and financial crimes cases. These figures indicate a steady progression in convictions return, which is encouraging in the light of the well-publicised encumbrances that the EFCC contends with in the prosecution of economic and financial crimes case.⁸⁴

Table 2: EFCC recorded convictions 2010–2014

Year	Number of convictions
2010	68 out of 206 cases filed in courts
2011	67 out of 417 of cases filed in courts
2012	87 out of 502 cases filed in court
2013	117 out of no specific number of cases filed in court
2014	126 out of no specific number of cases filed in court

Source: Field work, 2015.

81 EFCC Act section 40; Economic Commission for Africa (ECA) (2010) Report on Assessing the Efficiency and Impact of National Anti-corruption Institutions in Africa.

82 Focus group discussion, 27 March 2014, Abuja; key informant interviews, 28 March 2014, Abuja.

83 Zaggi H (2015, 20 February) EFCC secured 465 convictions in five years. *Daily Independent* newspaper.

84 Excerpts from press statement issued by the Economic and Financial Crimes Commission on Friday 14 February 2014 presented by Wilson Uwujaren, head, media and publicity.

In Nigeria's justice system, certain issues have been identified as factors that currently hamper the overall ability of the justice system to effectively and efficiently handle cases of corruption and economic and financial crimes. These salient points raised are still relevant because they have either not been addressed or adequately given attention by the authorities involved. The concerns of these groups, and more importantly of Nigerians, hinge on the continuing difficulties encountered by anti-corruption campaigners to ensure the timely and effective disposal of cases of alleged corruption, economic and financial crimes, as well as the diminishing public confidence in the ability and commitment of the Nigerian justice system, and the political will of the Nigerian government as a whole, to combat corruption. There are issues that need to be resolved with a view to enhancing the capacity of the justice system and its individual institutions to handle cases of corruption, economic and financial crimes.

H. Recommendations

To the office of the executive

A merger of the EFCC and the ICPC needs to happen, so as to streamline the mandate and consolidate a policy of establishing a single anti-corruption agency tasked with combating corruption as enshrined in the AUCPCC, to which Nigeria is a signatory and which it has ratified. However, for this to happen, there is a need to sensitise and educate the wider Nigerian populace as to why the merger is inevitable.

To the office of the attorney general

- As an immediate action, review and re-introduce the Non-Conviction-Based-Asset-Forfeiture Bill;
- Develop a witness protection bill in line with the requirements of the UNCAC;
- Introduce a whistleblower protection bill, as an executive bill, drawing on already existing legislative proposals and international good practices;
- Review and re-introduce the bill for the amendment of the Evidence Act, in order to ensure the admissibility of electronic and digital evidence;
- Limit the right to interlocutory appeals, in particular as relates to cases handled by the EFCC and the ICPC, including the consideration of a constitutional amendment;
- Introduce other amendments to the Criminal and Penal Procedure Acts, as appropriate, aimed to facilitate the handling of cases of corruption, economic and financial crimes (including the regulation of plea bargaining) drawing from examples already adopted at state

levels, in particular the administration of Criminal Justice Law of Lagos State; and

- Introduce amendments to the EFCC and ICPC Acts, allowing for cases of corruption, economic, and financial crimes, in particular as they relate to politically exposed persons (PEPs), to be tried in jurisdictions, other than the one of the locus of the crime.

To the CCB, EFCC and ICPC

- Review and, as appropriate, amend the human resource recruitment and management system for prosecutors with a view to attracting more competent and committed lawyers to join the legal departments of the anti-corruption enforcement agencies;
- Improve and standardise training, coaching and mentoring, in particular for junior prosecutors, including in the areas of management of individual caseloads, proper examination of the elements of crime, drafting of charges, prosecutorial tactics and strategy, preparation and management of witnesses, etc.;
- Improve the interaction with the media with a view to managing the premature raising of public expectations, unwarranted pressure by the media (leading occasionally to the filing of poorly prepared cases with little or no chance of obtaining convictions), as well as potential negative effects on public confidence in the justice system (as such damages will ultimately affect all institutions);
- Become more selective in relying on the assistance of outside lawyers, and only engage the services of those who possess both the competence and commitment;
- Conduct in all cases pre-trial briefings to prepare witnesses, scrutinise evidence and anticipate potential obstacles to the successful prosecution of cases and identify tactical responses to such obstacles;
- Establish a system for case selection and early evaluation, involving senior investigators and prosecutors alike, in order to focus limited human and financial resources on the most promising cases and to increase conviction rates;
- Ensure the early involvement of prosecutors in the planning and guidance of investigations, with a view to enhancing the effective use of investigative resources and efforts on only those elements relevant to the later prosecutions of the case;
- Create a permanent platform of interaction, coordination and cooperation among the anti-corruption law enforcement agencies in order to avoid duplication of investigations and identify cases of possible joint investigations and prosecutions;

- Provide regular, practice oriented training to investigators, including basic investigation skills, such as interviewing, search and seizure, corroborating evidence, international cooperation, recovery of digital evidence, etc.;
- Provide more resources and operational equipment in support of investigations and prosecutions;
- Employ more seasoned investigators and prosecutors to match the caseload; and
- Ensure the handing over of such cases to the police and other law enforcement agencies in which, because of their nature, the damage caused and/or values involved are less severe from the public interest perspective.

To the heads of courts and judges

- While the power of heads of courts to designate judges to handle cases of the EFCC and ICPC is not in question, it is recommended that the heads of courts be mindful of the demands of such specialised cases in the selection process;
- Develop and standardise needs of judges designated to hear EFCC and ICPC cases, including equipment, security and training;
- Recognising the immense public expectations to see decisive action in the handling of corruption cases. Designated judges should take a more proactive and managerial approach when hearing EFCC and ICPC cases. This entails particular, enhanced scrutiny in the granting of bail and adjournments as well as the immediate disposal of interlocutory applications;
- Recruit/assign and train court spokespersons to translate judicial decisions into easily understandable language and to handle media relations, in particular in high profile public interest cases;
- For the chief judge of the federal high court to limit the transfer of designated judges, where possible, to plan and communicate such transfers well ahead of time, and where necessary to make budgetary provisions that designated judges affected by transfers can conclude the EFCC and ICPC cases commenced by them; and
- For the heads of state and FCT courts to designate magistrates to decide speedily on applications brought by the EFCC and ICPC for search, remand and arrest warrants, and bankers' orders, etc.

To civil society organisations

- Campaign and push for policy and change in anti-corruption laws in a manner that will support the fight against corruption;

- Continue to serve as watch dogs in the implementation of transparency and accountability measures in governance. They should also strive to serve as watch dogs against abuses by the anti-corruption agencies;
- Initiate and support prevention and education programmes against corruption. In doing this, CSOs should engage, support and partner with anti-corruption agencies in the fight against corruption; and
- Continue to blow the whistle against corruption, and always demand accountability from the anti-corruption agencies.

To international development partners

- There is urgent need for effective donor coordination on anti-corruption support to state and non-state actors in Nigeria. Lack of donor coordination has been cited as one of the reasons most of the supports from different donor agencies have yielded little or no result in the past. So, donor agencies must insist and also work out modalities with the National Planning Commission on how to achieve this with maximum result.
- The incumbent government appears to be very enthusiastic about fighting corruption and it is obvious the government cannot do it alone to succeed. The collaborative effort of international development partners is paramount in making the anti-corruption agenda succeed. International development partners should take advantage of the anti-corruption initiatives and direction of the government and see where they can render support.

Appendix A

Some selected anti-corruption initiatives in Nigeria, 1975–2014

Year/period	Government/regime	Anti-corruption initiatives	Remarks
1975	Murtala/ Obasanjo	Corrupt Practices Decree	Elements of this decree formed part of the ICPC and EFCC Acts, etc.
1976		Public Officer (Investigation of Assets) Decree No. 5	This decree was part of the basis for establishing the CCB which is enshrined in the constitution
1977	General Olusegun Obasanjo	The Jaji Declaration	The declaration laid the foundation for the regime (armed forces ruling council) to express more commitment to corruption issues in the country
1979		Code of Conduct Bureau (CCB)	Provided for in the constitution
		Code of Conduct Tribunals (CCT)	Provided for in the constitution
1979– 1983	Alhaji Shehu Shagari	The Ethical Revolution	This initiative did not really succeed because governors and several ministers and special assistants under his administration (1979–1983) were convicted of corruption by Buhari/Idiagbon regime
1984	General Buhari and Idiagbon	War Against Indiscipline	This initiative is one that those Nigerians who experienced it will never forget. To some extent it is seen as the only intervention that made remarkable impact
		Recovery of Public Property (Special Military Tribunals) Decree 1984 (as amended)	The tribunals consisted of military officers as chairman, officers not below the rank of lieutenant colonel and its equivalent and a serving or retired judge of the high court as members
1985 – 1993	General Babangida	National Committee on Corruption and other Economic Crimes	The committee comprises mainly civilian technocrats who were assembled to advise government on tackling corruption related issues
1986		National Orientation Movement	This targeted at sensitising the people on government activities and direction. It also aimed at re-orientating the people on ethics and values

Year/period	Government/regime	Anti-corruption initiatives	Remarks
1987		Mass Mobilisation for Social Justice	This helped in sensitising Nigerians at all levels on the ills of corruption and social injustice in the society
1990		The Corrupt Practices and Economic Crime Decree	This decree expanded the definition of corruption to encompass the private sector
1994 – 1999		The Indiscipline, Corrupt practices and Economic Crime (Prohibition) Decree	This was largely a replica of Babangida’s 1990 decree on corrupt practices and economic crime ⁸⁶
1995	Sani Abacha	Advance Fee Fraud (otherwise known as 419) and Related Offences Decree	Amended in 2002, 2004 and 2012 and are in use at the moment
		Money laundering Act of 1995	
1996		War Against Indiscipline and Corruption	This was expanded initiative of Buhar’s WAI targeted at emphasising the issue of corruption
2000	Olusegun Obasanjo	The Independent Corrupt Practices and Other Related Offences Commission (ICPC Act)	The ICPC Act seeks to prohibit and prescribe punishment for corrupt practices and other related offences
2003		Budget monitoring and price intelligence unit (BMPIU)	This was used to check widespread corruption, gross incompetence and related vices in public procurement and service delivery
2003		Bureau of Public Service Reform	This reform deals with the issue of monetisation and generally targeted at minimising wastages and leakages in the public service
2004		Penal Code Laws of Federation of Nigeria	Amended in 2004
2004		Criminal Code Law of Federation of Nigeria	Amended in 2004
2004		The Economic & Financial Crimes Commission Act	This EFCC Act provides for the establishment of the EFCC charged with the responsibility for the enforcement of all economic and financial crime laws, among others

85 Agbu O (2003) Corruption and human trafficking: The Nigerian case. *West Africa Review* 4(1).

EFFECTIVENESS OF ANTI-CORRUPTION AGENCIES IN WEST AFRICA

Year/period	Government/regime	Anti-corruption initiatives	Remarks
2006	Olusegun Obasanjo	Advance Fee Fraud and Other Fraud Related Offences Act	The EFCC and other anti-corruption agencies makes use of this act in prosecuting offenders
2007		The Procurement Act	The act is being used in checking the corrupt practices during contract awards and other transactions within the public sector
2004/2007		Nigerian Extractive Industrial Transparency Initiative (NEITI)	NEITI was inaugurated in 2004 while the NIETI was established in 2007. The initiative targets the extractive industries mainly the oil and gas due to the maladministration and incessant oil theft in the industry. This initiative has attempted to check the activities of the oil and gas
2009	Umaru Yaradua/G Jonathan	Whistleblowing Protection Bill	The bill seeks to provide protection against any occupational detriment or reprisals of a person who discloses corrupt practices. This bill is among the bills that are still pending at the national assembly
		Assets Forfeiture Bill	The bill is designed to checkmate the activities of public officials who delight in diverting public funds into their private use. This bill is still pending at the national assembly
2010		Technical Unit on Governance and Anti-Corruption Reforms (TUGAR)	This body comprises of ministries, departments and agencies of government and non-state actors working on anti-corruption. Initiatives that this body championed include drafting a national strategy on anti-corruption (yet to be adopted by government)
2011		Freedom of Information Act (FOI Act)	This is operational but its effectiveness is undermined because of difficult bureaucratic nature of its implementation
2015	Buhari/Osibanjo	Presidential Committee on Anti-Corruption	Newly inaugurated at the time of concluding this report. The committee is yet to start making a positive impact

Compiled by the researcher, 2015.

Appendix B

Top 20 corruption cases in Nigeria, 2011–March 2015⁸⁶

Between 2011 and March 2015, there are 20 top corruption cases and scandals in Nigeria highlighted by Oluwole Isaac in March 2015. Isaac argued that for four years, there have been several alarming and scandalous cases of corruption in Nigeria, some perpetrators have been charged in court, some cases were never even investigated and many of the cases remain unsolved. The list of the top 20 includes the following:⁸⁷

1. N 195 billion Maina pension scam

It is alleged that Alhaji Maina misappropriated billions of naira worth of pension funds, which Maina claimed to have recovered from pension thieves. The national assembly senate committee probing pension funds management accused him of mopping up pension funds from banks and depositing the money in his private accounts. According to the committee, this mopping of such funds had made it impossible to pay thousands of pensioners across the country for months. When he was summoned to appear and clear the air on the committee's findings, Alhaji Maina instituted a N 1.5 billion case against the senate and the inspector general of police. Things came to a head when the senate passed a resolution asking the presidency to sack Alhaji Maina within two days or face its wrath. Although the presidency had initially insisted that only the head of service could sack Maina, it subsequently changed its tone and ordered that disciplinary action should be taken against him for absconding from his duty post without permission. **Punishment:** None, and has since fled Nigeria.

2. Kerosene subsidy scam

The former governor of the Central Bank and now Emir of Kano, Mr Sanusi revealed that the kerosene subsidy was eliminated in 2009 by a directive of the late president Umaru Yar'Adua. Further evidence, in the form of official data gathered from across Nigeria, shows that nowhere in the country is kerosene sold at a subsidised rate. It is bought by the NNPC at N 150, sold to marketers who then retail at between N 170 and N 250. Mr Sanusi estimates that USD 100 million goes astray this way each month. 'The margin of 300-500% over purchase price is economic rent, which never got to the man on the street. In dollar terms every vessel of kerosene imported by NNPC with federation money cost about USD 30 million and it was sold at USD 10 million or USD 11 million generating rent of USD 20 million per vessel to the syndicate.' It was learnt that since the national assembly members concluded their investigations, no officials of the NNPC or the marketers have

⁸⁶ A complete list and status of ICPC cases is available at www.efccnigeria.org. A list of EFCC convictions secured by 2014 is available at www.icpc.gov.ng.

⁸⁷ Excerpts from <http://www.nigerianeye.com/2015/03/top-20-corruption-cases-and-scandals-in.html> [accessed 8 October 2016].

been sanctioned, thus emboldening them to continue to import kerosene and allocate some to themselves and their cronies. Apparently due to alleged pecuniary benefits, the NNPC has continued to import kerosene and allocate in questionable circumstances to individuals and groups at the ex-depot price of N 40.90. But rather than selling the product at the subsidised price of N 50 per litre at filling stations, the beneficiaries of these allocations sell the product to middlemen at N 95 or N 100 per litre at the gates of the depots. These middlemen, it was learnt, truck the product to the filling stations and sell between N 130 and N 150 per litre. It was alleged that marketers give some of their allocations to some top government officials to ensure that they turn blind eye to the scam. The failure of the NNPC to implement a presidential directive removing subsidy from kerosene has fuelled suspicion among the stakeholders.

3. USD 6 billion fuel subsidy scam

Nigeria's parliament has deliberated on the presidential committee fuel subsidy scam report which revealed that USD 6 billion has been defrauded from the fuel subsidy fund in the past two years. It is sad that Nigeria is a major oil producer but has to import most of its fuel. Notable members of the PDP or their families were involved in the scam like Mamman Ali and Mahmud Tukur. **Punishment:** Ongoing court cases, no convictions. House of Representative report tainted by Farouk Lawan bribery setup.

4. N 123 billion fraud – Stephen Oronsaye

A damning report by the office of the auditor general of the federation indicted a former head of the civil service of the federation, Mr Stephen Oronsaye, over an alleged N 123 billion fraud perpetrated during his tenure, between 2009 and 2010. The 169-page report, titled 'Special Audit of the Accounts of the Civil Pensions', according to an online news medium, *Premium Times*, found Oronsaye guilty of allegedly presiding over the looting of the nation's resources during his tenure. The audit by the auditor general arose from the work of a special audit team constituted by the federal government in May 2011 to conduct a comprehensive examination of the accounts of the civilian pension department domiciled in the office of the head of the civil service of the federation. The audit, which covered the period 2005 to 2010, uncovered monumental financial irregularities, opaque transactions, irregular and abnormal running costs, and outright stealing and kickbacks said to have reached its zenith during the 18 months that Oronsaye served as head of service. According to *Premium Times*, the auditor general's office completed its assignment and submitted its report to government in 2012. However, no action has been taken to bring all those indicted to book. **Punishment:** No action taken.

5. Police pension fund fraud

The Economic and Financial Crimes Commission (EFCC) arraigned the ex-permanent secretary in the ministry of Niger Delta affairs, now a director in the police pension office, Atiku Abubakar Kigo; the chief accountant, Mrs Uzoma Cyril Attang, and four others

before an Abuja high court on an 18-count charge of conspiracy, breach of trust and embezzlement of N 32.8 billion police pension funds. The six accused persons were docked before Justice Hussain Baba to whom the case was reassigned following a controversial judgement of the first trial judge, Justice Abubakar Talba: he gave a light sentence to one of the accused, John Yusuf, who pleaded guilty to a three-count charge. But Attang, who was arraigned by the EFCC for the first time in connection with the alleged fraud, was granted N 10 million bail and two sureties in like sum. Those who were re-arraigned include Esai Dangabar, Atiku Abubakar Kigo, Ahmed Inuwa Wada, Mrs Veronica Ulonma Onyegbula, Sani Habila Zira, Christian Madubuike, and John Yusuf who had been convicted. **Punishment:** Accused and issued a two-year sentence or N 750 000 fine. Paid N 750 000.

6. Stella Oduah car purchase scandal

The committee set up by President Goodluck Jonathan to probe the N 255 million bulletproof car scandal in the aviation ministry has indicted the minister, Ms Stella Oduah. It was gathered that the report of the presidential committee tallied with findings of the House of Representatives Committee on Aviation on the scandal. In October 2014, there were reports that with the approval of the minister, the Nigerian Civil Aviation Authority purchased two bulletproof BMW cars at an allegedly inflated rate of N 255 million. The development sparked a countrywide controversy with many Nigerians and groups calling for her sacking. **Punishment:** None.

7. NNPC missing USD 20 billion

The immediate past governor of Nigeria's central bank, Lamido Sanusi, exposed the untold oil wealth disappearance into the pockets of the elite during one of his meetings with Nigeria's top bankers in 2014. Weeks later, he was fired by Nigeria's president in an episode that has shaken the Nigerian economy, filled newspapers and airwaves, and even inspired a rare street demonstration. Lamido Sanusi wanted to see where the money was going — USD 20 billion from oil sales that, mysteriously, was not making its way to the treasury, in a country that could soon be declared Africa's biggest economy and already attracts the most direct foreign investment on the continent, according to the United Nations. **Punishment:** Whistleblower was fired. The federal government ordered an audit of the NNPC. Audit report later indicts NNPC, corporation to refund USD 1.48 billion.

8. USD 15 million in private jet arms scandal

A private jet that conveyed USD 9.3 million cash from Nigeria to South Africa for an alleged arms deal between the two countries, had Nigerian crew members, and passengers from Israel and Austria. **Punishment:** Government claims involvement in scandal. No further explanations to individuals on board. Blames US for black market arms deal.

9. Abba Moro immigration recruitment scandal

The dust refuses to settle on the ugly immigration recruitment scandal that claimed the lives of about 20 unemployed Nigerians across the nation. Though President Jonathan cancelled the recruitment exercise, the minister of interior, Abba Moro still has unanswered questions. The investigations indicted Drexel Nig Ltd and the minister as culprits in the national tragedy. Many questions are begging for answers by the minister of interior or the comptroller general of immigration services. It will be pertinent for answers on who was responsible for the collection of the N 1 000 amount paid by the applicants and into whose account was the money paid? **Punishment:** None, Abba Moro is still a minister after supervising extortion from graduates and the death of 20 graduates. On Friday, 13 March 2015, he stood by the president as 33 recruitment letters and N 75 million were given to the families of slain applicants as compensation. In May 2015, the same minister conducted another recruitment exercise even as the administration was winding up, and despite the call by the civil society and most Nigerians to remove the man from office.

10. Malabu oil scandal

The USD 1.1 billion proceeds paid to the Malabu oil company were shared by some private firms owned by people very close to the presidency, a report by an anti-graft agency shows. On 25 March 2011, the Economic and Financial Crimes Commission (EFCC) reported that the sum of USD 1.092 billion was paid by ENI AGIP and Shell into a depository escrow account domiciled in JP Morgan Chase Co, London as proceeds for the sale of oil block OPL 245. The report said that the attorney general and minister of justice Mohammed Adoke and the state minister for finance Dr Yerima Lawal Ngama ‘instructed the release of USD 401 540 000’ into Malabu Oil and Gas Ltd accounts domiciled with First Bank of Nigeria and USD 400 million into another Malabu accounts with Keystone Bank (former Bank PHB). The EFCC report said, ‘JP Morgan complied with this instruction and made the transfers on 23 August 2011.’ Malabu, controlled by Chief Dan Etete, ex-oil minister, who was convicted of money laundering in France in 2007, further shared these monies to several other accounts belonging to individuals with very close ties to the presidency. Subsequently, USD 400 million was said to be deposited at Malabu’s Keystone bank account, USD 336 million was transferred to Rocky Top Resources Ltd’s account No. 1005556552 with Abuja CBD branch of the same bank. The remaining balance of USD 60 million was transferred to account No. 3610042596 (allegedly belonging to Etete) for forex trading, leaving zero balance with Malabu’s Keystone bank account. Of the USD 336 million transferred into the Rocky Top Resources account, USD 165 million was subsequently transferred into various individual accounts, leaving the balance of only USD 171 million, the anti-graft agency’s report said. According to the report, Rocky Top Resources was registered with the Corporate Affairs Commission (CAC) with 100 000 shares capital only and is owned by one Abubakar Aliyu. The report stated that first payment of USD 401 million to Malabu’s First Bank account was distributed directly to A Group Construction Co Ltd – also co-owned by Abubakar Aliyu (USD 157 million);

Mega Tech Engr. Co. Ltd (USD 180 million); Imperial Union Ltd (USD 34 million); Novel Property and Development Ltd – also co-owned by Abubakar Aliyu (USD 30m); leaving the balance of USD 143 million Malabu's account. And 'reasons for this payment is yet to be ascertained,' the EFCC report said. An attempt to get the reactions of Adoke yesterday was not successful as he neither answered his calls nor replied to text messages sent to his mobile phones. Ngama could also not be reached for comment. When contacted on the matter, EFCC spokesman, Wilson Uwujaren, asked for more time to respond to the questions. **Punishment:** None.

11. Crude oil theft scandal

According to President Goodluck Jonathan, 300 000 to 400 000 barrels of oil per day, or more than 10% of all Nigeria's production, is being lost at a cost to the state and oil companies of around GBP 1 billion a month – more than is spent on education and the health of the nation's 168 million people. Not only is Nigerian oil theft helping to keep the world price of oil high, it is causing corruption and social disorder, says the president. **Punishment:** None; ex-militant given contract worth billions to secure waterways. Rather than a decrease in oil theft, a marked increase is seen.

12. Arms scandal

Corruption in the Nigerian military is gargantuan and so vicious that even money meant for bullets to fight Boko Haram terrorists is stolen by top generals in the Nigerian army, an American official with inside knowledge made the shocking revelation. Sarah Sewall, the undersecretary of state for civilian security, democracy and human rights, said despite Nigeria's USD 5.8 billion security budget this year, 'corruption prevents supplies as basic as bullets and transport vehicles from reaching the front lines of the struggle against Boko Haram.' Morale is low, and desertions are common among soldiers in Nigeria's Seventh Army's division, the main fighting unit in the northeast, Ms Sewall said during a hearing of the House Foreign Affairs Committee. In another shocking revelation, the White House disclosed that it deployed 80 troops to Chad in Central Africa in addition to the 30 men already in Nigeria for the rescue of more than 200 schoolgirls kidnapped by Boko Haram on 14 April. However, the Pentagon said on Monday that the US Army will not share raw data with Nigerian soldiers as some of them are Boko Haram members. The Pentagon announced an agreement that would allow the United States to share some intelligence, including aerial imagery, with Nigerian officials, but not raw intelligence data. American officials are wary of sharing too much because they believe that Boko Haram has infiltrated the Nigerian security services, according to the *New York Times*. The White House stated that the American military personnel are not ground troops but mostly Air Force crew, maintenance specialists and security officers for unarmed predator drones that will help search for the girls. 'These personnel will support the operation of intelligence, surveillance and reconnaissance aircraft for missions over northern Nigeria and the surrounding area,' the White House said in a statement formally notifying congress about the deployment.

The US military has been flying manned and unmanned surveillance aircraft over the Sambisa forest where the girls are believed to be held. The monumental revelations of corruption in the Nigerian army came the same day the army in Nigeria blamed the media for a negative perception among Nigerians. **Punishment:** Not a publicly acknowledged problem, rather mutinous soldiers are sentenced to death.

13. Ekiti gate

The audio recordings depict the meeting as being attended by the eventual ‘winner’ of the election, Governor Ayo Fayose of Ekiti; Senator Iyiola Omisore; a man identified as Honourable Abdulkareem; the minister for police affairs, Caleb Olubolade; and Senator Musiliu Obanikoro who was at the time the minister of state for defence. Mr Chris Uba came to Ekiti with a huge stash of cash and soldiers from the east to carry out the assignment. The 37-minute recording details the conversation between these men as they bribed brigadier general Momoh with a promotion for his assistance in carrying out election fraud in Ekiti. In it, Obanikoro is clearly heard informing the group of men, ‘[I] am not here for a tea party, am on special assignment by the president.’ It was further reported that President Goodluck Jonathan had instructed the chief of defence staff, Alex Badeh, to use the army in arresting and intimidating opposition politicians before and during the election. The audio recording provides exact details of the plot, with the collaborators almost degenerating into physical combat.

14. Ballot papers

In another deal, the nation’s equivalent of the US Bureau of Engraving and Printing took out a USD 21 million loan at a staggering 22% interest rate to buy equipment supposedly to print ballots for the 2015 election. Emefiele, the Central Bank governor, is also chairman of the bureau, and the loan came from the bank (Zenith Bank) he used to run. The bureau did not have the contract to print the ballots. An Emefiele spokesman has denied any hanky-panky. According to numerous civil servants, public procurement invoices are often grossly inflated. ‘When it comes to a job that attracts money, only the director and the deputy director have knowledge of the real terms of the deal... If it’s 10 million, the director says, “Make it 12 million.” Procurement will say, “Make it 15 million,” and the permanent secretary says, “Make it 25.”’

15. USD 500 million dollar defence contract

There were reported documents in the media relating to a scandalously inflated USD 500 million defence contract that President Goodluck Jonathan awarded to Arthur Eze, a Nigerian businessman with a shady past, a close friend of the president and his wife and a major financier of the ruling People’s Democratic Party (PDP). The report reveals that Mr Eze, the chief executive of Triax, received the gigantic sum of USD 466.5 million in order to weaponise six Puma helicopters with the aid of an Israeli company named Elbit Systems. This meant that each weaponised helicopter cost close to USD 78 million. ‘For

the price of each helicopter provided by Engineer Arthur Eze, the Air Force could have acquired seven top grade military helicopters,' stated the report.

16. Pardon of Diepriye Alamieyeseigha

Pioneer Chairman of the Economic and Financial Crimes Commission, Malam Nuhu Ribadu, said the presidential pardon granted disgraced former governor of Bayelsa State, Mr Dipriye Alamieyeseigha, signifies the 'final nail in the coffin' for fighting corruption in the country. Alamieyeseigha and others received presidential pardon from President Goodluck Jonathan, years after the Ribadu-led EFCC, prosecuted him for stealing billions of naira while he was governor of the oil rich state.

17. Mohammed Abacha N 446 billion case

The government had charged Mohammed Abacha to appear in court on nine counts of stealing in February 2014. It had accused him of unlawfully receiving about N 446.3 billion allegedly stolen from its coffers between 1995 and 1998. But the attorney general of the federation and minister of justice, Mr Mohammed Adoke, asked Justice Mamman Kolo of the FCT high court to strike out the charges on the grounds of 'fresh facts' that had just emerged concerning the case. He was silent on whether new charges would be filed against Mohammed Abacha or not. Efforts to arraign Abacha on two previous occasions were unsuccessful because of his repeated absence from court. **Punishment:** None.

18. Farouk Lawan USD 3 million bribery scandal

Lawan had been recorded on camera collecting a total of USD 620 000 from businessman Femi Otedola who was embroiled in the subsidy scandal. Farouk Lawan had allegedly demanded USD 3 million to look the other way. Hon. Lawan claimed in his statement to the Special Task Force (STF) that the USD 620 000 bribery money was handed over to the chairman of the house committee on drugs and financial crimes, Adams Jagaba. Jagaba however rubbished the claim and challenged Lawan to prove how the money was given to him. That's the last the Nigerians heard of that case.

19. Diezanni Allison-Madueke alleged links with known front, Kola Aluko

Mr Aluko was reported to have lavished millions of dollars on parties attended by top models like Naomi Campbell, he is also reported to have purchased a USD 1.5 million champagne bottle at another party. The EFCC has since asked The International Criminal Police Organisation (Interpol) to arrest oil magnate Kola Aluko after he fled the country to Switzerland with billions of dollars believed to belong to several top politicians. He is said to have had a dramatic falling out with the petroleum minister, Mrs Dezianni Allison-Madueke after which he fled with the proceeds of some of the oil deals she had pushed his way.

