

**COMBATING PUBLIC SECTOR CORRUPTION IN GHANA: THE CASE OF THE
PUBLIC PROCUREMENT ACT (2003) ACT 663**

BY

PABIA ISAAC



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DECLARATION

I hereby declare that this thesis is the result of my own original work and that no part of it has been presented for another degree in this university or elsewhere. I further declare that with the exception of quotes, ideas and analysis attributed to acknowledged sources, this study is the result of research dutifully conducted under the supervision of my supervisor, Dr. Emmanuel Debrah. I am solely responsible for any errors which may be identified in this work.

.....

PABIA ISAAC
(CANDIDATE)

.....

DATE



.....

DR. EMMANUEL DEBRAH
(SUPERVISOR)

.....

DATE

ABSTRACT

This study sets out to assess the capacity of the Public Procurement Act, 2003 (Act 663) to combat public sector corruption in Ghana. The study notes that the Act has encouraged competition among bidders for public contracts and enhanced the level of transparency at the tendering process. Structures have been created to harmonise the procurement process to ensure judicious use of public funds. The law has standardized procurement procedures in the public sector. However, the study observed politicisation in the procurement process and manipulation of the tendering process by public officials and contractors. Procurement entities rarely adhere to guidelines set by the Act. Poor contract management, weak sanctioning regime and improper disposal of assets have undermined the capacity of the law to deal with corruption in public organisations. The use of sole sourcing by public institutions has aided corruption rather than stopping it. To address these shortcomings, the mechanism to strengthen contract supervision and monitoring will prevent shoddy works and the delivery of low quality goods. Also, de-politicisation of the procurement process would ensure that competent people are hired by politically independent and neutral organisation such as the Public Services Commission to handle the process. Guidelines for sole sourcing and disposal of assets should be enforced by the Public Procurement Authority to check their abuse by public sector institutions.

DEDICATION

To my parents Mr. Debidanegarah Welaga and Nma Balodi Welaga

And my late cousin Raymond Aziiba, for his inspiration to many in Kayilo-Paga.

And to my lovely wife Janet Tetteh and daughter Ingrid Welaga.



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LIST OF ABBREVIATIONS

AFRC	ARMED FORCES REVOLUTIONARY COUNCIL
AU	AFRICAN UNION
CDD	CENTRE FOR DEMOCRATIC DEVELOPMENT
CDRs	COMMITTEE FOR THE DEFENCE OF THE REVOLUTION
CHRAJ	COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE
CIPS	CHARTERED INSTITUTE OF PURCHASING AND SUPPLY
CPI	CORRUPTION PERCEPTION INDEX
CVA	CORRUPTION VULNERABILITY ASSESSMENT
CVC	CITIZENS VETTING COMMITTEE
DACF	DISTRICT ASSEMBLY COMMON FUND
DAs	DISTRICT ASSEMBLIES
EOCO	ECONOMIC AND ORGANISED CRIME OFFICE
ETC	ENTITY TENDER COMMITTEE
FAA	FINANCIAL ADMINISTRATION ACT
FAT	FINANCIAL ADMINISTRATION TRIBUNAL
FBS	FIXED BUDGET SELECTION
GACC	GHANA ANTI-CORRUPTION COALITION
GII	GHANA INTEGRITY INITIATIVE
ICT	INTERNATIONAL COMPETITIVE TENDERING
IMF	INTERNATIONAL MONETARY FUND
LCS	LEAST COST SELECTION
MDAs	MINISTRIES, DEPARTMENTS AND AGENCIES
NCT	NATIONAL COMPETITIVE TENDERING
NEPAD	NEW PARTNERSHIP FOR AFRICAN DEVELOPMENT

NIC	NATIONAL INVESTIGATION COMMITTEE
NLC	NATIONAL LIBERATION COUNCIL
NRC	NATIONAL REDEMPTION COUNCIL
OECD	ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
PDCs	PEOPLE'S DEFENCE COMMITTEES
PNDC	PROVISIONAL NATIONAL DEFENCE COUNCIL
PNP	PEOPLE'S NATIONAL PARTY
PPA	PUBLIC PROCUREMENT AUTHORITY
QBS	QUALITY BASED SELECTION
QCBS	QUALITY AND COST BASED SELECTION
RFP	REQUEST FOR PROPOSAL
RFQ	REQUEST FOR QUOTATION
RT	RESTRICTED TENDERING
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SBCQ	SELECTION BASED ON CONSULTANT'S QUALIFICATION
SFO	SERIOUS FRAUD OFFICE
SMC	SUPREME MILITARY COUNCIL
SSS	SINGLE SOURCE SELECTION
TEP	TENDER EVALUATION PANEL
TI	TRANSPARENCY INTERNATIONAL
TRB	TENDER REVIEW BOARD
UNCAC	UNITED NATIONS CONVENTION AGAINST CORRUPTION
UNCITRAL	UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
WDCs	WORKERS DEFENCE COMMITTEES

CHAPTER ONE

INTRODUCTION AND CONCEPTUAL FRAMEWORK

1.1 The Background to the Study

Over the past two decades, corruption has dominated discussions at global and national forums. The growing international interest in corruption and the need to control it is based on a consensus among all groups that the phenomenon must be eliminated from society (Gyimah-Boadi, 2002:1). Hence, discussions at every forum have centred on the debilitating effects of corruption on national development. For instance, the United Nations General Assembly has put corruption on top of its agenda and has adopted several resolutions on corruption including resolutions 54/205 of December, 1999 and 56/186 of December, 2001 among others. In order to discourage corruption, the UN earlier resolutions culminated in the adoption of United Nations Convention Against Corruption (UNCAC) by General Assembly Resolution 58/4 in October, 2003.

Similarly, Corruption also featured prominently at several International Conferences such as the one on Financing Development held by the UN in Monterrey, Mexico in March 2003. Paragraph 13 of the consensus (known as Monterrey Consensus) which was reached at the Conference recognised corruption as a serious impediment to effective resource mobilisation and allocation. It also recognised corruption as a means of diverting resources from poverty eradication activities and sustainable economic development.

In 1996, the World Bank President James Wolfensohn in an address to the Annual Meeting of Board of Directors of the Bank, described corruption as a cancer that need to eradicated. The speech opened a new chapter in the discussions on corruption in the international arena and within the International financial institutions. The speech drew attention to the corrosive

effect of corruption on development. The bank has since taken steps to assist member countries to reform their institutions to ensure transparency and accountability.

At the national level, corruption has often found space in political discourses. It has been at the heart of the political parties election campaigns since 1992. Some political commentators have linked the defeat of some incumbents to the prevalence of corruption in their governments. In Senegal, the defeat of Abdoulaye Wade's government in March 2012 elections is partly attributed to corruption. According to Arieff (2012:4), "official corruption reportedly rose under Wade. Senegal's ranking on the Transparency International's Corruption Perceptions Index dropped from 71 in 2007 to 112 in 2011, out of 182 countries assessed." This was further worsened by high profile cases of corruption that were not dealt with. A case in point is the alleged involvement in procurement related corruption by Wade's son, Karim who was in charge of preparation towards the hosting of Organisation of the Islamic Conference Summit in 2008 (Arieff, 2012).

The discussions on corruption on the international and domestic scenes have led to the unanimous conclusion that there is the need to root out it from society. The debilitating effect of corruption on resource mobilisation for development, the cost of doing business, the achievement of the millennium development goals, effectiveness of aid and legitimacy of government has made it a priority for all to fight the menace. Corruption also distorts public choice, affects service delivery, contributes to failure of public policies and programmes, and signifies governance failure at country level (Ayee, 2000a; Søriede, 2002; Shah and Schater, 2004).

Due to the devastating nature of corruption, several international and domestic efforts have been made towards arresting this social canker. Anti-corruption has therefore become a checklist of good governance. Apart from the United Nations Convention against Corruption

(UNCAC) which entered into force in December 2005, there are other international conventions which seek to prevent and control corruption. These include the Inter-American Convention against Corruption, APEC Course of Action (COA) on Fighting Corruption and Ensuring Transparency, AU Convention on Preventing and Combating Corruption and Southern African Development Community (SADC) Protocol against Corruption. All these instruments have a common aim of promoting and strengthening the development of mechanisms and policies that would prevent, detect and punish corruption (Fraser-Moleketi, 2005).

Transparency International, the World Bank, Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF) have placed the fight against corruption high on their agenda. Pieth (1997:127) observed that “the World Bank and the IMF have tried more general approaches, especially making loans conditional on structural reforms with the goal of reducing corruption.” The OECD also adopted a convention that seeks to criminalise bribery abroad. Transparency International has organised conferences and published anticorruption materials. Among its flagship anticorruption programmes is the annual Corruption Perception Index (CPI).

African countries have been encouraged to pursue anti-corruption activities to ensure greater accountability and transparency in public spending. To this end, the African Union adopted the AU Convention on Preventing and combating Corruption which enjoins member states to take steps to prevent corruption and ensure proper management of public resources. The New Partnership for African Development (NEPAD) is also committed to strengthening parliamentary oversight and adopting effective measures to fight corruption and improving corporate governance. The African Development Bank following the footsteps of the World Bank and IMF has embarked on fighting corruption by attaching conditions to its lending operations (Gyimah-Boadi, 2002).

Since the early post-colonial days, African countries at the national level have adopted and implemented a range of anti-corruption strategies. These include probes, Commissions of Inquiry, punishing offenders including executions, public sector reforms and enactment of anti-corruption legislations. In some cases these strategies have failed woefully, hence corruption has become endemic in some African countries.

Public procurement usually involves a huge expenditure and is particularly prone to corruption by dishonest politicians and bureaucrats (Pope, 1999). These people tend to consider their own good instead of the public good. In other words, the public good which public procurement is supposed to achieve is sacrificed for parochial gains by dishonest politicians and officials.

According to Transparency International (2006), procurement of goods, works and services by public bodies alone amounts to between 15% and 30% of Gross Domestic Product (GDP), in some countries even more. Corruption in procurement therefore has serious repercussions on the delivery of service to the public. Corruption in procurement increases the cost of goods and services by 20% to 25%. The UN Convention against Corruption (UNCAC) therefore deals with public procurement under article 9 of the convention.

Article 9(1) of the UNCAC specifically deals with issues relating to public procurement based on the principles of transparency, competition and the use of objective decision-making criteria. This involves the adoption of procurement system which ensures a timely and effective public distribution of procurement related information; the establishment and availability of the conditions for participation in procurement exercise; the establishment and public availability of selection criteria; effective system of review and appeal of procurement related decisions; and adoption of special rules for staff of procurement entities (UN, 2010:6).

Again, the United Nations Commission on International Trade Law (UNCITRAL) model law on procurement of goods, construction and services was adopted in 1994. The UNCITRAL model law provides a guide for countries in fashioning their own Procurement laws to ensure that they conform to international best practice. Public procurement has been given much attention in the international efforts to fight corruption due to the enormous public resources involved and its susceptibility to corruption.

Ware et al (2007:296) posited that the susceptibility of public procurement to corruption is further exacerbated by the relatively high degree of discretion that public officials, politicians, and parliamentarians typically have over public procurement programmes in comparison with other areas of public expenditure. The Public Procurement Act allows some amount of discretion in sourcing suppliers. This discretion may lead to abuse on the part of the public official charged with the responsibility to ensure that the public interest is served.

