

# Is the Economic and Organized Crime Office Now the Umpire for Corruption in Ghana?

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## Abstract

The Economic and Organized Crime Office, (EOCO) is an agency designed to address critical national security and public health challenges. These include organized crime activities, official and institutional bribery and corruption among others. Despite this mandate, EOCO appears to have lost the ability to police the economy of Ghana in the face of rampant reported and actual cases of massive corruption in government institutions and agencies. This paper poses the perplexing question as to whether EOCO has already agreed to play the umpire role as official and institutional corruption insidiously becomes the new national sport, pervasive and ubiquitous. Under EOCO law, it is designed to operate on hunches and suspicions; it is to develop its eavesdropping and spying skills so as to be able to apprehend the wrong doer before he/she completes the commission of the malfeasance. It appears the mere suspicion, the mere hunch that a crime is about to be committed or is being committed seems to be enough probable cause to deplore the police and subpoena powers on the suspect and correlative persons as provided for in the Second Schedule to L.I. 2183 of the EOCO Operations. The Act and the LI are more concerned with sophisticated crimes, and aim to engage in pre-crime interventions, espionage of certain classes of people in civil society and continuous monitoring. To realize these ends, they are given extra-judicial powers such as search and seizure of personal communications and effects without the production of a warrant guaranteed by the 1992 Constitution of Ghana. It is therefore vexatious that corruption has taken over the image of Ghana in quick step against unprecedented swooping powers given to EOCO to breach; for the public good, the civil and constitutional rights of companies and citizens bent on committing serious crime.

## Keywords

Corruption, Economic and Organized Crime Office, Umpire, Procurement,

## Abuse of the Tender and Bidding Processes

### 1. Introduction

#### 1) The rationale for the promulgation of the EOCO Act of 2010

The key motivation for the promulgation of the Economic and Organized Crime Office, (EOCO) Act of 2010 (Act 804) and its Legislative Instrument, 2012 (L.I. 2183), was to bring an end to, or, at least, curb official and institutional corruption in Ghana (Norman et al., 2015). However, when one looks at the nature of corruption related stories being broadcast daily by both the electronic and print media in Ghana, or those being pursued in the various court houses in the country, one wonders whether EOCO is fit for the responsibility placed on it. The moral fitness of a public entity charged with watch-dog oversight responsibilities over a public conduct such as corruption is by design identified by that entity's responses to such exigencies. That entity should be seen to be categorizing wrong doers, collecting information on the wrong doers' conduct, auditing such information through the court system via prosecution and punishment without favor. If a watch-dog such as EOCO is not seen as being above political influences, cronyism and ethnicity considerations, such conduct collectively invalidates the motivations for the creation of the entity and its correlative legislations as delineated in the EOCO Act of 2010 Section 3:

The Functions of the Office Are to:

- a) Investigate and on the authority of the Attorney-General prosecute serious offences that involve:
  - i) Financial or economic loss to the Republic or an State entity or institution in which the State has financial interest,
  - vi) Other serious offences,
- b) Take reasonable measures necessary to prevent the commission of crimes specified in paragraph (a) and their correlative offences.

The Economic and Organized Crime Office appears to be now waiting on the proverbial field until a major player in the general stream of commerce commits a serious crime, which blows over in the news media. Like a referee on the soccer pitch, EOCO appears to then rush to the scene to conduct its investigations after the crime is completed? That is not EOCO's mandate! For example, on January 13<sup>th</sup>, 2015, the biggest drug (pharmaceuticals) storage and distribution outlet for the Ministry of Health and the Ghana Health Service, (GHS) the Central Medical Stores, was set on fire. It was discovered that the fire was set by GHS's own employees, who were suspected to have embezzled large amounts of money. Those implicated were under investigations but to cover up the extent of the crime they had committed, they engaged a security guard at GHS to ignite the Central Medical Stores and thus destroy the evidence against them. The damaged caused by the fire was in excess of USD\$81million. This included drugs purchased by the state for the treatment of Malaria, HIV/AIDS, Tuberculosis and some Ebola PPE's which were all kept at the Central Medical Stores for distribution across the country (<http://www.myjoyonline.com/news/2016/January-29th/report-cms-fire-was-deliberately-set-off-to-cover-up-the-ft.php#sthash.bNgnqnZk.dpuf>).