20. N 6 billion bribe to Christian religious leaders

On 4 February 2015, director general of the Buhari Presidential Campaign organisation, Governor Rotimi Amaechi of Rivers State, accused some church leaders of taking N6 billion bribe from the People's Democratic Party (PDP) to campaign against the presidential candidate of the All Progressives Congress (APC) General Muhammadu Buhari (retired). Governor Amaechi, at the APC governorship campaign rally in Emohua Local Government Area, Rivers State, said that the religious leaders were allegedly distributing leaflets all over and that Buhari had plans to Islamise the country if elected. Amaechi called on the pastors to return the alleged bribe collected from the PDP. By 19 February, a Borno-based pastor, Kallamu Musa-Dikwa, said the money that was given to pastors by the president was actually N 7 billion and not N 6 billion as alleged by Amaechi.

6

SENEGAL



Semou Ndiaye

A. Executive summary

The peaceful political change following the presidential elections of 2012 marked a new opportunity for reform, to promote good governance and reverse the trend of corruption in Senegal. From the time of his election, president Macky Sall stated that his mandate would be one of sober and virtuous governance. This was reflected first of all in the reinforcement of the legal and institutional framework of the fight against corruption (and related offences) with the creation of the National Office for the Fight Against Fraud and Corruption (OFNAC) and the reactivation of the court of repression of illicit enrichment (CREI). The president of the republic then created a ministry in charge of promoting good governance. The ministry developed a national good governance strategy, adopted by the council of ministers on 11 July 2013.

The strategy was backed up by a social communications plan defining the goals, methodology, activities and tools to be implemented. This strategy existed to generate a change in behaviour that would reflect the values and principles of good governance. It was organised along seven main lines, essentially focusing on: integrity, reinforcing justice system independence, efficient administration of justice, and the strategic pillars of education, health, mining, and civic education.

The political will suggested by this strategy is expected to be more clearly demonstrated with the Emerging Senegal Plan.¹ During the official inauguration of the members of OFNAC on 26 March 2014, the president of the republic stated that the fight against corruption was henceforth top priority, as the Emerging Senegal Plan required strong transparency in its implementation.² Good governance is third on the list of the programme's priorities.

1 The Emerging Senegal Plan (ESP) is an economic development strategy paper elaborated by Senegal in 2012 to speed its progress towards economic emergence by 2035. See <http://www.gouv.sn/Plan-Senegal-Emergent-PSE.html> [accessed 26 November 2014].

2 Official inauguration of the members of OFNAC: Address by His Excellency Macky Sall, President of the Republic. Available at <http://www.presidence.sn/content/c%C3%A9r%C3%A9monie-solennelle-d%E2%80%99installation-des-membres-de-l%E2%80%99ofnac-discours-de-son-excellence> [accessed 26 November 2014].

However, a recent statement by the president of the republic on tracing ill-gotten gains³ casts doubt on his genuine will to combat the wrongdoings of former dignitaries from the previous government. Asked about the issue during an interview, he said, ‘we aren’t attacking anyone. You would be surprised at the number of cases we have not pursued’.⁴

The sociocultural environment in Senegal is a significant obstacle in the fight against corruption. Poverty, but also the omnipresence of social reciprocity, creates a fertile ground for corruption by lending it legitimacy. This is reflected in popular semantics, which strongly contribute to the legitimisation of corruption.⁵

The economic environment appears to be rather positive, provided the current trend is sustainable. The Inter-Governmental Action Group Against Money Laundering’s (GIABA’s) annual report for 2013 states that Senegal is on the road to sustained recovery in growth, although poverty remains a significant challenge.⁶ From an economic standpoint, OFNAC is operating in an enabling environment, marked by a certain degree of economic stability.⁷

In 2003, Senegal set up a National Commission for the Fight Against Non-Transparency, Corruption and Misappropriation (CNLCC). In 2012, the commission was dissolved and replaced by OFNAC.

The aim of this study is to assess the Senegalese experience in terms of anti-corruption agencies. It focuses on a pivotal time, between the end of the CNLCC’s run and the new trial with OFNAC. A comparison between these two institutions is required, to a certain extent. By analysing the CNLCC experience, we will be able to determine whether lessons were sufficiently well learned. An analysis of this kind would necessarily refer to the best practices for anti-corruption agencies. With this in mind, the methodological approach adopted for the study included:

- Documentary research on corruption in general and anti-corruption agencies in particular.

3 This was in reference to the proceedings launched against former dignitaries of the government of Abdoulaye Wade for predation of public funds and specifically illicit enrichment. Stated during the US-Africa Leaders Summit held in early August 2014.

4 La grosse boulette de Macky Sall à propos des ‘dossiers classés sans suite’ (Macky Sall’s big gaffe regarding ‘cases closed without action’). Leral News. Available at http://www.leral.net/La-grosse-boulette-de-Macky-Sall-a-propos-des-dossiers-classes-sans-suite_a121102.html [accessed 7 August 2014].

5 A number of expressions reflecting social reciprocity are often cited: ‘Loxo caxoor day weeseloo’ (people who belong to the same network need to help each other out); ‘niyu murid’ (Mouride greeting, suggestive of the constant donations made by disciples to their marabout); ‘ku èmb sa sanqal, èmb sa sutura’ (if you have a stock of ground millet, you have security); ‘kuy xalam di ca jaayu’ (if you can play the xalam (musical instrument), you show it off); ‘ku am kuddu du lakk’ (if you have a spoon, you don’t get burned); ‘njègu guro’ (money to buy kola nuts). See: Forum Civil (2005) *Gouvernance et corruption dans le secteur de la santé, rapport d’études*. p. 72 et seq.; See Blundo G, Olivier de Sardan JP (2001) *Sémiologie populaire de la corruption*. *Politique africaine* 2001/3: 98–114.

6 GIABA (2013) *Rapport annuel 2013*. p. 58.

7 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) *Background Paper: Best Practice for Anti-corruption Agencies*. p. 8.

- Interviews with stakeholders, including members of the CNLCC and OFNAC, technical and financial partners, and civil society representatives. The aim was to grasp how the agencies worked in practice and how they were perceived by other stakeholders.
- A workshop attended by anti-corruption stakeholders, for the purpose of validating the study.

Among its main conclusions, the study stresses the fact that, although the move from the CNLCC to OFNAC was a positive one, the legal framework governing the fight against corruption in Senegal was still deficient. The ineffectiveness of the CNLCC was largely due to a lack of political will that contributed to a considerable reduction of its independence. The CNLCC was also dependent on insufficient and unstable financial resources. In addition, its human resources were insufficient and had very few of specialised skills.

Other notable weaknesses affecting the CNLCC include:

- Limited investigative powers;
- Poor positioning in the institutional framework of the fight against corruption;
- Weaknesses in rules regarding integrity (no code of conduct);
- Lack of visibility and support for actors in the fight against corruption; and
- Low levels of support from donors.

The replacement of the CNLCC by OFNAC was a qualitative change. Greater efficiency could be obtained by reinforcing the resources and powers of OFNAC. However, in the light of international standards, OFNAC presents some weaknesses that need to be corrected and it needs to overcome certain challenges to be effective.

These weaknesses include:

- The monopoly of the executive in terms of the appointment of the membership, which runs the risk of compromising the agency's independence;
- The lack of a guarantee that the members are apolitical; and
- Limited and unstable financial resources.

The challenges to be met included the need to:

- Provide OFNAC with sufficient, qualified human resources;
- Establish a culture of integrity within OFNAC;
- Win the confidence of citizens and anti-corruption players in general;
- Effectively fulfil its mandate by making sound policy choices; and
- Position itself effectively in the institutional framework of the fight against corruption.

B. Legal framework

Senegal has a variety of laws making corruption a criminal offence or serving to prevent it. The preamble to the constitution enshrines the principles of good governance and transparency as constitutional values. Senegal has also ratified the United Nations (UN) and African Union (AU) conventions against corruption as well as the Economic Community Of West African States (ECOWAS) protocol on the subject. Senegal is a member of communities such as ECOWAS and West African Economic and Monetary Union (WAEMU), which have legal and institutional frameworks including provisions on the prevention and repression of corruption.

The legal environment in Senegal has recently experienced positive change. Laws have been adopted with a view to improving the legal framework of the fight against corruption. This was the case of the Public Procurement Code (2007) and the Law on Declarations of Assets. However, many laws include imperfections that need to be corrected. They include the laws on declarations of assets, laws on conflict of interests and others. Similarly, the legal framework needs to be rounded out by adopting new laws through the process of domesticating international anti-corruption conventions. These would include laws on the funding of political parties and laws on access to information. Sufficient efforts have not yet been made to ensure that the legal framework is both complete and effective.

National legal framework

Criminalisation of corruption

Long before the advent of the international conventions against corruption, corruption was already a criminal offence in Senegal. The Criminal Code sanctions corruption as well as certain related offences. While it does not provide a comprehensive definition of corruption, it refers, however, to both active corruption⁸ and passive corruption.⁹ Passive corruption is when a public official takes advantage of his or her position by requesting or accepting gifts, promises or benefits for performance of or failure to perform any of his or her official duties. Active corruption is when a person or legal entity uses gifts, benefits or promises to obtain or seek to obtain from a public official the performance, abstention from or delaying of any of his/her official duties.

According to the approach taken by the Criminal Code, corruption offences may be broken down into two separate infractions. This approach is justified by the fact that corruption is an offence that exists when there is an agreement between a bribe-giver and a bribe-taker, but also when a potential bribe-giver or bribe-taker makes an offer, whether or not the other complies.

This view has certain consequences in that the behaviour of a bribe-giver and a bribe-taker may be prosecuted and judged separately. This view is different to the view that offences of corruption are either one-sided or bilateral. According to the latter view, the

8 Article 161 of the Code of Criminal Law.

9 *Ibid.*: article 159.

offence exists only where there is an agreement between the bribe-giver and bribe-taker. This approach leads to a hierarchy of behaviours, in which the bribe-taker is viewed as the main perpetrator and the bribe-giver as his or her accomplice.¹⁰

The approach taken by the code organises a better system of repression since it also sanctions attempted corruption. However, it is not without disadvantages, since it does not promote the denunciation of corrupt practices. Furthermore, the sanctions stipulated are not commensurate with the seriousness of the offences. The sentence incurred in case of active corruption is two to ten years in prison and a fine of at least USD 300. This amount seems derisory and ought to be increased.

The Criminal Code is far from being the only law sanctioning corruption. Due to widespread corruption, special laws against corruption exist in specific sectors. The Electoral Code, for instance, prohibits bribing of voters in articles 102 and 104. In the fisheries resources sector, the new Fisheries Code also criminalises corruption in the sector. By criminalising corruption, Senegal has complied with the anti-corruption conventions to which it is party.¹¹

The Criminal Code also sanctions similar or related offences such as active or passive influence peddling, misappropriation of public funds,¹² extortion and illicit enrichment. Currently, attention is primarily focused on illicit enrichment with the reactivation of the CREI¹³ since Karim Wade, a former minister (and son of former president Abdoulaye Wade), has been brought before it. The criminalisation of illicit enrichment can be analysed as a manifestation of a will to fight corruption, in that states are not bound by anti-corruption conventions to make it a criminal offence. It is a case of voluntary criminalisation.¹⁴ The explanation resides in the fact that it violates the presumption of innocence which is a constitutional principle in certain countries.¹⁵

Codes of ethics and conduct

Corruption is very much a matter of individual conscience. That is why the promotion of ethics and proper professional conduct must be a priority in the prevention of corruption. Ethics includes a number of principles that are not of a legal nature in that they are not subject to legally binding sanctions. Industriousness, for example, cannot be legally sanctioned. Professional conduct, however, includes the rules of professional ethics which are sanctioned by laws. This is a recommendation of the conventions against corruption.¹⁶

10 Segonds M (2011) *Sur les systèmes d'incrimination de la corruption / Comparative Study of the Bribery Incrimination Systems*. Paris: Association internationale de droit pénal.

11 Article 4 of the African Union Convention on Preventing and Combating Corruption and Related Offences.

12 Article 151 of the Code of Criminal Law.

13 *Ibid.*: article 163.

14 Article 20 of the United Nations Convention against Corruption; article 6, paragraph 3 of the ECOWAS Protocol Against Corruption; article 1 g of the African Union Convention on Preventing and Combating Corruption.

15 On this issue in Senegal, see our explanations on p. 232.

16 Article 8 of the United Nations Convention against Corruption, article 7 of the African Union Convention on Preventing and Combating Corruption and Related Offences, and article 5 (a) of the ECOWAS Protocol against Corruption.

A number of professions have their own codes of ethics and professional conduct. Among these, we can cite the code of ethics and conduct of the customs department, of medical doctors, or pharmacists, and the central directorate of procurement (DCMP). One major shortcoming in this area is in the fact that the codes of ethics and conduct only apply to a limited category of civil servants. A code of ethics and conduct applicable to all public officials has yet to be established. Another practical gap arises from the non-application of the sanctions provided for. The rare cases in which sanctions are meted out seem to apply only to officials with special status.

Senegal's ratification of the African Public Service Charter and the African Charter on Values and Principles of Public Service and Administration should help reinforce ethics within the Senegalese administration. These two instruments focus on the ethics-based conduct of public servants. They call for professionalism¹⁷ and prohibit corruption,¹⁸ influence peddling and conflicts of interest.¹⁹ They also prescribe declarations of assets for public officials.²⁰ These instruments are useful in that they oblige state parties to take a holistic approach to the fight against corruption.

The ratification process of the African Charter on Values and Principles of Public Service has begun.²¹ Likewise, the development of a code of ethics and conduct applicable to public servants is underway at the bureau of organisation and methods in the office of the president of the republic.²²

The World Bank has promoted the adoption of a code of ethics and conduct by producing a guidance note on professional conduct of public officials.²³ This note reviews a body of international and regional standards and, most importantly, best practices on the subject. It therefore constitutes a good foundation for strengthening ethics, particularly within the administration.

Laws on conflicts of interest

Article 29, paragraph 2, of the rules of procedure of the CNLCC defines conflict of interest as 'any apparent, potential or real situation that is objectively of a nature to compromise the independence and professionalism necessary for the performance of duties'. If the link between conflicts of interest and corruption is not automatic, persons in such situations

17 Article 9 of the African Charter on Values and Principles of Public Service and Administration, article 21 of the African Public Service Charter.

18 Article 23 of the African Public Service Charter and article 10, paragraph 2, of the African Charter on Values and Principles of Public Service and Administration.

19 Article 24 of the African Public Service Charter and article 11 of the African Charter on Values and Principles of Public Service and Administration.

20 Article 13 of the African Charter on Values and Principles of Public Service and Administration, and article 25 of the African Public Service Charter.

21 Interview with Sidy Diop, organisational advisor at the bureau of organisation and methods in the office of the president of the republic, 15 April 2014.

22 Ibid.

23 World Bank (2013) Code de déontologie des responsables publics-note d'orientation, Dakar, 23 July 2013, unpublished.

may be tempted to take advantage of their position. Fighting against conflicts of interest constitutes a means of preventing corruption.

A conflict of interest pertaining to former president Wade was reported in the press. He had created an agency that awarded the contract for the construction of the national arena to the SATTAR company. A budget of 1.197 billion CFA Francs was established and paid out over five years without any work actually being carried out.²⁴ We can also cite the case of the current director of the national electricity company of Senegal (SENELEC) who resigned from that company to lead a private company known as SIMELEC that earned 99% of its sales figure through business with SENELEC and subsequently resigned from that company to direct SENELEC.²⁵

Prevention of conflicts of interest is provided for in several instruments applying to officials of the administration²⁶ and members of the government²⁷ and parliament. It is reflected in the system of incompatibilities between certain functions. These incompatibilities are established for all officials in the administration. The Criminal Code specifically sanctions violations of such incompatibilities in article 157. This article refers to the interference which takes place when active or inactive administration officials²⁸ have an interest in the acts, tenders, businesses or divisions for which they were either wholly or partially responsible. This infraction is punishable by a sentence of one to five years and a fine. In addition, persons found guilty shall be permanently barred from the civil service.²⁹

The Public Procurement Code also provides that all state officials or public-law entities shall be brought before the financial discipline chamber of the court of audit, in the event that they are involved in any way in the awarding of a public procurement contract, a public service delegation, or a partnership contract to a business in which they have acquired or maintained an interest.³⁰

However, this legislation is incomplete and insufficient. Stakeholders such as Forum Civil (the Senegalese branch of Transparency International) are therefore advocating for the adoption of a law on conflicts of interest. In order to expedite that process, it has prepared a draft bill proposal on conflicts of interest.³¹ The establishment of a system of mandatory, prior declaration of interests is envisaged, whereby officials would be required to declare all potential conflicts of interest and, where relevant, to abstain from participating in the deliberation or decision. With President Sall's ascension to power, it was noted that

24 Plus 86 milliards de marches douteux passés par Karim Wade (2011, 25 October) *Leral Net*. Available at http://www.leral.net/PLUS-86-MILIARDS-DE-MARCHES-DOUTEUX-PASSES-PAR-KARIM-WADE_a20325.html [accessed 3 November 2016].

25 http://www.sn.africav.com/view_article.php?viewkey=b08ef6d3f9ff3ce6eb1d [accessed 25 September 2014].

26 Article 12 of Law No. 69-54 of 16 July 1969 on the general status of the communal civil service, amended by Law No. 93-18 of 2 September 1993.

27 Article 38, paragraph 2 of the Constitution.

28 The causes of their inactivity may vary. It may be because they are on leave, on standby, retired, resigned, dismissed or removed from their position.

29 Article 157 of the Code of Criminal Law.

30 Article 146(b) of the Public Procurement Code.

31 Unpublished.

a number of businesspersons took key state positions as either advisors or ministers.³² This makes the adoption of a law of this kind even more urgent. Particular emphasis should be placed on conflicts of interest following a term in office.

Laws on declaration of assets

Declarations of assets are vital for preventing corruption, as they make it possible to monitor changes in assets in the light of an individual's legal sources of income. They are also a useful tool for protecting honest officials who may be victims of defamation. Accordingly, anti-corruption conventions require state parties to enact such legislation.³³

A certain category of public officials is subject to declarations of assets in Senegal. Article 37, paragraph 3 of the constitution, which provides for the declaration of the assets of the president of the republic, stipulates that the latter must produce a written declaration of his or her assets, which must be submitted to the constitutional council, which is responsible for its publication. The declarations of the assets of the magistrates of the court of audit are governed by stricter provisions.³⁴ No magistrate of said court may take up his or her position without having produced a declaration of assets. The items to be included are specified, along with the requirement of reporting any information that could produce a change in those assets.

The members of the public procurement regulation agency (ARMP) constitute another category of officials required to declare their assets. Article 7 of Decree 546/2007 of 25 April on the Organisation and Operation of the ARMP stipulates that, on taking up or leaving their positions, members of the public procurement regulation board must make a sworn written statement on their honour of all of their property and assets, addressed to the president of the court of audit.

A new law, Law 17/2014 of 2 April on the Declaration of Assets, has been recently adopted by the national assembly, which broadens the list of those subject to such declarations.³⁵ It now includes:³⁶

- The speaker and the senior *questeur* of the national assembly;
- The members of the government;
- The president of the economic, social and environmental council (CESE);
- All budget administrators;
- Authorising officers in all revenue and expenditure transactions; and

32 Sylla F (2012, 16 July) Conflit d'intérêts au sommet de l'Etat : le Forum Civil met en garde contre les lobbies autour de Macky SALL. *ENQUÊTE+*. Available at <http://www.enqueteplus.com/content/conflit-d%E2%80%99inter%C3%AAt-au-sommet-de-l%E2%80%99etat-le-forum-civil-met-en-garde-contre-les-lobbies-autour> [accessed 24 September 2014].

33 Article 5(g) of the ECOWAS Protocol against Corruption.

34 Article 17 of Organic Law No. 99-73 of 17 February 1999 on the status of the magistrates of the court of audit.

35 Law 17/2014 of 2 April.

36 Article 2.

- Public accountants carrying out transactions for an annual total of one billion CFA francs or more.

The law stipulates that such declarations must be made within three months after they take up their duties and within three months following their leaving of office.³⁷ It also stipulates that in the event of unjustified changes in assets, OFNAC shall refer the matter to the public prosecutor or any other competent magistrate.³⁸ Those who refuse to declare their assets shall be subject to sanctions. Elected officials who refuse to declare their assets shall be subject to a 25% cut on their emoluments until such time as they can prove that they have duly declared their assets. Administrative officials may be removed from their position, should they refuse to declare their assets.³⁹

It should be pointed out that prior to the adoption of the law, the mayor of the city of Dakar, Khalifa Sall, took the initiative of declaring his assets following his election in 2009, in the absence of any law requiring him to do so. This declaration was made before a court of honour made up of former ministers, trade union members and religious officials.⁴⁰

However, this legislation contains numerous insufficiencies in that it still only applies to a limited category of civil servants and the vast majority of deputies are still not required to produce such declarations. It should be noted that these deputies were divided on the matter of declarations of assets when the law was adopted. The majority were against the requirement for all deputies to declare their assets, due to the fact that the majority of them did not handle public moneys.⁴¹ However, this reasoning ignores the fact that illicit enrichment may result from corruption or influence peddling, and not solely from misappropriation of public funds.

The government, however, had purely practical considerations for justifying the general exclusion of elected officials, stating that their exclusion was dictated by reality. According to Abdou Latif Coulibaly (then minister in charge of the promotion of good governance and relations with institutions) the personnel of OFNAC were too few, which made it impossible for it to check all declarations if the number of declarations was too high.⁴² Three thousand people are currently required to declare their assets and the list of those required to declare their assets may be broadened in the future.⁴³

This legislation contains further insufficiencies. For instance, constitutional provisions are incomplete regarding the president of the republic, in that they do not specify which assets are to be declared. They also do not provide for any sanctions, should the president of the republic refuse to declare his or her assets. As for the magistrates of the court of

37 Article 1.

38 Article 6.

39 Article 8.

40 See, in French, http://www.rewmi.com/declaration-de-patrimoine-khalifa-sall-un-elu-riche_a17329.html [accessed 24 June 2014].

41 APS, Les députés adoptent à l'unanimité la loi sur la déclaration de patrimoine. Available at http://www.aps.sn/articles.php?id_article=126212 [accessed 24 September 2014].

42 Contribution by the minister during the adoption of the law on the declaration of assets in the national assembly, see http://www.aps.sn/articles.php?id_article=126212 [accessed 25 June 2014].

43 Ibid.

audit, the fact that the declaration is made to the president of the court itself raises some doubts as to the rigour and objectivity of the verification of the declarations. Similarly, no provisions of the new law lay down sanctions in the event of non-compliance with the requirement of producing a declaration of assets on leaving office. The law even provides that the requirement is no longer binding if such a declaration was made less than six months prior to the magistrate's leaving office.⁴⁴

The World Bank also supported the government in the establishment of an assets declaration system by producing a guidance note on the subject, judicious use of which could help improve legislation in this area.⁴⁵ The note takes critical stock of experiences in the area, while indicating the points that should be emphasised to establish an efficient assets declaration system.

The implementation of the law has been met with some reluctance on the part of certain ministers. Some have let the then president, Nafi Ngom Keita, know that they were not willing to declare their assets, others have stated that they did not wish to justify the assets they declared, while still others have expressed a desire not to declare their bank assets.⁴⁶ Despite the president of the republic's encouragement,⁴⁷ those required to declare their assets refused fulfill their obligation. Ministers were not alone in expressing reticence, though. According to OFNAC's 2014-2015 activity report, 48% of those subject to the obligation had not fulfilled it 18 months after the law was passed and 11 months after the publication of its implementing decree.⁴⁸ This situation is due in part to certain officials' unawareness of the fact they were subject to the obligation.⁴⁹ Furthermore, while the confidential nature of declarations of assets can be justified by sociocultural considerations, it does appear to limit the dissuasive impact of declarations of assets.⁵⁰

Public Procurement Code

The current legal architecture governing public procurement dates back to 2007. The new Public Procurement Code⁵¹, which entered into force in 2008, meets international standards on public procurement.⁵² It introduced a number of innovations that have

44 Article 1, paragraph 3 of the law on declarations of assets.

45 World Bank (2013) *Déclaration de patrimoine des responsables publics - note d'orientation*, 23 July 2013, Dakar, Senegal, unpublished.

46 These revelations were made by the president of OFNAC during a broadcast on RFM Radio; the report can be consulted in French at www.jdd.sn/un-ministre-ma-reveillee-a-minuit-et-demi-nafi-ngom-keita/ [accessed 24 February 2015].

47 He took advantage of the second edition of Institution Day to urge government ministers to declare their assets as he had undertaken to do. See Agence sénégalaise de presse: *Déclaration de patrimoine : l'injonction présidentielle a eu l'effet escompté* (Declaration of assets: the presidential order had the desired effect). Available at http://www.aps.sn/articles.php?id_article=137131 [accessed 25 February 2015].

48 OFNAC, *rapport public d'activités 2014–2015*, p. 107.

49 *Ibid.*: 106. The awareness campaign conducted by OFNAC has yet to overcome this difficulty.

50 *Ibid.*: 109.

51 Decree No. 2007-545 of 25 April 2007 repealed by Decree no. 2011-1048 of 27 July 2011 on the public procurement code.

52 An initial evaluation of the compliance of the national system with international public procurement standards

reduced opportunities for corruption. It also introduced greater transparency into public procurement by requiring the contracting authorities to define a plan for the awarding of public procurement contracts⁵³ and to publish notices of public procurement contracts,⁵⁴ as well as defining strict rules for same.⁵⁵

Another major innovation in the code resides in its strict regulation of direct awards. According to the government, one of the results has been a progressive drop in the percentage of direct awards, which they say have fallen from 23% of public procurement contracts in 2009 to approximately 18% in 2013.⁵⁶ As direct awards are intended to be an exceptional procedure, any change in the sense of reducing their number should be considered positive. Senegal has made a commitment to the International Monetary Fund (IMF) and the World Bank not to exceed a percentage of 20% per annum.⁵⁷ This commitment has been upheld if we consider the 2011, 2012 and 2013 fiscal years with respective rates of 19.25%, 18% and 18% even though the percentage was occasionally exceeded on a quarterly basis.⁵⁸

Additionally, a charter of transparency and ethics has been adopted with a view to promoting a culture of integrity by prohibiting government officials, public institutions and public companies from exchanging their services for benefits in cash or kind.⁵⁹

A survey by the private sector support directorate of the ministry of the economy and finance revealed that 85% of business leaders surveyed were satisfied with the public procurement system.⁶⁰ The ARMP,⁶¹ also seems to enjoy great credibility: since its establishment, it has not been faced with any serious challenges and the number of appeals presented to it is constantly rising, which could account for the confidence of the actors in public procurement. The number of appeals to the ARMP has risen from 48 in 2008, to 71 in 2009, 99 in 2010, 167 in 2011 and 172 in 2012⁶². Furthermore, a survey by Forum Civil ranks the body as the best-known control body in Senegal.⁶³ In addition to its advisory role,

according to OECD/DAC benchmark indicators was successfully conducted; see ARPM 2009 Report, p. 45.

53 Article 6 of Decree No. 2011-1048 of 27 July 2011 on the public procurement code.

54 Article 56.

55 Article 66 & 86.

56 Address by the minister in charge of the promotion of good governance and relations with institutions to the national assembly while defending his ministry's budget for the 2014 fiscal year.

57 IMF (2011) Senegal: Lettre d'intention, Mémorandum de politique économique et financière et Protocole d'accord technique, 19 mai 2011, p. 17. Available at <http://www.imf.org/external/np/loi/2011/SEN/fra/051911f.pdf> [accessed 26 September 2014].

58 See the portal on public procurement: Statistiques sur les marchés publics. Available at http://www.marchespublics.sn/index.php?option=com_stats&task=afficheTacmaq&Itemid=141&annulRec=0 [accessed 26 September 2014].

59 Decree no. 2005-576 of 22 June 2005 on the charter of transparency and ethics in relation to public procurement.

60 Survey quoted by Mohamed Ly, Réforme du Code des marchés publics : analyse et perspective par le Think Tank IPODE. Available at <http://thinktank-ipode.org/2013/09/20/reforme-du-code-des-marches-publics-2013-analyse-et-perspectives-par-le-think-tank-ipode/> [accessed 25 June 2014].

61 Decree no. 2007-546 of 25 April 2007 on the organisation and operation of the ARMP.

62 See http://www.arpmp.sn/index.php?option=com_content&view=article&id=447&Itemid=60 [accessed 23 September 2014].

63 Forum Civil (2014) Report of the PGP programme component 'Contribution à la mise en place d'un

the ARMP also conducts a posteriori checks on national and WAEMU rules regarding the awarding and execution of public procurement contracts, public service delegations and partnership contracts.⁶⁴ The ARMP is called upon to contribute to the fight against corruption in the sense that it is empowered to take part in legal proceedings in the framework of its mission to ensure compliance with regulations on public procurement and public service delegations and, particularly, to ban corruption.⁶⁵

There are significant gaps in the Public Procurement Code, however, in that it does not apply to the national assembly or the CESE. Furthermore, Forum Civil regularly denounces abuses in the awarding of public contracts.⁶⁶ In its public report of the state of governance in 2014, the office of the state inspector-general (IGE) also noted violations of the Public Procurement Code.⁶⁷

A new reform of the Public Procurement Code has recently been adopted by the government. It follows the reform of 2011, the aim of which was to consolidate various amendments to the code, enriched by the contributions of the United Nations Commission on International Trade Law and the experience of Senegal's technical and financial partners.⁶⁸

Decree 1048/2011 of 27 July was repealed and replaced by Decree 1212/2014 of 22 September on the Public Procurement Code. The chief argument cited to justify the reform in the report presenting the decree was the cumbersome procedures that keep the contracting authorities from absorbing the appropriations made available to them. The quest for efficiency took the form of shorter wait times, more streamlined procedures, accountability of the contracting authorities and higher thresholds for the application of Public Procurement Code procedures.