1.2 The Statement of the Problem

Public sector corruption is regarded as a major problem in Ghana. Several surveys have been conducted in Ghana and the results have always revealed that corruption is still endemic in the country's public sector (CDD, 2000; GII, 2011). The performance of Ghana on Transparency International's annual Corruption Perception Index has not seen any remarkable improvement.

There are several international efforts which seek to prevent and fight against corruption. Within the new paradigm of fighting corruption which involves legal instruments, there are several international conventions on corruption. These conventions in general seek "to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; facilitate and support international cooperation and technical assistance in

prevention of and fight against corruption; promote integrity, accountability and proper management of public affairs and public property” (UN,2004).

In Ghana, the fight against corruption has taken several forms, starting with the “dawn Broadcast” by Dr. Kwame Nkrumah, various commissions of enquiry including Anin Commission of 1974, to the execution of public officials alleged to have committed offences amounting to corruption during the infamous “house cleaning” exercise by the AFRC led by Jerry John Rawlings.

After resorting to these methods of fighting corruption with limited or no success, the new thinking is that legal instruments would bring about the needed change. Hence, since the inception of the Fourth Republican Constitution of Ghana, numerous legislations aimed at curbing corruption have been enacted. The Procurement Act is one of such legislations. The question therefore remains whether or not these legislations are achieving their desired impact with regards to fighting corruption.

Public procurement is one area that commands huge government expenditure in the acquisition of goods and services for public benefit. The failure of the Ghana Supply Commission Law (P.N.D.C.L 245) in streamlining public procurement to achieve value for money coupled with numerous loopholes that offer opportunity for public officials to engage in corrupt practices, called for reforms in the public procurement process. This culminated in the enactment of the Public Procurement Act (Act) 663 in 2003.

According to Ware et al (2007:308), to minimise the risk of corruption, procurement systems need to be examined for potential weaknesses that corrupt individuals can explore. The Procurement law has been in existence nearly a decade now, yet there is growing public outcry of high incidence of corruption. Media reports and court cases are flooded with cases bothering public sector corruption, including embezzlement, inflated contracts and non-

adherence to procurement processes including contract abrogation which result in judgement debts. It is therefore necessary to ascertain the contributions of the Procurement Act to the fight against public sector corruption; and the potential vulnerabilities.

1.3 Research Questions

The critical questions to examine are:

First, what is the role of the Public Procurement Act in combating corruption in Ghana?

Second, what structures and processes are created under the Act to help fight corruption?

Third, are the structures and processes under the Act capable of fighting corruption?

Fourth, what should be done to make the law active to deal with the prevalence of corruption in Ghana?

1.4 Objective of the Study

The objectives of this study are four fold.

First, it finds out how the Public Procurement Act has contributed to fighting corruption.

Second, it identifies the weaknesses in the Public Procurement Act.

Third, it examines the impact the Public Procurement Act has made on the fight against corruption in Ghana.

Finally, it recommends measures to improving its efficiency to achieve the purpose for which the law was passed.

1.5 Significance of the Study

The Public Procurement Act which was passed in 2003, aims at harmonising “the process of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner”(Republic of Ghana,2003a).

Procurement has been identified as one area that usually involves huge expenditure and open to abuse, therefore anticorruption activities need to be focused on public procurement (Ware et al:2007:308).

The study therefore is very important and timely in the quest to fighting procurement related corruption. The study will also contribute to shaping procurement policies to promote transparency and accountability which are essential elements in any anti-corruption drive.

The study will also contribute to the body of knowledge in the area of anticorruption and public procurement in Ghana.

1.6 Literature Review

This section reviews relevant literature on different perspectives on corruption and causes of corruption. Literature on the cost and benefits of corruption which basically discusses the revisionists and moralists argument on corruption is also reviewed. The section also reviews literature on public procurement and corruption and general literature on strategies for combating corruption.

1.6.1 Theoretical Perspectives on Corruption

The term corruption has been subjected to different definitions by different scholars (Gbenga, 2007; Ackerman, 2004 and Tanzi, 1998). Corruption exists in all spheres of life and this has given rise to the varied definitions. Due to the complex nature of corruption, there is no single acceptable definition; however, there seem to be consensus on which practices constitute corruption

Klitgaard (1998) defines the term as monopoly of power, combined with discretion and absence of accountability. The resultant formula therefore becomes $C=M+D-A$, where C is corruption, M is monopoly, D is discretion and A is accountability. In a situation where public officials (be they elected politicians or bureaucrats) hold the monopoly to allocate public resources through daily decision making or procurement activities, with a lot of discretion to exercise and less accountability, then corruption is bound to occur.

The World Bank and Transparency International define corruption simply as “the misuse or abuse of public office for private gain”. The term “misuse” suggests a standard, (Ackerman 1997) invariably legal. Therefore, corruption occurs when public officials “break the law in pursuit of advancing their personal interest” (Khan, 2006:3). The above definitions however suggest that corruption only take place in the public sector, but corruption does also occur in the private sector. The element of ‘private gain’ also suggests that corruption benefits the person who perpetuates it but it is not always the case.

Corruption on the part of the public official may not yield personal benefits but may be yielding benefits to one’s party, tribe, friends, class (Tanzi, 1998:564) or a group to which one owes allegiance. Corruption can therefore occur not for direct benefit of the one engaging in the act. It may be for the benefit of a social class or for the maintenance of tribal or kinship relationship outside the working environment.

Khan (1996) and Gbenga (2007) offered more comprehensive definitions that cover corruption in both the public and private sector. According to Khan (1996), corruption is an act which deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding-motive such as wealth, power or status. Gbenga (2007) described corruption as the conscious attempt or deliberate diversion of resources from the satisfaction of general interest to that of self (personal) interest. Corruption is therefore an act that is intentionally perpetuated to advance a certain cause that is different from the general interest of society or an organisation for which resources have been allocated.

Scholars have over the years tried to come out with a typology of corruption to help explain the complex nature of corruption. In one such typology offered by Alatas (as cited by Heywood), he distinguishes between transactive corruption which involves the mutual

arrangement of donor and recipient they both pursue to their advantage; and extortive corruption which entails some form of compulsion usually to avoid harm being inflicted on the donor or those close him/her (Heywood, 1997:420). According to Alatas, other types of corruption revolve around these two. Other types of corruption described by Alatas are defensive, investive, nepotistic, autogenic and supportive corruption.

The defensive corruption is inversely related to the extortive type of corruption whereas the investive corruption involves the offer of goods and services without direct link to a particular favour but with the view of a probable required favour in the future. The nepotistic corruption involves the unjustified opportunity of friends and relatives to public office or giving them favoured treatment. Autogenic corruption involves just an individual who profits from pre-knowledge of a given policy outcome whereas supportive corruption describes actions undertaken to protect and strengthen existing corruption, often through the use of illicit plot violence(*ibid*, 1997:420). It is significant to note that a corrupt public office holder may be engaged in one or more of these types of corruption.

Jenkins Rob (2007) offers a more comprehensive distinction of types of corruption. He distinguished between petty and grand corruption, Systemic and personalised corruption, and Positive and Negative Corruption. Petty corruption consists of the small-time bribes exacted by clerks and other minor officials whereas grand corruption covers such transactions as commissions paid to high level decision makers who award defence contract.

Systemic corruption is a corruption that is all but built into official roles (in the sense that illicit income is required by official in order to earn back the amounts expended in order to get themselves appointed to such lucrative posts). Personalised corruption refers to instances in which a rogue official exploits a one off opportunity for illicit gain.

Positive corruption occurs when an official actively seek personal gain from his or her public position whereas negative corruption (undue influence) occurs when an official makes biased decisions in order to avoid incurring the wrath of a powerful actor, such as a politician, an official higher up the chain of command, or a private business person with connections sufficient to get the official transferred, reprimanded, or even charged with a crime if he or she resist the person's demand (Jenkins,2007:130).

Jenkins explains that distinction between systemic and personalised corruption is very important. The reason according to him is that “in local settings, systemic corruption (in which an official has little choice but to take a bribe) can become fairly legitimised when people begin to sympathize with officials who find themselves in such situations”. He argues that a situation like this makes it difficult to mobilise the people in an anti-corruption drive.

1.6.2 Causes of Corruption

Any attempt to combat corruption without finding out the root causes will be an exercise in futility. Scholars have therefore devoted their time to investigate the causes of corruption. A myriad of causes have been cited by scholars of the subject. Very often these causes are classified into political, social, legal, institutional and economic causes. Another classification simply categorises the causes into demand side and supply side causes. Some of the most cited causes of corruption in Africa are discussed below.

Neo-patrimonialism, which Kempe describes as “a perverse system that awards economic and political benefits to politicians and their followers” (2000:2), is one of the most cited causes of corruption in Africa. Neo-patrimonialism operates through clientelism which survives on personal favours by a person in authority (either the politician or the bureaucrat). This affects public decisions and influence appointment to public service. Loyalty to one's ethnic group, community, party and family becomes the main qualification to appointment

into public office instead of meritocracy. As Kempe points out, in such a situation, “the politicians and the bureaucrats forged a dependent patron-client relationship through which administrative decision-making occurred” (2000:18). The end result is that people who are not qualified are appointed to positions they cannot handle but continue to draw salaries from the public purse.

State intervention in the economic activities and its regulatory power, though at times may be necessary, is also cited by scholars as a cause of corruption. Eldgado and Van Dijk (2003) pointed out that regulation is one of the many key areas where interests of business people and regulators stand in sharp contrast and many opportunities and justifications for corruption exist.

Corruptions have been blame on the traditional social relations, customs and traditions of African societies. The extended family system and the culture of gift giving are often cited as having potential of leading to corruption. According to Osei-Hwedie and Osei-Hwedie, (2000), though the traditional society does not condone cheating and stealing, the distinction between a gift and bribe is a bit difficult since it depends on the circumstance and the intent for which it is given. In Annie Jiagge Commission Report of 1969, it was conceded that public officers are entitled to gifts just like all other citizens of the state. However, the report added that “public officers have a duty to be more careful with the receiving of gifts” (Ghana, 1969b).

For the purpose of this work, the classification of the causes into demand side and supply side causes will be helpful. The demand side causes of corruption are those that create opportunities or incentives for the public official to extract bribes from the private firms or people who demand services from them, or engage in any form of corrupt practices. Mensah, Aboagye, Addo and Buatsi (2003) in their work ‘Corporate Governance and Corruption in

Ghana: Empirical Findings and Policy Implication’ listed some of the conditions that create incentives on the demand side for corruption as follows:

“... administration of government regulations e.g. the issuance of licenses and permits, control over government procurement, control over hiring, promotion, and firing of civil servants, control over access to public services and resources, control over auditing and tax administration, poor supervision, over-politicization of the public service, and not least, poor remuneration and lack of incentives” (2003:9).

Mensah et al (2003) also noted that the fundamental cause of corruption on the demand side is delays in the delivery of public services. Such delays create an incentive for public officials to demand what is known as “speed money” from those who cannot endure the delay in accessing public services.