#### 2) Conducting Criminal Investigations

Criminal investigation is the tracking or tracing of those responsible for a criminal offence. It typically starts with a systematic and thorough investigation, with openness and willingness to consider all forms of information (Norman et al., 2015). This would be followed by a potential line of inquiry in order to develop a particular theory and fix on a particular suspect or a group. As investigative strategy, the case presented three main theories: a) straight arson investigation, b) obstruction of criminal investigation and justice, and c) allegation of embezzlement. The post fire investigation was conducted by EOCO and the Ghana National Fire Service. The fact is EOCO was not mandated to investigate arson cases, despite its broad investigative mandate on white collar crimes, financing of terrorism and money laundering. Although it can co-opt experts from the Fire Service with skills and knowledge in arson investigations, its primary obligation; no matter how broad it is; is not for post-event fire investigations. That is the job of the Central Intelligence Department of the Ghana Police, (CID) and the Bureau of National Investigations, (BNI) in collaboration with the Ghana National Fire Service. That is to say, the Principal Investigating agency for the Central Medical Stores fire was the Ghana National Fire Service. At any rate, at the completion of the investigations, EOCO produced a report which shows that it did con-

duct investigation into the crime of arson and even named the alleged perpetrators of the crime. In my view, EOCO should have decoupled its investigation from the Ghana National Fire Service and concentrated on these two theories a) obstruction of criminal investigation and justice, and b) allegation of embezzlement.

### 3) Mandate to conduct Pre-Crime Investigations

EOCO's mandate is to conduct pre-crime investigations and to detain the furtherance of the anticipated crime before it happens or while it is happening. To wait for the fire to consume the very public assets that EOCO and institutions like it were created to protect is a failure of EOCO's mandate.

Institutional and official corruptions are twin evils so dishonorably associated with Ghana and all the nations in Africa, their leaderships and bureaucracies (Norman and Aviiisah, 2015). Since the 1960s when the phenomenon of corruption became a regular feature of public accounts commission's agenda, there has been systemic national and international outcry against institutional and official corruption (Agbodohu & Quarmyne, 2014; Treisman, 2000; Van de Walle, 2001; Mauro, 1998; Kiltgaard, 1998). The condemnation of corruption in Africa is driven by the public's abhorrence of the audacious abuse of fiduciary trust by; typically; the members of the ruling government or political parties (Meng, 2004). Some of the corrupt activities engaged in at the state or national levels, as well as those at the market or street levels are blatant criminal acts of misappropriation of agency or sovereign funds. Such acts are perpetrated by those entrusted to safeguard such public assets for the public good (Norman & Aviiisah, 2015; Norman et al., 2014; Soreida et al., 2012; Van Rijckeghem & Weder, 2001; Abbink, 2002).

### 4) Potential Pre-Crime investigations into the Procurement Process

Another public activity which attracts a great deal of concern due to the economic burden it places on the national exchequer is the Procurement process. There is rampant abuse of the procurement process in Ghana so much so that there have been calls by civil society organizations and various opposition parties to revise the procurement process or reject it completely (Imani Ghana, 2016). The oversight of the procurement process is one of those critical national institutional activities that the Economic and Organized Crime Office Act was enacted. Although the Public Procurement Law, 2003, ACT 663 was meant to guide the process of procurement of goods and services in the public sector, the very fiduciaries of the Act have systematically thwarted the safeguards the law has provided against encroachment and abuse by fiduciaries and other agents.

Due to the persistent financial malfeasance associated with the procurement process, EOCO should have already made procurement related investigations its reason to exist. The public sector is probably the biggest consumer market in most developing nations where the Central and Municipal governments are the biggest employers. The procurement law was designed as the first responder mechanism in the fight against institutional and public corruption. It was meant to ensure transparency, probity and fairness in the procurement of recurrent consumables such as stationeries, office equipment, new public works, consulting services and others. The acquisition of these goods and services were to be effected through competitive bidding process for all subvented institutions where the face value of a given purchase or procurement was beyond a certain threshold. The presumption was that through the more competitive, arm-length tendering and bidding mechanism; the state would obtain the best value for the public funds earmarked for such purchases (Akazili et al., 2008).

Since the bidding was designed to be 'blind' it was hoped biases and the purposeful massaging of the quotations and pro forma invoices (under invoicing and over-invoicing tactics), would be at best eliminated, or at worst, minimized. That is to say, the winning bidder only wins for providing the best price, at the expected time, with the best quality product or services to be delivered at a future date or time. Due to the active and deliberate machinations of agency or institutional workers who are engaged procurement process, many experts agree that Ghana's procurement law has become more an albatross than a guiding rod against the realization of the goals and aspiration of the Procurement Act. It has become more expensive to shop or buy under the procurement law than it cost to buy the same goods and services on the open market.