The reform of the Public Procurement Code was particularly controversial, opposing the government, the public procurement regulation agency and civil society. Expressing the position of the government at the time, the minister of the interior pointed out that one of the bottlenecks arising from the code was linked to the length of the procedures involved. Statistics showed wait times of 209 days in 2009, compared to 194 days in 2010. In his view, this resulted in a problem with the absorption of funds.⁶⁹

The director of the ARMP did not agree with this point of view. According to the director, the rate of absorption of appropriations in Senegal ranged from 85% and 90% annually over the last four years. The Public Procurement Code could therefore not be considered an obstacle to the absorption of funds. He also pointed out that with the procedures of the

Observatoire National pour la Transparence et la Redevabilité'. p. 37.

64 Article 144 of the Public Procurement Code.

65 Article 6-6) of Decree No. 2007-546 of 25 April 2007 on the organisation and operation of the public procurement regulation agency.

66 See statement on abuses in public contract awards at http://www.forumcivil.sn/sites/default/files/communiqués/2013_01_29_derapages_dans_les_marchés_publics.pdf [accessed 25 June 2014].

67 IGE (2014) Rapport public sur l'état de la gouvernance et de la reddition des comptes, July 2014, p. 69 et seq. Available at <http://www.ige.sn/images/stories/Rapport%20public%20sur%20l%27Etat.pdf> [accessed 10 August 2014].

68 Report presenting Decree No. 2011-1048 of 27 July 2011 on the public procurement code.

69 Daily newspaper Le Soleil, 31 May 2014.

donors, the rate of absorption of appropriations was below 60%.⁷⁰ For its part, Forum Civil believed that the delays in the implementation of public policies under the code were actually due to a lack of training on the part of the contracting authorities. It therefore denounced the state's will to raise thresholds for the control of public procurement and the change from the sphere of a decree to the sphere of an order, which would create a risk that most public procurement contracts would escape control entirely.⁷¹

The government of Senegal and the ARMP disagreed on the matter of raising of thresholds for procurement contracts to be subject to the procedure of requests for information and prices.⁷² The government envisaged raising the thresholds to 75% compared to the 50% the ARMP considered appropriate.. It should be noted that corruption is highly prevalent in public procurement contracts subjected to the procedure. The former budget minister and current director of the office of the president of the republic, Mouhamadou Makhtar Cissé, wished to explain the meaning of the reform. In his view, the government's wish was to ease ex-ante controls in order to speed up procedures while reinforcing ex-post controls to preserve transparency in the awarding of public procurement contracts.⁷³

Another issue that was debated in relation to public procurement focused on unsolicited bids. Unsolicited bids are defined as offers on the initiative of a private operator regarding the execution of a partnership contract which are not submitted in response to a call for bidding issued by the contracting authority.⁷⁴ Deputies and public figures have viewed this as a form of direct award⁷⁵ that could lead to corruption. According to some public procurement specialists, the prevention of embezzlement in this area will depend on a strict system of controls to verify whether the offer is advantageous for the client.⁷⁶

In the end, the government maintained its position with regards to reforming the Public Procurement Code and raised the thresholds for awarding public procurement

70 Thioubou M-W (2014, 24 June). Réforme du Code des marchés publics : le niet de l'ARMP. Available at http://www.seneweb.com/news/Societe/reforme-du-code-des-marches-publics-le-n_n_128862.html [accessed 14 November 2016].

71 See the statement by Forum Civil: 'The government has not published statistics on public procurement contracts in the final two quarters', published on 3 February 2014. Available at http://www.transparency.org/news/pressrelease/le_gouvernement_du_senegal_na_pas_public_les_statistiques_sur_les_marches_p [accessed 24 June 2014].

72 Article 78 of the Public Procurement Code, which stipulates that this procedure is applicable when the estimated value of the contract is below the thresholds set in article 53 of the code and which requires a call for tenders to be made.

73 Interview with Mouhamadou Makhtar Cissé, former budget minister, published on the site of the Senepus newspaper, at <http://www.senepus.com/article/%C2%ABnotre-idee-c%E2%80%99est-d%E2%80%99allegers-formalites-priori-pour-renforcer-les-controles-posteriori%C2%BB> [accessed 25 June 2014].

74 Article 4 of the new Public Procurement Code defines unsolicited bids as 'offers on the supply of goods, the provision of services, the performance of work, particularly in the framework of turn-key contract with a financial plan that is not submitted in response to a call for tenders or a direct solicitation'.

75 Dieye Y (2014, 17 June) Marché public et bonne gouvernance: les dessous de l'offre spontanée. Available at <http://www.club-epsilon.com/marche-public-et-bonne-gouvernance-les-dessous-de-loffre-spontanee/> [accessed 25 September 2014].

76 Interview with Babacar Diop, former member of the ARMP. Available at http://www.seneweb.com/news/Economie/babacar-diop-ex-membre-de-l-rsqou-armp-l_n_136140.html [accessed on 25 September 2014].

contracts⁷⁷ and unsolicited bids.⁷⁸ For example, for the state, local authorities and public institutions, the threshold for awarding work contracts rose from USD 50 000 to USD 140 000. Unsolicited bids are not forbidden, but conditions are attached to them; notably that the public procurement contract in question must be worth at least USD 100 000 000 in the opinion of the DCMP.⁷⁹ A priori, the argument of efficiency is legitimate. Only practice will allow us to allay or confirm the concerns of the other actors as to the risks of abuses that could arise from the reform.

Community legal framework

WAEMU initiatives have helped consolidate national anti-corruption frameworks. Notable examples include public finance reforms, regulation of public procurement, the setting up of organisations such as the national financial intelligence processing unit⁸⁰ and the preservation or even the establishment of courts of audit. Community anchoring of such regulations and organisations protects them from untimely government reforms. It was against this backdrop that Law 22/2012 of 27 December on the WAEMU Transparency Code in the Management of Public Finances was adopted; this was domesticated through the adoption of Law 17/2014 of 2 April on the Declaration of Assets. Other instruments applicable to specific sectors focus on the requirement of transparency. These notably include the ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector.⁸¹ ECOWAS is also behind the creation of the GIABA.

International legal framework

Senegal ratified the UN⁸² and AU conventions on corruption and related offences⁸³ on 16 November 2005 and 14 April 2007, respectively. It had previously ratified the United Nations Convention against Transnational Organised Crime on 18 July 2003 and signed the ECOWAS Protocol on the Fight against Corruption⁸⁴ on 10 September 2004.

The domestication process has been implemented for these conventions. In the report presenting Decree 211/2006 of 2 March on the approval of the Rules of Procedure of the

77 Article 53 of the new Public Procurement Code.

78 Article 81 of the new Public Procurement Code.

79 The other conditions include compliance with regulations on indebtedness in Senegal, subcontracting of at least 10% of the total amount to nationals, and the definition of a plan for skills and knowledge transfers.

80 Cellule Nationale de Traitement des Informations Financières (National Financial Intelligence Processing Unit).

81 Directive C/DIR3/05/09 of 27 May 2009.

82 The UNCAC was approved on 1 October 2003 by the special committee created for the purpose in December 2000 before being submitted to the general assembly, which adopted it on 31 October 2003. It was opened to all states for signature from 9–11 December 2003 in Merida, Mexico. The conditions for its entry into force were met on 15 September 2005, after the deposit of the 30th ratification instrument. The convention entered into force on 14 December 2005 in keeping with the provisions of article 68, i.e. 90 days after the deposit of the 30th ratification instrument.

83 The African Union Convention on Preventing and Combating Corruption and Related Offences was adopted by the African heads of state and government in attendance at the Maputo summit in Mozambique in July 2003. It entered into force on 5 August 2006, 30 days after the date upon which the requisite number of ratifications, set at 15, was reached.

84 The Protocol on the Fight against Corruption was adopted on 21 December 2001, in Dakar. The protocol has yet to enter into force, as the required number of ratifications has yet to be reached.

CNLCC, establishing its mode of operation, it is indicated that this commission arose from a requirement of the African Union Convention on Preventing and Combating Corruption. Before its demise, the CNLCC developed draft bills for the domestication of these conventions. OFNAC, which inherited these instruments,⁸⁵ re-examined the legislative gap between the national legal and institutional framework and the United Nations Convention Against Corruption (UNCAC), within the framework of the self-assessment required by said convention. The examination of this gap revealed that Senegalese legislation was largely compliant with the UNCAC. However, the legal framework did need to be improved, particularly with regard to:

- Public information;
- The development and enforcement of codes of ethics;
- Mechanisms for gathering statistical data (particularly on justice decisions handed down in cases of corruption and related offences);
- The statute of limitations on corruption (which appears short in the light of the requirements of the UN conventions);
- the non-criminalisation of the corruption of foreign public officials and international organisation officials; and
- Insufficient coverage of private sector corruption, *inter alia*.⁸⁶

C. Institutional framework

OFNAC has a three-fold mandate: preventing corruption, repressing acts of corruption and promoting good governance. This mission allows it to operate on all levels of the fight against corruption. OFNAC also enjoys guaranteed institutional independence due to a generous system of protection for its members. However, the circumstances of the appointment of the members of OFNAC have allowed doubts to persist as to their integrity and their distance from political forces that could influence their decisions. Both the CNLCC and OFNAC satisfy international standards as to the financial independence of anti-corruption agencies. OFNAC has complete budgetary management and control, although it is subject to the accounting standards and audit requirements set out by the Jakarta principles.

Makeup of the staff

Appointment, term of office and loss of status

The CNLCC was made up of ten members, including its president. The distribution was tripartite and equal: three representatives of the administration, three representatives of civil society, and three representatives of the private economic sector. The members of the CNLCC were appointed by decree for a non-renewable three-year period. They were required to be recognised for their integrity. Loss of membership status in the CNLCC

⁸⁵ Interview with Mamadou Moustapha Tall, former vice-president of the CNLCC 15 March 2014.

⁸⁶ OFNAC (2015) Rapport public d'activités 2014–2015. p. 107.

was defined by law. A member's term in office could only be prematurely ended in case of resignation, death or impediment. The Law 35/2003 of 24 November establishing the CNLCC stipulated that impediments must be certified by the president of the republic. The replacement of members of the commission were subject to the same conditions as their appointment.⁸⁷

The procedure for the appointment of members of OFNAC is different. It should be noted that the number of members was raised to 12. Law 30/2012 of 28 December establishing OFNAC provides that the members are chosen among magistrates, high-ranking members of the administration, higher-ranking university teaching staff, and members of civil society or the private sector who are holders of at least a masters or equivalent-level degree.⁸⁸

Members of OFNAC are appointed for a term of three years, renewable once. The law stipulates that half of the membership is to be replaced every three years.⁸⁹ The duration of their term in office was increased from that of the members of the CNLCC. It is, however, still insufficient in the light of all of the delays observed in the operationalisation of OFNAC. Contrary to the appointment of the former members of the CNLCC, the appointment of the members OFNAC is not simultaneous. The president of OFNAC was appointed by Decree 1045/2013 of 25 July. The vice-president was to be appointed on 17 October 2013 and the ten other members on 2 January 2014.

The makeup of the CNLCC reveals insufficient consideration of gender diversity. On the other hand, the appointment of a woman to head OFNAC can be interpreted as showing a certain degree of gender sensitivity. Certain studies make this issue a priority, as they consider that women resist corruption better than men. The promotion of a woman to the head of OFNAC is viewed, from that standpoint, as a positive move.⁹⁰

Qualifications and training

Law 30/2012 of 28 December is more concerned with the qualifications of its members, as it requires a certain level of education. Professional experience of at least ten years is also required.⁹¹ This does not mean that the members of OFNAC are necessarily more qualified than were the members of the CNLCC.⁹²

87 Articles 5, 9 and 10 of the law on the CNLCC.

88 Article 4, paragraph 1 of the law on OFNAC.

89 Article 5 of the law on OFNAC.

90 Jenneth V (2007, 31 January) Criteria for Appointing Executives of Anti-corruption Agencies, U4 Expert Answer, 31 January 2007. p. 2; Transparency International (2011, 7 October) Are women less corrupt than men? And other gender/corruption questions, available at <http://blog.transparency.org/2011/10/07/are-women-less-corrupt-than-men-and-other-gendercorruption-questions/> [accessed 25 June 2014].

91 Article 4, paragraph 2 of the law on OFNAC.

92 Whereas OFNAC currently includes two inspectors from the office of the state inspector-general, a police commissioner, an economic investigations commissioner, a treasury inspector, a former ambassador, a gendarme, a lawyer, a magistrate, a university medical professor, a former minister and a member of civil society, the CNLCC included two professors of law, a member of the office of the state inspector-general, a journalist and a labour inspector, inter alia.

The variety of profiles and professions of the members of the CNLCC did not, however, ensure that they had specialised competencies in the area of corruption. A training plan should have been developed to that end. Unfortunately, the former CNLCC lacked such a plan.⁹³ Even so, the members were able to benefit from a few international training sessions as opportunities arose. On average, USD 18 000 were devoted to training out of a total budget of USD 374 000. Certain members were able to receive training on money laundering in the United States; on the management of anti-corruption programmes, and on the fight against corruption and money laundering in Benin; and on the mechanism for the monitoring of the enforcement of the UNCAC in Vienna, Austria, thanks to support from the United Nations Office on Drugs and Crime (UNODC).⁹⁴ Certain members therefore participated in the evaluations of various countries within the framework of the monitoring mechanism of the UNCAC. These countries included Lebanon and Rwanda in 2011. The lack of resources led certain members to ask their original civil service corps or professions for financial support to enable them to participate in training.⁹⁵ In the end, for want of a training plan and adequate budget, former CNLCC members' specialised skills in the fight against corruption were limited. It is regrettable that the CNLCC did not draw inspiration from the National Financial Intelligence Processing Unit (CENTIF), which has its own training centre, enabling it to provide capacity building for its members and support staff but also for those subject to suspicious reports.⁹⁶

A training plan was defined by OFNAC. The option chosen by OFNAC in terms of training consists of short-term practical training that may apply to all members or only some.⁹⁷ For example, training is envisaged on monitoring techniques in a computerised environment, as well as on complaints processing and management.⁹⁸ The UNODC has decided to provide support for the training of members of OFNAC.⁹⁹

Members of OFNAC have already been trained on criminal law enforcement tools in the fight against corruption and transnational organised crime, and participated in Interpol programmes on fighting corruption and financial crime and recovering assets in West Africa, and in programmes run by the European Anti-Fraud Office.

OFNAC has benefitted from a training-needs assessment mission conducted by French experts specialising in surveys and audits. Beforehand, its members received training on the best investigation and prosecution techniques pertaining to financial crimes, money laundering and financing of terrorism; this was funded by the bureau of counterterrorism.¹⁰⁰

93 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

94 Ibid.

95 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

96 Interview with Waly Ndour, President of CENTIF, 18 April 2014.

97 Interview with Ibrahima Faye, vice-president of OFNAC.

98 Ibid.

99 Interview with Samuel de Jaegere, anti-corruption advisor at the UNODC regional office in Dakar, 24 March 2014.

100 On the different training programmes followed by OFNAC members, see its public activity report 2014–2015, pp. 113–118.

Training for members and staff will be reinforced with the planned establishment of the OFNAC anti-corruption academy.¹⁰¹ Further opportunities are available to OFNAC with the establishment of the anti-corruption academy of the Network of National Anti-Corruption Institutions in West Africa (NACIWA).¹⁰²

Staff remuneration and working conditions

To allow anti-corruption agencies to operate effectively, attractive member status is recommended. From this standpoint, the status of members of OFNAC is more attractive than that of members of the former CNLCC. On the date of its adoption, Law 35/2003 of 24 November stipulated that the tasks of its members were unremunerated. They also did not receive benefits in kind or life insurance. Initially, the commission did not have a headquarters, which is why, for the first two years, meetings took place in the home of the president. The members were responsible for their own travel costs too. The law was amended in 2008 to grant monthly allowances of USD 2400 for the president, USD 1200 for other members and USD 1400 for the permanent secretary.¹⁰³

Article 8 of Law 30/2012 of 28 December establishing OFNAC stipulates that the remuneration and benefits of the president shall be established by decree, as well as the amounts of the allowances and benefits of the vice-president and other members of OFNAC. The president of OFNAC receives an allowance of USD 10 000, the vice-president receives an allowance of USD 7000 and other members receive an allowance of USD 5000. The president of OFNAC receives a housing allowance of USD 2000.¹⁰⁴ These allowances are similar to those received by the members of institutions such as CENTIF. Compared to the average salary earned in Senegal, it can be considered that these allowances are attractive enough to enable OFNAC to recruit relatively qualified human resources. However, these allowances can be considered quite high if we take into the account the fact that, with the exception of the president, the other members are not permanent. In any case, the trend seems to be positive compared to the status of the members of the former CNLCC.

Working conditions will undoubtedly improve considerably. A more functional headquarters has already been acquired. Benefits include vehicles and fuel allowances. Certain members say that it was not so much the benefits they did not receive as the lack of recognition that hurt them the most.¹⁰⁵

Support staff

Best practices recommend that anti-corruption agencies have sufficient, qualified support staff, recruited on the basis of transparent recruitment procedures and placed under the

101 OFNAC (2015) Rapport public d'activités 2014–2015, p. 127.

102 See <https://www.unodc.org/westandcentralafrica/fr/the-network-of-national-anti-corruption-institutions-in-west-africa-naciwa-elects-new-executive-committee-and-adopts-a-strategic-plan-2015-2017-with-support-from-unodc.html> [accessed 13 June 2016].

103 Decree No. 2008-1359 of 24 November 2008, establishing the allowances of the members of the National Commission for the Fight against Non-Transparency, Corruption and Misappropriation (CNLCC).

104 Decree no. 2014-769 of 12 June 2014.

105 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

control of the agencies alone.¹⁰⁶ Article 13 of the Law 35/2003 of 24 November establishing the CNLCC only provided in article 13, paragraph 2, that it could receive assistance from state departments in the performance of its tasks. The rules applying to its support staff were supposed to be defined in the rules of procedure and the procedures manual. In practice, however, the procedures manual only defines the tasks of the support staff.

Article 34 of the rules of procedure states that the commission recruits the necessary staff required for its work, except where such staff are provided by the public authorities.¹⁰⁷ However, the government only provided the commission with a gendarme who ended up retiring after two years in his position.

The CNLCC recruited three staff members on a contractual basis. Their pay scale was established by referring to the salaries of civil service officials of a similar category. In addition, they received an allowance paid from the budget of the commission.¹⁰⁸

The CNLCC had control over the hiring of support staff, which it was empowered to dismiss in case of misconduct. In this regard, the law was compliant with the Jakarta Statement, which stipulated that anti-corruption agencies shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures. The purpose of this provision is to ensure operational independence for anti-corruption agencies and protect them from political interference. This prerogative of the CNLCC was also recognised for OFNAC. Article 3 of Law 30/2012 of 28 December establishing OFNAC provides that it may avail itself of the services of any necessary staff to provide it with support. OFNAC has more support staff than the CNLCC did. It has also been provided with additional staff from the administration. Staff recruitment is based on the establishment of multidisciplinary teams where experienced management-level staff work closely with trained and motivated young staff members.¹⁰⁹

Anti-corruption missions

Law 35/2003 of 24 November entrusted the CNLCC with three main missions¹¹⁰:

- *A mission of preventing corruption.* In this framework, the CNLCC was to identify the structural causes of corruption and related offences but also to raise awareness, particularly on the harm done by corruption.
- *A mission of promoting good governance.* This consisted above all of proposing legislative, regulatory or administrative reforms, including those related to international transactions.
- *A mission of sanctioning corruption.* The aim of this was to receive and process claims from natural persons and legal entities pertaining to acts of corruption or related offences.

106 Jakarta Statement on Principles for Anti-Corruption Agencies.

107 Article 34 of the Rules of Procedure of the CNLCC.

108 Article 35 of the Rules of Procedure of the CNLCC.

109 See OFNAC (2015) Rapport public d'activités 2014–2015, p. 31.

110 Article 2 of said law.

When the CNLCC had sufficient evidence to justify the initiation of legal proceedings, it was required to submit a detailed memorandum and recommendations to the president of the republic, specifying the identity of the persons or bodies that may be subject to prosecution.¹¹¹ The consequence was that the former CNLCC had no relationship with the justice system and could not refer cases to the courts. The situation was all the more paradoxical in that some cases it investigated were indeed referred to the justice system. One example was the case between former minister Coulibaly and Baïla Wane, former director of LONASE (the national lottery).

Box 1: Case of Abdou Latif Coulibaly vs. LONASE

This case is interesting for more than one reason, in that it reveals the risks run by whistleblowers but also the limitations of the powers of the former CNLCC.

Investigative reporter Abdou Latif Coulibaly had written a book entitled *LONASE - a story of systematic looting*, which was jointly published by L'Harmattan and Sentinelles on Wednesday 24 July 2007. By writing the book, he sought to draw the attention of the CNLCC to certain cases of corruption, waste, nebulous contracts and above all impunity, in which the chief party accused was Baïla Wane, the former CEO of LONASE. The latter initially lodged a complaint for defamation. When this complaint was rejected by the criminal court, he filed an appeal. However, fearing the procedure would not lead to the hoped-for decision, he lodged another complaint for theft and concealment of administrative documents. This second complaint was more likely to succeed since the journalist was not an employee of LONASE. This condemnation in no way constituted proof that there was no wrongdoing at LONASE.

Aware of this risk, Forum Civil, a civil society organisation, asked the CEO of LONASE to accept the journalist's invitation to review the case before the CNLCC with a view to ascertaining the truth.

However, when he received a summons from the CNLCC, the CEO demanded proof that the latter had the power to compel him to respond to such a summons but above all to produce the required documents. He further emphasised his point by producing a bank transfer to President Wade and asking the commission to kindly investigate that authority.

As in all cases where a top official was involved, particularly the president of the republic, or when judges were accused, the case was closed. The media reported that a file had been lodged with the justice system, but to this day the case has not been tried.

Source: Interview with a former member of the CNLCC, 17 April 2014; Ablaye Ranera, LONASE – Rebondissement dans l'affaire du pillage de la société : des poursuites demandées contre Baïla Wane. Available at <http://www.sunugalsene.com/LONASE-Rebondissement-dans-l.html> [accessed 24 April 2014].

The vision and mission of the members of the former CNLCC was to prevent and repress corruption. This was an open mission, to use the expression of one of the former vice-presidents of the commission.¹¹² OFNAC is entrusted with the same mission. Article 2 of

¹¹¹ Article 4 of the law on the CNLCC.

¹¹² Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

Law 30/2012 of 28 December establishing OFNAC states that its mission is to prevent and combat fraud, corruption, similar practices and related offences, with a view to promoting integrity and probity in the management of public affairs. Like the CNLCC, it can recommend any legislative, regulatory or administrative reforms that promote good governance, including those related to international transactions.¹¹³

In the scope of its mission to prevent corruption, outside of any initiatives it may take,¹¹⁴ provision has also been made for it to issue opinions on preventive measures upon request by the administrative authorities; these opinions may not, however, be published.¹¹⁵

While the missions remain the same, the prerogatives have changed. First of all, there is a difference in terms of the scope of their jurisdiction. The CNLCC was only competent to deal with corruption and related offences, while OFNAC is also responsible for dealing with practices and fraud.¹¹⁶ Fraud is a broader and more concrete concept than corruption. The 2013 GIABA report reveals the scope of tax fraud, bank fraud and deposit fraud in Senegal.¹¹⁷

A second difference lies in the fact that, unlike the former commission, OFNAC is empowered to receive declarations of assets under Article 3 of Law 17/2014 of 2 April on the Declaration of Assets. OFNAC's mission of preventing corruption is thus broader than that of the CNLCC.

Another fundamental difference is in the powers vested in them to accomplish their assigned missions. Unlike the CNLCC, OFNAC has power to act on its own initiative and to directly refer cases to the justice system. Article 12 of Law 30/2012 of 28 December provides that it has the power to act on its own initiative in any cases of fraud, corruption (or any offence referred to in article 3(1))¹¹⁸ of which it is aware, and that it may also receive referrals from any natural person or legal entity.

One major innovation resides in the fact that, in addition to referrals to the public prosecutor, OFNAC is also empowered to institute disciplinary proceedings against public officials guilty of the above-mentioned offences. Its powers of investigation are also broader than those of the former CNLCC. Neither professional secrecy nor banking secrecy is enforceable against OFNAC.¹¹⁹ Regarding banking secrecy, it should be noted that Senegal is in compliance with the UN convention, which requires state parties to ensure that, in case of criminal investigations of offences established in accordance with the convention, there are appropriate mechanisms available within their domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.¹²⁰ A priori, it can be considered that the reinforcement of the powers of OFNAC will enable it to meet its objectives in fighting against corruption. Furthermore, the fact that its mandate

113 Article 3 of the law on OFNAC, point 2.

114 Article 2 of the law on OFNAC.

115 Article 3(4) of the law on OFNAC.

116 Article 2 of the law on OFNAC.

117 GIABA (2013) Annual Report, p. 54.

118 Namely, offences related to corruption.

119 Article 3 of the law on OFNAC.

120 Article 40 of the United Nations Convention.

includes corruption among the members of the executive, the judiciary and parliament is viewed as a good option.¹²¹

The then president of OFNAC has outlined a system of denunciation that could be adopted.¹²² The first step is the adoption of a law on access to information to protect whistleblowers who provide information to anti-corruption agencies. The next step is to make a hotline available to the public to facilitate anonymous reports. Finally, to encourage denunciation, 15% of all sums recovered could be set aside for whistleblowers. If this system were to be adopted, it would have to be strictly regulated to avoid false allegations. The CNLCC was faced with a situation of this kind in the case of a whistleblower Pape Malick Ndiaye who was never able to produce the evidence he promised.¹²³

Box 2: The case of Abdoulaye Baldé vs. Pape Malick Ndiaye, also known as 'le Corbeau'

Pape Malick Ndiaye, who said he belonged to an organisation known as the Collective for Reflection and Action Against Corruption (CRAC) accused the executive director of ANOCI of having accepted bribes amounting to 1.8 million Euros from the CDE company and having allowed it to make deposits in his foreign bank accounts. Mr Ndiaye also accused Mr Baldé of corrupting most major government departments (police, customs, ministry of foreign affairs, port authority, airport). Thus, Mr Baldé addressed a letter dated 29 May 2006 to the CNLCC, asking it to investigate the allegations against him.

His request was deemed admissible by the members of the commission, who considered that the CNLCC was competent to rule as long as the matters referred to it pertained to offences of corruption, whether they were referred by the accused or a whistleblower.

In order to fulfil its mission, the CNLCC undertook an investigation into the existence of the CRAC, of which alleged members had been named. It also contacted the national financial intelligence processing unit and certain foreign banks named in connection with the case, in addition to tracing the CDs and other electronic documents meant to serve as evidence of corruption in the various government departments allegedly implicated.

The CNLCC initially concluded that the CRAC did not exist, since Mr Ndiaye was unable to produce the articles of association of the alleged organisation. On the merits of the case, CNLCC also had to close its investigation because the plaintiff was unable to provide proof of his allegations, and because there was no follow-up to the letters addressed to CENTIF and the banks. CENTIF refused to collaborate on grounds that there was no legal foundation for its collaboration. The banks also did not consider themselves obliged to provide documentation, even non-confidential documentation.

Source: Excerpts from an article by journalist Alioune Badara Coulibaly in the Gazette newspaper, subsequently published on the Leral website on Friday 4 September 2009.

121 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 12.

122 Ibid.: p. 12.

123 See Box 2.

OFNAC's current system for the management of complaints and denunciations is somewhat different from this vision. In organisational terms, it relies on two bodies: an office of complaints, denunciation and hotline administration (BPD), and a committee for complaints processing and analysis (CTAP). The BPD is tasked with receiving complaints and denunciations from natural persons and legal entities, the implementation of case files and the monitoring of feedback to complainants in the form of an explanatory letter or acknowledgement of receipt. The mission of the CTAP is to conduct analysis of complaints and denunciations, to prepare technical memos on case files and to issue opinions on all complaints and denunciations reviewed. The establishment of the CTAP proceeds from a will to ensure the quality of the cases. This approach has already been tested by the Argentinian anti-corruption agency. There the selection of cases to be investigated and prosecuted is founded on one of the following three criteria:

- An economic criterion, i.e. whether the amount involved is equal to or higher than USD 281 000;
- An institutional criterion, i.e. whether the scope and seriousness of the case prevent the accused institution from fulfilling its mandate; and
- A social criterion, i.e. whether the act of corruption affects a large number of people benefiting from the services provided by the institution.¹²⁴

In operational terms, OFNAC's complaints management system is attached to various service platforms: These include a website containing an electronic form for filing complaints and denunciations, a hotline (800 000 900) available on business days from 8AM to 5PM (GMT), a mobile app, email and text messaging.¹²⁵ The diversification of means of referring cases to OFNAC has made it possible to increase the number of cases referred, unlike the former CNLCC, which could only be addressed by mail or hand delivery. Throughout its existence, the number of cases taken in by the CNLCC did not exceed 100. OFNAC's 2014-2015 public activity report reveals that 320 complaints and denunciations were made to them.¹²⁶

The CNLCC established a system for receiving complaints, but it had no system for selecting cases to be investigated and prosecuted from those complaints. The procedure for referring a case to the commission was described in its rules of procedures, which defined the form and treatment of claims. The CNLCC could take all useful action to establish the merits of the cases, notably by hearing all persons likely to be of assistance. However, it should have applied the adversarial principle by allowing the accused to be informed of the allegations and giving them the opportunity to comment on the acts denounced.¹²⁷

124 Interview with Mr de Jaegere, anti-corruption advisor at the UNODC regional office in Dakar, 24 March 2014.

125 OFNAC (2015) Rapport public d'activités 2014–2015, p. 107.

126 *Ibid.*: 47.