The issue of poor remuneration and lack of incentives for public servants is also cited as accounting for public sector corruption. It is argued that when salaries are low “the officials are more tempted to use their positions to raise income from those they deal with” (Osei Hwedie &Osei Hwedie, 2000:46). According to Emile Short (2009), petty corruption by junior staff is pervasive and is attributable, by many, to low salaries by civil servants. Therefore, it is necessary to consider making rewards and remuneration more attractive for public servants in order to make it less desirable for them to engage in unethical behaviour (Osei Hwedie &Osei Hwedie , 2000:53) Although this argument may be true to some extent, it is not an assurance that when salaries are attractive, the corrupt official will stop being corrupt.

On the supply side are the private businesses and individuals who seek services from the public sector. Private sector firms try to influence public decisions including decisions on award of contracts in their favour due to the immeasurable benefits they stand to gain. Mensah et al (2003) sums it up as follows:

“Supply side corruption is driven by rent-seeking entrepreneurs seeking to exploit political influence to their benefit. Business organizations and their officials influence public officials to make decisions that are more favourable to them than to the general body of the citizenry. Such influences may be monetary or non-monetary and can take the form of political campaign contributions, trips abroad, paying school fees for wards of public officials, or physical cash paid directly to the officials” (2003:9).

Corruption can be initiated by both the demand side (Politicians and Bureaucrats) and the supply side (Private businesses). On the demand side, politicians and bureaucrats can create the conditions that will frustrate people who will like to access their services and cow them into paying bribes for the services. On the Supply side, the private individuals, companies and organisations offer various incentives to the politicians and bureaucrats in order to gain favourable decisions from them.

1.6.3 Effects of Corruption

Corruption has been described as ‘evil’ in most of the literature on the subject, but is corruption entirely evil? This question has resulted in a debate between two schools of thought - the moralists and the revisionists.

The moralists such as Ackerman, Lambsdoff and Mauro argue that “corruption is economically harmful and politically amoral or even immoral” (Montinola & Jackman, 2002:148) because it undermines growth, distorts allocation of economic benefits favouring the haves over the have-nots and leading to less equitable income distribution (Ackerman, 1997). Stapenhurst Rick and Shahrzad Sedigh (1999) explain the position of the moralists in the following passage:

Indeed, corruption is damaging if only for the simple reason that it distorts choice. In the public realm, decisions that should be made for the social good, with due regard to the norms of public sector efficiency and sound governance, are instead based on considerations of

private gain, and with little attention paid to the effects on the wider community. Corrupted decision making distorts the public expenditure process, leading to the funding of inappropriate megaprojects. In effect, public decision making is sold to the highest, best-connected bidder, thereby diverting public funds from more efficient uses and reducing the resources available for legitimate and more productive public use. Corruption also damages the economic life of a society (1999:3).

On the other hand, the revisionists argue that corruption is not evil as the moralists want us to believe. According to revisionists such as Huntington, Leff, Leys Bailey Beck and Maher, corruption has political, social and economic benefits. Huntington and Leff argued that corruption facilitate economic activities of firms in an economy where bureaucratic delays and rigid regulations slow down action. Firms or private individuals seeking to do business which faces strict regulation or licensing by government department or bureaucracy, can easily get around the regulations through bribes or what is known as “speed money”. Corruption therefore serves as a lubricant that oils the wheels of the otherwise slow economies.

Stapenhurst Rick and Shahrzad Sedigh offered a moralists response to this revisionists argument. They argued that although some argue that it can help grease the wheels of a slow-moving and overregulated economy, there is little doubt that corruption increases the cost of goods and services, promotes unproductive investment in projects that are not economically viable or sustainable, contributes to a decline in standards (for example, in construction and transportation), and can even increase a country's indebtedness and impoverishment (1999:4). The revisionists point out other key benefits of corruption as according efficiency enhancing, capital formation and political integration.

Most of the arguments put forward by the revisionists have been strongly contested by the moralists. For instance, the view that corruption can enhance efficiency of the bureaucracy through acceleration of administrative procedures for those willing to pay bribes or “speed money” (Buscaglia & Van Dijk, 2003) is dangerous to say the least. Public officials can deliberately create delays in the delivery of services which will in turn create avenues for extortion of bribes from individuals and firms who desire such services. Also, whenever a bribe is paid to get ahead of the bureaucratic queue, another person suffers further delay in accessing the desired services. As Heywood (1997) posited that “if a service is provided more quickly to one corrupt purchaser, then another equally, deserving potential recipient will be forced to wait: the advantage of one represents a disadvantage to the other.”

A cost-benefit analysis of corruption will point out that what is perceived as benefits of corruption actually come with serious repercussions on social, economic and political development of society. The serious repercussions that corruption has on society have made it an unwelcome phenomenon everywhere on the globe. It is therefore not surprising that corruption continues to attract attention both at international and national stage.

1.6.4 Public Procurement and Corruption

Procurement related corruption has been given attention in development literature due the enormity of harm it can cause society. Public procurement usually involves huge expenditure and demands utmost attention. The World Bank, Transparency International, and OECD have developed guidelines and handbooks aimed at curbing procurement related corruption.

According to the TI (2006:13), procurement of goods, works and services by public bodies alone amounts to between 15% and 30% of Gross Domestic Product (GDP), in some countries even more. Procurement corruption therefore has serious repercussions on the delivery of service to the public. Corruption in procurement increases the cost of goods and

service by 20% to 25% (T.I.2006:13). In the face of high demand for services by the public and the huge development deficits in Ghana as well as other African countries, the percentage increase in cost of goods and services due to corruption in procurement represents a drain on the public purse.

Public procurement generates an interaction between public officials on one hand and the private firms and in some cases state-owned companies on the other hand. Competition for contracts is therefore generated among the private firms. This constitutes an incentive both on the demand and supply sides for corruption to take place. This view was strongly articulated in the following statement by Emile Short:

Government contracts are invariably given out to private enterprises, both domestic and international. There is stiff competition for these contracts, and therefore the incentive to offer a bribe to win the contract is extremely high. (2009:17)

Public procurement corruption take different forms, most of which are complementarily used to make it difficult for such corrupt practices to be detected. Procurement related corruption according to Ware et al, (2007:299), includes kickbacks, bid rigging, bid rotation or collusion among bidders, lowballing and the use of front companies. These corrupt practices in public procurement are committed by different actors involved in the procurement process. According to TI (2006), actors in procurement related corruption include a) Officials (representing a public authority), b) Bidders- comprising suppliers, contractors, consultants and sub-contractors, c) Agents- other middlemen, consultants, joint venture partners, subsidiaries etc. d) Politicians

It is worth noting that corruption can occur at each stage of the procurement process, starting from need assessment or project identification stage, through execution stage to evaluation or audit stage. This makes it difficult to insulate procurement system from corruption. As Ware

et al (2007), intimated, no procurement system is totally corruption proof but a well-designed and regulated system can reduce corruption. Hunja (2003) also points out that “significant savings can be gained by a well-organized procurement system”. Therefore there is the need to periodically review procurement systems to ensure efficiency in the process. The periodical review will expose the vulnerabilities in the system, which offers incentives for corruption to thrive for necessary correction.

Although, no procurement system is perfect there is the need for conscious effort to improve on a system. T.I believes that a particular procurement system is good, if it incorporates the principles of integrity, transparency, accountability, effectiveness and Fairness (Transparency International, 2006:48). The problem of corruption in public procurement can only be effectively dealt with if all stakeholders contribute to improvement of the procurement system.

1.6.5 Strategies to Combat Corruption

Due to the complex nature of corruption, there is no single strategy that is used to combat corruption. Different strategies have been adopted by different countries in the effort to control corruption. Scholars have tried to categorise the various approaches to fighting corruption.

Mbaku (2000) chronicles four types of strategies which he termed as traditional approaches to dealing with corruption. These approaches are the societal approaches, legal approach, market strategies and political approach.

The societal approach is the strategy which searches for a common standard of morality which can be used to determine if behaviour is corrupt. This is very much dependent on what the society view as corruption. On the other hand, Legal strategies for corruption control are

supposed to work through the activities of the courts, police, media and members of society. With this approach, the law defines what constitutes corrupt behaviour, defines the responsibilities and limits of civil servants; and encourage members of society to be vigilant and report suspected cases of corruption to the police. The police are to investigate such reports and submit their findings to the judiciary.

Market strategies for corruption control are based on the argument that there is a relationship between market structure and the incidence of corruption. Government intervention in the marketplace creates opportunities for individuals to engage in corruption. The remedy prescribed is less government intervention in private exchange and greater reliance on markets for the allocation of resources. Political strategies for controlling corruption emphasize governmental decentralization. The argument is that corruption arises from the concentration of political power at the centre and in the hands of a few individuals. Thus, a process which improves citizen access to the political process will significantly reduce levels of corruption in the country. Under this approach, dealing effectively with corruption should begin with political liberalization and the subsequent improvement of opportunities for citizens to participate in governance (2000:127).

Some countries use the mix of the four approaches that are suitable to their local peculiarities. No two countries are the same and an approach that works for one country may not necessarily work for another. As Ojukwu (2009) points out, “a country must choose an approach that suits its economic, social and political circumstance”. Each country must consider its own peculiar circumstances and fashion out strategies that are appropriate to fight corruption effectively.

Ayittey (2000:105) also offers the following five step prescription to fighting corruption. These are exposing the problem, diagnosing the causes of the problem, prescribing a solution,

implementing the solution, and Monitoring the implementation of the prescription to see if it is working. If not the dosage may be increased or an entirely new remedy tried.

Among these steps, Ayittey considers the diagnosis as the crucial step since “wrong analysis of the causes may lead to a wrong prescription which may treat only the symptoms and not the fundamental causes, or worse, may aggravate the ailment”(2000:106). A critical public review and debate is therefore seen as necessary to avoid the mistake of wrong diagnosis. Kaufmann stresses that “the role of Civil Society in the diagnosing and raising awareness of the sources and forms of corruption in their country ought to be supported” (2000:80). The monitoring of the implementation of whatever strategy adopted to deal with the problem is necessary to ascertain the efficacy of such a strategy.

Kaufmann (2000) also provides another categorisation of the strategies. He classifies them into ex-post and ex-ante anti-corruption strategies. According to him, the ex-post strategies include all “legal and institutional enforcement designed to improve detection, enforcement and prosecution of already committed corrupt acts”(2000:63) and the ex-ante strategies aim at preventing corrupt acts from taking place. In other words, the ex-post strategies are curative whereas the ex-ante strategies are preventive. The problem with this categorisation is that there are certain strategies that fall within the two categorisations. For example, a law or an institution may be performing both curative and preventive role in the fight against corruption, in that a law may seek to prevent corruption from taking place and at the same time provide for remedies if it occurs.

Within each of the strategies categorised above, are various methods countries adopt to address corruption. These methods include codes of conduct for public office holders, establishment of independence anti-corruption agencies, naming and shaming corrupt officials, deterrence and judicial actions, Commissions of Inquiry, Public Sector reforms,

deregulation, decentralisation and privatisation. African countries have adopted a mix of these methods in their anti-corruption strategies with little success due to the lack of political will on the part of leadership. To sustain a vigorous anti-corruption drive, there is the need for strong political will on the part of leadership to ensure that they do not pay lip service to the fight against corruption, but pursue it with all seriousness it deserves.