The hemorrhaging of the national coffers through the procurement process is being carried out under the clear oversight of the Economic and Organized Crime Office. This is a negative habit of procurement which EOCO as a national institution is very much aware of or should have been aware of. This is because, under the current design of the law, the procurement entity (ministry, government agency or department) is largely in charge of the processes leading to the bidding, during the bidding and finally at the award or announcement of the winner of the bid. At the institutional levels, i.e.: ministry, agencies and departments, subvented institutions are to have a procurement unit in their organizations that manage and facilitate all procurement activities. It is the procurement entity that sets up its own Tender Evaluation Committee. The process is fraught with seductive gifts or

promissory notes of future big gifts to those who sit on the various institutional procurement boards. There is also subterfuge such as multiple related companies bidding on the same tender with different quotes and offers so as to sabotage the competition.

#### **5) Why Sole-Sourcing should be a suspicious activity**

In exceptional cases, and in emergency situation, the procurement law allows the award of certain contracts without a competitive bidding process. These would typically involve either national security needs or in cases where specific expertise is required (which only one entity may possess) or where the contract has to be expedited due to emergencies. The procurement board must however authorize such processes. This is called sole-sourcing. The sole-sourcing provision has been abused and misused by greedy and corrupt officials of respective ministries, agencies and departments that are criminally motivated. The Procurement Board appears to turn a blind eye to such conduct. What it boils down to is that, perhaps, members of the Board do not seem to be morally fit to oversee the sole sourcing aspect of the Procurement Law. The Board appears to willy-nilly allow sole-sourcing contracts without tender to be awarded at the most disadvantageous quotations and prices to the State compared to the prices at the open market. “Almost every major scandal involving the state over-paying for a contract involved sole-sourcing. In a ministerial report on Ghana Youth Empowerment and Entrepreneurial Development Agency, (GYEEDA) arguably Ghana’s biggest corruption scandal in recent times, it was noted that the contracts, which were all sole-sourced, were heavily lopsided towards companies owned by just two individuals with connections to the presidency. It is estimated that contract sums to these individuals and their companies were in excess of GHc 150 million (<http://www.modernghana.com/news/669648/imani-alert-institute-of-public-projects-excellence-abett.html>). The stealing of sovereign funds through official but organized crime activities does not augur well with good governance and responsible populace (Norman & Aviiisah, 2015; Agbodohu & Quarmyne, 2014). Where was EOCO when these activities were happening?

## **2. Conclusion**

EOCO is, by the power vested in the parliament of Ghana to make laws to govern the affairs of the land, given extra-judicial powers such as search and seizure of personal communications and effects without the production of a warrant guaranteed by the 1992 Constitution of Ghana. While this paper does not endorse encroachment of any kind on the civil liberties of the population, except for the public good and with due process, EOCO has unprecedented opportunity to use its mandate to help Ghana rid itself of the corruption virus disease from its socio-economic and political lives. If only EOCO would take bold decisions and drop what appears to be a rapidly evolving pusillanimous investigative stands towards politically connected individuals, but conduct its affairs without fear or favor, then EOCO would be a grand national institutional and not the lily-livered agency it now seems to be.

## **3. Recommendation**

1) To the Parliament of Ghana:

In order for EOCO to rise up to the responsibilities vested in it, its organizational structure has to change. Placing EOCO under the Attorney General’s office was a sure way to politicize the entity even before it started the operationalization of its mandate. All agree that the Ghanaian Attorney General’s Office is subject to political control by constitutional design. By placing an entity which is supposed to stop activities which are engaged in even by all branches of government, including the executive was to cripple EOCO from the start.

2) To the Executive:

If Ghana is serious about curbing corruption, EOCO has to be allowed to do its work. Its Chief Executive Officer should have the same terminal appointment as Judges to free them from political control;

3) To EOCO’s Management:

a) The mandate of EOCO allows it to even hold suspected entities of serious crimes in jail pending investigations for a limited period of time. This is so as to protect vital evidence and documents as well as assets. These provisions were placed in the Act establishing EOCO to address specific national challenge and should be deployed strategically to achieve maximum results in serious crime investigations and in corruption cases.

- b) EOCO seems to be too timid and fearful of the powers vested in it. Management needs to drop the hesitancy and act decisively with patriotism and messianic zeal to salvage Ghana from the corruption virus disease that has so much infested the people, departments, agencies and even ministries.

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