127 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

Collaboration with police or gendarme departments¹²⁸ in the investigation of the cases it was aware of was very limited. The police were only called upon to deliver summonses. The gendarme appointed to the commission was only tasked with preparing investigation forms and were not involved in the actual investigations. This limited collaboration was due to a will on the part of the members of the CNLCC to preserve the autonomy of the commission and ensure that the police or gendarmes did not directly refer cases to the public prosecutor after investigation.¹²⁹

OFNAC's collaboration with police and gendarme departments should be more intensive. It should be noted that the members of OFNAC include a commander of the gendarmerie and a former national police commissioner.

The power to directly refer cases to the justice system should enhance cooperation between the justice system and OFNAC. However, the roles of OFNAC, in relation to the justice system, have been clearly defined. It does not have the power to prosecute and is divested of a case as soon as it submits its report to the public prosecutor.¹³⁰

In its organisational chart, OFNAC has planned to set up a multi-purpose intervention and financial analysis unit made up of two brigades: a mobile anti-corruption brigade and an economic and financial brigade. In so doing, OFNAC can guarantee the independence of its investigations.

In the framework of the promotion of good governance, OFNAC has already carried out significant awareness-raising work. One hundred awareness-raising and sensitisation missions have been conducted; 67 277 people have been met with on their own or on OFNAC premises; and 19 schools have been visited, along with one summer camp and one Koran school.¹³¹ A study on perceptions and an evaluation of the cost of corruption have recently been launched with support from the UNDP and OSIWA.¹³² In this area, it should be noted that OFNAC has opted for action research as opposed to fundamental research. This will provide insight into the interventions to be undertaken to ensure the success of the mission.¹³³

Independence

Senegal granted the former CNLCC and OFNAC the status of independent administrative authority.¹³⁴ Thus, while it acts in the name of the state, the latter enjoys a certain independence, both in relation to the sector it controls and in relation to the public authorities. As a consequence, it is not subject to the hierarchical power of the central

128 The Rules of Procedure of the CNLCC stipulated in article 36 that the president of the commission could ask for police officers and gendarmes to be made available to it.

129 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

130 Article 14, paragraph 2 of the law on OFNAC.

131 OFNAC (2015) Rapport public d'activités 2014–2015, p. 81 et seq.

132 Ibid.: 121.

133 Ibid.: 119–120.

134 Respectively, articles 1 of laws No. 2003-35 of 24 November 2003 establishing a National Commission for the Fight against Non-Transparency, Corruption and Misappropriation and No. 2012-30 establishing a national office for the fight against fraud and corruption.

government. Article 13 of Law 35/2003 of 24 November stated that the CNLCC was an independent institution. An independent administrative authority receives no orders or instructions from any other authority. Article 3 of Law 30/2012 of 28 December also provides that OFNAC members shall receive instructions from no other authority in the accomplishment of their duties.

Another guarantee of the independence of OFNAC is the security of tenure of its members. Members may only be removed from their positions under very specific conditions; namely, in cases of resignation, death, gross misconduct or impediment duly certified by a majority of the members.¹³⁵ A fundamental difference with the former CNLCC resides in the fact that in the case of the latter, impediment was certified by the president of the republic. This could have provided an opportunity for the president to interfere with the operations of the commission.

The protection enjoyed by the members was an additional guarantee of their independence. Members could not be prosecuted, wanted by the police, arrested, held or judged for any statements or opinions issued, nor for any actions or decisions undertaken in the performance of their duties.¹³⁶ This protected status is a recommendation of the Jakarta Statement on Principles for Anti-Corruption Agencies, which stipulates that ‘anti-corruption agencies heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate’.

The stability of the institution is relatively guaranteed in that it was established by law and is therefore theoretically protected from untimely amendments by the executive. However, this statement should be put into perspective. Due to the subordination of the legislative body to the executive, OFNAC is not fully protected from a potential challenge at the will of the executive. It is for that reason that the draft constitution proposed by the National Commission for Institutional Reform¹³⁷ provides not only that independent administrative authorities are permanent bodies and that they are established by law but specifically that those involved in the fight against corruption, financial malpractice and financial crime are able to refer cases directly to justice.¹³⁸ Through this provision, the commission for institutional reform sought to capitalise on the experience of the former CNLCC, which did not have the power to refer cases directly to the courts, a situation that considerably undermined its effectiveness in the fight against corruption.

135 Article 6 of the law on OFNAC.

136 Article 9 of the law on OFNAC and article 16, paragraph 2 of the law establishing the CNLCC.

137 The National Commission for Institutional Reform (CNRI), established in May 2013 by a decree of President Sall, was tasked with ‘formulating any proposals aimed at improving the operations of the institutions, consolidating democracy, furthering the rule of law and modernising the political regime’(article 2 of Decree No. 2013-730 of 28 May 2013). In December 2013, the CNRI submitted a report to which was annexed a draft proposal for a new constitution in conformity with the findings of its work. As of the date of writing of this report, no action had as yet been taken on the proposals of the CNRI.

138 Article 141 of the draft constitution proposed by the CNRI.

Organisation and operations

The organisation of OFNAC is, to a degree, hierarchical. At the head of each institution is a president, representing its leadership. However, the relationships between the members and the presidents of the institutions are not hierarchical in nature. Decision-making is collegial and the president's vote is decisive only in the event of a tie. The president's hierarchical power is exercised in relation to the support staff.

The CNLCC operated through commissions organised around its essential missions. The roles and functions of its members and staff were clearly defined. The OFNAC organisational chart reveals a general organisation around departments defined on the basis of its principal missions and the requirements of its internal governance. They include the department of inquiries and investigations (DEI); the department of audits and verifications (DAV); the department of declarations of assets (DDP); the department of prevention and social mobilisation against fraud, corruption and related offences (DPM); the studies-research-accountability department (DERRQ); and the internal governance department (GI). The distribution of roles and responsibilities is clearly established from that point of view.

The lack of local-level organisation was viewed as a weakness of the CNLCC, which explains the lack of visibility of the CNLCC and the weakness of the cases referred. The question raised is whether OFNAC should organise at local level, like the CENA¹³⁹ for example. Forum Civil is in favour of that option,¹⁴⁰ as opposed to those – such as Samuel de Jaegere, anti-corruption officer at the UNODC regional office in Dakar – who worry that OFNAC would not be able to effectively control regional satellites.¹⁴¹ In the view of these others – who include Mr de Jaegere, anti-corruption at the UNODC regional office in Dakar – a hotline and a website along the lines of what is offered by the ARMP to take in denunciations would suffice. OFNAC's own preference would be to set up regional branches in addition to the hotline and an online denunciation mechanism¹⁴² to bring the agency closer to the population.¹⁴³

The principle of continuity stipulated by the Jakarta Statement – which implies that in the event of the definitive unavailability of the head of the agency, his or her powers shall be delegated by law to an appropriate official in the institution within a reasonable period of time – has been complied with. In the event of a permanent impediment, the president of OFNAC is temporarily replaced by the vice-president. It remains that the appointment of another president within a reasonable period of time is not guaranteed. The experience of the CNLCC is an illustration of this. Indeed, after its president passed away, the CNLCC remained without a president from 28 May 2012 until the creation of OFNAC.

139 Autonomous national electoral commission

140 Forum Civil (2014) Contribution à la mise en place d'un Observatoire National pour la Transparence et la Redevabilité, final report of the PGP, January 2014, p. 28.

141 Interview with Mr de Jaegere, anti-corruption advisor at the UNODC Regional Office in Dakar, 24 March 2014.

142 The hotline number is 800 000 900.

143 OFNAC'(2015) Rapport d'activités public 2014–2015, recommandation No. 2. p. 56.

The CNLCC and OFNAC shared the same decision-making process. The simple majority rule is in force, except in decisions referred to the prosecutor; in which case, a two-thirds majority is required.¹⁴⁴

Funding

The financial resources of the CNLCC were essentially drawn from the appropriations allocated by the state. A budget was drawn up by the permanent secretary¹⁴⁵ and submitted to the general assembly of the CNLCC for validation, before being sent to the office of the president of the republic for arbitration. It should be recalled that the CNLCC was attached to the office of the president of the republic and that, as such, its budget was an item in the budget of the office of the president.¹⁴⁶

The budget allocated to the CNLCC increased progressively, although it never was very substantial. From USD 30 000 in 2005, the budget rose to USD 120 000 in 2006, then USD 200 000 in 2008 before stabilising at USD 374 000 as of 2009.¹⁴⁷

Section 3 of Law 30/2012 of 28 December focuses on OFNAC's financial resources. This demonstrates the importance granted to the issue. In addition to the budgetary allocation from the state, it is expressly provided that OFNAC may receive financial resources from participations, aid and grants from partners in bilateral and multilateral cooperation.¹⁴⁸ The purpose of this provision is to provide OFNAC with a legal foundation for negotiating directly with donors.

Article 20 of the Law 30/2012 of 28 December provides that the appropriations required for OFNAC's running and the performance of its duties were to be independently included in the general budget and authorised by the budget act. This arrangement reinforced its autonomy. It also provides that the president of OFNAC shall act as the budget authorising officer and that a public accountant appointed by the minister of finance will be assigned to OFNAC.¹⁴⁹ The financial provisions of Law 30/2012 of 28 December will be completed through a decree that will determine the financial regime of OFNAC.¹⁵⁰

OFNAC has access to a more substantial budget than the CNLCC. It should be noted that the budget in 2013, was only USD 200 000. Between 2014 and 2015, budget appropriations allocated to OFNAC rose from USD 2 350 000 to USD 3 300 000. In the budget act of 2016, the appropriations allocated to OFNAC totalled USD 2 798 000.

The CNLCC received very limited support from technical and financial partners. The World Bank refused to provide support, stating that it did not have the powers to fulfil its missions.¹⁵¹ Certain partners criticised it for its inertia, as well as a lack of leadership

144 Article 11 of the law on OFNAC and article 11 of the law on the CNLCC.

145 Article 33 of the Rules of Procedure of the CNLCC.

146 Article 14 of the law establishing the CNLCC.

147 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

148 Article 19 of the law on OFNAC.

149 Article 20, paragraph 4 of the law on OFNAC.

150 Article 20, paragraph 5 of the law on OFNAC.

151 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

and, above all, strategic vision.¹⁵² It only truly received support from the United States Agency for International Development's (USAID's) Peace and Governance Programme (PGP), particularly for the organisation of seminars on the domestication of the UNCAC, capacity building for the network of journalists against corruption, and the drafting and popularisation of the national anti-corruption programme. Thus, the support in question was not budgetary support.¹⁵³

Relations between OFNAC and its technical and financial partners are more promising. The World Bank has supported the government of Senegal in the process of domesticating the WAEMU Transparency Code, producing guidance notes on three essential elements of this code, namely: declarations of assets, the code of ethics of public officials and policies on access to information pertaining to public finance. The World Bank plans to provide assistance in the form of budget support for the implementation of Law 17/2014 of 2 April on the Declaration of Assets. The focus will be on supporting OFNAC as the depositary in the process of submission of declarations of assets.¹⁵⁴

The UNODC has provided OFNAC with support for technical capacity building by setting up a mechanism for the selection of complaints with a view to conducting investigations. It also envisages, over the medium and long term, serving as a repository for donor funding intended for OFNAC.¹⁵⁵ The delegation of the European Union (EU) in Dakar has granted budget support to OFNAC in the amount of €400 000. The United States embassy has provided OFNAC with support for the organisation of numerous training sessions on investigation; while the French embassy has facilitated the visit of a delegation to the high authority for transparency in public life, in France.

The UNDP contributed to the audit of its organisational chart and the redefinition of its strategic action plan. UNDP support was also geared toward increasing the consistency of donor support, as it was noted that there was a certain amount of overlap. The UNDP also intends to provide financial support for OFNAC with a view to conducting a survey on perceptions of corruption. The preparation of the 2014-2015 OFNAC activities report was financed by Canadian cooperation. In 2015, support for OFNAC from technical and financial partners totalled USD 732 350.¹⁵⁶

The low level of donor support for the CNLCC and their enthusiasm towards OFNAC confirm a strong tendency among donors to prefer certain activities on the part of anti-corruption agencies. These include investigations and prosecution of grand corruption or declarations of assets.¹⁵⁷ It is understandable that the World Bank refused to support the CNLCC, which had no power to act on its own initiative or to refer directly to the

152 Interview with Babacar Ndiaye, PGP/USAID programme officer in Dakar, 20 March 2014

153 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

154 Address by the Resident Representative of the World Bank at the sharing and awareness-raising workshop on mechanisms for the promotion of transparency, Hotel Palm Beach 22–23 April 2014, p. 2.

155 Interview with Mr de Jaegere, anti-corruption advisor at the UNODC regional office in Dakar, 24 March 2014.

156 OFNAC (2015) Rapport public d'activités 2014–2015, p. 33.

157 William R & Doig A (2001) Achieving Success and Avoiding Failures in Anti-corruption Commissions: Developing The Role of Donors, U4 Brief, January 2007, No. 1, p. 2.

justice system.¹⁵⁸ The vice-president of OFNAC, however, suggested that the technical and financial partners he met with were willing to support the priorities defined by OFNAC.¹⁵⁹

Relationships with stakeholders

Public

The CNLCC understood the importance of public visibility to garner support and involvement with a view to enhancing the effectiveness of the fight against corruption. However, unlawful non-publication of the CNLCC's reports,¹⁶⁰ either by the CNLCC or the president of the republic, partially explains the lack of visibility and support of the CNLCC. The Jakarta Statement on Principles for Anti-Corruption Agencies recommends that these institutions should present a report on their activities to the public at least once per year. This lack of visibility constitutes a failure by the state to meet its obligations under the UNCAC, which requires all member states to take appropriate measures to ensure that anti-corruption agencies are known to the public and ensure that they are accessible so that the offences covered by the convention are reported to the public, even anonymously.¹⁶¹

If we refer to a recent study by the World Bank, popular support is far from being won. This study indicates that the majority of the persons interviewed were not focused on anti-corruption reforms.¹⁶² Reformists comprised a minority made up of young intellectuals with a certain level of income.¹⁶³ Public support therefore appears to be a real challenge for OFNAC.

The ambiguity faced by the CNLCC surrounding the publication of reports has been dispelled. After submitting its report to the president of the republic, OFNAC may publish said report by all appropriate means.¹⁶⁴ Another means of obtaining public support is to involve the public in the auditing of the agency. The national integrity council, which supervises the national integrity agency in Romania, has accepted civil society as a member.¹⁶⁵ OFNAC makes the general public its main target. Its members wish to convince the population as quickly as possible of their determination to fight corruption through concrete results.¹⁶⁶

158 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

159 Interview with Mr Faye, vice-president of OFNAC.

160 Article 4 of the law on the CNLCC.

161 Article 13, paragraph 2 of the United Nations Convention against Corruption.

162 World Bank, *Etude diagnostique sur la gouvernance et la lutte contre au Sénégal*, p. 129.

163 *Ibid.*: 130.

164 Article 17 of the law on OFNAC.

165 UNDP (2011) *Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies*. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 32, footnote 18.

166 Interview with Mr Faye, vice-president of OFNAC.

Media

The media's contribution to the fight against corruption is significant. The media have revealed a number of wrongdoings.¹⁶⁷ They can be a strategic partner, not only in awareness campaigns on the damage done by corruption, but also and especially through the support they can provide for OFNAC against potential pressures. In the view of some, the media and civil society can constitute an external control system for agencies, effectively making up for a lack of independence in anti-corruption agencies.¹⁶⁸

Aware of their visibility issues, the CNLCC took the initiative, in collaboration with a handful of journalists, to set up the Network of Journalists for Anti-Corruption in Senegal, or REJAS (its French acronym). This network is highly representative, as all of the media are represented. The CNLCC contributed substantially to capacity building for the members of the network by organising training seminars for them. It should be noted that they also benefited from training funded by technical and financial partners such as the EU and USAID, through the offices of the CNLCC.¹⁶⁹ REJAS has supported the CNLCC in various events, particularly in the framework of International Anti-Corruption Day.

The dissolution of the CNLCC did not spell the end of REJAS, which was able to maintain its autonomy by developing its own activities. It was able to obtain training on investigative journalism in mining industries in collaboration with the ministry of mines, and capacity building with Forum Civil on declarations of assets and conflicts of interests.¹⁷⁰

REJAS plans to develop a site to accommodate all of the documentation on corruption in its possession.¹⁷¹ It also endeavours to create a periodical in graphic-novel format. This means that OFNAC can draw support from a well-established network with real experience. Exploratory talks were undertaken with the president of OFNAC. OFNAC hoped to draw support from the network to disseminate information on an as-needed basis. The president of OFNAC has since promised to assign an office to REJAS at the institution's headquarters and to assist with capacity building for its members.¹⁷² However, REJAS intends to maintain its independence and especially its watch-and-warning role.¹⁷³ It is regrettable that OFNAC has no members who are professional journalists, unlike the CNLCC. This would have been amply justified by the emphasis the Jakarta Statement places on communications and public information. It states that the agencies 'shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness'.

The role of the media would be facilitated if a law on access to information were adopted, even if such a law is not intended for the media alone as the matter concerns all

167 See Box 2.

168 Meagher P (2004) Anti-corruption agencies: A review of experiences. *The Iris Discussion Paper on Institution and Development* 04/02. p. 70.

169 Interview with Jacques Ngor Sarr, president of REJAS, 23 April 2014.

170 Ibid.

171 Ibid.

172 Ibid.

173 Ibid.

citizens. A draft bill was submitted prior to the last change of government; however, for the time being, no law has been adopted by the national assembly.

Civil society

Like the media, civil society plays a watch-and-warning role. Its support for anti-corruption agencies is also vital when they take on grand corruption.¹⁷⁴ The experience of Forum Civil shows that, beyond denunciation, civil society can use advocacy to instigate various consolidating reforms for the legal and institutional framework of the fight against corruption. It was with this in mind that it prepared draft bills on declarations of assets, conflicts of interest and financing of political parties, on OFNAC and on a commission for the recovery of ill-gotten gains. Forum Civil is behind a number of studies on corruption in Senegal.¹⁷⁵

Forum Civil also contributes to capacity building for parliamentarians in the area of good governance and the fight against corruption by providing them with assistance in the drafting of bills on the subject. One such example is the draft bill on declarations of assets.¹⁷⁶ It therefore appears to be a natural partner for anti-corruption agencies. The CNLCC had signed a convention with Forum Civil, a framework structured for the promotion of governance, on 22 September 2011. Three goals¹⁷⁷ were assigned to this agreement:

- Enhancing good governance and the fight against corruption through technical support for the CNLCC;
- Having relevant research approaches, expertise, documentation, awareness strategies, communications and training to promote transparency, good governance and the fight against corruption; and
- Having citizens who are more active, more aware, more informed and involved in the promotion of transparency, good governance and the fight against corruption.

In this framework, Forum Civil participated in the work of the CNLCC by drafting instruments for the domestication of the UNCAC. Despite this support, Forum Civil was often critical of the CNLCC due to its ineffectiveness. While this may be viewed as constructive criticism, some have interpreted it as a lack of real support for the CNLCC which may have contributed to the weakening of the institution.¹⁷⁸

174 Meagher P (2004) Anti-corruption agencies: A review of experiences. *The Iris Discussion Paper on Institution and Development* 04/02. p. 70.

175 These notably include studies on governance and corruption in the health and education sectors, as well as in the sector of the environment and natural resources.

176 Forum Civil, Loi portant sur la déclaration de patrimoine : analyse comparative du projet de loi du Gouvernement et de la proposition de loi de la section sénégalaise de l'APNAC (Réseau des parlementaires africains contre la corruption). Available at <http://forumcivil.net/sites/default/files/D%C3%A9claration%20de%20patrimoine%20Analyse%20comparative.pdf> [accessed 24 June 2014].

177 Article 3 of the partnership convention.

178 Interview with Babacar Ndiaye PGP/USAID, in Dakar, 20 March 2014.

The former president of OFNAC was inclined to pursue this cooperation. She had participated in Forum Civil events while raising the issues of OFNAC's lack of resources and the fact that certain members of OFNAC had yet to be appointed.¹⁷⁹

Fortunately, OFNAC can count on the support of Forum Civil, as the latter contributed to its establishment. Indeed, the draft bill on OFNAC was proposed to the president of the republic by Forum Civil.¹⁸⁰ This cooperation should be extended to include another stakeholder, namely the platform of non-governmental actors against corruption and misappropriation set up on the initiative of the CNLCC, thanks to support from USAID's PGP. This initiative is part of the implementation of the national plan against corruption.

The observatory of non-governmental actors against non-transparency, corruption and misappropriation is a joint platform for civil society, the private sector and the trade unions.¹⁸¹ This platform has produced a documentary¹⁸² for the purposes of creating awareness on the costs of corruption. The platform is interesting in that it constitutes a foundation for a body which, if it were extended to parliament and the justice system, could be vested with the power to monitor OFNAC. Although no formal agreements have as yet been signed with civil society, exploratory discussions with civil society associations have taken place.¹⁸³ OFNAC has also invited civil society actors to its strategic action planning workshop.¹⁸⁴

Other public institutions

Cooperation with certain institutional actors is a necessity for the effectiveness of the fight against corruption. The UNCAC requires that state parties organise cooperation between anti-corruption agencies. Among the institutional actors, the CNLCC had signed a partnership protocol with CENTIF for the establishment of a mutual data-gathering body on 22 September 2011. This agreement was all the more justified by the fact that corruption is a predicate offence for money laundering. Under this agreement, CENTIF provided support for the CNLCC when it was faced with banking secrecy.¹⁸⁵

On the other hand, the CNLCC had no formal relationship with the other monitoring bodies such as the office of the state inspector-general (whose mandate includes the fight against corruption), the court of audit and the ARMP.¹⁸⁶ The CNLCC merely invited them to its events and seminars it organised. This was the case, for instance, during its

179 Forum Civil, Rapport Final du programme Gouvernance et Paix. p. 6; Mbaye A. Le Forum Civil et l'OFNAC prêts à agir sur les comportements, <http://www.senepius.com/article/le-forum-civil-et-lofnac-pr%C3%AAts-%C3%A0-agir-sur-les-comportements> [accessed 25 June 2014].

180 Forum Civil (2014) Contribution à la mise en place d'un Observatoire National pour la Transparence et la Redevabilité, final report of the PGP, January 2014, p. 4.

181 Interview with Maïmouna Dieng, permanent secretary of the platform of non-governmental actors for the Cotonou Agreement, 7 August 2014.

182 Ndiaye S (2014) Revue documentaire sur les coûts de la corruption.

183 Interview with Mr Faye, vice-president of OFNAC.

184 See: OFNAC, communiqué de presse n°2 http://www.ofnac.sn/IMG/pdf/COMMUNIQUE_DE_PRESSE_No_2.pdf, viewed on 25 February 2015.

185 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

186 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

proceedings on the domestication of the UNCAC. This situation is all the more paradoxical in that the ARMP is vested with a power to sanction acts of corruption. Article 147 of the Public Procurement Code provides that the dispute resolution committee of the ARMP, sitting as a disciplinary board, may hand down sanctions against bidders or awardees of public procurement contracts who are convicted of corruption of public officials in charge of awarding public procurement contracts, or fraudulent activities with a view to obtaining a contract.¹⁸⁷

It should be said that the mission assigned to the cooperation department of the CNLCC was to establish cooperation with similar institutions in other countries and prepare trips abroad,¹⁸⁸ whereas domestic cooperation should have been envisaged first and foremost. It is important to stress that the responsibility is shared with the other institutional stakeholders. The ministry of foreign affairs, which received documentation and invitations on the subject of corruption, preferred to pass them on to the ministries of justice, the interior or even the ministry of commerce.¹⁸⁹ Overall, domestic cooperation was severely inadequate, with each body involved in the fight against corruption preferring to keep its information to itself.

The CNLCC envisaged signing cooperation agreements with institutions such as the court of audit. Due to its dissolution in 2012, it did not have enough time to conclude such agreements.¹⁹⁰ OFNAC is expected to complete the process. Article 3 of Law 30/2012 of 28 December takes account of the importance of cooperation by providing that it shall maintain cooperative relationships with similar national agencies active in the fight against fraud, corruption, and similar practices and related offences.¹⁹¹

The court of audit and the ARMP have signed a cooperation agreement to enhance the fight against corruption even though the principal mandate of these institutions is not to combat corruption. The aim of the agreement is to provide a space for dialogue and for sharing information, documentation, experience and know-how of common interest pertaining to the review of their respective missions.¹⁹² This agreement appears to be a necessity for an effective institutional fight against corruption and violations of management ethics. The ARMP aims to sign similar agreements with the IGE and OFNAC.

Partnership projects between OFNAC and the ARMP, the city of Dakar, the inland revenue service (DGID), the customs authorities (DGD) and the court of audit are currently under development.¹⁹³ An agreement between OFNAC and the ARMP could also focus on dialogue and information sharing. Parallel referrals to OFNAC in cases where corruption

187 Article 147 (f) of the public procurement code.

188 Article 5 of the law on the CNLCC.

189 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

190 Ibid.

191 Article 3, paragraph 3, of the law establishing OFNAC.

192 Boye SA, 'La Cour des comptes et l'ARMP mettent en place un cadre de collaboration', available at <http://www.aps.sn/newseedit/spip.php?article127927> [accessed 3 July 2014].

193 OFNAC (2015) Rapport public d'activités 2014–2015, p. 122.

is investigated by the ARMP could be sought, though the ARMP also has the power to refer directly to the justice system.¹⁹⁴

In addition to the court of audit and the ARMP, OFNAC's cooperation with the CREI is particularly worthy of attention. Corruption is one of the offences that leads to illicit enrichment. Thus, as the depository of the declarations of assets of the principal officials required to make such declarations, OFNAC is called upon to support the CREI in its mandate. It will undoubtedly refer to the special prosecutor at the CREI whenever it discovers, while reviewing declarations of assets, that there are serious indications of illicit enrichment on the part of an official.¹⁹⁵ Such cooperation may contribute to calming the debate surrounding the CREI by making referrals more objective.

This cooperation will certainly not, however, be able to end the debate on the legality of the court or the controversy surrounding the reversal of the burden of proof which applies in that court. Although, it should be noted that if the reversal of the burden of proof constitutes an *a priori* breach of the principle of presumption of innocence, it has been recognised in case law that, under exceptional circumstances, the reversal of the burden of proof could be allowed. The French Constitutional Council has allowed that

exceptionally, legal presumptions of guilt may be established, notably in relation to minor offences, provided that they are not irrebuttable, natural justice is preserved and the facts of the case are such as to generate a probability of responsibility.¹⁹⁶

The European Court of Human Rights (ECHR) expressed a similar view when it considered that the presumption of innocence was not violated where the court was able to exercise a power of appreciation over the presumption and over evidence debated in adversary proceedings. The ECHR deemed that *de facto* or *de jure* presumptions could be allowed in criminal cases. However, it did require that the states 'remain within certain limits as regards criminal law'. They must 'confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence'.¹⁹⁷ The court shall always seek to determine whether these limits have been exceeded to the detriment of the applicant.

A Criminal Code reform is ongoing and a reform of criminal procedure is envisaged. The commission established for that purpose has already submitted its conclusions.

194 Article 6-6 of the decree on the organisation and operation of the ARMP and article 10, paragraph 4 of Decree No. 2009-501 establishing the recruitment procedures, status and powers of ARMP officials in charges of investigations on the propriety of public procurement contract award and execution procedures, public service delegations and partnership contracts.

195 Article 6 of the Law on the Declaration of Assets.

196 Decision No. 99-411 DC of 16 June 1999. Available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/recueil/recueil-1999-anglais.pdf [accessed 15 July 2016].

197 *Salabiaku vs. France*, 7 October 1988, § 28, series A no. 141-A; *Radio France and others vs France*, no. 53984/00, § 24, CEDH 2004-II.

However, contrary to media reports stating that the reversal of the burden of proof had been abolished,¹⁹⁸ the only substantive change pertaining to illicit enrichment is the deletion of paragraph 3 of Law 163B on Illicit Enrichment, which provided that proof of a gift or donation alone is not sufficient to justify the legal origin of assets.¹⁹⁹ OFNAC, with support from USAID's PGP, is preparing a seminar on monitoring bodies and organs. The aim is to produce cooperation agreements and to share experiences and information.²⁰⁰

D. Critical assessment

Mixed track record

The missions assigned to the CNLCC were not fully accomplished. Their completion was uneven, to say the least, due to a lack of political will on the part of the government; the very limited powers and resources of the CNLCC; the lack of visibility of the CNLCC; and the insufficient amount of time at its disposal.²⁰¹ The former vice-president pointed out the haste of the Senegalese people who showed little awareness of the fact that investigations took time.²⁰²

Promoting good governance

This mission involved the definition of a national anti-corruption strategy and the coordination of its implementation. The CNLCC was able to define a national plan against corruption, validated by national actors and approved by the president of the republic. The strategic pillars of justice, public procurement, local government, education and health were identified in this plan. To monitor the plan, an observatory of non-governmental actors against corruption and misappropriation was set in place.²⁰³ However, the CNLCC did not have time to implement the plan before its dissolution in 2012.

In the framework of the domestication of the UNCAC, the CNLCC had prepared draft bills on transparency in public life; governing declarations of assets and financing of political parties; recovery of assets; access to information; as well as draft bills amending the Criminal Code and Law 35/2003 of 24 November granting the CNLCC the right to act on its own initiative and to refer cases to the justice system.²⁰⁴ These different instruments were not enacted prior to the dissolution of the CNLCC and the establishment of OFNAC. The implementation of the promotion of integrity desired by the CNLCC had not yet begun.

198 Sénégal : enrichissement illicite, la loi qui enterre la CREI. Available at <http://diasporaenligne.net/senegal-enrichissement-illicite-l-e-nouveau-code-penal-qui-enterre-la-crei/> [accessed 25 September 2014].