According Ware et al (2007:325), the newest and most innovative idea in the field of fraud and corruption prevention is the Corruption Vulnerability Assessment (CVA) which is liken to the Environmental Impact Assessment. The CVA is an intelligence driven assessment that can determine likelihood of corruption occurring in a planned project. It is very important that a CVA is conducted for all major procurement of goods, services and public works before contracts are awarded in order to detect potential leakages of public funds.

1.7 Conceptual Framework

Several approaches have been used to fight against public sector corruption. These include moral suasion, creation of watchdog institutions such as CHRAJ, Deterrent Approach which advocates severe punishments including jail sentences, executions and confiscation of property.

However, this study will adopt the Legal and Institutional frameworks. This is because according to Kututwa (2005), the legal or legislative framework is the starting point in the fight against corruption. The laws of a country represent the basis for determining what constitutes corruption. Without clear laws on corruption, it will be difficult to control corruption in any country since there will be no legal basis to prove corruption in a court of law. Therefore the enactment of appropriate legislations and their enforcement will contribute immensely to the fight against corruption. Ojukwu (2009) argued that either the legal

framework is effective in containing corruption or the corruption will invariably lead to the destruction of such legal system.

According to Mbaku (2000:29), without a clear understanding of the laws and institutions of a country, an attempt to analyse corruption in that country would not yield policy-relevant information. To design an effective corruption-control programme, one must take into consideration the impact of existing laws on the behaviour of market participants. A good anti-corruption strategy should therefore include the setting up of appropriate and independent oversight institutions which will alter the incentive structure to guarantee the outcomes desired by society (Wei, 2003:16).

The institutions according to Kututwa, include all those institutions in a country that are tasked with ensuring the sound administration and protection of the public purse and the general accountability of public officials (2005:2). However, in the case of anti-corruption, the institutions are supposed to have the mandate to restrict the behaviour of public officials, investigate and prosecute those found to have engaged in corrupt practices. Wei argues that there is no question as to what the importance of law and law enforcement is but urges that it is also important to consider the institutional environment within which corruption thrives (2003:17). Therefore, there must be credible institutions to supervise the implementation of the laws.

Institutions charged with enforcement of laws must have adequate staff, in-service training and logistics in order to carry out their mandates (Pope, 1999:102). According to Oluwo (2000), to create credible institutions, they need to be well resourced and independent. These institutions should be free from any political interference so as to command the trust of the general public. Independent enforcement institutions should operate to increase the likelihood of corruption being detected and punished (Pope, 1999:101).

The central thesis of the legal and institutional framework to fighting corruption is that appropriate legislations and their enforcement by credible institutions will go a long way to help in the fight against corruption.

1.8 Deployment of Concepts

The first part of the central thesis of the framework which emphasises the need for appropriate laws was used to explain the contribution of the processes and procedures of the Public Procurement Act (Act 663, 2003) in the fight against corruption.

The second part of the central thesis which places emphasis on enforcement of laws by credible institutions was used to explain the contribution of the structures that the Public Procurement Act establishes (i.e. Public Procurement Authority and Tender Review Boards) to the fight against corruption.

1.9 Definition of Terms

1.9.1 Public Sector

It refers to that part of the economy which is controlled by the state, regional and local authorities financed with public funds. This includes the provision of security, healthcare public education, road infrastructure and so on. In other words, public sector is that part of the economy that deals with the production, delivery and allocation of goods and services by and for government or its citizens.

1.9.2 Public Procurement

According to Matechack (2010), “public procurement is the process whereby government entity contracts with a private sector enterprise to furnish a particular good or provide a particular service for a fee subject to legal terms and conditions contained in a contract”.

Public procurement refers to all the contracts between government and companies (public or private) or individuals (Transparency International, 2006:14).

1.9.3 Accountability

According to Maipose (2000:90), it is a mechanism by which decision-makers are held responsible for performance by those affected by their decisions. The main tenet of accountability is “the idea that one person or institution is obliged to give account of his/her or its activities to another” (Jenkins, 2007:136). Therefore accountability represents the obligation of decision makers to take responsibility for their actions and inactions. Two main types of accountability are identified- vertical accountability and horizontal accountability. Vertical accountability occurs when the state is held to account by non-state actors whereas horizontal accountability occurs when public institutions charged with the responsibility for keeping watch over government agencies keep the agencies in check (Jenkins 2007:140).

1.10 Methodology

This section explores the methodology adopted for this study. The research design, the research tools, the sample technique used as well as data analysis are explained.

1.10.1 Research Design

The study is qualitative case study. According Yin (2009:18), a case study is “an empirical inquiry that investigates a contemporary phenomenon in-depth and within its life context”. It is considered a robust research method particularly when a holistic in-depth investigation is required (Zaidah,2007). A case study focuses on one or two issues that are fundamental to understanding the system being examined (Tellis, 1997).

Through case study method, a researcher is able to go beyond the qualitative statistical results and understanding the behavioural conditions through the actor's perspective (Zaidah, 2007). The strength of the case study lies in its ability to deal with a full variety of evidence – document, interviews and observation. However, it has been faulted for its lack of rigour and that it also provides “very little basis for scientific generalisation since the focus is on specific phenomenon, subject or programme” (Yin, 2009:15).

1.10.2 Research Instruments

The study made use of both primary and secondary sources of data. The main source of primary data was the responses from structured face to face interviews. The Annual Procurement Reports published by the Public Procurement Authority was another source of primary data. The secondary data involved an intensive review of literature including books, journal, Articles, reports, seminar papers and online publication. This enabled the researcher to obtain background information as well as review Ghana's anti-corruption strategies in the post-independence era. The Balme, Political Science, ISSER and African Studies libraries came in handy in the search for the secondary data.

1.10.3 Sampling Techniques

Purposive sampling technique was used. The purposive sampling involves selecting respondents “based on a specific purpose rather than randomly” (Tashakkori & Teddlie, 2003:17). The research selected key institutions that represent the various stakeholders in the public procurement process. These institutions include the Public Procurement Authority as the regulator, Kasena Nankana West District Assembly representing procurement entities, Department of Purchasing and Supply of Accra Polytechnic representing institutions of training of procurement specialist. Also, Ghana Anti-Corruption Campaign Coalition (GACC) and Ghana Integrity Initiative (GII) were also selected to represent civil society

organisations with focus on fighting corruption. Two contractors were also selected to represent contractors, suppliers and consultants.

The purposive sampling was adopted for this study because of the specialised nature of public procurement and corruption. In all nine (9) respondents were selected and interviewed since not all persons had expert knowledge on public procurement and procurement related corruption. The sample included two (2) officials of the Public Procurement Authority, an official of GII, an official of GACC, a tutor of Department of Purchasing and Supply of Accra Polytechnic. The Sample also included two (2) contractors, an official of Works Department of the Kasena Nankana West District as well as an official of the Planning Unit of the same district.

The purpose of the sample was to generate primary data to complement the information in Annual Procurement Reports.

1.10.4 Data Analysis

The interview transcripts were sorted into specific themes. Opinions were then be grouped around similar thematic areas and analysed alongside what the Public Procurement seeks to do. The Annual Reports of the Public Procurement Authority was also analysed to find out how the implementation of the Act is been carried out by stakeholders.

1.11 Limitation of the Study

One of the major challenges is that access to official data. The Public Procurement Authority made available data on their annual assessment from 2006 to 2009. The 2010 to 2012 results, according to the officials of PPA had not been gazetted and therefore cannot be released for any purpose.

The second constraint was the unwillingness of officials to grant interviews due to the sensitive nature of the issue, busy schedules and administrative procedure. However, upon persistent visits to the institutions, the officials became more comfortable to grant interviews.

1.12 Organisation of the Study

The study structured into five chapters. Chapter one covers the introduction, statement of the problem, Literature review, theoretical Framework and the Methodology.

Chapter two deals with historical overview of anticorruption strategies in Ghana prior to the inception of the Fourth Republic. The chapter takes a look at the Nkrumah's period, the immediate post Nkrumah period which saw a number of Commissions of Inquiries, the AFRC and PNDC regimes.

Chapter three deals with legal instruments and institutions for fighting corruption before Act 663. The chapter explores how the legislations and institutions are being used to combat corruption in the Fourth Republic. Institutions such as the Public Accounts Committee, CHRAJ, Auditor- General's Office and Economic and Organised Crime Office were explored. Legislations passed under the Fourth Republican Constitution such as the whistleblowers Act, Code of conduct for Public Officers and Financial Administrative Act were also explored.

Chapter four is entitled the law and corruption. The chapter discusses how the implementation of the Public Procurement Act has contributed to combating public sector corruption. The chapter also discusses the challenges faced by the actors in the procurement process in the implementation of the Public Procurement Act. Chapter five covers the summary of findings, Conclusions and recommendation.

REFERENCE

- Ackerman, S. R. (2004). The Challenge of Poor Governance and Corruption. *Copenhagen Challenge Paper.2004*,
[http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_\(0.7mb_version\).pdf](http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_(0.7mb_version).pdf) accessed on 9th December, 2010
- Alexis, A. (2012), Senegal: Background and U.S. Relations. Congressional Research Service, Report R41369. <http://www.fas.org/sgp/crs/row/R41369.pdf> accessed on 22nd June, 2012.
- Ayee, J. R. A. (2000a). *Saints, Wizards, Demons and Systems: Explaining The Success Or Failure Of Public Policies And Programmes*. Accra: Ghana Universities Press
- CDD (2000). The Ghana Governance and Corruption Survey: Evidence from Households, Enterprises and public Officials. CDD: Accra
- Edgardo Buscaglia and Van Dijk (2003) *Controlling Organised Crime and Corruption in the Public Sector*. Forum on Crime and Society, Vol.3 No.1 and 2, December 2003.
- Emile, S. (2009). Reporting corruption and Whistleblower Protection in *Uniting Against Corruption*. Report of proceedings of 5th National Governance Workshops, GACC: Accra
- Fraser-Moleketi, G. (2005). 'The African Union Convention on Corruption and NEPAD's African Peer Review Mechanism' a paper presented at *6th Global Forum on Reinventing Government towards Participatory and Transparent Governance*, 24 – 27 May 2005, Seoul, Republic of Korea.
- Freille, S. (2007). Essays on Corruption and Economic Development.
<<http://en.scientificcommons.org/43794789>> Accessed on 10th April, 2011
- Gbenga, L. (2007), corruption and development in Africa: Challenges for Political and Economic Change. *Humanity and Social Science Journal* 2(1):01-07

- Ghana Integrity Initiative (2011). 'The Voice of the People Survey'. Available at <
<http://www.tighana.org/giipages/publication/voiceofthethepeoplesurvey.pdf>> Accessed
on 23rd May, 2012.
- Gyimah-Boadi, E.(2002). Confronting Corruption in Ghana and Africa. *CDD Briefing Paper*,
Vol.4. No.2, CDD:Accra
- Heywood, P. (1997). Political Corruption: Problems and Perspectives. *Political Studies*, *XLV*,
417-435
- Hunja, R. (2003) , Obstacles To Public Procurement Reform In Developing
Countries.<www.wto.org/english/tratop_e/gproc_e/wkshop_tanz../hunja2a2_e.doc>
Accessed on 10th April, 2011
- Jenkins, R. (2007), The Role of Political Institutions in Promoting Accountability in Anwar
Shah (ed) *Performance Accountability and Combating Corruption*. World Bank:
Washington D. C.
- Kaufmann, D. (2000). Revisiting Anti-corruption Strategies: Tilt Towards Incentive Driven
Approaches in *Corruption and Integrity Improvement Initiatives in Developing
Countries*. UNDP/ OECD: New York
- Kempe, R. H (2000b), Corruption and Development in Africa in Kempe Hope and Chikulo
Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case
studies*. Macmillan Press Ltd: London
- Kempe, R. H. and Chikulo C.B. (2000a). Introduction in Kempe R. H. and Chikulo C.
B.(eds) *Corruption and Development in Africa: Lessons from Country Case studies*.
Macmillan Press Ltd: London
- Khan,M.(1996. A Typology of Corrupt Transactions in Developing Countries. *IDS Bulletins*
27(2). pp12-21
- Kututwa, N. (2005). African Anti-corruption Commitments: A review of Eight NEPAD
Countries. AHSI paper 7

<kms1.isn.ethz.ch/serviceengine/Files/ISN/.../2005_01_01.pdf> accessed on 20th

January 2012.