199 Interview with Ousseynou Samba and Abdou Aziz Seck, members of the criminal code reform commission.

200 Interview with Mr Faye, vice-president of OFNAC.

201 Interviews with Mr Tall and Mr de Jaegere, 24 March 2014.

202 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

203 Ibid.

204 Ibid.

Prevention and awareness of corruption

The mission of prevention implies research and analysis, promotion of ethics, a review of declarations of assets and legislative assessment. The CNLCC devoted most of its efforts to sensitisation on the damage done by corruption. While it would be difficult to say that this sensitisation has had no impact, its impact appears limited in light of the low visibility of the CNLCC.

Research and analysis were poor cousins to action at the CNLCC, although a studies department was created for the purpose. The experience of certain agencies recommends that research should be left in the hands of research institutes or consultants, due to constraints involving capacities and financial resources.²⁰⁵

Education on corruption has been very timid and has been limited to the organisation of events in schools when it could have been included in their curricula. In all, the prevention and awareness that the CNLCC devoted its efforts to have yielded very limited results. Its focus on awareness was not a bad option per se;²⁰⁶ however, it was not so much a strategic option as a choice imposed by the fact that the former president of the republic did not take action on the cases referred to him by the CNLCC. A focus on certain aspects of the agency's mandate was recommended as is often the case when anti-corruption agencies do not have access to substantial resources.²⁰⁷

As for OFNAC, progress is being made. A spokesperson has already been recruited for the agency. He will be supported by a communications officer.²⁰⁸ The first report published by OFNAC²⁰⁹ was unanimously well received by civil society and, it can safely be said, by the public.²¹⁰ Awareness-raising activities have had a positive impact on the perception of OFNAC's missions by the public. In 2015, 68.42% of complaints and denunciations were deemed admissible because they were within the scope of competence of OFNACA, compared to 58.82% in 2014.²¹¹

Repressing corruption

Although the responsibility cannot be imputed to a lack of will on the part of the members of the CNLCC, it must be recognised that it did not contribute to the repression of corruption. Among the cases of corruption investigated, which are estimated at less than one hundred, none were been subject to legal action, although this situation is largely due

205 Papua New Guinea Technical Working Group on National Anti-corruption Strategy (2013) International Best Practice for Anti-corruption Agencies. Background Paper, May 2013. p. 15.

206 Meagher P (2004) Anti-corruption agencies: A review of experiences. The Iris Discussion Paper on Institution and Development 04/02. p. 69.

207 Ibid.: 69.

208 Announcement by the President of OFNAC, see (in French) http://www.seneneews.com/2015/02/06/ofnac-nafi-ngom-keita-declare-son-patrimoine-et-se-radicalise-je-refuse-de-me-taire_110553.html [accessed 13 October 2016].

209 OFNAC (2015) Rapport public d'activités 2014–2015.

210 OFNAC Report: Everyone is calling for sanctions, available in French at http://www.seneweb.com/news/Societe/rapport-de-l-rsqou-ofnac-tout-le-monde-r_n_183303.html [accessed 13 June 2016].

211 OFNAC (2015) Rapport public d'activités 2014–2015, p. 48.

to former president Wade, who never referred the cases submitted to him by the CNLCC to justice.²¹²

The ineffectiveness of the CNLCC was due also to its limited powers and means of investigation. The CNLCC was faced with the refusal of certain persons to comply with its summonses, while others decided on the nature of the information they could provide to the commission.²¹³ It was only through its cooperation agreement with CENTIF that it was able to override banking secrecy in certain cases.²¹⁴

The commission's lack of visibility to the general public, and particularly the lack of regional focal points or a hotline for anonymous tips, undoubtedly played a role in this situation. The members of the former CNLCC also complained of the lack of popular understanding of the concept of corruption. Ninety percent of denunciations by members of the general public did not apply to cases of corruption per se. Furthermore, many whistleblowers were unable to be found to help investigate the cases of corruption they denounced.²¹⁵

Another explanatory factor lay in the lack of resources needed to carry out investigations properly. This paucity hindered the witness relocation programme; the hiring of financial and cybercrime investigation staff; the capacity to solve complex cases often involving more than just corruption; and the use of special investigative techniques.²¹⁶ Protection of whistleblowers was far from being guaranteed. At the level of the CNLCC, this was blamed on the fact that there was no law protecting whistle-blowers.²¹⁷ However, the anonymity of whistle-blowers was maintained in cases where they made their denunciations directly to the commission.²¹⁸

Another limitation explaining the mediocre results of the former CNLCC resides in the self-limiting behaviour of its members, who were 'overly respectful' of the institutions and the law.²¹⁹ This was the case when instances of corruption that had come to its attention turned out to involve institutions such as the president of the republic or certain professions such as judges; and so, investigations were simply suspended. This situation was due to diverging views between members of the former CNLCC.²²⁰

The option of removing the police from investigations did not facilitate the investigations of the CNLCC. The establishment of a brigade such as the anti-corruption commission of Togo, which has an economic and financial brigade placed under its sole authority,²²¹

212 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

213 Ibid.

214 Ibid.

215 Ibid.

216 Reichelt JR (2013) *Le rôle des agences de lutte contre la corruption dans la détection et la répression : l'expérience internationale*, Contribution to a seminar on the role of anti-corruption agencies, Rabat, Morocco, 19 June 2013.

217 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

218 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

219 Ibid.

220 Ibid.

221 Decree No. 2002-030 establishing an Economic and Financial Brigade (BEF) within the National Commission to Combat Corruption and Economic Sabotage. The mission of this brigade is to conduct the

would have reinforced the CNLCC's investigative capacities while preserving its autonomy. The constitution of a brigade was entirely possible since the rules of procedure recognised that the president of the CNLCC had the power to ask the competent authorities to place gendarmes and police officers at the commission's disposal.²²² Furthermore, because the president of the republic formed an obstacle in the referral of cases to justice system, the will to prevent direct referrals from the police to the prosecutor of the republic seems to have been a strategic error in itself.

Dubious independence

The independence of anti-corruption agencies is a common requirement of the Jakarta Statement and the various anti-corruption conventions.²²³ However, in the view of some authors, the importance attached to this criterion is exaggerated. In their eyes, formal independence or dependence are not decisive factors in the effectiveness of anti-corruption agencies.²²⁴ This view can be backed up by the example of the IGE in Senegal. Indeed, although it is placed under the authority of the president of the republic, it has built up a strong reputation. Its professionalism and objectivity are recognised by all.²²⁵ Its reputation is amply justified by the fact that, in its July 2014 public report on the state of governance and accountability, it pointed out the irregularities of the special appropriation decrees issued by the president of the republic.²²⁶ However, it must be recognised that the effectiveness of the IGE may be hindered by a president of the republic with little concern for good governance. That is why certain civil society or parliamentary actors have suggested that the IGE should no longer be placed under the authority of the head of state. This shows that the independence of anti-corruption agencies must be guaranteed.

While the independence of anti-corruption agencies in Senegal is enshrined in their establishing instruments, certain situations raise questions as to how effective this independence actually is. One notable example is when former president Wade ordered the CNLCC not to publish its reports, despite the fact that Law 35/2003 of 24 November provided that the annual report of the commission must to be published. The question was whether, following its submission, the report was to be published by the CNLCC or whether the president of the republic was to arrange for its publication after receiving it. The members of the CNLCC, who were divided on that issue, decided to submit the question to the president of the republic in an audience. Noting that the reports were

necessary investigations to detect acts of corruption and economic sabotage in keeping with the missions of the commission.

222 Article 36 of the Rules of Procedure of the CNLCC.

223 Article 6, paragraph 2, and article 36 of the United Nations Convention against Corruption, article 5(h) of the ECOWAS Protocol against Corruption, article 5, paragraph 3, of the African Union Convention.

224 Meagher P (2004) Anti-corruption agencies: A review of experiences. The Iris Discussion Paper on Institution and Development 04/02.p. 70.

225 See World Bank, Etude diagnostique sur la gouvernance et la lutte contre au Sénégal, p. 117.

226 IGE (2014) Rapport public sur l'état de la gouvernance et de la reddition des comptes, July 2014, p. 107.

not published by the president of the republic, certain members recognised that they had mishandled the situation.²²⁷

The institutional anchoring of anti-corruption agencies raises some questions as to their independence. No specific provision of Law 35/2003 of 24 November provided that it was to be attached to the office of the president of the republic. It was the members who, based on the fact that the commission was to submit its report to the president of the republic, deduced that the office of the president of the republic was its institutional anchor. There is, however, a legal basis for the attachment of the former CNLCC to the office of the president of the republic in article 14 of the law, which provides that its budget estimate should be included in that of the office of the president of the republic.²²⁸

As for OFNAC, its attachment to the office of the president is expressly provided by article 1 of Law 30/2012 of 28 December. When the law was voted on, certain deputies expressed their wish that OFNAC would be attached to the court of audit or to the ministry in charge of the promotion of good governance and relations with institutions. However, as in the case of the former CNLCC, its attachment to the office of the president did not entail an operational relationship between OFNAC and the office of the president of the republic. It does not call the independence of the anti-corruption agencies into question. Indeed, Benin's constitutional court considered that the existence of a supervisory relationship between the president of the republic and the high authority of the fight against corruption did not entail the subordination of the latter to the former. To arrive at that conclusion, the constitutional court based itself on a certain number of elements, including the existence of specific legal provisions on the autonomy of the anti-corruption agency in relation to: the other republican institutions; the method of appointment of its members; the fact that the election of its executive board was left to the discretion of its members; and the fact that the offences referred to it were under the sole jurisdiction of courts which were constitutionally independent from the executive.²²⁹ However, some recommend that anti-corruption agencies should not be attached to the office of the president of the republic.²³⁰

The appointment of the presidents of the CNLCC and OFNAC was not in compliance with international standards, which recommend that appointments should not be made at the sole discretion of the executive.²³¹ Indeed, the monopoly of the executive over the appointment of the heads of anti-corruption agencies entails a risk that the choice may be political and enable political interference in the running of the agencies. Some are of the opinion that the choice of the former president of the CNLCC was dictated by the will of former president Wade to neutralise any investigation focusing on his government.²³²

227 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

228 Article 14, paragraph 1 of the law on the CNLCC.

229 Constitutional court of Benin, Decision DCC 11-064 of 30 September 2011.

230 USAID (2006, June) *Anti-Corruption Agencies*, Anti-Corruption Program Brief. p. 11.

231 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) *Background Paper: Best Practice for Anti-corruption Agencies*. p. 20.

232 Interview with a former member of the CNLCC, 10 August 2014.

This explains why any cases in which he was implicated, such as the LONASE case, were always dropped. It also explains the non-publication of the reports of the CNLCC.²³³

The circumstances of the replacement of the president of the OFNAC highlighted the question of the procedure for appointing members of this institution. Mme Keita was appointed by Decree 1025/2013 of July 25 and only officially took office on 27 March 2014 when she was sworn in, in accordance with article 10 of Law 30/2012 of 28 December. The president of the republic, considering that the three-year term started running on 25 July 2013 and expired on 25 July 2016, appointed Ms. Seynabou Ndiaye as replacement by Decree 1025/2016 of 27 July.

Mme Keita petitioned the supreme court and asked that the decree dismissing her be ruled illegal on ground of abuse of power. According to her counsel, Professor Jacques Mariel Nzouankeu, the term of OFNAC members starts running after their inauguration as members; that is to say after taking the oath before the first president of the appeal court on 27 March 2014. As a result, their term only expires in March 2017.²³⁴

Faced with the general public disapproval of the sacking of the former president, the government has responded through its spokesperson to insist that the term of office had indeed expired in that it had started to run upon notification of the decree of appointment. The government also explained the reasons for non-renewal as having to do with repeated breaches of professional discretion and duty of confidentiality under Mme Keita's watch, as attested by the fact that details of hearings conducted by OFNAC were regularly leaked to the media.²³⁵ Mrs Keita forcefully rejected this accusation at the commissioning ceremony with the new president of OFNAC.²³⁶ Many observers believe that the decision to remove her from office stems from a desire to end the ongoing investigations conducted by OFNAC, including that relating to the brother of the president of the republic.²³⁷ The executive may have also been angered by the publication of OFNAC's 2014-2015 annual report, which questioned the management and integrity of a number of officials of the current regime. It is worth noting that an allegedly busy schedule at the presidency of the republic meant that the former OFNAC president never had the chance to formally submit the report to the president of the republic, even though he had, during the same period, been presented the report of the CESE.

Another source of conflict between the president of the republic and the former OFNAC president lies in the refusal of some government officials to declare their assets. In a secret correspondence to the president of the republic, Mrs Keita named individual

233 Ibid.

234 http://www.dakaractu.com/Pr-Nzouankeu-Les-autorites-ont-illegalement-mis-fin-aux-fonctions-de-Nafi-Ngom-Keita_a115063.html [accessed 6 August 2016].

235 <http://www.igfm.sn/ofnac-le-gouvernement-regrette-la-publication-de-documents-confidentiels-porte-parole/> [accessed 6 August 2016].

236 http://www.seneweb.com/news/Societe/nafi-ngom-keita-je-n-rsquo-ai-jamais-div_n_189838.html ; <http://jotay.net/nafi-ngom-keita-fusille-ses-detracteurs-il-faut-faire-la-difference-entre-secrets-detat-et-secrets-contre-letat/> [accessed 6 August 2016].

237 OFNAC : Pétro Tim au cœur du limogeage de Nafi Ngom Keita ?, <http://dakarswagg.net/ofnac-petro-tim-au-coeur-du-limogeage-de-nafi-ngom-keita/> [accessed 6 August 2016].

advisors to the president as well as the president of the supreme court as among those who have failed to declare their assets.²³⁸ This was picked up in the media, which also disclosed that the chief of general staff of the armed forces, Mamadou Sow, was among those who had failed to declare their assets.²³⁹ It was later disclosed that the president of the republic stated that the first president of the supreme court was not subject to the obligation of declaration of assets and should be left alone. The minister of justice clarified that the president of the supreme court was exempted from the obligation because the operating budget of the supreme court is less than USD 2 000 000. Forum Civil took the opposite view and highlighted that the 2016 budget law – Law 23/2015 of December 18 published in the Official Journal²⁴⁰ – has provided to the supreme court an operating budget of USD 3 326 851.²⁴¹

Beyond the above-mentioned legal arguments, additional reasons for the early dismissal of the former OFNAC president can be found in her turning down offers of her appointment as cabinet minister, ambassador, commissioner of UEMOA, or vice-governor of the Central Bank in exchange for leaving OFNAC.²⁴²

As a result of this dismissal saga, the will of the president of the republic to fight corruption has been strongly questioned,²⁴³ especially after El Hadj Ndiaye Seck Wade, former director of public transport and a prominent member of President Macky Sall's party APR, was granted provisional release from detention and promoted to board chair of the road maintenance fund,²⁴⁴ all despite being indicted by the prosecutor the republic following an investigation by OFNAC.²⁴⁵

An important lesson from this saga is that the process and rules for appointing members of OFNAC, and its president in particular, are in urgent need of revision. There are several options. The head of the agency could be nominated by a multidisciplinary selection committee including members of the judiciary, of the legislature, civil society and even

238 <http://www.igfm.sn/depart-de-lofnac-nafi-ngom-keita-un-limogeage-pris-au-pied-de-la-lettre/> [accessed 6 August 2016].

239 http://www.seneweb.com/news/Politique/ces-personnalites-refusent-de-declarer-l_n_189475.html [accessed 6 August 2016].

240 JORS No. 6901 of 11 January 2016

241 Déclaration de patrimoine du Premier Président de la Cour Suprême: Birahime Seck démonte les arguments de Sidiki Kaba. http://www.dakarmatin.com/rubriques.php?rub=article.php&id_rubrique=2, [accessed 6 August 2016].

242 http://www.seneweb.com/news/Politique/depart-de-l-rsquo-ofnac-ces-propositions_n_189391.html, [accessed 6 August 2016].

243 <http://actusen.com/index.php/2016/07/29/aboucry-mbodj-pdt-raddho-macky-sall-a-decu-les-senegalais/>; http://www.pressafrik.com/%E2%80%8BBabacar-BA-du-Forum-civil-Les-organes-de-contrôle-de-la-pure-theorie_a152714.html [accessed 6 August 2016].

244 By Decree n°2016-985 of 13 July 2016 referenced in Scandale : Macky Sall nomme PCA un 'apériste' inculpé pour corruption. http://www.dakarmatin.com/rubriques.php?rub=article.php&id_article=16457 [accessed 7 August 2016]

245 Vente de permis de conduire: l'OFNAC fait arrêter le directeur des transports. http://www.seneweb.com/news/Justice/vente-de-permis-de-conduire-l-rsquo-ofna_n_178774.html, [accessed 7 August 2016]; Le Directeur des transports routiers écroué pour corruption: L'OFNAC tient son premier client. http://www.dakaractu.com/Le-directeur-des-Transports-Routiers-ecroue-pour-corruption-L-Ofnac-tient-son-premier-client_a108844.html [accessed 7 August 2016].

the private sector, and then confirmed by the executive. It would also be possible for the head of the agency to be appointed by the executive, but for the choice to be approved by a qualified majority of parliament. A third option would be for the selection to be placed in the hands of an ad hoc parliamentary committee comprising majority and opposition deputies.²⁴⁶ Law 30/2012 of 28 December should also include a provision that grants the OFNAC general assembly the authority to formally certify the expiry of the term of office of members. A certified report would be drawn up by the secretary-general and transmitted to the president of the republic by the president of the OFNAC.

There is also a question of whether OFNAC is immune from undue political influence with regard to the failure to comply with the principle of political neutrality that was supposed to govern the selection of the other members. The impartiality, political neutrality and integrity of the members of the former CNLCC have never been called into question. This question was raised, following the appointment of the members of OFNAC.

While the appointment of the president was welcomed by many actors, the same could not be said of certain members of OFNAC. The principle of political neutrality was not fully complied with. Three members have marked political leanings, having campaigned either as a member in the Macky 2012 coalition which supported Macky Sall's candidacy in the 2012 presidential election; or in the APR, the party of the president of the republic; or in the Senegalese Democratic Party (PDS), the party of former President Wade. The member who had belonged to the PDS resigned from the party just days before his appointment to OFNAC, which Forum Civil denounced as a violation of the principle of political neutrality.²⁴⁷ Forum Civil was also worried that criminal prosecutions and referrals to the prosecutor of the republic would be neutralised whenever a member of the presidential majority was implicated. It also viewed this as a means for the government to control the institution.

The former head of the police was reproached for having been involved in a case of drug trafficking within the police, a situation that undermines the integrity of OFNAC.²⁴⁸ These criticisms sparked a reaction from the former minister in charge of the promotion of good governance and relations with institutions, Mr Coulibaly, who pointed out that the members of OFNAC were well aware that, from the time of their appointment, they were supposed to cease any form of political activity. As for the former head of the police, the minister pointed out that his name had been cleared by an administrative investigation.²⁴⁹

The appointment process for members of OFNAC does not guarantee their political neutrality or their impartiality. The process of selection of the members is entirely under

246 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 20.

247 See the statement by Forum Civil on the appointment of members of OFNAC: http://www.transparency.org/news/pressrelease/declaration_sur_la_nomination_des_membres_de_loffice_nationale_de_lutte_con [accessed 24 April 2014].

248 Ibid.

249 This reaction was reported by the online newspaper REWMI: <http://www.rewmi.com/au-senegal-loffice-de-lutte-contre-la-corruption-mis-en-cause.html> [accessed 7 August 2016].

the control of the executive. In Yemen, for example, situations such as this are prevented by requiring potential members of the anti-corruption commission to declare their assets and interests as well as the nature of their relationships with politicians, the business world and other sectors.²⁵⁰ Despite the fact that Law 30/2012 of 28 December makes no stipulation in this regard, the requirement that its members should be politically neutral is imposed on the Senegalese authorities under the terms of the UNCAC, ratified by Senegal, which requires that state parties ensure the independence of their anti-corruption bodies by protecting them from any undue influence.²⁵¹

In short, it can be said that the selection of the members of OFNAC is out of phase with best practices, which require the involvement of the judiciary, parliament and civil society in the selection process.²⁵² In Senegal, undue influence is not necessarily of a political nature. It may also be social or denominational. During the investigation of one case submitted to it, the CNLCC had to deal with familial and religious pressures.²⁵³

It should be pointed out that it is OFNAC's view that the nomination criteria stipulated by article 4 of the law require its members to be apolitical, impartial, neutral and qualified, in compliance with the Jakarta Statement.²⁵⁴ However, as previously indicated, the profiles of certain of its current members remain questionable.

The challenge of employing adequate, qualified staff

In the absence of a training plan, the members of the CNLCC did not have all of the desired specialised qualifications. The support staff of the CNLCC were also insufficient: they only comprised three people, whereas a full staff and subordinate staff was recommended. In contrast, the anti-corruption agency of Hong Kong employs 1300 people. The staff of OFNAC still appears insufficient. OFNAC envisages hiring approximately 50 additional practitioners over the 2016-2020 period for its inquiry, investigation, audit and verification department. However, this recruitment can only be actioned if the budget is increased.²⁵⁵

While the contractual members (and the civil servants making up its support staff) are respectively subject to the provisions of the Labour Code and the law on the general status of the civil service,²⁵⁶ the specific status of their original role,²⁵⁷ and to the obligation of professional secrecy in application of article 11 of the Criminal Procedure Code,²⁵⁸

250 Jenneth V (2007) Criteria for Appointing Executives of Anti-corruption Agencies. *U4 Expert Answer* 31, p. 5.

251 Article 6 of the United Nations Convention against Corruption.

252 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies.

253 Interview with Mr Tall, former vice-president of the CNLCC, op. cit.

254 OFNAC, Rapport public d'activités 2014-2015, p. 31.

255 Ibid. p. 79.

256 Loi n° 61-33 du 15 juin 1961 relative au statut général des fonctionnaires modifiée (Law no. 61-33 of 15 June 1961 on the general status of civil servants, amended).

257 In the case of police officers, for instance, see law no. 2009-490 of 9 March 2009 on the status of national police personnel.

258 Article 11 of the Criminal Procedure Code provides that any person who acts in the capacity of a public official is bound to professional secrecy. Breaches of professional secrecy are punishable by one to six months in prison and a fine ranging from 50,000 CFA francs to 300,000 CFA francs.

the laws establishing anti-corruption agencies in Senegal do not define a specific status arising from their affiliation with these structures. This was the case with the CNLCC, and continues to be the case with OFNAC. The implementing decree of Law 30/2012 of 28 December should fill that void.²⁵⁹

The effectiveness of anti-corruption agencies depends on the existence of a sufficient number of support staff with specialised training on corruption, who are subject to a code of conduct and are generously compensated.²⁶⁰ Section 6 of the Act Establishing the High Authority for Good Governance in Côte d'Ivoire focuses on the status of its personnel. Like the members, the secretary general, directors and department heads of the institution may not be prosecuted, arrested, imprisoned or judged for opinions they expressed in the performance of their duties. These personnel are also bound to professional secrecy.²⁶¹

Staff compensation at the CNLCC was not very attractive, although it was slightly higher than in the administration because employees' salaries were calculated according to the corresponding categories of the administration.²⁶² This situation ran contrary to the recommendations of the Jakarta Statement, according to which employees of anti-corruption institutions were to be compensated on a level that would attract a sufficient number of qualified staff members.

Regarding the status to be granted to support staff, including secondment of civil servants, some recommend contractual status to boost performances and avoid a career system that could reduce efficiency.²⁶³ This view was not shared by all, since others felt that the most important thing was for support staff members to be selected on the basis of their integrity and expertise; for them to receive continuous training and generous compensation; and for recruitment and termination procedures to be entirely controlled by the agency itself to avoid any outside interference.²⁶⁴

In the opinion of the vice-president of OFNAC, each option has advantages and disadvantages. For example, while the career system may inhibit staff performances or promote personal relationships with staff in the institutions being monitored, it also promotes the accumulation of experience.²⁶⁵ In the interest of transparency, a firm was contacted to propose procedures for the recruitment of support staff positions to be conducted via a call for application.²⁶⁶ However, support staff need to be highly qualified to ensure speedy handling of cases. The staff of OFNAC is currently made up of three

259 Interview with Mr Faye, vice-president of OFNAC.

260 Jenneth V (2007) Criteria for Appointing Executives of Anti-corruption Agencies. *U4 Expert Answer* 31. pp. 3–4.

261 Articles 51 and 54 of Order no. 2013-661 of 20 September 2013 on the High Authority for Good Governance of Côte d'Ivoire. Article 52 provided for their protection against any insults, provocations and threats to which they may be subject in the performance of their duties.

262 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

263 Bolongaita, E., An Exception to the Rule: Why Indonesia's Anti-Corruption Commission succeeds where others don't – a comparison with the Philippines Ombudsman, *U4 Issue* August 2010, No. 4, p. 26.

264 Jenneth V (007) Criteria for Appointing Executives of Anti-corruption Agencies. *U4 Expert Answer* 31. pp. 3–4.

265 Interview with Mr Faye, vice-president of OFNAC.

266 *Ibid.*

categories: members appointed by decree, operational staff under permanent contracts and service providers.²⁶⁷ Secondment of certain public servants to OFNAC, such as police officers,²⁶⁸ for instance, shows that both options are applied.

Measures implemented to place staff in optimum working conditions included setting up a canteen with a 50% subsidy on overhead paid by OFNAC, a solidarity fund, health insurance covering 90% of medical and pharmaceutical costs for employees and their families, and a housing cooperative.²⁶⁹

Finding adequate and stable funding

The budget of the CNLCC was notoriously low. After a series of budget increases, the budget, which stagnated at USD 374 000, was devoted to the overheads of the institution, the allowances of the members, and the salaries of the support staff.²⁷⁰ Consequently, it could not enable the CNLCC to effectively fulfil its mandate.

Furthermore, the CNLCC had no control over its budget, since the amount was determined by the president of the republic.²⁷¹ The budget was paid out in four tranches,²⁷² rather than being made available to the CNLCC in its entirety at the beginning of the financial year in compliance with the requirements of the Jakarta Statement, which recommends that ‘sufficient and reliable resources’ be made available ‘in a timely manner’. In addition, the CNLCC was never controlled by the court of audit and no internal or external audits were conducted during its lifetime.²⁷³

Although OFNAC is better off than the CNLCC was, with a budget of USD 2 798 000 for the 2016 financial year, its financial resources remain insufficient and stability is still not guaranteed. The insufficient number of investigators and preventive officers at OFNAC and the opening of regional branches is a clear illustration.²⁷⁴

Furthermore, in light of the high cost of corruption in Senegal, which has been estimated by some at more than USD 760 million for a given period, it seems clear that this budget is woefully inadequate. In any case, neither the former CNLCC nor OFNAC has applied internationally recognised best practices²⁷⁵ where their budget is concerned. A suitable budget should be determined based on the activities of the agency. Senegal, which opted for a multi-purpose agency, should have the political will to provide OFNAC with

267 OFNAC (2015) Rapport public d’activités 2014–2015. pp. 31–32.

268 See the article ‘Nafy Ndour blinde l’OFNAC avec deux commissaires et un colonel des douanes.’ Available at http://www.leral.net/Nafi-Ngom-Ndour-blinde-l-Ofnac-avec-deux-commissaires-et-un-colonel-des-Douanes_a127578.html [accessed 26 February 2015].

269 OFNAC (2015) Rapport public d’activités 2014–2015.

270 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

271 Article 32 of the Rules of Procedure of the CNLCC provided that ‘the CNLCC shall have an emergency fund sustained by resources determined by instruction of the president of the republic’.

272 Interview with Mr Ndoye, former permanent secretary of the CNLCC, 10 March 2014.

273 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

274 Ibid.

275 UNDP (2011) Practitioners’ Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016].

sufficient resources to carry out its missions. Comparative research on the budgets of anti-corruption agencies compared to country population size and certain global indicators shows that corruption can be effectively controlled with an investment of more than USD 1 per inhabitant in an anti-corruption agency. In addition, such countries achieve scores above five in Transparency International's Corruption Perceptions Index, and above 50 in the World Bank Control of Corruption Index, even though this is considered to be far from a guarantee of success.²⁷⁶

In a context where resources are scarce, a performance-focused budget which increases the budget based on efficiency runs the risk of leading to a decrease in the budget of OFNAC. This is a challenge that the members of OFNAC could, perhaps, accept.

The stability of OFNAC's budget has yet to be guaranteed. Article 20, paragraph 2, of Law 30/2012 of 28 December provides that all budget funds shall be made available to OFNAC at the start of the financial year. Between 2014 and 2015, financial resources allocated to OFNAC were divided up in violation of this law.²⁷⁷ In addition, the budget allocated to OFNAC for the 2016 financial year is USD 2 798 000, marking a drop of USD 502 000 from the 2015 budget.

The recommended stability of the annual budgets of anti-corruption agencies is not guaranteed by the law or by the constitution. The possibility of using additional funding generated by its work is also not recognised.²⁷⁸ In a country such as Ghana, the stability of the budget is guaranteed by the constitution, which provides that the administrative expenditures of the Commission on Human Rights and Administrative Justice, including salaries, compensation and pensions payable to or on behalf of all of its collaborators, shall be charged to the consolidated budget of the state.²⁷⁹

With a view to ensuring the stability of the budget, some recommend allowing the agency to directly submit its budget to parliament.²⁸⁰ This is supported by the provisions of article 20 of which stipulates that:

The appropriations required for its running and the performance of its duties were to be independently included in the general budget (of the state). They are authorised by the budget act.

In violation of this provision, the appropriations allocated to OFNAC were included in the budget of the office of the president of the republic during the first three years of its

276 De Jeagere S (2012) Principles for anti-corruption agencies: A game changer. *Jindal Journal of Public Policy* 1(1): 99.