Maipose, G.S (2000). Aid Abuse and Mismanagement in Africa: Problems of Accountability, Transparency and Ethical Leadership in in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

Matechack J P (2010), *Fighting Corruption in Public Procurement* <www.cipe.org/pdf/publications/fs/matechak.pdf > (accessed on 1 April 2010)

Mbaku, J. M (2000), Controlling Corruption in Africa: A Public Choice Perspective in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

Mensah, S., Aboagye, K, Addo, E and Buatsi, S. (2003). *Corporate Governance and Corruption in Ghana: Empirical Findings and Policy Implication*. ACMF: Accra

Ojukwu C. N. (2009). Legal and Institutional Mechanisms Combating Corruption in Nigeria. <<http://www.isrcl.org/Papers/Ojukwu.pdf>> Accessed on 20th January 2012.

Olowo, D. (2007). Public Accountability, Good Governance and Constitutional Validation in Commonwealth Africa, *African Journal of Development Studies* 1(12) 1-31
www.enelsyn.gr/papers/w16/PaperbyDr.OladejoOlowu.pdf#page=16&zoom=auto,0,77
Accessed on 12 June,2011.

Osei- Hwedie, B. Z. and Osei- Hwedie, K. (2000). The Political, Economic, and Cultural Bases of Corruption in Africa in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

Pieth, M. (1997). International Cooperation to Combat Corruption in Kimberly Ann Elliot (ed) *Corruption and the Global Economy*. Institute for International Economics: Washington DC

- Pope, J. (1999a) 'Enhancing accountability and Ethics in the Public sector' in Stapenhusrt, R. and Kpundeh S. J. (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C.
- Pope, J (1999b), Elements of a Successful Anticorruption Strategies in Stapenhusrt R. and Sahr J.Kpundeh (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C
- Shah, A. and Schacter, M. (2004). Combating Corruption: Look Before You Leap. *Finance and Development*. (IMF) 41(4):10-14
- Søreide, T. (2002), Corruption in Public Procurement: Causes, Consequences and Cures < <http://bora.cmi.no/dspace/bitstream/10202/185/1/R%202002-1.pdf>> (accessed on 10th October, 2010)
- Stapenhusrt, R. and Sedigh, S. (1999), Overview of the Costs of Corruption and Strategies to Deal with It In Stapenhusrt, R. and Kpundeh S. J. (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C.
- Tanzi, V. (1998), Corruption around the World: causes, Consequences, Scope and Cures. *IMF Staff Papers*, Vol. 45, No. 4 (December, 1998)
- Tashakkori, A., & Teddlie, C. (Eds.) (2003). *Handbook of mixed methods in social & Behavioral Research*. Thousand Oaks, CA: Sage.
- Tellis Wiston (1997), Application of a Case Study Methodology. The Qualitative Report, Vol.3 No. 3 Sept.1997. < <http://www.nova.edu/ssss/QR/QR3-3/tellis2.html>> Accessed on 1st May, 2013
- Transparency International (2006), *Curbing Corruption in Public Procurement: a handbook*
- United Nations (2004). *United Nations Convention against Corruption*. UN: New York
- < http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> accessed on 21st June, 2011

- United Nations (2010), 'Good Practices in the Prevention of Corruption in Public Procurement' *Open-ended Intergovernmental Working Group on the Prevention of Corruption* Vienna, 13-15 December 2010
<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2010-December-13-15/V1056970e.pdf> accessed on 27th May, 2012.
- Ware G. T, Moss, S., Edgardo J. C. and Noone G.P. (2007) Corruption in Public Procurement: A Perennial Challenge, In Edgardo, J.Campos and Sanjay Pradhan (eds) *The Many Faces of Corruption: Tracking Vulnerabilities at Sector Level*. World Bank: Washington D.C
- Wei Shang-Jin (2001), Corruption in Economic Transition and Development: Grease or Sand? <www.unece.org/ead/sem/sem2001/papers/Wei.pdf> Accessed on 20th January, 2012.
- Yin, R. K. (2009). *Case Study Research: Design and Methods* 4th edition Applied Social Research Methods Series Vol.5 Los Angeles: Sage Publications
- Zaidah, Z. (2007). Case Study as a Research. Jurnal Kemanusiaan bil 9, Jun 2007.
http://eprints.utm.my/8221/1/ZZainal2007-Case_study_as_a_Research.pdf accessed on 1st May, 2013.

CHAPTER TWO

STRATEGIES FOR COMBATING CORRUPTION IN GHANA: AN OVERVIEW

2.1. Introduction

This chapter explores the nature and limitations of the various anticorruption strategies adopted by various regimes since independence. The chapter however gives much attention to the legal and institutional frameworks under the Fourth Republic. Institutions such as the Public Account Committee of Parliament, the CHRAJ, EOCO as well as legislations such as the Whistleblowers Act, the Financial Administration Act and the Internal Audit Agency Act, 2003 are also discussed.

2.2. Nkrumah's Regime

Right from the start, the Nkrumah government appeared to have been engulfed by a steady increase in corruption (Owusu, 2008). In 1952, the Cocoa Purchasing Company (CPC) was established to break the European domination in the cocoa buying business. The CPC was also to advance loans to farmers to help them in their farming activities. By 1954, allegations of malfeasance in the activities of CPC abound. The Governor, therefore set up the Jibowu Commission to enquire into the affairs of CPC. The commission discovered the CPP was using vehicles belonging CPC and was using the loans to secure the vote of farmers. The commission also declared that the head of CPC was not fit to hold public office (Osei Hwedie & Osei Hwedie, 2000:47).

Due to the embarrassing nature of corruption cases involving CPP functionaries, such as J.A Braimah's case where a bribe of US\$ 1400 was alleged to have been received by Braimah-the Minister of Transport and Communication, and the subsequent resignation of Braimah's

ministerial secretary and one other person from the Finance Department and their committal to trial on charges of corruption (Owusu, 2008), Nkrumah resorted to moral suasion as a strategy to control corruption among his appointees. The case in point is the famous dawn broadcast.

On the dawn of 8th April, 1961, Nkrumah addressed the nation on radio in which he strongly condemned the rampant bribery and corruption between top government and party officials. He called for high probity on the part of party officials, ministers, civil servants, parliamentarians and the public in general to rid the society of bribery and corruption, exploitation, patronage and nepotism (Owusu, 2008). He also dismissed and publicly disgraced some of the officials (Osei Hwedie & Osei Hwedie, 2000:47).

The effectiveness of moral suasion as a strategy by Nkrumah to fight corruption cannot be ascertained. However, Omari (as cited in Owusu, 2008) points out, “when political men sell their souls for worldly goods, it takes a greater god than Kwame Nkrumah to inspire them to disinterested deeds in the service of country”. In the opinion of Owusu (2008), in the early period of Nkrumah’s rule, there was a sincere effort “to try to nip incipient corruption in his government in the bud but with limited success because many of the factors promoting corruption such as colonial political culture and materialistic values of Ghanaian society were outside his control”(Owusu, 2008:30).

2.3 The NLC Period

The CPP government was overthrown on 24th February, 1966. Corruption and mismanagement were among the reasons cited for the coup. The new regime set out to investigate functionaries of the Nkrumah’s regime through commissions of inquiry.

The National Liberation Council headed by General Ankrah set up a number of Commissions of Inquiry under NLC Decree 72 (Investigation and Forfeiture of Assets), to probe into various allegations of corruption against specified persons who had an association with the Nkrumah's Convention Peoples' Party.

In March, 1966 the Apaloo Commission was set up to investigate into Kwame Nkrumah's properties. One of the adverse findings against Nkrumah was that he had more money in his private accounts than he ever earned (1966). Another commission appointed under the Act 250 and NLCD 72 was the Annie Jiagge Commission which was charged to enquiry into the assets of specified persons. Some of the specified persons, the commission investigated include Mr. S.K Tandoh, Mr. L.R Abavana, Mrs. Grace Ayensu, Dr. Ako Adjei, Dr. Emmanuel Ayeh-Kumi, Mr. I.K. Chinebuah, Mr. Imoru Egala and Mr. B.E. Kwaw-Swanzy. Whereas the Commission was convinced that some of the people had acquired their income and property lawfully, it was not convinced that others acquired theirs lawfully and therefore recommended to the NLC that the assets that were not justified be confiscated to the state (Ghana,1969a) .

On 29th May, 1967, the NLC appointed two commissions to also enquire into the assets of specified persons. These are the Manyo-Plange (Assets) Commission and Sowah Commission. The two commissions were allocated twelve persons to each to be investigated.

The Manyo-Plange Commission was tasked to enquire into assets of persons including Mary-Winifred Koranteng, Kwasi Sintim Aboagye, Joseph Henry Alhassani, I.J. Adomako-Mensah, Kobina Orleans Thompson and Kofi Pobee Baako. The commission discovered that some of the persons had more assets that their lawfully earned income could acquire. The Commission therefore recommended to the NLC to confiscate to the state, moneys or assets which have not been lawfully acquired. Others such as Mary Winifred Koranteng, who no

adverse findings were made against them, the commission recommended that their assets be defrozen. The White Paper that was issued on the Commission's report endorsed the recommendation and various amounts were to be recovered from the specified persons who were found to have acquired income unlawfully (Ghana 1969b).

The Sowah Commission was tasked to enquire in the assets of twelve persons including Kodwo Addison, Kweku Akwei, Susana Alhassan, John Arthur, Kwaku Amoa Awuah, E. I. Preko and Paul Tagoe. The Commission made no adverse findings against Susana Alhassan, Kweku Akwei, Paul Tagoe and others. The Commission therefore recommended to the NLC to defreeze their assets. The Commission also made adverse findings against Kodwo Addison, John Arthur, Kwaku Amoa Awuah and E.I Preko. Therefore the Commission recommended that various amounts of monies be recovered from these persons. In addition, the Commission recommended that two houses belonging to Kwaku Amoa Awuah and four houses belonging to E.I Preko be confiscated to the state (Ghana, 1969c).

The commissions of enquiry set up by NLC were not only targeted at persons who had a close association with Nkrumah's regime, but also companies. A commission headed by Samuel Azu Crabbe was tasked to enquiry into the ownership of NADECO Ltd, its relationship with C.P.P and whether or not any public funds have been diverted to NADECO Ltd. The Commission discovered that the company was used by the CPP as a front company to receive illegal commission and bribes. It was discovered that the company had been paying annual subvention to the C.P.P. the commission recommended that monies in various accounts of the company be confiscated and paid into government chest. It also recommended that the company should be liquidated (Ghana, 1969d).

All these commissions set up by the NLC may have brought to the fore the extent of rot in the country at the time. But the impact of these commissions in reducing corruption in the

country is doubtful. Ayee who argue that “while many revelations of the Nkrumah period carried out by the NLC may have proved enlightening, they had apparently not brought about much improvement in the quality of public administration”(2000b:185). Ironically, the Chairman of the NLC, Gen. A. Ankrah resigned in April 1969 for allegedly accepting a bribe. The commissions of enquiry were seen by many as a means to discredit Nkrumah and legitimise the coup.

2.4 Busia’s Regime

Because the recommendations of the various commissions were thought to have no positive or preventive effect on corruption, the Progress Party government under the leadership of Dr. Busia wanted a more proactive approach to tackling the problem of corruption. The P.D. Anin Commission was set up in the 1970 by the Busia’s administration to “study the area, prevalence and methods of bribery and corruption in Ghanaian society and to determine whether there factors in society which contributed to this” (Ayee, 2000b:185). However, Ghanaians became sceptical about the Anin commission because those who were caught in previous probes felt no shame (Peasah cited in Ayee, 2000b:185).

The difference between the Anin Commission and those set up under the NLC regime was that, whereas the NLC established commission investigated corrupt cases that might have occurred in the past, the Anin Commission was tasked to find out the root causes of corruption in society. This made the Anin Commission necessary since there can be no improvement in corruption before there is understanding of the causes (Werlin, 1972). The pre-emptive nature of the Commission was therefore commendable.

2.5 NRC/SMC Regime

The National Redemption Council/Supreme Military Council government under Colonel Acheampong published the report of the Anin Commission in 1975. The regime also set up the Taylor Assets Commission which implicated Dr Busia, Chief Dombo and R. R. Amponsah in alleged corrupt deals. The Government White paper on Taylor's Commission report recommended the confiscation of four houses allegedly acquired by Dr. Busia. It was also recommended that £70,000 and £15,000 allegedly acquired illegally by Dombo and R.R. Amponsah respectively should be refunded to the state (Owusu, 2008).

Ironically, Acheampong regime is touted as arguably the most corrupt regime in the history of Ghana. Under the regime, black marketing ('kalabule') of goods and corruption in government was entrenched. Apart from the initial commitment to publish the Anin Commission report and the establishment of Taylor Assets Commission, the NRC/SMC government did little to fight corruption.

Although, Commissions of enquiry may be good in combating corruption, they are not a panacea to corruption. Most commissions of enquiry are set up to enquire into incidences which have already occurred. This makes them more curative than preventive. The effect of naming offenders in reports and shaming them cannot be ascertained and is even doubtful in a society where riches are adored.

2.6 AFRC and PNDC – Populist Strategies

The 4th June, 1979, a group of young army officers overthrew the Supreme Military Council (SMC) government. The new junta - the Armed Forces Revolutionary Council (AFRC) was headed by Flt Lt Jerry John Rawlings. The AFRC in the announcement of the overthrow of SMC cited corruption as a reason for the coup. In the announcement of the coup the AFRC stated "the ranks in alliance with junior officers- captains and below- had taken over the

government of the country because SMC I and SMC II were corrupt and destroying both the country and the army. A house cleaning campaign was to be launched to clear all the corrupt officers and their civilian allies” (Awoonor, 1984:110).

The declaration of intent to rid the country of corruption by the AFRC led to execution by firing squad of three former military Heads of State and five senior military officers. Other officials and business men were also imprisoned for alleged corruption after being tried in special tribunals set up by the AFRC. Thus, the AFRC within its short reign, adopted “deterrence and judicial actions which insist on the need for death and jail sentence”(Ayee, 2000b:186).

Though, the actions of the AFRC might have gained the support of a section of the public, the rush with which the actions were taken was likely to affect innocent citizens who had earned their riches legitimately. The sustainability of such an approach to fighting corruption was certainly not guaranteed.

Even though, there was an impending elections before the AFRC came into power, it did not interrupt the process and allowed the elections to be held. The People’s National Party (PNP) led by Dr. Hilla Limann won the elections. The AFRC handed over power to the PNP with the expectation that the new administration will continue the “house cleaning” exercise and reduce the reoccurrence of corruption. However, the PNP government could not maintain the momentum and corruption in public office manifested itself again. The corrupt activities of the PNP government came to a head during the first week of December 1981 when the chairman of the party, Okutwer Bekoe, was implicated in a bribery scandal that involved the receipt of monies from South African sources(Ayee,2000b:187).

On 31st December, 1981, Flt Lt Jerry John Rawlings staged a coup and seized power from the PNP government. Corruption and failure of the PNP administration to continue with the

house cleaning were cited as the main reasons for the coup. Rawlings called for a ‘holy war’ against injustice, corruption and inequality in society. The Provisional National Defence Council (PNDC) in pursuit of the war against corruption instituted several strategies to bring perpetrators to book and also monitor public officials. These strategies include the creation of People’s Defence Committees (PDCs), Workers’ Defence Committees (WDCs) and Committees for the Defence of the Revolution (CDRs) which was a re-designation of the PDCs and WDCs. Other institutions established by the PNDC include the Public Tribunals, Citizens Vetting Committee and National Investigation Committee (NIC).

The PDCs were formed at the community level “to safeguard the day-to-day interests of the local people, protect tenants from unjust landlords and mobilize the local people for communal labour” (Ayee, 2000b:87). The PDCs engaged in acts of lawlessness, molestations and intimidation. However, Awoonor argued that “the PDCs have within two years scored remarkable successes even if they were beset by early problems of predictable lawlessness, excessive zeal lack of proper education as to their roles”(1984:15).

The Workers Defence Committees were organised at workplaces “to monitor the management of their factories and workplaces, watch out for corruption in the handling and invoicing of raw materials and finished products, and participate in decision-making” (Ayee,2000b:187). Just like the PDCs, the WDCs were not without excesses. In spite this they “achieved a level of remarkable cohesion by developing work consciousness” (Awoonor, 1984:16). Some WDCs forced some managers out of their offices and took over factories without having the skills to manage them. Some leaders of both the PDCs and WDCs engage in corrupt practices which they were set up to prevent.

In order to curb the excesses of the PDCs and WDCs, the CDRs were created to replace them. The CDRs were tasked to initiate local development projects, organize voluntary

labour for community works, and present problems and complaints to the government and explain government policies to the people. Unlike the PDCs and WDCs, CDRs were not tasked to be agents of accountability and anti-corruption.

In July, 1982, the PNDC established Public and Military Tribunals. The Public Tribunals were to deal with cases of involving profiteering, corruption and abuse of power as well as specified anti-state activities. The Public tribunals were manned by ordinary people drawn from all walks of life. They operated alongside the traditional judicial system. The chairman of the PNDC in announcing the formation of the Public Tribunals stressed that these tribunals would “not be fettered by technical rules which have in the past perverted the course of justice and enabled criminals to go free” (Gyimah-Boadi & Rothchild, 1982:65). Baffour Agyeman-Duah observed that corruption and profiteering had eaten into the fabric of the nation and it was thought to be unwise to use the old institutions of the judiciary to handle such social vices (1987:627).

The Public Tribunals allowed legal representation of people who appear before them. Their hearings were also held in public. The law that set them up made provision for the inclusion of one lawyer in the panel. However, the Bar Association protested against the establishment of Public Tribunal and threaten boycott which some lawyers actually carried through. The Bar Association saw the Public Tribunals as a means to displace the existing judicial system and curtail civil liberties. The Bar Association argued that the existing justice system is capable of handling all cases in the country.

The citizens Vetting Committee was formed in 1982 and later rechristened the Office of Revenue Commissioners. It was tasked “to investigate cases of alleged tax avoidance and default as well as to invoke the proper penalty in the event that the law had been broken” (Gyimah-Boadi & Rothchild, 1982:64). The CVC investigated the lifestyle of the wealthy,

especially large-scale traders and professionals and particularly lawyers. Many of them were found to have either engaged in corruption or evaded tax (Ayee, 2000b). Awoonor points that the CVC achieved a remarkable success in the collecting of taxes.

In addition to the CVC, the National Investigation Committees (NICs) were established with the mandate “to investigate the accounts and finances of anyone referred to them, as well as other alleged cases of corruption” (Gyimah-Boadi & Rothchild, 1982:64). They [NICs] were also given the power to arrest and detain people. The law (PNDC Law No. 2) also empowered the NICs to freeze the assets of person on justifiable grounds. The law also allowed for people under investigation to confess their sins and offer compensation to the state for the crimes perpetrated against the state. The NICs also reviewed confiscation of assets during the AFRC regime.

In spite of all these revolutionary strategies adopted by the PNDC, corruption still remained a canker in the country. As Agyeman-Duah put it “the war against corruption and fraud, major objectives of the revolutionary system of justice, had lost its sting by 1986, in spite of the decision to impose the death penalty for 'economic sabotage', embezzlement had reached unprecedented levels in some key public institutions”(1987:628).

Again, another set of strategies to control corruption in the country has failed to yield the much needed results. The modest achievements of the populist strategies introduced by both the AFRC and the PNDC eroded within a decade. This leaves one to wonder whether draconian laws are able to sustain anti-corruption gains.

2.7 Conclusion

Various strategies such as moral suasion, commissions of enquiry, naming and shaming people in reports as well as confiscation of assets and even executions have been used in

combating corruption in Ghana. From Nkrumah Regime through to the PNDC regime, Ghana has witnessed efforts at combating corruption by the various governments with limited success. The limited success by the various governments in combating corruption and the general shift in strategy around the globe has seen Ghana resorting to the use of legal and institutional framework in combating corruption.