277 OFNAC (2015) Rapport public d'activités 2014–2015. p. 32.

278 UNDP (2011) Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 32.

279 Article 227 of the Ghanaian Constitution.

280 UNDP (2011) Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 32.

existence. It was only in the 2016 financial year that an independent budget heading was authorised in the framework of the budget act of 2016.²⁸¹ The budget from the state therefore remains under the control of the executive, contrary to opposing recommendations.²⁸² This situation could prove to be a handicap for its operations.

The stability of OFNAC's budget remains a challenge that should be addressed taking account of the experience of Argentina, where the anti-corruption office lost its reputation as an effective agency due to repeated budget cuts.²⁸³ In order to avoid such a situation, it is recommended that a budget is established over several years and the law is amended so that the budget for any given year may not be lower than the budget for the previous year.²⁸⁴

Maintaining integrity

The integrity of the members and staff of the CNLCC was not guaranteed, as there was no code of ethics. The rare provisions governing the behaviour of the members were stipulated in the rules of procedure. Article 16 provides that the members must mandatorily participate in the proceedings in or out of sections. They were specifically bound to attend the meetings of the commission and to uphold their obligation of discretion under all circumstances, particularly by maintaining the secrecy of the deliberations of the commission and the confidentiality of the information and documentation they have access to in the performance of their duties. It was also stipulated that, after leaving their office, they could not reveal the information to which they had access in the performance of their duties.²⁸⁵ Article 16 of Law 35/2003 of 24 November also provided that its members were bound to secrecy as to the claims they received and the opinions expressed in debates.

Contrary to the requirements of the Jakarta Statement on the establishment of monitoring and disciplinary mechanisms (aimed at reducing the number of professional misconduct or abuses of power), no sanctions were provided for in the event these rules were violated. We can certainly understand the chronic absenteeism of certain members. It must be said that their status as non-permanent members further contributed to the situation.

OFNAC has a code of ethics and professional conduct. Law 30/2012 of 28 December contains rules outlining a code of conduct complete with sanctions. A member may also be removed from office for professional misconduct that has been duly certified by of the

281 OFNAC (2015) Rapport public d'activités 2014–2015. p. 33.

282 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 26.

283 Meagher P (2004) Anti-corruption agencies: A review of experiences. *The Iris Discussion Paper on Institution and Development* 04/02. p. 8.

284 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 27; UNDP (2011) Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 34. Note 18 quotes the provisions of article 29, paragraph 3 of the law on the anti-corruption agency of Mongolia, according to which, 'the budget of the anti-corruption agency for any given year may not be lower than the budget of the agency for the previous year'.

285 Article 17 of the Rules of Procedure.

members.²⁸⁶ Article 10 of the law stipulates that the members of OFNAC are bound to maintain discretion.

It should also be pointed out that the members of the CNLCC were not required to declare their assets. The same applies to the members of OFNAC, despite the recent adoption of Law 17/2014 of 2 April on the Declaration of Assets. This situation is all the more regrettable in that certain other African countries, aiming to establish a culture of integrity within anti-corruption agencies, have provided for declarations of assets by the members of their institutions. In Benin, preselected members declare their assets before being appointed by decree. The situation is the same in Côte d'Ivoire, where the secretary general, directors and department heads are also required to declare their assets.²⁸⁷ The draft bill on OFNAC submitted to the government by Forum Civil included a provision on declarations of assets by members of OFNAC, which was to take place both on taking up and leaving a position.²⁸⁸

However, it should be pointed out that the president of OFNAC had taken the initiative of establishing declarations of assets well before the vote on the Law 17/2014 of 2 April, which took place on 27 February 2014.²⁸⁹

The non-permanent status that applied to all members of the CNLCC and to the majority of members of OFNAC is an issue that needs to be addressed. This is a major constraint on the members' productivity, while at the same time increasing the risk of conflicts of interests, with members carrying out other activities in parallel.

The rules of procedure of the CNLCC included provisions on conflicts of interest. All members operating in conflict of interest must inform the president, who refers to the commission, which then decides on whether or not it will review the case in question. The rules of procedure define conflict of interest as any real, apparent, or potential situation that is objectively of a nature to compromise the independence and impartiality necessary for the performance of duties.²⁹⁰ Law 30/2012 of 28 December contains no provisions on conflicts of interest. However, the draft bill on OFNAC submitted to the government by Forum Civil included a provision on conflicts of interests.

The issue of integrity also applies to the support staff, who should be subject to a code of conduct and bound by professional secrecy. Law 35/2003 of 24 November contained no provisions of that kind. Abuses of power by members and staff, and external monitoring of anti-corruption agencies, are not sufficiently addressed as they are in many agencies. In the case of OFNAC, support staff are subject to monitoring by their hierarchy, which ensures

286 Article 6 of the law on OFNAC.

287 Article 16 of order no. 2013-661 of 20 September 2013 establishing the powers, makeup, organisation and operations of the high authority for good governance provides that 'before their entry into service, the members of the high authority for good governance, the secretary general, directors and department heads must produce declarations of assets before the court of audit'.

288 Article 6 of the draft bill on OFNAC proposed by Forum Civil.

289 See http://www.senenews.com/2015/02/06/ofnac-nafi-ngom-keita-declare-son-patrimoine-et-se-radicalise-je-refuse-de-me-taire_110553.html [accessed 25 February 2015].

290 Article 29 of the Rules of Procedure of the former CNLCC.

that they are regularly present and produce quality work. Furthermore, an electronic timing system was put in place to monitor time spent by employees at the workplace.²⁹¹

The activities of OFNAC are also audited internally, with the aim of ensuring that procedures are followed and that the requirements of effective and transparent management are met.²⁹² These different measures can contribute to promoting ethical behaviour in OFNAC. However, they could be improved in terms of certain best practices. One such practice consists of setting up an internal committee in charge of ensuring that the code of conduct is upheld, and also handling all complaints against the agency.²⁹³ External audits are also not explicitly provided for in either Law 35/2003 of 24 November or Law 30/2012 of 28 December. This type of monitoring is designed to promote efficiency by assessing the performance of the agency, especially in reinforcing its credibility among stakeholders in the fight against corruption.²⁹⁴

Position in the institutional framework

Anti-corruption agencies alone cannot meet the challenge of the fight against corruption. Their impact will depend on their ability to cooperate and interact with other institutions involved.²⁹⁵ One of the determining factors of the success of the anti-corruption agency of Hong Kong is the fact that strict obligations of cooperation are imposed on institutions active in the fight against corruption.²⁹⁶ As anti-corruption agencies do not have powers of prosecution in Senegal, they need the support of other institutions, particularly within the justice system.²⁹⁷

It should be recalled that the CNLCC could not even refer directly to the courts. It simply investigated the cases of corruption submitted to it and referred to the president of the republic when it felt there was compelling evidence of corruption.²⁹⁸ OFNAC can refer to the justice system but once it does so, it is removed from the case.²⁹⁹

The relationship between anti-corruption agencies and the justice system does not create a bias in the institutional architecture of the fight against corruption, as such. However, there is reason to question whether the fact that the public prosecutor of the republic has discretion to determine the status of proceedings might not weaken the fight

291 OFNAC (2015) Rapport public d'activités 2014–2015. p. 32.

292 Ibid.

293 Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 22.

294 UNDP (2011) Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 32.

295 Chene M (2012, 16 March) Organismes de lutte contre la corruption: centralisés ou décentralisés. *U4 Expert Answer*. p. 2.

296 Ibid.: 9.

297 UNDP (2011) Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies. Available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html> [accessed 13 October 2016]. p. 30.

298 Article 3 of the law on the CNLCC.

299 Article 14, paragraph 2 of the law on OFNAC.

against corruption. Would it not be preferable, as in the case of CENTIF, to require the public prosecutor to bring proceedings when referred to be OFNAC? In other terms, shouldn't a provision be made for the mandatory duty of the public prosecutor of the republic when referred to be OFNAC? Or to allow OFNAC to bring civil action, which is already the case for the director of inland revenue?³⁰⁰

OFNAC would also like to have feedback on the judicial treatment of cases referred to the justice system.³⁰¹ The judicial processing of referred cases is far from being a concern for OFNAC alone. This concern is also shared by CENTIF.³⁰² In any case, collaboration with the justice system is necessary for OFNAC to function efficiently. The poor performance of the anti-corruption agency of Botswana³⁰³ was due, in part, to the refusal to cooperate with justice.³⁰⁴

One can also ask whether the fact that any citizen can directly refer to the public prosecutor of the republic does not reduce the interest of creating an agency such as OFNAC. The situation was more easily justified in the case of the CNLCC, which did not have the power to refer to the court and faced the risk that the president of the republic might abstain from referring the cases of corruption submitted by the CNLCC. This question is all the more pressing given that other institutions such as the ARMP, the court of audit and CENTIF have the power to refer directly to justice when they discover acts of corruption in the course of their investigations.

Another problem involves the explicit mandate of fighting fraud and corruption conferred on the office of the state inspector-general. From this standpoint, there is an overlap of powers between OFNAC and the IGE. However, on the one hand, the missions of the IGE extend beyond the fight against fraud and corruption; on the other hand, the work of the IGE in the fight against corruption is marginal in practice. The IGE is vested with an audit and assessment mission.³⁰⁵ The fact that the president of the republic is the sole recipient of the reports of the IGE creates a certain demarcation between the two institutions.³⁰⁶ Partnership with the IGE could be helpful due to its role in boosting, supervising and coordinating non-judicial administrative and financial controls.³⁰⁷

300 Interview with Mr Faye, vice-president of OFNAC.

301 Ibid.

302 Interview with Waly Ndour, president of CENTIF, 18 April 2014.

303 Directorate on Corruption and Economic Crime (DCEC).

304 Meagher P (2004) Anti-corruption agencies: A review of experiences. The Iris Discussion Paper on Institution and Development 04/02. p. 4.

305 Article 3 of Decree 2007-809 of 18 June 2007 establishing the rules of organisation and operation of the office of the state inspector-general.

306 Article 6 of the law on the IGE.

307 Ibid.

Strategic choices and efficiency

OFNAC cannot be evaluated on this issue because the institution is still young. A prospective analysis will therefore be conducted. Drawing lessons from the experience of the CNLCC, and due to its limited resources, OFNAC is obliged to make strategic choices in the performance of its mandate. It is necessary to focus more on certain missions. However, in the case of OFNAC, this focus could not signify the exclusion of a mission that is part of its mandate. Instead, higher priority was granted to some more than to others, to see how it could cooperate with the other actors in the fight against corruption in light of their comparative advantages.

The vision of OFNAC is backed by that of the president of the republic, Mr Sall, who placed his term in office under the auspices of virtuous, sober and efficient governance. It was also inspired by the missions assigned to it and the prevailing socio-economic context in Senegal.³⁰⁸ This vision puts its focus on ‘promoting integrity and transparency in the management of public and private affairs by preventing and combating the fight against fraud and corruption’.³⁰⁹ It is structured around the promotion of a culture of integrity and exemplarity; a culture of respect for and protection of public property; a culture of performance and merit; and a culture of accountability, responsibility and credibility.

This was based on the then president of OFNAC’s hope that the institution would devote 50% of its focus to prevention, communication and information activities; 30% to the fight against corruption and 20% to research.³¹⁰ OFNAC has already made significant efforts to raise popular awareness of the damage done by corruption.³¹¹ It can be considered that this is a strategic vision that OFNAC intends to develop to successfully complete the huge mandate entrusted to it. As we have already indicated, it is recommended that agencies maximise their efficiency, particularly where resources are scarce.³¹² However, OFNAC must be able to justify the choices made, particularly considering the fact that the activities it does not emphasise are dealt with by other actors in the fight against corruption.³¹³ Its efforts at raising awareness should also target women and remote areas of the country. OFNAC is more often referred to by men than by women. In addition, a high concentration of referrals in the Dakar region has been observed.³¹⁴

In the area of repression, it should be emphasised that OFNAC is already referred to in cases of corruption. The transition was organised by article 21 of Law 30/2012 of 28 December, which provides that, as of the date of its entry into force, all cases pending

308 OFNAC (2015) Rapport public d’activités 2014–2015, p. 23.

309 Ibid.

310 Nafi Ngom Keita, president of OFNAC, ‘Comment nous allons combattre la corruption’. Available at : <http://www.actu24.net/societe/article/nafi-ngom-keita-presidente-de-l> [accessed 22 June 2014].

311 OFNAC (2015) Rapport public d’activités 2014–2015, pp. 83–84.

312 See Papua New Guinea National Anti-Corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-corruption Agencies. p. 12.

313 Ibid.: 69.

314 Of 320 complaints received by OFNAC, only 14 were lodged by women. Furthermore, 207 complaints or 65% of the total came from the Dakar Region: see OFNAC (2015) Rapport public d’activités 2014–2015. pp. 52–56.

at the CNLCC shall be transferred to OFNAC. According to the president of OFNAC, as at 5 February 2015, the number of complaints received and in the process of being dealt with by the institution were estimated at more than 130.³¹⁵ The 2014-2015 activity report mentions 320 complaints and denunciations.³¹⁶ Thus, the number of complaints and denunciations increases constantly.

Only time will tell whether OFNAC will be effective at repressing corruption. At any rate, it has broader powers than the CNLCC did in that area. From a strategic standpoint, however, OFNAC could have begun by focusing on the easiest cases to solve, thereby getting some quick wins under its belt before turning to grand corruption.³¹⁷ As indicated previously, it was important to lose no time in establishing its credibility with the public. Sectors that are riddled with corruption and that have significant impact on the living conditions of the people should have been targeted. For example, cases could have been selected on the basis of social criteria, so that the fight against corruption led to improvements in people's living conditions.³¹⁸ In practice, OFNAC chose to combine investigations on minor and major cases of corruption. This choice emerged from a desire to respond to the requests of citizens affected by corruption 'without neglecting cases involving a high level of grand corruption'.³¹⁹

Tracking grand corruption is never without risk. This is another takeaway from the early dismissal of former OFNAC president Nafi Ngom Keita. The question is: how will the new president, Seynabou Ndiaye Diakhate, conduct herself? Will she take the path set by her predecessor at the risk of incurring the wrath of the executive? Or, to the contrary, will she play it soft and rather use her authority to discourage or disrupt any OFNAC investigation of cases involving people close to the regime?

In terms of its makeup, OFNAC is theoretically quite well equipped to trace acts of fraud and corruption. However, its prerogatives should be reinforced by granting OFNAC investigators all of the powers vested in police officers.³²⁰

The organisational chart, as it stands, could raise questions as to the transparent management of complaints. Indeed, there are no direct, functional links between the complaints office, the committee that processes and analyses complaints, and the inquiries and investigations department. For purposes of internal transparency, the complaints office should have been placed under the direct authority of the processing and analysis committee, which would refer cases to the inquiries and investigations department when necessary. Such a procedure would not mean that the president of the institution would

315 Statement made during the OFNAC strategic action and planning workshop for the 2015-2017 period. Available at Jenneth V (2007, 31 January) Criteria for Appointing Executives of Anti-corruption Agencies, U4 Expert Answer, 31 January 2007. Available at http://www.pressafrik.com/Plus-de-130-plaintes-et-denunciations-portees-a-l-OFNAC-Nafi-Ngom-Keita_a132530.html [accessed 13 October].

316 OFNAC (2015) Rapport public d'activités 2014–2015, p. 47.

317 Interview with Mr de Jaegere, anti-corruption advisor at the UNODC regional office in Dakar, 24 March 2014.

318 Interview with Mr Faye, vice-president of OFNAC.

319 OFNAC (2015) Rapport public d'activités 2014–2015. p. 60.

320 *Ibid.*: 79.

cease to be informed of all complaints, but it would prevent the president from being able to obstruct the process of dealing with complaints.

The 2014-2015 activities report mentions eight inquiry reports submitted to the prosecutor of the republic in Dakar, for the purposes of prosecution.³²¹ A report was also sent to the prosecutor of the republic in Louga. In total, nine reports have been referred to the justice system to date.³²²

The publication of this report raised a certain amount of hope as to the usefulness and efficiency of the institution. However, the reaction of those implicated in the inquiries³²³ (particularly the minister in charge of the office of the president of the republic, who reproached OFNAC for failing to comply with its duty of discretion) raised questions as to the government's will to ensure sound management of public affairs.³²⁴

In the framework of promoting good governance, it should be pointed out that OFNAC's choice of using independent firms to conduct empirical studies on corruption is in line with international recommendations.³²⁵

Coordination and cooperation among institutions involved in the fight against corruption remains an issue. Indeed, there is nothing to oblige the other institutions to cooperate with OFNAC. It should be recalled that, until it signed an agreement on information-sharing with the CNLCC, CENTIF had always refused to provide assistance to the CNLCC.³²⁶ The draft bill on OFNAC proposed by Forum Civil tried to address the issue of coordination and cooperation through a certain number of provisions. It provided that OFNAC would have the right to receive copies of the reports of the court of audit, CENTIF, the office of the state inspector-general, and the office of the inspector-general of administration of justice.³²⁷ It also provided that it could ask other agents, monitoring bodies, or inspection bodies for access to all reports, minutes, confidential records or secrets they may hold,³²⁸ as well as any information it deems necessary for the completion of its mission or to conduct any studies, investigations or audits.³²⁹

321 Ibid.: 61–77.

322 http://www.seneweb.com/news/Justice/l-rsquo-ofnac-envoie-9-dossiers-chez-le-_n_183617.html [accessed 13 June 2016].

323 The lawyer of the director of the centre des œuvres universitaires de Dakar (COUD, the student services centre of the University of Dakar) announced that he was lodging a complaint against OFNAC for 'defamation and violation of professional secrecy' and denounced its failure to comply with the adversarial principle as no preliminary report had been sent by OFNAC to his client for comment, see http://www.seneweb.com/news/Justice/plainte-du-coud-contre-l-rsquo-ofnac_n_183826.html [accessed 13 June 2016]. The president of OFNAC reacted by stating that the investigations had been conducted in a professional manner and that she did not want to get into an argument, see http://www.seneweb.com/news/Justice/l-rsquo-ofnac-envoie-9-dossiers-chez-le-_n_183617.html [accessed 13 June 2016].

324 http://www.dakaractu.com/Rapport-Le-Palais-est-il-fache-contre-l-OFNAC_a111463.html [accessed 13 June 2016].

325 Papua New Guinea National Anti-corruption Strategy: Technical Working Group (2013) Background Paper: Best Practice for Anti-Corruption Agencies. p. 15.

326 Interview with Mr Tall, former vice-president of the CNLCC, 15 March 2014.

327 Article 12, paragraph 1 of the draft bill on OFNAC proposed by Forum Civil.

328 Article 12, paragraph 2 of the draft bill on OFNAC proposed by Forum Civil.

329 Article 12, paragraph 3 of the draft bill on OFNAC proposed by Forum Civil.

The only provision of this nature currently included in Law 30/2012 of 28 December pertains to the possibility of requesting all reports containing acts of fraud or corruption.³³⁰ It is not mandatory for the other institutions to cooperate by making full information on fraud or corruption available to OFNAC, it is merely optional. Furthermore, the institutions may sanction any member of their staff who provides information to OFNAC without their knowledge.

It is therefore important for OFNAC to complete effective cooperation agreements with all institutions involved in the fight against corruption. Coordination among institutions is a difficult issue in the sense that rivalry may play a role. However, OFNAC has an advantage in terms of its makeup. The members of OFNAC come from corps or departments that play an important role in the fight against corruption.

E. Recommendations

Institutional framework

- Enshrine OFNAC in the constitution to increase its stability.
- Revise the appointment procedure for members of OFNAC by increasing the involvement of the judiciary, civil society and parliament. This could take the form of the establishment of a selection committee comprising members of parliament, civil society and the judiciary, who would propose a list of candidates to the president of the republic.
- Formally enshrine a criterion of political neutrality for members of OFNAC.
- Establish a system of incompatibility between membership in OFNAC and any other public or private function.
- Require mandatory declarations of assets and interests for members of OFNAC and, with this in mind, increase the number of depositary authorities for such declarations.
- Include a section on the status of OFNAC support staff in the law on OFNAC.
- Establish an OFNAC monitoring body including parliament, the judiciary, the private sector and civil society, tasked with evaluating its operations and formulating recommendations to increase its efficiency.
- Increase and stabilise the budget of OFNAC by including a provision in the law stating that the institution's budget may not be lower than USD 10 000 000.
- Establish an agency for the recovery of ill-gotten gains; OFNAC would be entitled to a portion of the funds recovered.

330 Article 13 of the law on OFNAC.

- Reinforce cooperation between OFNAC and civil society organisations and other institutions involved in the fight against corruption. To this end:
 - Set in place a forum for dialogue with sufficient financial resources;
 - Make it mandatory for the institutions to cooperate or at least agree on the signing of effective cooperation agreements between OFNAC and the other institutions; and
 - Make OFNAC the focal point for international cooperation, particularly in the implementation of international conventions.

Legal framework

- Reinforce the national legal framework for the fight against corruption by fully domesticating anti-corruption conventions. The draft bills on the domestication of the UNCAC prepared by the CNLCC would be a good foundation for this.
- Involve all stakeholders in the fight against corruption in the drafting of legislation.
- Prohibit presidential pardons and commuted sentences for all persons who have been convicted and sentenced for corruption or for similar or related offences.
- Define the concept of fraud in the Criminal Code.

Technical and financial partners

- Adapt aid to the national context by agreeing to fund activities identified by OFNAC.
- Coordinate regarding aid for OFNAC.

ECOWAS

- Strengthen the network of anti-corruption agencies within ECOWAS to help the national agencies in the different countries pool their experience.
- Raise awareness in ECOWAS member states on the ratification of the ECOWAS protocol against corruption.

7

SIERRA LEONE



Emmanuel Gaima

A. Executive summary

The legal and regulatory framework for the anti-corruption efforts in Sierra Leone has major weaknesses. Those, however, do not constitute insurmountable constraints on the Anti-Corruption Commission's (ACC's) ability to carry out its mandate. The Anti-Corruption Act (ACA) of 2008 is a stronger legislation than the previous version of 2000; however, it still has its limitations in that it does not have specific provisions empowering the ACC to directly address corruption in the private sector. The ACC does, however, often use the interpretation of the ACA which empowers it to investigate corruption matters that may cause loss to the state as conduit to pursue private sector corruption, especially if the state stands to lose if such act is not addressed. The current legislation dictates that appointment of civil society organisation (CSO) members to the advisory board on corruption is determined by the president of the country, without any obligation to consult the CSO sector. There are a number of national legislations which do not directly complement the ACA in the fight against corruption. They include the Anti-Money Laundering Act, the Freedom of Information Act, the Financial Intelligence Act and the audit service legislation. They are mostly focussed on regulation, to promote efficiency, governance and international best practices, rather than identifying and stemming corruption.

Public sector reform initiatives (decentralisation and improvement of services and financial management, audit service functionality, national public procurement, inclusion of non-state actors in public financial management, etc.), have had a direct impact on the detection and minimisation of corruption issues through the introduction of controls and improvement on deterrents against corruption and its related practices. There are existing and on-going collaborations between the ACC and key institutions such as the audit service commission (ASC), the national commission for democracy (NCD), a number of CSOs, and the media. The collaborations are formalised through bi-lateral memorandums of understanding (MoUs) which are constrained by extreme sensitivity over the extent and limit of mandate of the collaborating parties; the parties can only collaborate to the extent that their mandate is not ceded or interfered with by the MoUs. The ASC in Sierra Leone

has not been making its annual report available to the ACC in advance, even where corrupt practices have been found, until the report is presented to parliament.

The level of funding of the ACC and the structure of funding mechanisms present a challenge to the autonomy and independence of the ACC. The ACC in Sierra Leone is principally funded by the consolidated revenue fund (CRF), up to 80%, while the remaining 20% is provided by development partners. Section 139 of the ACA provides for the commission to retain 10% of funds recovered in successful civil proceedings, but instances of this are few and cannot be considered a predictable source of income. Financing is largely inadequate to meet the commission's needs; however, there is a reasonable degree of development partner funding, which is often tied to negotiated aspects of the ACC's mandate. The release of funds is done by the ministry of finance and economic development, consistent with its medium-term expenditure framework. The commission has control over the management of its budget.

The work of the ACC is relatively appreciated, but people believe more could be achieved by targeting corruption in high places. The inability of the ACC to successfully prosecute some high profile cases casts suspicion over the commission and its anti-corruption efforts.

There is a mismatch between rhetoric and reality when it comes to the fight against corruption. There are idiomatic phrases such as 'determination to fight corruption', 'no stone shall be left unturned', 'there shall be no sacred cows' and 'zero tolerance'; but when it comes to actual work of identifying, investigation, prosecution and sentencing, partisanship and political interference come into play.

There are mixed assessments of the performance of the ACC under the 2000 legislation. The inability of the ACC to meet the high expectations of the public in going after people in high places was frustrating; there were allegations of lack of political will and weak capacity of agency personnel to fulfil their mandate. The ACC was, however, in a position to make a few achievements such as facilitating the indictment and prosecution of a high court judge and serving senior minister of the government, indicting another minister, and a number of public servants. The limitations around the powers of the commission to indict suspected persons of corruption was addressed by amendment to the 1991 Constitution of Sierra Leone, but there still remains an impediment – permission is required from the attorney general (in some cases) to facilitate trial by judge alone, and not by jury.

B. Historical and political background

This section of the study provides background information on the national and contextual issues that necessitated the establishment of a national anti-corruption institution in Sierra Leone.

Reality and public perception of corruption

The understanding of corruption as an action that is inimical to society is well established in Sierra Leone. This understanding was confirmed by feedback contained in a study commissioned by the department for international development carried out between March and June 2000. The study provided baseline data on the perceptions, opinions and attitudes of Sierra Leoneans toward corruption, as well as gauging their level of awareness of the ACA and their level of confidence in the commissioners who were yet to assume office.¹

Since the enactment the first Anti-Corruption Act (2000), the initial act that established the ACC, there have been several efforts to address the scourge of corruption in its varied manifestations in the country.

A report governance and corruption in Sierra Leone stated the incidence of corruption in Sierra Leone thus:

Corruption and bad governance are widely considered among the most important factors responsible for the states of socio-economic decline in post independent Sierra Leone. Corruption, particularly among politicians, state functionaries and public officials – in its diverse forms including bribery, misappropriation, embezzlement, ‘voucher gate’, ‘contract gate’, nepotism, under-invoicing, tax evasion, etc. – has become so rampant over past three decades that resources of the state (state revenues) virtually disappeared into private pockets and bank accounts both at home and abroad.²

A CSO report titled ‘Contract Watch Bulletin’ exemplified corruption and its manifestation thus:

The Society for Democratic Initiative (SDI) has discovered that the contract to construct the dual road (Wilkinson road) was awarded to a Chinese company called China Railway and Seventh Group Company limited. The road construction started in July 2010 and [was] expected to be completed in July 2011. The exact amount involved in this project is not known and the bidding process was conducted outside the provisions of the National Public Procurement Authority Act (2004).³

There are also numerous cases of corruption involving ministries, departments and agencies (MDAs), and elements within the private sector; these cases cover breaches of procurement procedures, collisions, absence of documentation, inflated costs, etc. These

1 CMDA (2002) Sierra Leone, Steering Committee on the Governance and Corruption Survey: Governance and Corruption Study. p. 29.

2 Ibid.

3 *Contract Watch Bulletin*, p. 4.

issues came up in the audited accounts of the Ebola funds, in a report released by the ASC in February 2015, in which billions of Leones had not yet been properly accounted for by MDAs, private sector actors, and CSO operatives.

The negotiation and signing of mining agreements and concessions also continue to provide various corruption channels. Cases of this nature generally involve granting concessions that cause loss to the state but could bring officials personal gain. A 2009 report from the taskforce on minerals sector reform noted:

Poor contract negotiations by government officials leading to agreements that afford open-ended opportunities to mining companies to exploit some of the weaknesses ... and evade contractual obligations have been unhelpful and contributory to government losses in revenue.⁴

There is a strong public perception of corruption in major national institutions such as the judiciary, the police and other law enforcement agencies. In 2013, an independent national perception survey, supported by the ACC, highlighted citizens' perception of the existence and enormity of the problem of corruption in Sierra Leonean society as follows:

About 20% of the sampled households perceive reduction in corruption in the district councils, while about 60% perceive it has increased. In the chiefdom councils 40% of sampled households are of the opinion corruption has reduced but 30% perceive it to have increased. Whereas about 80% of sampled respondents are of the opinion that corruption has increased in the police, judiciary and the public service, only 10% perceive it have reduced in these institutions. The business community is not let off the hook as about 60% of the sampled respondents perceive that corruption has increased in the business community.⁵

There are varied factors supporting the pervasive rate of corruption in Sierra Leone. Some of the readily identifiable causes are:

- The attitude and conduct of public sector facilitators leading to delays in the issuance of permits and licenses; as well as long periods for business registration and in the clearance of goods from customs (with a large proportion of the fees being considered unofficial and often not received, contrary to the customs and excise law).
- The irregularity and underperformance of service delivery institutions in the country, compounded by low wages, especially in public services. In 2014, the minimum monthly wage for public service employees was raised to USD 116 (USD 140 for police and military). This is not only

4 Taskforce on Minerals Sector Reform (2009) Report on the Taskforce for the review of Mineral Rights. Summary of findings, paragraph 5.

5 Centre for Development and Security Analysis (CEDSA)(2013) National Corruption Perception Survey. p. 20.

grossly inadequate and poorly implemented due to noncompliance on the part of government and private sector actors.

- The weak/absent enforcement of the laws that restrain or punish corrupt individuals, with the national police force and judiciary constantly being held suspect by the public. In addition, many individuals who indulge in corrupt practices know how to coerce would-be prosecutors.
- The lack of public access to information. Prior to the access to information legislation of 2014, ‘no citizen or member of the public had power or means to elicit from government information of the quality that parliament can elicit’.⁶ This created avenues for corruption in society.
- The overhang of patronage in the public service sector, particularly the bureaucracy and the political class. Most elected officials are perpetually preoccupied with promoting their partisanship and related interests for personal, political and financial gains.
- The prevalence of nepotism and cronyism with flagrant disregard for merit, and the expectation of rewards/special offers to friends and family; this is inconsistent with institutional rules, procedures and recognised international best practice.
- The predominance of bribery as a mechanism for altering legal decisions, favouring those who can afford to pay.
- The absence of a culture of transparent procurement processes in most public and private institutions (despite national public procurement legislation and a regulatory entity) leading to bribery and collusion in winning contracts; as exemplified in the annual government audited accounts undertaken by the ASC.