REFERENCE

- Agyeman-Duah, B. (1987). Ghana, 1982-6: The Politics of the PNDC. *The Journal of Modern African Studies*, Vol. 25, No.4 (Dec, 1987), pp 613-642.
- Awoonor, K. (1984), *The Ghanaian Revolution: Background Account from a Personal Perspective*. Oasis publishers: N.Y
- Ayee, J. R. A. (2000b). Ghana: the Continuing Search for Cures in the Fight Against Corruption in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Ayittey, G. B. N. (2000), Combating Corruption in Africa: Analysis and Context in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Ghana (1966). *Apaloo Commission Report on Enquiry into Kwame Nkrumah Properties*. Ghana Publishing Corporation: Tema
- Ghana (1969a). *Annie Jaigge (Assets) Commission Report*. Ghana Publishing Corporation: Tema
- Ghana (1969b) .*Manyo-Plange (Assets) Commission Report*. Ghana Publishing Corporation: Tema
- Ghana (1969c) . *Sowah (Assets) Commission Report*. Ghana Publishing Corporation:Tema
- Ghana (1969d), Azu Crabbe Report of Enquiry into Affairs of NADECO
- Gyimah-Boadi, E. and Rothchild, D. (1982). Rawlings, Populism, and the Civil Liberties Tradition in Ghana. *A Journal of Opinion*, Vol. 12, No. 3/4 (Autumn - Winter, 1982)
- Osei- Hwedie, B. Z. and Osei- Hwedie, K. (2000). The Political, Economic, and Cultural Bases of Corruption in Africa in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

Owusu, M. (2008). Money and Politics: The Challenge of Democracy in Ghana. Ghana Speaks Lecture/ Seminar Series No. 4. IDEG: Accra

Werlin, H. H. (1972). The Roots of Corruption: the Ghanaian Enquiry. *The Journal of Modern African Studies*, Vol. 10. No. 2 (July, 1972), pp247-266.

CHAPTER THREE

LEGAL INSTRUMENT AND INSTITUTIONS FOR FIGHTING CORRUPTION BEFORE ACT 663

3.1 Introduction

This chapter takes a look at the strategies employed in fighting corruption since the inception of the Fourth Republic. The fourth republic marked the shift in paradigm in the fight against corruption. Legislations and institutions are used under the fourth republic to fight corruption as opposed to commissions of inquiry and other draconian measure used prior to Fourth Republican Era. This chapter therefore examines some these legislations such as financial Administration Act, the Whistle Blowers Act and Internal Audit Agency Act are discussed. The Chapter also discusses institutions such as Public Accounts Committee of Parliament, CHRAJ and EOCO as well as the role of civil society and the media in the fight against corruption.

3.2 The 1992 Constitutional Framework

Guided by history, the framers of the 1992 Constitution included several provisions which seek to guide against corruption, mismanagement of public resources and promote accountability.

First, in chapter six of the constitution on directive principle of state policy, it is stated in Article 35(8) that “the state shall take steps to eradicate corrupt practices and the abuse of power” (Republic of Ghana, 1992). The state may deem to have given meaning to this provision due to the numerous Acts of Parliament passed to regulate the management of public resource and the conduct of public officers. The Article 37(1) of the Constitution also states that “the State shall endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability...” This also

places the issue of accountability at the forefront of Ghana's quest to practice democracy and good governance.

Secondly, the constitution also establishes independent constitutional bodies with mandates which are targeted at ensuring that public resources are well managed and accountability is maintained. One of such bodies is the office of the Auditor-General established under Article 187 of the constitution. The Auditor-General is mandated to audit the public accounts of Ghana and of all public offices. Also, the constitution provided for the establishment of Commission on Human Rights and Administrative Justice (CHRAJ) mandated under Article 218(a) to “investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties”(Republic of Ghana,1992).

Thirdly, the chapter 24 of the constitution is dedicated to the code of conduct for public officers. The Article 284 of the constitution states “A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.” The chapter also provides for the declaration of assets and liabilities by public officers on assumption of office, every four years and upon leaving office.

All these constitutional provisions have been given further boost through the numerous Acts of Parliament enacted since the coming into force of the Constitution. Some of these Acts have been highlighted below.

3.3 Legislative enactments against Corruption

The Fourth Republic has seen the enactment of a number of Acts of Parliament which collectively are aimed at ensuring public accountability and judicious use of public resources.

These Acts of Parliament include the Public Office Holders (Declaration of Assets and Disqualification) Act, Act 550 (1998), Audit Service Act, Act 584 (2000), Financial Administrative Act, Act 654 (2003), Internal Audit Act, Act 658 (2003), Public Procurement Act, Act 663 (2003) and the Whistleblowers Act, Act 720 (2006).

3.3.1 Public Office Holders (Declaration of Assets and Disqualification)

Act, Act 550

The Public Office Holders (Declaration of Assets and Disqualification) Act, Act 550 (1998) gives impetus to code of conduct contained in chapter twenty-four of the 1992 Constitution. This Act demands that public office holders declare their assets and liabilities and submit the forms to the Office of Auditor-General. The declaration shall be made by the public officer—

- (a) before taking office;
- (b) at the end of every four years; and
- (c) at the end of the term of his office and shall in any event be submitted not later than 6 months of the occurrence of any of the events specified in this subsection (Republic of Ghana, 1998)

The act also provides that a person be disqualified from holding public office, if a Commission of inquiry has found that whilst holding public office, he/ she

- (a) acquired any assets unlawfully; or
- (b) defrauded the State; or
- (c) wilfully and dishonestly or corruptly acted in a manner prejudicial to the interest of the State; or
- (d) knowingly made a false declaration of his assets, properties or liabilities (Republic of Ghana, 1998).

The Act seeks to prevent public office holders from illegal acquisition of assets. The section 5 of Act requires that all assets be declared by public officers and any assets acquired by the public officers after the initial declaration and which is not reasonably attributable to legally earned income, gift, loan, inheritance or any other reasonable source shall be regarded as illegally acquired assets (Republic of Ghana, 1998).

However, as the law stands, there are several challenges of implementation that work against the basic objective of the Act. The Auditor -General is only mandated to receive the declarations and keep them without access to the content. It is under three circumstances can the content of a declaration be disclosed as evidence. These are:

- before a court of competent jurisdiction; or
- before a commission of inquiry appointed under Article 278 of the Constitution; or
- before an investigator appointed by the Commissioner for Human Rights and Administrative Justice.

The Auditor-General therefore cannot verify the declarations submitted by public office holder who are enjoined by the constitution to declare their assets. Experts therefore view this as retrogression in our assets declaration regime since the PNDCL 280 allowed for public disclosure of assets declared by officials. As Akowuah (2005:4) observed, ‘under the law (PNDCL 280), the Auditor-General caused to be published everything that was declared by any of the specified public and other office holders’. Therefore, for the Act to serve its purpose of ensuring accountability, the Act should be amendments to allow public disclosure and authentication by the Auditor-General.

3.3.2 The Audit Service Act (2000), Act 584

In pursuance to article 188 of the 1992 Constitution, parliament enacted the Audit Service Act (2000), Act 584 which tasks the Audit Service under the headship of the Auditor-General

to audit the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of Parliament and report to Parliament (Republic of Ghana, 2000).

The Act also grants access to the Auditor-General to all relevant books and records needed to perform the tasks assigned to him by both constitutional provisions and Act 584 (2000). Head of any organisation which fails to comply with accounting systems approved by the Auditor-General 'is liable to be surcharged with the cost of any loss occasioned by defective or deficient internal controls of auditing' (Republic of Ghana, 2000).

3.3.3 The Financial Administration Act, Act 654 (2003)

The preamble of the Financial Administration Act, Act 654 (2003) which received presidential assent on 28th October, 2003 reads as follows 'an Act to regulate the financial management of the public sector; prescribe the responsibilities of persons entrusted with financial management in the government; ensure the effective and efficient management of state revenue, expenditure, assets, liabilities, resources of the government, the Consolidated Fund and other public funds and to provide for matters related to these.'

As can be inferred from the preamble, the Financial Administration Act (FAA) covers a wide range of issues bordering on financial management in the public sector. Some of these issues include the appointment and duties of the Controller and Accountant-General, modalities for making payments out of the Consolidated Funds, investment of public money in securities among other issues.

The FAA also provides for the establishment of Financial Administration Tribunal (FAT) with the jurisdiction to:-

- (1) to hear and determine matters that fall for determination under this Act;

- (2) to enforce recommendations of the Public Accounts Committee on the Auditor-General's reports as approved by Parliament;
- (3) to enforce contracts and bonds entered into in pursuance of this Act;
- (4) to make such orders as it considers appropriate for the recovery of monies, assets or other property due to the State;
- (5) to prohibit any individual whether a public officer or not from managing public accounts or funds if the individual is unqualified professionally or has been persistently negligent in the management of public funds;
- (6) to prohibit any person from participating as a bidder in any government procurement or contract where the person has a record of defrauding the State (Republic of Ghana,2003a).

The Financial Administration Act is a piece of legislation with wide coverage. the provision for the FAT will go a long way to ensure that the Act and other Acts such as the public procurement which aim at ensure judicious use of public resources are enforced. The FAT has the mandate to prevent a supplier, contractor or consultant from taking part in public procurement process, if such a supplier, contractor or consultant has been found to have defrauded the State.

3.3.4 The Internal Audit Agency Act, Act 658

The Internal Audit Agency Act (2003), Act 658 which received Presidential assent on 31st December, 2003, established an Internal Audit Agency as a central agency to co-ordinate, facilitate, monitor and supervise internal audit activities within Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies in order to secure quality assurance of internal audit within these institutions of State; to provide for the Board of the Internal Audit Agency (Republic of Ghana,2003b).

The Internal Audit Agency is to ensure standards and quality of internal Audits in MDAs and MMDAs. This is to safeguard national resources and guarantee economic, efficient and effective administration of government programmes and operations. The Agency is also tasked to facilitate the prevention and detection of fraud; and ensure that risks are adequately managed (Republic of Ghana, 2003b).

3.3.5 The Whistleblower Act (2006), Act 720

The Whistleblower Act (2006), Act 720 provides for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures.

A significant development under the Act is the establishment Whistleblower Reward Fund to provide funds for payment of money rewards to whistleblowers. It is a significant development because the Act does not only seek to protect whistleblowers but also to reward them on the following conditions:

1. A whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund (Republic of Ghana,2006).
2. A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with
 - (a) ten per cent of the amount of money recovered, or
 - (b) the amount of money that the Attorney-General shall, in consultation with the Inspector-General of Police, determine (Republic of Ghana,2006).

It is expected that the Whistleblower Act will boost the confidence of the public to disclose information that will lead to the arrest of people engaged in corrupt practice and other illegal activities. Although, the Act provides for protection of whistleblowers, fear of victimisation may prevent many from coming forward to disclose information. Public education is therefore necessary to eliminate the fear of intimidation and victimisation by people.

From the discussions above, it is clear that Ghana under the Fourth Republic has deliberately adopted several legislations aimed at streamlining the use of public resources to ensure efficiency, responsiveness and accountability. Meticulous enforcement of these legislations will go a long way to minimise mismanagement and corruption in the public sector. However, whether these laws have been adequately enforced is a subject for debate

3.4 Anti-corruption Institutions

As stated in earlier chapters, institutions are very essential for combating corruption since they are a vehicle for the implementation of the legislations in the country. It is therefore important to discuss some of these key institutions which are at the forefront of ensuring that public funds are properly used. The CHRAJ, SFO/ EOCO and Public Accounts committee of Parliament is therefore discussed below.