There are often political pronouncements which, if translated into policy actions, could support the fight against corruption; but, many commentators readily cite the aforementioned mismatch between rhetoric and reality. In 2007, His Excellency Ernest Koroma campaigned ‘zero tolerance of corruption’ and assured the country (and the world at large) that ‘there will be no sacred cows’ in his government after winning the presidential elections. There are concerns over the extent to which such lofty promises have been honoured. There is an infamous National Social Security and Insurance Trust (NASSIT) saga, in which an almost wrecked ferry was purchased and reconditioned just to break down a few months after being transported and commissioned in Sierra Leone. The ACC investigated and found that the then director general, the deputy director general and

⁶ Berewa SE (2013) *A New Perspective on Governance, Leadership, Conflict and Nation Building in Sierra Leone*. Bloomington: Author House. p. 104.

the head of investment had been involved in acts of corruption in handling the purchase. Instead of pushing for robust prosecution, ACC settled for repayment; the public have yet to be sufficiently informed of the status of the repayments.

There is also a lack of pronounced commitment from senior political and public figures to take the necessary actions in aid of the anti-corruption crusade. In a local radio station discussion on the subject of Sierra Leone's unimpressive performance in meeting the Millennium Challenge benchmark on corruption, a former minister of mineral resources said 'corruption in Sierra Leone is more of perception than reality ... the country is succeeding in its corruption fight as it has one if not the finest anti-corruption legislations in the world'. These statements seem to be in sharp contrast with citizens' perceptions of corruption as rife and increasing, in both the public and private sectors of the country.

The ACC is required, by its enabling legislation, to use asset declaration forms for all public servants as a mechanism for tracking incidences of corruption. The current statutory requirement dictates that public servants undertake annual declarations, but this has not been happening on time. In any case, the entire administration is still the subject of debate, especially among CSOs and development partners. There is strong advocacy for honouring the current statutory annual asset declaration which could give the ACC an opportunity to review a whole career of public servants. At the time of the research in 2015, the ACC's asset declaration drive was in limbo as members of parliament wanted to amend the provisions in the ACA, pushing for entry and exit declaration instead of the current obligation of annual declarations.

There are various sources of information, including but not limited to: the ASC report, the national public procurement authority (NPPA) monitoring report, the ministry of finance, and economic development monitoring reports; these highlight cases of corruption in the local councils of Sierra Leone, which have often led to major loss of government resources. There are also instances of collusion with suppliers in the area of procurement and awards of contracts, improper documentation to support procurement initiatives, and poor financial management and record keeping.

In addition to the ACC, the media and CSOs are the main agents for championing the anti-corruption crusade in Sierra Leone. There is hardly a month in the year when an incident of corruption cannot be flagged, especially by the media. There are, however, concerns over the veracity of some of the claims of corrupt practices being committed by public or private sector individuals/entities acting in collusion with public servants, as reported in the media. The ACC complains that the media and CSOs, either out of lack of commitment or capacity, often blow the whistle but fail to follow through in providing convincing facts and information, or even supporting the prosecutorial team by giving evidence in court. The media and CSOs, in turn, criticise the ACC for a lack of support in sharing information on the investigation of cases that they have whistle blown, or informing them on what could be followed up on in pursuing suspected cases of corruption. In an interview, executive director of Transparency International Sierra Leone, Lavina Banduwa had this to say:

There is increasing involvement of CSOs in the corruption fight in Sierra Leone, possibly due to the visible negative impact on national development. In recent times, corruption in the form of bribes and direct financial mismanagement has also given rise to another practice of deals. A CSO report on land issues in Sierra Leone stated ‘many of the land deals are opaque, involving companies apparently formed specifically for land leases. ... The lack of transparency raises serious concerns about the possibility of corruption in land deals.’⁷ There is however need to assess the level of involvement, results and impact on the national corruption fight.⁸

The development partners, most of whom speak on corruption anonymously, often raise concerns on issues such as public procurement, the slow pace of initiating action on the ASC’s annual audit reports, improper recruitment procedures (often leading to poorly qualified/inexperienced people occupying strategic offices), etc. In many instances, these issues (and their implications for service delivery and effective governance) are raised in various mission reports which are shared with government MDAs, often with clear recommendations for actions. In the interviews conducted, there were views expressed that only one out of ten recommendations are ever addressed, leading to the continuation of corrupt practices. ‘Many high profile cases get lost within the court structures.’⁹

The World Bank, in its Country Assistance Strategy (CAS) Completion Report for Sierra Leone, stated:

The government of Sierra Leone’s difficulties in dealing with politically sensitive issues on some reforms (power, transport and agriculture) led to slower CAS implementation than expected.¹⁰

There was, however, this view expressed on the World Bank’s conclusion, by Professor James Robinson of the department of government at Harvard University:

I would conjecture that the focus seems to be driven by the relative ease with which resources can be appropriated from these sectors (power, transport and agriculture) either for personal gain or political end.¹¹

7 ALLAT (Action for Large Scale Acquisition Transparency) and Partners (2013, July) ‘Who is Benefitting?’. Freetown, Sierra Leone: ALLAT. (July 2013). p. 14.

8 Interview with Lavina Banduwa, executive director, Transparency International-Sierra Leone chapter, 15 May 2014.

9 Sesay G & Gaima E (2014) *Sierra Leone: Democracy and Political Participation*. Dakar: OSIWA-AfriMAP. p. 13.

10 World Bank (2009) *CAS Completion Report*. p. 59.

11 Robinson JA (2009) *The cow eats where it is tethered*. Unpublished. p. 2.

Setting up an anti-corruption agency

The Sierra Leone Truth and Reconciliation Commission report noted that ‘the central cause of the civil war in Sierra Leone had been endemic greed, corruption and nepotism of political elites who plundered the nation’s assets’.¹² From 1996, after the assumption of office of the first democratic government in Sierra Leone in more than three decades, there were a host of discussions and preparatory work. The country had little to show for its post-independence state, however, it was at the bottom of the Human Development Index for several years, basic services were nearly absent or poorly provided and poverty was pervasive. The civil war proponents sought justification in the extreme poverty the country was experiencing and the neglect of the country by overtly corrupt politicians and public servants. There were various references to corruption and mismanagement in official publications such as the National Strategy on Good Governance and Public Sector Reform (1996), which highlighted its damaging effects on governance, peace, and security. The various conferences hosted during the search for peaceful settlement of the civil war (which commenced in 1991) also placed corruption high on the list of factors contributing to the start and escalation of the war. In a draft final report by selected development practitioners in Sierra Leone, it was highlighted that:

A constant stream of aid money which corrupt government see as free money could be an incentive for bad governance. With increased levels of aid that flowed into the country in the immediate post conflict period, there were concern in the donor community that corrupt politicians and business people may use this money to enrich themselves rather than improving living conditions of the poor and vulnerable.¹³

In response to the huge volume of information linking corruption to bad governance and Sierra Leone’s under-development, the late former president Alhaji Dr Ahmad Tejan Kabbah authorised the establishment of an anti-corruption agency, the ACC. The first commissioner and head of agency was Mr Valentine Collier, a seasoned and respected civil servant. There were a number of commissioners appointed from the police and the civil service. The commissioners, using the 2000 legislation, established the structures of the commission and commenced operations consistent with their mandate.

The first pioneer legislation on corruption was enacted in 2000. This legislation was criticised for being very limiting, as the ACC lacked the legal rights to prosecute on its own accord. The suspected cases of corruption were investigated by the ACC and the files were forwarded by the ACC commissioner to the office of the attorney general and minister of justice, who had the responsibility of assessing whether to order a prosecution or not. In

12 Fanthorpe R & Gabelle C (2013) *Political Economy of Extractives Governance in Sierra Leone*. Washing DC: World Bank. p. 8.

13 Development Challenges in Sierra Leone (draft manuscript) for Commonwealth Secretariat, p. 42.

instances where a prosecution was ordered, the government's law officers department was responsible for the prosecution with the ACC providing the necessary evidence.

The weaknesses in the 2000 ACA led to the review and enactment of a more comprehensive 2008 ACA which, among other things, was considered more empowering and, in the words of many observers, 'gave ACC the teeth to bite'. Since 2008, the law has been improved, while the more robust provisions of the 2000 act have been retained; these have been complemented with a number of innovative and empowering provisions such as that giving powers to the ACC commissioner to order a prosecution, allowing ACC lawyers to undertake the prosecution. Another major improvement on the legislation is the expansion of the list of what constitute corrupt offences in Sierra Leone, also determining what falls under the ACC's purview for investigation and prosecution.

There have been four ACC commissioners since its establishment;¹⁴ two under the 2000 legislation and two under the latest. Mr Abdul Tejan-Cole was the first under the updated ACA and the second ACC commissioner to resign, the reasons for which are as yet unknown. The current commissioner, Mr Joseph F. Kamara, has had the opportunity to substantively use the provisions of the new legislation in furtherance of the commission's work.

The public assessment of the ACCs work since the enactment of the 2008 legislation has informed this report to a large extent. There are assorted cases lost and won, the perennial accusations of 'small flies and less big fishes' are still commonplace in newspapers and radio programmes. However, even amidst these challenges, the commission continues to exist and operate in the country.

C. Structure, powers and independence

The ACA clearly defines the structure and powers of the agency. There are also provisions highlighting independence as a key feature; a parameter often used to determine not only the quality of the legislation, but also the performance and effectiveness of any anti-corruption agency.

Appointment, tenure and qualification of commissioners

The constitution predates the setting up of ACC¹⁵ and as such, it does not legally protect the ACC in terms of assured existence, or insurance from executive or legislative dissolution. The only institution mentioned in the constitution with powers to maintain integrity and assure a semblance of corruption-free public sector is the office of the auditor general.

14 First commissioner, Valentine Collier, a retired senior civil servant; second commissioner, Prof. Henry Mathew Joko-Smart, law professor at the University of Sierra Leone; third commissioner, Abdul Tejan-Cole, a private legal practitioner with a strong CSO background and who worked for the International Centre for Transitional Justice (ICTJ); and the fourth and current commissioner, Joseph F Kamara, a private legal practitioner with experience as state counsel and worked for the Sierra Leone special court.

15 The constitution came into force in 1991, with the central focus being to return Sierra Leone to a multiparty democracy after years of one party constitutional rule, which was imposed in 1978.

The head of the ACC (the commissioner) and his deputy are appointed according to section 3(1) of the ACA:

The commission shall have: a commissioner who shall be the head of the commission and a deputy commissioner, both of whom shall be appointed by the president, subject to the approval of parliament.

The ACA prescribes the qualifications of the commissioner and deputy commissioner in section 3(2-3) as follows:

The commissioner shall be a legal practitioner having not less than ten years' practice in his profession with proven managerial experience and of conspicuous probity;

and

the deputy commissioner shall have proven knowledge, ability and experience of at least ten years in accounting, banking, financial services or any other relevant profession, and shall be a person of conspicuous probity.

In 2014, upon the end of the five-year tenure of the deputy commissioner, a director of the ACC was requested to serve in an acting capacity. The acting director was subsequently nominated by the president, subject to the usual parliamentary approval, and is now deputy commissioner. This situation requires some scrutiny to determine whether the commissioner did have any role in the nomination of his deputy; there is rife speculation that this could have been the case, since the former deputy commissioner and the commissioner had a very cold working relationship leading to his resignation.

There are statutory provisions regulating the tenure of the commissioner and deputy commissioner as captured in section 4(1-4), with section 4(1) stating broadly that:

the commissioner and deputy commissioner shall each hold office for a term of five years and shall be eligible for re-appointment for another five years only.

...

The commissioner or deputy commissioner may not be removed from office except for inability to perform the functions of their office, whether arising from infirmity of body or mind or for stated misconduct.

The ACA provisions for appointing the head of the ACC are quite clear in the statute, but there have been and continue to be citizen concerns as to how the president zeroes in on the preferred candidate to occupy the position. There have been speculations as to nominated candidates being chosen as a result of their experience in the public service;

their professional track record in the field of law; or in the worst cases, on the basis of partisan aspirations. These could be legitimate concerns, but one thing that is certain and which attracts less (if any) controversy is the fact that the individuals nominated have (so far) had the minimum requisite qualification and experiences to manage the affairs of the commission. With the ACA giving the ACC power to prosecute, having a commissioner with a strong legal background could only be an advantage to the commission; particularly in deciding whether or not to prosecute. A regular change of guard has, however, had implications for institutional memory and maintaining short term strategic focus. There is an argument for recruiting and maintaining qualified staff in such high and sensitive positions and this could find merit in the comment from a Capitol Hill (USA) staffer ‘political appointees come and go but the bureaucracy endures’.¹⁶

The removal from office of both the commissioner and deputy commissioner of the ACC are also provided for in section 4(5-8) with a broad provision in section 4(5), stating:

If it is represented to the president that the question of removing the commissioner or deputy commissioner under section 4 ought to be investigated then the president shall appoint a tribunal which shall consist of a chairman and two other members all of whom shall be person qualified to hold or to have held offices as justices of the court of appeal.

Section 4(7) states what actions the president could possibly take while the tribunal is investigating an issue involving the ACC commissioner and or the deputy commissioner:

While the question of removing the commissioner or deputy commissioner from office is pending before a tribunal under subsection 5, the president may suspend the commissioner or deputy commissioner, as the case may be, from performing the functions of his office and the suspension shall in any case cease to have effect if the tribunal recommends to the president that the commissioner or deputy commissioner ought not be removed from office.

Section 4(8), spells out the statutory conditions under which it shall be legal to remove the commissioner or deputy commissioner:

- (a) If the question of his removal from office has been referred to a tribunal in accordance with subsection 5 and the tribunal has recommended to the president that the commissioner or deputy commissioner ought to be removed from office; and
- (b) If his removal has been approved by a two thirds majority in parliament.

¹⁶ Kingdom JW (2003) *Agencies, Alternatives and Public Policies*. USA: Longman. p. 33.

The ACA therefore does also have substantive provisions that should insulate the offices of commissioner and deputy commissioner from any arbitrary removal from office, which leads to security of tenure motivating any occupant of those offices to remain professional and productive.

Powers and functions

The ACC, under the amended ACA, has powers and responsibilities clearly defined in the legislation. The statutory provisions highlighting the broad powers are outlined in section 7(1) thus:

The objects for which the commission is established are:

- (a) To take all steps as may be necessary for the prevention, eradication or suppression of corruption and corrupt practices;
- (b) To investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise;
- (c) To investigate any matter that, in the opinion of the commission, raises suspicion that any of the following has occurred or is about to occur:
 - (i) Conduct constituting corruption or an economic or related offence;
 - (ii) Conduct liable to allow, encourage or cause conduct constituting corruption or an economic or related offence; and
- (d) To prosecute all offences committed under this act.

The 2008 act is ground-breaking, compared to its predecessor; unlike, the 2000 act, the 2008 act statutorily confers the authority upon the ACC commissioner to prosecute offences in its own name. In part VI, section 89(1) of the 2008 ACA, the prosecutorial powers were defined thus:

Where the commissioner is of the opinion that the findings of the commission on any investigation warrant a prosecution under this act, he shall do so in court.

This is perhaps the most significant empowerment clause in the ACA. There is good reason for the on-going constitutional review process to note this empowering clause and seek to protect and insulate it from being expunged in a repeal of the section; either for political expediency or to undermine the powers of the commissioner in any future constitution. This provision is further elaborated and reinforced in section 89(2):

An indictment relating to an offence under this act (2008) shall be preferred without any previous committal for trial, and it shall in all respects be deemed to have been preferred pursuant to consent in writing by a judge granted under

section 136(1) of the Criminal Procedure Act, 1965 and shall be proceeded with accordingly.

In order to give meaning and effect to the prosecutorial powers, section 89(3) states:

On a trial on indictment preferred under this section, an extract of the findings of the commission, signed by the commissioner, to the effect that a particular person is, or particular persons are implicated in any offence under this act shall, without more, be sufficient authority for preferring that indictment in respect of such offence as is disclosed in or based on the report of those findings.

The ACA attempts to address a perennial problem of clogged up cases and overloaded courts by giving legislative priority to actions initiated for prosecution by the ACC in the following provision in section 89(6): ‘The trial of any offence under this act shall have priority of hearing in the court over any other indictment except an indictment for treason, murder or other capital offence.’ This is also another major improvement in the legislative framework. It ensures that the commission’s prosecutorial work is not hampered by a judiciary with the kind of poor case management that leads to undue delays in court cases.

The ACA, despite the wide publicity given to it by the ACC and the executive arm of government, is considered ‘one sided and biased focussing only on the public sector’ and not directly on the private sector. There are limited instances of the ACA being stretched to engage private sector entities. The ACC has noted a few instances where they consider ‘the public interest and public funds being at stake’; such as when a corrupt practice in the public sector has a nexus with private sector entities, necessitating ACC intervention to ‘secure public funds and public interest’. It is stated that ‘a total of over Le10 billion was recovered and paid back to the consolidated fund between 2008 and 2012’.¹⁷

The limitation of the ACC to deal with mainly public service issues needs to be addressed, either by further review of the ACA or another legal mechanism sought to ensure that the private sector can be directly investigated (on the basis of clear legal provisions in the act) and where evidence exists, be subject to prosecution in a court of law within Sierra Leone.

Reporting obligations

Section 19(1-2) requires that the ACC undertake regular annual reporting:

The commission shall, not later than three months after the end of any year, submit to the president a report of its activities in that year.

...

The commission shall cause the report submitted under subsection 1 to be tabled before parliament.

¹⁷ Government of Sierra Leone (2013) *The Agenda for Prosperity (PRSP) 2013–2018*. p. 113.

There are CSO participants in this research who hold the view that mandatory reporting is a good starting point; but, given the tendency for offices within the presidency to be accused of corruption and corrupt practices, the ACC must invoke section 19(1) to make sure the report is presented to parliament in the same way as the annual report of the ASC. The members of parliament (especially the transparency committee and other such committees concerned with promoting accountability in governance and state management) must be lobbied to promote a culture of engagement with the ACC report, equal to that of the ASC report.

The ACC annual report is not necessarily required to contain recommendations that must be acted upon. There is often a section on challenges and constraints, but not specifically institutional recommendations to which it will commit itself. The act does, however, require the report to contain the number and detailed accounts of:

- Investigations carried out in the year;
- Investigations that have been discontinued;
- Investigations that have lasted more than six months;
- The status of matters pending in the courts;
- Key prevention measures instituted or implemented during the year;
- Key education and community relations activities undertaken during the year; and
- The audit report of the commission.

The challenges reported on over the years (such as improving ACC's working relationship with the judiciary; accessing credible witnesses to support prosecution; and being provided with additional financial and technical resources) are yet to have any meaningful recommendations to address them in a manner that will enhance the effectiveness of the agency.

Funding

In section 16 of the ACA there is a provision relating to the expenses of the commission:

The administrative expenses of the commission, including the salaries, allowances, gratuities and pensions of the commissioner, deputy commissioner and staff of the commission shall be charged on the consolidated fund.

The following section also defines the funds of commission as comprising:

- (a) Monies appropriated for the purposes of the commission;
- (b) Subject to section 2, grants, gifts, donations or bequests made to and accepted by the commission; and
- (c) Funds derived from or accruing to it from any other source.

The funding of the ACC is also traceable to other known state sources as stated in section 18(1): ‘Parliament shall, on the basis of annual estimates of expenditure submitted to it by the commission, provide the commission with funds.’

The legal framework from the cited clauses does make provisions identifying where resources for the agency should come from; what is missing, which ideally should have been defined in the ACA, is a percentage of national budget that should be appropriated to the ACC. This is important, given the general agreement that corruption in the country is widespread and pervasive with the potential to undermine national development and threaten peace and security. The assigning of a predetermined percentage would further protect the agency from undue budgetary manipulation. The ACC reported, during the course of this research, that there have been significant yearly increases in budget:

In terms of percentage increase, with government increasingly taking over higher proportions while support from development partners contributions are declining. Government now contributes over 80% of the ACCs budget taking on all staff and operational costs while the development partners collectively can account for only 20% of total budget.¹⁸

The new financial management modalities adopted by the government have had a constraining effect on the operations of the ACC, as disbursements in the financial years prior to 2013 were done on quarterly basis; since 2014, a practice of monthly disbursements was introduced. The ministry of finance and economic development reasoned that large amounts disbursed to MDAs are often left idle in their accounts, only to be spent in the last few months of the fiscal year. Now there are monthly disbursements which are primarily used for salaries, while other charges/operational costs are provided on a half-yearly basis. The overall financial system within the ACC is superintended by a finance committee for financial management regulations and an audit committee to ensure controls and proper utilisation of funds. The commission is also subject to the annual ASC audit of state institutions that receive money from the consolidated revenue fund (the national treasury).

The bulk of the required financing for smooth and effective execution of the functions of the ACC is sourced from the consolidated revenue fund which is administered by the minister of finance and economic development as well as a nominee of the chief executive of state. The quantum of funds allocated as well as the timing and nature of the financial transfers into the coffers of the ACC are externally determined by the ministry of finance and economic development. This therefore means that, in the absence of a self-budgeting and financing arrangement, there is a subtle external fiscal control mechanism in place that affects the operations and execution of the powers of the ACC. The quality of prevention work, community engagement, investigations and prosecutions are, to a great extent, driven by adequacy and timely release of funds to the ACC. The present reality

18 Interview, Mr Sheku Kamara, director of finance, ACC, Freetown, 27 May 2014.

is that the ACC is not fully funded and has to rely on donor input from myriad sources such as the World Bank (for capacity building and institutional strengthening); Irish Aid (for work on systems review); and the UN (for a number of small but major areas of the commission's work).¹⁹

Contribution from development partners

The development partners in the country have been very proactive by approaching the ACC and requesting partnerships or working together under various programmes, including: public financial management, improving national revenue performance, promotion of various forms of accountabilities, support to the system's review, improvement within corruption-prone MDAs, community liaison, and outreach/civic education. In this type of partnership, the ACC has benefitted from both direct financial resources, which have supplemented the insufficient national budgetary allocations, and indirect to support units within the ACC to improve performance and produce desired results of curbing the rate of corruption within the country.

The relationship between the development partners and the ACC is often

built on suspicion and mistrust with some development partners thinking that the ACC has failed to do more, encourages political interference and chases small flies while leaving off the hook the big fishes.²⁰

Since corruption has national security implications and can effectively blockade development and exacerbate poverty, most development partners have continued to work with the ACC, albeit at a lower level in many instances. They do this in the interest of protecting national wealth and public money and assets, which need to be distributed and utilised in a transparent manner to ensure growth and improve the general welfare of the people of Sierra Leone. The development partners often undertake high level policy engagement to highlight the issue of corruption, often urging the government to ensure that the ACC gets tougher and more committed to results if the agency, and the country, are to continue receiving much needed support and funding.

The ACC is quite appreciative of the partnership it has established with the development partners, but they are also concerned about the 'impatience of some development partners who only see ACCs success in the number of convictions leading to custodial sentences and fines'.²¹ There is also the tendency for some development partners to be prescriptive on the use of funds they provide and this, according to the commission, denies it the latitude to deploy funds in other areas outside the development partners' agreed priorities for funding. Although these differences endure, both the ACC and its numerous development partners continue to keep the collaboration and partnership alive while pushing for

19 Interview, CSO representative, Freetown, 15 May 2014.

20 Interview, development partner (anonymous), Freetown, 10 April 2014.

21 Interview, Reginald Fynn, director of investigations department, ACC, Freetown, 1 April, 2014.

greater effectiveness; which, for development partners, will ensure that the ACC justifies its existence and ‘provide value for money’.

Independence

The ACA has a laudable legal provision highlighting the independence of the ACC, as one interviewee stated: ‘at least on paper to satisfy the development partners so that the government and ACC could continue receiving donor funds’. The provision is traced to section 9(1-2) which states:

The commission shall act independently, impartially, fairly and in the public interest.

...

Subject to the act, the commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

The provision is brilliant and carries a lot of goodwill at face value. The popularly held view in Sierra Leone is that the ACC is not independent, nor is it impartial. There are repeated references to the appointed leadership of the ACC being nominees of the president as chief executive of state. In the estimation of most observers and analysts, the powers of removal are also influenced by the president. The president also makes the final decision on whether to dismiss or retain a commissioner who is under investigation (who, by legislation, could also be suspended while being investigated); this could prove to be somewhat of a dilemma for ACC leadership. There has always been and continues to be huge executive overhang over the activities and operations of the ACC leadership. The improved ACA gives the commissioner the powers of prosecution, but there have been instances where Commissioner Kamara informed the media that ‘he had to consult the president prior to commencement of action in a major banking/national revenue authority case’. The explanation was that ‘in his opinion, he wanted to be certain that there were no national security implications in deciding to prosecute the cases’.²²

The real crux of the matter is that the new legislation gives the ACC legal basis to assert its independence and impartiality, but the occupants of the leadership positions of the commission often ‘do not have good relationship with the president and are deemed hounded from office’ as was insinuated in the media for the removal of the ACCs first commissioner, Mr. Valentine Collier; although another view is that his tenure officially ended and there is no guarantee of a second five-year term. There are others who are rumoured to be ‘registered, card carrying members’ of the ruling parties and as such are often cautious not to hurt the ‘big men in big offices’²³ in the interest of personal gain and partisanship. There is, therefore, the challenge of having metering legal provisions against

²² A journalist (anonymous), Freetown, 6 April 2016.

²³ Ibid.

personal interest, bringing into question professional standards and the actualisation of a legislatively provided for independence.

The ACC works in tandem with an advisory board. This board is established at the discretion of the president as indicated in section 22(1): ‘The president shall appoint, with the approval of parliament, an advisory board on corruption consisting of several members.’ In section 22 (4), it is stated that:

The advisory board on corruption shall, in addition to any function,

- (a) Advise the commission on any aspect of the mandate and functions of the commission; and
- (b) Annually assess the work of the commission and advise the commission on it.

The place and role of the board also calls into question the practical realities of the ACC commissioner and staff in executing their powers and mandate. There is a possibility that in the conduct of its statutory advisory mandate, the advisory board and the commissioner and team could have differences in opinions and positions on certain issues relating to the mandate of the commission. Since the legislation is silent on any mode of arbitration, there is a tendency for the commissioner and team to acquiesce on contentious issues; this could affect the independence, fairness and impartiality of the ACC in the execution of its powers.

There is, perhaps, a weakness in the new legislation in the sense that the commissioner, deputy commissioner and the advisory board are all nominated by the president and face the national parliament for scrutiny and confirmation. The standard authority of the board is to recruit and appoint heads of agencies, with the power to hire and fire; this does not exist in the case of the ACC commissioners and members of the advisory board (as the name suggests, they are expected to provide advice to the commissioner and team). There are also inherent advantages to securing the autonomy and independence of the commissioners somehow free from board manipulations.

D. A critical assessment

Over the last 15 years, the ACC has successfully tried out the 2000 ACA, documented its strengths and weaknesses and advocated for its review which culminated in the enactment of the ACA (2008). It has tried to formulate a national anti-corruption strategy involving MDAs and CSOs to guide the country’s anti-corruption agenda, focussing on various strands such as community outreach, prevention, systems review and strengthening.

The ACC has made notable progress in effecting mechanisms for accounting for its work. It has produced annual reports which catalogue achievements and constraints as well as inform the public on the activities of the ACC, leading to information sharing as well as some level of buy-in for the fight against corruption. There are also relatively strong

community relations/outreach systems in place, with strong focus on executing activities and programmes for schools and major national institutions. It has also made considerable efforts at decentralisation with the opening of regional offices, while plans to set up district offices are in the making. This strategy aims to improve access to the ACC for purposes of reporting corruption.

There has been significant focus on prevention, ensuring that corruption-prone institutions are kept under close watch, recommending the strengthening of systems and improvement of controls. The media, however, report poor collaboration with the commission and limiting access of information (on matters such as cases being investigated and the evidence at its disposal) to the public.

Mindful of the usual clogged up court system, the ACC has negotiated with government for the assignment of dedicated corruption trial judges who, in recent times, have been foreigners with proven track records in their home countries within the commonwealth. The ACC has adopted a strategy of recovering misappropriated funds, in some instances leading to repayment of 90% of the amount recovered into the consolidated revenue fund.

The ACC's weak resource base means that it heavily relies on national budgetary support, which is often inadequate and has increasingly been provided piecemeal, unlike the quarterly disbursements of the past.

Since 2007, the ACC has been experiencing a reversal of the gains made earlier in the anti-corruption fight. It has also notoriously conducted weak investigations, leading to poor prosecutions and loss of several cases with negative implications for the image and integrity of the agency. There has been irregular management of asset declarations, in that the ACC has failed to print and distribute the annual asset declaration forms to categories of public servants who are legally required to complete them. This has given the public cause to question the relevance of the asset declaration process, and its contribution to the corruption fight.

Strong legal framework

The 2008 revision of the ACA gave rise to what is often referred to as 'a much detailed and comprehensive legislation'. Section 2 provides that the new law does not affect the existence and status of the ACC. The ACC officials indicate:

Since establishment in 2000, the ACC has already had two statutes but in actual fact, what has taken place is a transition from an old legislation (2000) to a new legislation (2008) in which the strong and efficient clauses of the old law have been saved and transitioned into the new legislation, hence making it better and stronger in empowering the ACC to take on the anti-corruption fight in Sierra Leone.²⁴

24 Interview, Reginald Fynn, director of investigations department, ACC, Freetown, 1 April 2014.

Section 2, in prescribing the status of the ACC, states:

The commission shall be a body corporate having perpetual succession and shall be capable of

- (a) Acquiring, holding and disposing of moveable and immoveable property;
- (b) Suing and being sued in its corporate name; and
- (c) Performing all such acts as bodies corporate may by law perform.

There are a number of complementary laws which endeavour to address the issue of corruption such as the 2012 Anti-Money Laundering Act and the Financial Intelligence Act of the same year. These legislations protect against money laundering which provides avenues for corruption and the movement of proceeds of corrupt practices within and across countries. The Financial Intelligence Act empowers the country's Central Bank to undertake intelligence monitoring, information gathering, analysis etc., necessary to forestall any corrupt endeavours within the financial services sector of Sierra Leone.

There is an Access to Information Law in the country now but this may have been passed for the wrong reasons, not to enhance access to information for people who require it, but the law was passed for attracting proposed foreign direct investment into the country. As at the time of conducting the research in 2014 months after accenting of the Access to Information Law modalities were only being considered for putting in place mechanism for its enforcement.²⁵

The anti-corruption crusade has yet to benefit from the assumed openness that the Freedom of Information Act should bring. There is now a commission in place, but there are still concerns over the slow pace of full operations. There are also CSO concerns over the appointment of the commissioners as well as inadequate funding for operations. The legislation has one major deficit, the request for information from any source must be done in writing. This is considered demanding for a country with high illiteracy rates, where agencies complain about lack of funding for logistics such as writing paper or courier services for delivery of communication. The illiterate population could hardly ever benefit from the Freedom of Information Law.

The ACC has, over the years, been developing national anti-corruption strategies. This is the framework that guides the ACC in the implementation of its operational strategies in leading the fight against corruption in the country. The national anti-corruption strategy is developed as a multi-stakeholder model, aimed at diagnosing the gravity of the problem of corruption and its consequences for the society, also proposing concrete actions to forestall the negative incidences of corruption if left unattended. There is a senior office with the

²⁵ Ibid.

responsibility of ensuring the operationalisation of the strategy, as well as ensuring that partner collaboration is maintained.

Innovative reporting and prosecutions mechanisms

The ACC has a dedicated reporting centre at its headquarters in Freetown and desk officers in its regional offices within the country. The reporting centres are professionally staffed and

there are good rates of reporting. The dilemma is that so much reports come but a good volume of them normally have no corruption bearing and so the reporting centre staff have to advise them on which relevant MDA is best established to handle cases of domestic concerns mainly.²⁶

The corruption reporting centres operate only in office hours; this could be limiting as any incident not reported within the daily schedule will have to be carried over to the next working day. There is also no system in place for receiving reports outside office hours, weekends and holiday/vacation periods.

The commission has established telephone hotlines for reporting all incidences, acts or perceive corruption cases to it in the last few years. These telephone lines were provided by private mobile phone companies. This has its own drawback in terms of control of airtime, however. There were also concerns around the manning of the hotline centres and the recording and processing of the information. These recordings are crucial for establishing basis, facts and decision-making on whether the reported incident is connected to a known act of corruption,

The ACC and its operations are relatively centralised in Freetown and the southern, eastern and northern regions of the country. The country has 12 districts spread across these three regions with the districts being home to 149 chiefdoms (which could be considered as the lowest unit of administration). The majority of the citizens reside in the chiefdoms, so the current arrangement of having to move from the chiefdom to the district and then regional capital to report corruption is deeply problematic. In addition, all corruption cases are tried in Freetown and not in the regional capital.

The trial of corruption cases exclusively in the national capital could serve as a disincentive for reporting incidences of corruption since any potential witness will be required to constantly travel to Freetown for court proceedings. The ACC intimates that it is expensive for the judiciary to move the courts to the regions on specific anti-corruption matters and also do express security considerations.²⁷

²⁶ Interview, Reginald Fynn, director of investigations department, ACC, Freetown, 1 April 2014.

²⁷ Interview with Kelvin Lewis, president of the Sierra Leone Association of Journalists, Freetown, 28 March 2014.

The ACC enjoys the status, as expressed by its enabling legislation, of having the authority to bring prosecutions in its name and having its seal of office and authority.

The existing reality is that since inception in 2000 and continuing today, there is more focus on the position, personality and professional stance of the commissioner and to a lesser extent the deputy commissioner in assessing the exercise of the statutory powers.²⁸

The commissioner has made, and continues to make, indictments upon his conviction that there is a corruption case that requires investigation and details his prosecution team to follow through on the process and ‘there are instances where the commissioner has appeared in court and become part of the prosecution team and this has been allowed by the trial judges’.²⁹ This manifestation of commitment has, however, been viewed as over-enthusiasm, since the commissioner is expected to support quality in-house investigations and then allow the prosecution team to proceed without his dominant presence.

The ACC utilises the national judicial system in the prosecution of the cases that are considered to have merit and to be tried under the relevant provisions of the ACA. This therefore means that the choice of judges and courts that should hear the proceedings is determined by the judiciary under the leadership and administration of the chief justice. The issue of which judge leads on court proceedings is regarded by the ACC as a huge challenge and, in extreme cases, an obstacle to successful and efficient case management. In the early days of the establishment of the ACC, it addressed high profile cases which sent strong signals to ‘big fishes’ to observe caution and restraint in the execution of their duties and refrain from corruption.

The ACC has succeeded in working towards the recruitment of a crop of qualified legal officers to work in the investigations unit and there are expectations that the quality of investigation (generally regarded as fairly poor) would improve, thereby supporting successful prosecutions of corrupt cases before the courts.

The work of the ACC is, to a greater extent, undermined by the bloated court system in the country, in which the chief justice is responsible for the allocation of cases to courts/magistrates and judges. In order to address this perennial problem, the government also adopted a practice of appointing special judges to handle anti-corruption cases in the country. This is to ensure that ACC cases are no longer held up either due to lack of a magistrate or judge.

The use of special courts and judges has ensured that anti-corruption cases once committed for prosecution are prioritised to progress, depending on the judge’s schedule and the judiciary’s failure to assign a judge on time. In the last known cases, the anti-corruption judges³⁰ have mainly been non-Sierra Leoneans and this has had its own

28 Interview with a CSO member, Freetown, 11 May 2014.

29 Interview with a development partner agency staff on anonymity, Freetown, 7 April 2014.

30 The judges have come mainly from Commonwealth countries such as the UK, Uganda and The Gambia.

implications as they have to operate with national lawyers, within the laws and procedures of Sierra Leone. There is yet to be any public outcry to link the foreign judges with undue political influence in the management of corruption cases; instead, it is the judiciary in Sierra Leone who are accused of external and political interference in handling cases, which has led to perception surveys indicating increasing citizens' lack of confidence in the judiciary.

Table 1: Successful and unsuccessful cases

Successful case	Factors for success	Background note
Michael Katta et al, vs. the NRA	<p>High quality and sound investigations leading to strong evidence.</p> <p>No political interference in the investigations and prosecutions.</p> <p>Good cooperation from multiple stakeholders (development partners, private sector actors, CSOs, and media).</p>	<p>This case involved a number of personnel working for the national revenue authority (NRA) who colluded with commercial banks to siphon millions of Leones into their personal accounts.</p> <p>The accused and his wife were found guilty and sentenced to varying terms. The personal accounts of the convicts were frozen.</p>
Unsuccessful case	Constraining factors	Remarks and observations
Mr & Mrs Allieu Sesay et al. vs. the NRA	<p>There were several disagreements around processes and procedures (granting bail or not, conducting searches etc.).</p> <p>Poor protection of evidence (the national revenue authority suffered a fire disaster).</p> <p>Intimidation of ACC officials in the form of alleged arson on the commission's building.</p> <p>Conflagration of multiple external interests.</p>	<p>The former commissioner general of the national revenue authority, his wife and others were indicted on various forms of corruption-related offences – conflict of interest, mismanagement, etc.</p> <p>The commissioner and his wife were acquitted of over 50 charges to the dismay of the ACC and the general public.</p> <p>The ACC made public pronouncement of being let down by the courts and vowed to appeal the loss.</p>

Relations with other oversight institutions

As a way of garnering and improving inter-agency cooperation and collaboration, the ACC has evolved a practice of negotiation and entering into MoUs with other probity and transparency supporting agencies such as the ASC.

The ACA made provision for the ACC to establish and maintain institutional relationships with a number of national institutions, particularly MDAs. Section 10(1) provides the statutory basis for any relationship established by the ACC thus:

The commission may, in the performance of its functions, work in co-operation with any other persons or bodies it may think appropriate and it shall be the duty of such persons or bodies to cooperate with the commission.

Section 10(2) specifies some major entities in the public sector that the ACC should relate, work and collaborate with:

Without prejudice to the generality of subsection 1 such persons or bodies include the auditor general, the accountant general, the commissioner general of the national revenue authority, the national security adviser, the inspector general of police, the chief executive officer of the national public procurement authority.

The ACC has been making efforts to ensure that these strategic relationships are established and maintained. There have been several mechanisms introduced, such as joint reviews, meetings and information-sharing. The ACC have started cooperating with the listed agencies and others to develop, review, agree and sign MoUs, in the absence of formal guidelines for regulating relationships in order to grow them into operational partnerships. The MoUs signed do state the terms and conditions of partnerships and collaborations. The idea of entering into MoUs to define anti-corruption collaborations is great as it has provided an integrated platform to reinforce the ACC's mandate of education, prevention, investigation and enforcement. There are, however, concerns that the anticipated fruits of collaboration such as synergy, information-sharing, leveraging each other's resources (especially manpower and expertise) is not as forthcoming as was anticipated.

There are a number of factors cited as undermining the effectiveness of the rollout of the MoUs, one over which there is consensus is:

The various institutions despite signing up the MoU remain very sensitive about preserving their institutional and statutory mandates even as they agree to work with other agencies.³¹

This state of affairs has not supported timely actions or built trust and conviction in the institutions to work together at levels lower than that of the institutional heads. It is important to highlight the fact that, in Sierra Leone, the public service is often said to be plagued by siloed/compartimentalised operations. This is problematic, given the deep

31 Interview with deputy auditor general, Audit Service Commission, Freetown, April 2014.

seated nature of corruption and the lukewarm approach towards fighting it; leaving the ACC alone in the fight, with all the known institutional challenges that it faces, will hardly produce positive results.

Concerns over role of the office of the president

The relationship between the ACC and the office of the president has also been cited as a cause for concern in ensuring that the agency executes its powers unimpeded. Since the ACC commissioner and deputy commissioner are appointed by the president, they are seen as an extension of the presidency. There are routine administrative exchanges between the office of the commissioner and that of the presidency. As an example, there is statutory provision for the annual report of the ACC to be presented to the president, and by inference, one can deduce that the office of the president could have authority to raise issues on the content of the report and the ACC would be required to proffer explanations/reasons as to its conduct accordingly. The ACC is required to report on all cases including completed and ongoing. Reporting on the ongoing cases could be seen as an avenue for political interference where the executive arm of government has interest of a general or partisan nature. There were opinions collected during this research indicating a preference for the ACC's annual report to be presented to parliament, as in the case of another 'integrity agency' – the ASC. This is believed to foster increased transparency and objectivity as well as making the reports more credible. This suggestion may require further analysis to determine any potential strengths or weaknesses.

Role of non-state actors

Non-state entities such as CSOs (mainly operating as NGOs and CBOs) are recognised as critical actors and by extension have been accorded recognition as partners in the anti-corruption fight. The CSOs have a seat on the advisory board on corruption,³² although the down side to this is that the nomination of the individual to represent CSOs does not come from its membership but from the president of the country. There has been some passive reaction to this mode of nomination for and on behalf of CSOs; a mechanism that will ensure capable and effective representation by whoever 'it pleases the president to nominate' has yet to be devised. In the absence of any obligatory requirement for the CSO representative to report back to the general CSO body, one can infer that the representation can be likened to individual nomination and less of a sector-wide representation, leading to lack of full CSO engagement in the ACC's work at the strategic level of the advisory board.

In many instances, CSOs have designed, sought funding and managed projects around 'transparency and accountability' and in the implementation of some of these projects, the NGOs and CBOs have partnered with the ACC. There are other CSOs whose programme orientation has ensured that they serve the watchdog roles by placing the ACC under the spotlight, in terms of the nature of activities that they implement and the results and

³² Section 22(2) of the ACA.

impacts that are produced. It should be noted that CSOs are not as effectively engaged in corruption advocacy beyond the ‘small projects which are mostly donor-funded’. The ACC also sees them as ‘potential partners’ that are not fully on board, despite the huge capacity they possess to enhance change and reduction in the incidences of corruption in the country.³³

In 2014 while this research was ongoing, the CSO-ACC relationship was under the national spotlight. The national parliament using a private members motion and bill (one of the few such motions/bills passed in parliament in recent years), instituted an investigation into CSO activities to, among other things, ‘determine the utilisation of funds received for and on behalf of the people of Sierra Leone’; at the time of preparing this report, the exercise had not been concluded. The investigation of international NGOs has been completed while that of local NGOs started and then lost momentum; the public is awaiting the report from parliament. It is logical to infer that if parliament were to find any of the CSOs wanting, they will refer the matter to the ACC for more in-depth investigation that could possibly lead to possible indictment and initiation of prosecution, based on the expanded list of offences in the 2008 ACA.

The media in Sierra Leone have, since 1996, positioned themselves as a critical sector within the national governance framework of the country. As such, they are increasingly being requested to undertake and perform major roles in the management of national processes as well as to have representation on mechanisms that promote national development. The ACC developed and signed an MoU with the media requesting joined collaboration in the fight against corruption.

The ACC is however frustrated with the media in the country as the media in Sierra Leone is not experienced and orientated in campaign journalism which is what the ACC needs from the media. In addition, when cases are lost in the courts by the ACC it expects the media to report in a manner that will educate the public on what went wrong, instead of the media joining members of the public in issuing strong condemnations in print and electronic forms.³⁴

The media is called up as and when required to participate in press conferences, but these are often of

a straight jacket type in which the statement is read out and very few questions taken and answers provided as deemed fit by the ACC without opportunity for journalist to probe issues any further.³⁵

33 Interview, development partner, Freetown, 16 May 2014.

34 Interview with Kelvin Lewis, president of the Sierra Leone Association of Journalists, Freetown, 28 March 2014.

35 Ibid.

The ACC is also criticised by the media for its lack of openness and refusing to make required information available for reporting. In the course of the research and in talking to both segments (media and ACC), it was realised that there are huge benefits that could be realised if they both work together in an open and more structured manner, with sincerity as a central factor. This being said, there has not yet been evidence of major gains derived from these complementarities.

The private sector does not fall within the statutory mandate of the ACC in any direct manner although matters of public interest, financial resources and assets with corruption import could be of interest to the commission. As part of its public enlightenment campaign, the ACC shares information on the prevention of corruption, as well as the powers of the agency and how it deals with corruption involving the public sector, and with members and institutions operating within the private sector. The ACC is quite keen to advocate for further review of the ACA to ensure that corruption and related matters within the private sector could be brought within its mandate. The argument is that the private sector in the country is growing and there is the tendency for public sector corruption to influence the private sector; if the corruption fight is to be holistic and comprehensive then ‘safe havens must not be created within the private sector for it to mushroom and grow’.³⁶

Relationships with political parties

There is little or no direct evidence of the ACC making focussed efforts to work or partner with political parties in the country’s governance system. Since the introduction of the ACC, the opposition parties tend to view its leadership as political, especially if there are instances of backtracking on the call for high profile political cases to be investigated. Opposition parties have, however, accused Commissioner Joseph F. Kamara of impartiality after excessive media reports that he was caught in jubilation on behalf of an All Peoples Congress political party rally in November 2012.³⁷ The suspicion and mistrust in which the current commissioner is held is not a feature common to his predecessors, who were never readily associated with any parties at the time.

There would be a lot of positive gains if the commission were to forge and nurture an institutional relationship with political parties, especially those in the opposition, as they are more likely to give it support in the fight against corruption. The opposition would readily complement efforts of the ‘progressive media of the country’ and other transparency agencies such as the ASC and NPPA. This is mostly because the fight against corruption is a political tool and political parties in opposition often use it to inform the public about what is being lost due to poor service delivery and lack of ‘real development’ in the country; they do this to secure political advantage. In as much as the political intentions of opposition parties often motivate them to denounce corruption, if the ACC decides to work with them

³⁶ Interview, Reginald Fynn, director of investigations department, ACC, Freetown, 1 April 2014.

³⁷ Interview, development partner (anonymous), Freetown, October 2015.

in a structured manner, it can at least access information which can be processed in aid of executing its mandate. There is no such formal partnership as of yet.

Impact of broader institutional reforms

The ACC in the agenda for prosperity (PRSP) for Sierra Leone, 2013 highlighted the following as its focus:

to address the challenges faced by the commission (inadequate public support, weak collaboration and political will from MDAs to implement recommendations of system review, poor location and environment), government in collaboration with all stakeholders will:

- Strengthen the accountability regime within the overall governance structure;
- Deepen the recovery of government resources;
- Broaden the focus on the revenue generation sectors, such as the national revenue authority, mining and fisheries;
- Address wastages in government especially in local council operations;
- Invest in staff welfare and management in order to attract and retain more professionals, especially in the areas of investigations and prosecutions;
- Further decentralise through recruitment and expansion of ACC offices in Kono; and
- Take advantage of sector specific transparency initiatives, for example EITI in mineral, oil and gas, land... to implement improved accountability and transparency across sectors.³⁸

The ACC has signed up to the following:

- The United Nations Convention Against Corruption as an international framework which has been signed, ratified and domesticated and has aided the commission in ensuring ‘effective criminalisation of corruption’;³⁹
- The International Cooperation Act of 2008 which enabled the ACC to bring back a corruption suspect who was on the run from Gambia to Sierra Leone to face prosecution for various corruption related charges; and
- The ratification of the AU Instruments on the Fight Against Corruption.

There have been a number of major reforms aimed at reducing corruption in the country.

The national audit service, which was a former government department, has been upgraded to the status of a commission and the position of auditor general continues to

38 Government of Sierra Leone (2013) *The Agenda for Prosperity (PRSP) 2013–2018*. p. 113.

39 Interview, Alhassan Kargbo, public information officer, ACC, Gloucester Street, Freetown, 5 June 2014.

benefit from the constitutional protection under the constitution.⁴⁰ The new status of a commission has since allowed for the agency to be removed from the former bureaucratic control of the ministry of finance and economic development. There is autonomy in the human resources management, the operations (especially in the conduct of audit of MDAs, including the office of the president) and in issuing its report. The ASC's reports are required by its enabling legislation to be presented to the public accounts committee (PAC) in parliament which in turn shall lay it before the house, review the report and prepare its own committee report.

The space to function in an autonomous manner (especially to hire and fire), to support institutional capacity building and that of staff as well as to enter into MoU with integrity agencies and the preparation and presentation of its annual reports of audited MDAs and public service accounts has given the agency a lot of visibility and leverage to exercise both its constitutional and legislative mandate. The staffing with a handsome number of professional accountants has improved not only on the quality of its reports but equally so it's timely production and presentation to parliament. The era of delayed reports is gradually becoming a thing of the past.⁴¹

In terms of its contribution to the fight against corruption, an MoU was signed with the ACC which was for both entities to collaborate by supporting each other based on respective mandates. The ASC Act, however, is limiting as the suspected incidences of corruption can only be made part of its annual report to the PAC and so cannot present such information to the ACC in advance. In a similar manner, once an issue of suspected corruption emanating from the ASC's annual report is before parliament's PAC (with powers of a high court) the ACC has to wait before it can act on its content. If the ACC were to act on any suspected cases of corruption based on the ASC report, it could be in conflict with the law, for there could be implications for contempt. This is a legal-cum-constitutional quagmire that any serious inter-agency collaboration in the corruption fight should review and potentially address. Synergy and effective action are needed against instances of corruption incidences which tend to go unpunished for long periods as a result of legal bottlenecks.

Prior to the resuscitation of decentralised local government and the decentralisation reform in 2004 (after an absence of 32 years due to dissolution), there was known incidence of centralisation of state authority and resources. The creation of 19 local authorities has seen the de-concentration of the procurement function for the provision of most services. The NPPA Act (2004) requires all agencies that receive public funds to have procurement committees to undertake the function. In many cases, the functioning of these committees

40 Section 152 subsection 6(c) of the 1991 Constitution of Sierra Leone.

41 Deputy auditor general, Audit Service Commission, Freetown.

is subject to CSO monitoring and there are reports that corrupt cases have often been identified and brought to the attention of the ACC and the national police force. This is having a positive effect as the rampant nature of mis-procurement is now considerably reduced, with the various entities undertaking minute segments of the whole. For decentralisation to have the effect of promoting development (which should include control of corruption), as Yongmei Zhou of the World Bank puts it,

implies that the capacity of the following sets of institutions must be simultaneously enhanced as part of the process of institutionalising decentralised governance in any country; the national government, the local governments, citizen's groups, businesses and community action groups.⁴²

Since 1996 with the country's focus on public sector reform and good governance, there have been efforts on the part of the government working alongside its diverse development partners to ensure that non-state actors have a critical role to play in governance. There is a global trend of CSOs enhancing and promoting transparency and accountability in the conduct of state business. In Sierra Leone, the public financial management reform has provided for greater involvement of CSOs in capacity-building of citizens as well as institutional support to ensure increased participation in monitoring the processes of state fund management. There are various CSO initiatives such as: district budget oversight, procurement monitoring, and advocacy. These are producing results such as: raising awareness of corruption and corrupt practices, identification of cases of alleged corruption, whistle blowing, and demands that corruption-prone entities be investigated. In the area of budgets, the CSOs are monitoring not only sector allocations but also utilisation of funds to ensure that commensurate goods, services and works are provided through monitoring and advocacy, which lead to commissioning of studies and issuing reports. There have been recent reports on tax waivers and concessions as well as on mining agreements, which highlights procedural issues that require attention to avoid possible corruption taking place and causing loss of state resources.

The ministry of finance and economic development has, over the years, introduced a mechanism for tracking the utilisation of funds allocated to public institutions, both at the central (MDAs) and sub-national level (local councils). This mechanism is focussed on conducting comprehensive annual public expenditure tracking by independent assessors, through administration of questionnaires as well as demanding proof of expenditure and delivery of goods, works and services. The public expenditure tracking survey has disclosed major financial irregularities in the management of public funds; some of the major cases have been followed up by the ACC. The notion of an annual review of performance has

42 Joint African Institute (2006) Report on the Proceedings: Senior Policy Workshop on Local governance and Pro-poor outcomes in Africa. p. 9.

also been contributing to control of corruption, especially in the public service institutions of the country.

The PAC has a constitutional responsibility to ensure that all state resources raised and utilised are properly accounted for by receiving and spending entities in the public service. The ASC presents its annual report to this oversight committee in parliament as per legal requirement; the PAC then considers the findings and recommendations of the ASC report and is required to produce its own report and recommendations for addressing the issues raised. In the past, Sierra Leone defaulted in having the annual audits conducted and processed through the then auditor general's department, for which there was huge condemnation from development partners and CSOs. With the new ASC, however, the reports have been issued regularly, meeting international standards in quality, and the PAC has been tabling its own reports. The robust nature of the ASC's work and the strong recommendations issued tend to temper down corruption in the public service. There have been slight delays experienced on the part of the PAC to undertake the necessary procedures to pave way for the implementation of recommendations to address corruption-related matters. This has often led to tension between the ACC and PAC, as was realised over the 2014 audit report on the Ebola virus disease (EVD) funds, as well as in the delays in addressing the 2013 audit report (which featured issues that could have corruption implications for the agricultural and feeder roads sectors, both of which were pending as at the time of preparation of this report).

There is a recent EVD audit report which had findings that were of interest to the ACC but was sent to parliament instead. The ACC became aware of the ASC's findings in the EVD audit report and took the proactive step of engaging people and agencies suspected of involvement in corrupt practices; this resulted in a confrontation between the ACC commissioner and the majority leader in parliament (who is also head of government business). The ACC backed down from inviting the suspects and instead issued a statement that it was collaborating with parliament to study the report; the PAC was allowed to proceed with handling the report. At the end of its review, the PAC requested that some suspects refund money to the state, while others have been requested to provide missing supporting documentation to the ASC. The ACC, as at the time of finalising this report, did not issue a single indictment on the massive mismanagement of funds raised in the ASC audit report. The ACC has established links with non-state actors and has spaces for them on the advisory board, consulting with them in the preparation of the national anti-corruption strategy, and in a limited number of cases, signed operational agreements to work together on anti-corruption issues, especially education, prevention, and exposing of corrupt practices.

E. Conclusion

There are development practitioners who continue to question the relevance of an anti-corruption agency in Sierra Leone, since there are laws in the country that could address all related issues, if only politics could be taken out of the law enforcement. One interviewee who has held several high-ranking public sector positions in Sierra Leone indicated that malfeasance exhibited by the people knowing how to manoeuvre the system is a major factor in legislations' failure to curb corruption. This position was reinforced in this statement:

The enactment of an ACC law is to accept that the rule of law is not working and creation of independent corruption fighting agency in a country like Sierra Leone is creating other centres of power and opportunities for high level negotiated graft in society. The proper understanding of the causes of corruption may likely influence the approaches to resolution.⁴³

On the issue of the reference to inadequate funding of the ACC and its inability to operate as desired to effectively fight corruption according to its strategy, there were views expressed such as this:

The ACC can do something with the little they have, there is no need for an ACC which gives more excuses, which is trapped by political power as two years of the new audit service commission is more than 15 years of the ACC in terms of real commitment to expose and make recommendations to curb graft in the public service and by extension the country at large.⁴⁴

The ACC could be effective if certain factors were looked into, such as the appointment of the commissioners and advisory boards, which could be done by national open nomination instead of by the president. The annual report should be presented to parliament and the citizens should have a right to challenge the actions or inactions of the commission.

F. Recommendations

Government

The following legislative and institutional measures should form part of an overhaul of the national anti-corruption efforts:

- Review and update the 2008 ACA to make more explicit and stronger provisions empowering the commission to investigate the private sector, making the legislation more holistic and comprehensive.

43 Interview, a former senior presidential adviser (currently head of an international agency) in Sierra Leone, Freetown, 20 May 2014.

44 Ibid.

- Increase the budgetary allocation to the ACC as well as define and protect its portion of the annual national budget in legislation.
- Review the ACC's reporting obligations to ensure simultaneous reporting to the executive and parliament; this should be captured during the next revision of the ACA.
- Considering the fact that, under Sierra Leone law, an act of parliament supersedes a standing order of parliament, parliament and audit services must be urged to comply with the act of parliament and present evidence of corruption to the ACC immediately, rather than wait for it to be tabled before parliament. The investigative and prosecutorial powers of the ACC should not be undermined by parliament.
- Review the nomination processes for the appointment of the ACC commissioner, the deputy and key positions. In particular, consider including in the legislation some public participation (through vetting), or even advertising vacancies for the positions of the commissioner et al.
- Remove the current legislative restriction which dictates that ACC commissioners must have legal education, qualifications and experience. This limits the chances of the commission attracting other competent persons with strong strategic and leadership capabilities to head the commission and produce the requisite results.
- Seek harmonisation between in-country corruption-fighting instruments and those of the West African sub-region, for ease of collaboration and complementarity, as soon as practicable.

Anti-Corruption Commission

- Finalise, adopt and operationalise a national anti-corruption whistle blower protection policy and possibly upgrade to legislation, thereby strengthening the current provisions on whistle blower protection in the ACA. This will enhance the ACCs corruption fight, especially by bringing on board witnesses to support prosecutions – an issue which is a major constraint faced by the commission presently in Sierra Leone.
- Deepen de-concentration of ACC offices to district level offices and facilitate the de-concentration of limited administrative authority to reduce the burden of regular referral of minor issues to headquarters.
- Revisit partnerships with CSOs and the media with the purpose of further strengthening, so that the CSO and media actors could be increasingly engaged and provide facilitation support to the ACC in executing its statutory mandate.

- The ACCs current mode of operations permits time for its commissioner to conduct internal review of cases under investigation. This practice should be discontinued by introducing a panel system to undertake such review; incorporating a commissioner, director of investigation, and head of prosecutions.
- Develop operational guidelines and codes that are consistent with international principles and standards to regulate the conduct of senior officers (especially the commissioner and deputy commissioner), as well as to impact human resources management and confidentiality.
- Improve the management of confidentiality and evidence management, especially for major investigations. Expertise should be sought for protecting documents and technical innovations that could facilitate investigation and prosecution.
- The ACC should be bold in the area of enforcement. It should work with the court system to introduce strong punitive measures, with incarceration seriously considered as an alternative to fines, which will clearly demonstrate unfettered commitment of the ACC in executing its mandate under its enabling legislation.
- It needs to address weaknesses currently associated with weak investigations and prosecution of corruption related matters, through such measures as ensuring that more senior and experienced lawyers support the younger and less experienced lawyers in executing prosecutorial roles of the ACC, by the ACC.



With reportedly over USD100 billion lost annually through graft and illicit practices, combatting corruption in Africa has been challenging. However, laws and policies at the continental, regional and national levels have been promulgated and enacted by African leaders. These initiatives have included the establishment of anti-corruption agencies mandated to tackle graft at national level, as well as coordinate bodies at regional and continental levels to ensure the harmonisation of normative standards and the adoption of best practices in the fight against corruption.

Yet, given the disparity between the apparent impunity enjoyed by public servants and the anti-corruption rhetoric of governments in the region, the effectiveness of these agencies is viewed with scepticism.

This continent-wide study of anti-corruption agencies aims to gauge their relevance and effectiveness by assessing their independence, mandate, available resources, national ownership, capacities and strategic positioning.

These surveys include evidence-based recommendations calling for stronger, more relevant and effective institutions that are directly aligned to regional and continental anti-corruption frameworks, such as the African Union Convention on Preventing and Combatting Corruption (AUCPCC), which the six countries in this current report – Benin, Liberia, Niger, Nigeria, Senegal and Sierra Leone – have all ratified.