3.4.1 Commission on Human Rights and Administrative Justice (CHRAJ)

The 1992 constitution provided for the establishment of Commission on Human Rights and Administrative Justice (CHRAJ) with the responsibility of ensuring human rights, administrative justice and the fight against corruption. In pursuant to this constitutional provision, the Commission on Human Right and Administrative Justice (CHRAJ) Act, Act 456 (1993) was enacted on the 6th July, 1993. The Commission was subsequently inaugurated in October, 1993.

The commission has been assigned three key functions by the Act. These are (a) human rights function, (b) the Ombudsman function and (c) the Anti-corruption function. Section 7 of Act 456 which deals with the functions of the Commission, captures the anti-corruption function in subsection (a), (e) and (f) as follows:

1. to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
2. to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution;
3. to investigate all instances of alleged or suspected corruption and the inappropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation.

CHRAJ has since its establishment investigated several allegations of corruption, illegal acquisition of assets and abuse of office holders. Some of these officials include ministers of state such as Col. (Rtd) E.M Osei-Owusu (former Interior Minister), Mr. P.V Obeng (Presidential Staffer), Ibrahim Adam (Minister of Agriculture) and Dr. Richard Anane (Minister for Roads and Transport). In 2003, an allegation of conflict of interest was made against the President, His Excellency John Agyekum Kuffour. CHRAJ investigated the case but findings did not support the allegations. The fact that CHRAJ went ahead to investigate the allegation against the President of the Republic underscores the role of CHRAJ as an independent anti-corruption institution (Bossman, 2007:10).

However, CHRAJ has certain challenges that impede its function as an anti-corruption institution. First, its powers to enforce decisions serve as a severe limitation. Section 18 of Act 456 that established the Commission provides that after arriving at a decision on an issue,

the CHRAJ should submit its report including its findings and recommendations to the appropriate person, minister, department or authority concerned, with a copy to the complainant (Ayee,2000b:192). The Commission can only go court to seek the enforcement of its recommendations after three months, if the recommendations are not carried out.

Secondly, an inadequate financial resource is also a challenge to the Commission. This has resulted in the commission's inability to open offices in all the districts as required by Act 456. As argued by Franklin Oduro (2001:68), "the inability of the commission to fulfil constitutional requirement to open offices in all the districts in the country implies that the services of the commission has not been accessible to all citizens".

Thirdly, the inability of CHRAJ to conduct investigation into an alleged corruption case without a complaint is a serious limitation on the powers of CHRAJ. This follows the Commissions' investigation of Dr. Richard Anane and the subsequent ruling by the Supreme Court.

Another challenge of the commission is its inability to retain trained staff. "Low salaries and unattractive conditions of service for staff of the Commission have resulted in the exodus of competent and trained personnel from the Commission for other institutions" (Bossman, 2007:11).

3.4.2. The Serious Fraud Office/The Economic and Organised Crime Office

The serious Fraud Office (SFO) was set up by an Act of Parliament, Act 466 (1993) as a specialised agency of Government to monitor, investigate and on the authority of Attorney-General, prosecute any offence involving serious financial or economic loss to the State. The section 3(a) of the Act mandates the Office "to investigate any suspected offence provided for by law which appears to the Director on reasonable grounds to involve serious financial or

economic loss to the State or to any state organisation or other institution in which the State has financial interest”.

However, the SFO Act has been replaced with the Economic and Organised Crime Office (EOCO) Act, Act 804 (2010). The mandate of EOCO has been broaden beyond that of SFO. Unlike the previous Serious Fraud Office (SFO) which was only mandated to investigate matters which cause financial or economic loss to the state, EOCO is mandated to investigate, prosecute and recover proceeds of crimes including money laundering, drugs and human trafficking, bribery, forgery, extortion, smuggling, tax fraud among others.

3.4.3 Public Accounts Committee

The Public Accounts Committee (PAC) of parliament is a standing committee of parliament as part of the constitutional mandate of parliament to exercise supervision function over the public expenditure (not only passing the Appropriation Act as started in Article 178 of the constitution), is also required to ensure that monies parliament authorized for withdrawal from the consolidated funds and other public funds are appropriately accounted for by appropriation of such amounts.

The Article 103 of the 1992 constitution mandates parliament to establish standing committees and other committees that it deems necessary for effective discharge of its functions. In accordance with this constitutional mandate, the PAC was established by order 151 (2) of the standing orders of the Parliament of Ghana (Parliamentary Centre, 2009:1).

The PAC must consist of not more than 25 members and should be chaired by a member who is not a member of the party that hold the executive power. This is to ensure that party in executive who control public funds does not also become judge and prosecutor in its own case.

The primary function of the PAC is to examine Auditor-General's Reports to minimize financial losses to the state. It is argued that this is a limited mandate to PAC to only examine report presented by Auditor –General. Therefore, a strong case can be made for mandate of the PAC to be extended to include carrying out pre-emptive investigations into cases of financial malfeasance with the view to advert misuse of public resources.

Another serious challenge facing the PAC is inadequate funding for activities of the committee including study visits, outreach and meetings. In spite of these challenges, the PAC has made giant strides in recent years. The public broadcasts of the Committee sittings have drawn public attention to issues of accountability of public officials.

3.4.4. Auditor- General Office (AD-G O)

The 1992 constitution provides for the office of the Auditor-General charged with the responsibility to audit public accounts of Ghana. This mandate of auditor-general is states in Article 187(2) as follows:

The accounts of Ghana and all public offices, including the courts, the central and local government administrations of the universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of Parliament shall be audited and reported on by the Auditor-General.

The Auditor-General is also required by the constitution to submit his report Parliament, in which he must draw attention to irregularities. The Auditor-General's reports form the basis for the work of the Public Accounts Committee of Parliament. The procedure is that the Auditor-General submits his report to Parliament; the speaker refers the report to the Public Accounts Committee; the PAC after it sittings makes recommendations to Parliament for adoption. The Financial Administration Act,2003 (Act 654) makes provision for the establishment of the Financial Administration Tribunal with the mandate to among others

enforce recommendations of Public Accounts Committee on the Auditor-General's reports as approved by Parliament (Republic of Ghana,2003a).

There have been a backlog of reports to clear and the PAC examines reports it should have examined two years earlier. The Auditor General's reports have led to the discovery of huge drains on the public purse due to corrupt practices by public officials. The discoveries of malfeasance are sometimes corrected through the recovery of the monies involved. However, Ayittey (2000:109) points out that nothing was done about the 1993 report which revealed a number of corruption and embezzlement cases by high government officials. That report covered a ten year period, 1983-1993. The establishment of the Financial Administration Tribunal will therefore go a long way to ensure that the recommendations of Parliament on the Auditor-General's Report are implemented.

3.5 Media and Civil Society

The role of the media and civil society in the fight against corruption cannot be overemphasised. Free and independent media is one of the major keys to fighting corruption. Larry Diamond underscores the need for free media in the fight against corruption in the following passage:

Controlling corruption requires a press that is free from intimidation and restraint, a press that has the resources to investigate rumours and evidence of corruption, and a press that has the maturity, restraint, and professionalism to eschew sensationalist charges based on any whisper of malfeasance (1999:2).

The 1992 Constitution guarantees the freedom and independence of the mass media under Article 162(1) which states that "freedom and independence of the media are hereby guaranteed". Following the promulgation of the 1992 Constitution, the media landscape in Ghana have been expanded. A free and independent media can contribute to the fight against corruption by raising awareness of causes and consequences of corruption. It can also aid the

anti-corruption drive by exposing corrupt practices through investigative journalism and reporting.

In 1996, a series of media crusade on alleged corruption involving top government functionaries prompted the government to direct CHRAJ to investigate the allegations. After the investigation, CHRAJ made adverse findings against three of the functionaries whilst one was exonerated (Bossman, 2007:9).

Another media crusade by JOY Fm, an Accra-based radio station exposed an alleged corruption and conflict of interest against Social Security and National Insurance Trust (SSNIT) and its former Director-General, Mr. Charles Asare for causing financial loss to the state. CHRAJ investigated the case and made adverse findings against Mr Asare and recommended further investigation and prosecution for causing financial loss to the state.

It is clear from the above examples that a free media can go a long way to help in the fight against corruption and put fear in potential perpetrators of corrupt acts. It is also noteworthy that the Ghana Journalists Association (GJA) is member of the Ghana Anti-corruption Coalition (GACC). This underscores the readiness of the media in Ghana to partake in the fight against corruption in the country.

The Fourth Republic brings along the widening of the political space. Civil society organisations (CSOs) have increase in number and scope. There are several Non-Governmental Organisation (NGOs) and think tanks operating across the country.

Civil society organisations in Ghana engage in advocacy programmes and direct interventions in community development especially at grass root level. Civil society plays an important role in anticorruption drive. This includes monitoring, advocating and lobbying for the passage and enforcement of effective legislation to fight corruption. Civil society is also

sometimes involved in exposing acts of corruption and naming and shaming public officials found engaging in corrupt activities (Kututwa, 2005:2).

In Ghana, the civil society has been deeply involved in the fight against corruption. A coalition of civil society organisations known as Ghana Anti-Corruption Coalition (GACC) has been formed. This underscores the need for collaborative effort in the fight against corruption.

The Ghana Integrity Initiative (GII), a local chapter of Transparency International has been at the forefront of the anti-corruption campaign. Through research and advocacy the GII has brought issues of corruption to public attention. The annual launch of the Corruption Perception Index (CPI) by the GII brings corruption in the country into focus.

The Centre for Democracy and Development (CDD) and Institute for Economic Affairs (IEA) have also conducted research and held seminars aimed at strengthening accountability and influencing policy for better accountability and transparency in public office. It should be noted that these two institutions are also members of GACC.

3.6 Other Anticorruption Initiative under the Fourth Republic

Ghana witnessed a peaceful transfer of power from one party to another in 2001. President Kuffour in his inaugural address declared the commitment of his government to fighting corruption in the country by pronouncing zero tolerance for corruption. The Kuffour Administration went further to establish the Office of Accountability at the presidency. The Office of Accountability was an in-house watchdog agency for close monitoring of ministers and other executive appointees in discharge of their duties.

However, the Office of Accountability was “met with great scepticism because its mandate was not been defined for the public; as a result, observers can make no assessment of its

vigour and effectiveness” (Keith (2005:2). Baffour Agyeman-Duah observed that the appointment of the wife of a Senior Policy Advisor to the President and the mother of a close Presidential Aide betrayed a lack of sensitivity to conflict of interest avoidance norms and undermined the government’s credibility in its declared commitment to a policy of zero tolerance for corruption (2008:5)

Another landmark anti-corruption initiative under the Fourth Republic is the Commission of Inquiry on Ghana@ 50 celebrations. The Commission was appointed under Article 278 of the 1992 Constitution of the Republic of Ghana on 1st June, 2009. The three member commission had Justice Isaac Duose as Chairman, Marietta Brew Appiah-Opong and Osei-Tutu Prempeh as members. The Commission was tasked to enquire into the operations of the Ghana@50 National Planning Committee, the Ghana@50 Secretariat and matters related to the Ghana@50 celebrations.

One of the terms of reference of the Commission was to inquire into and report on allegations of improper use of public and any other funds. After several sittings which were broadcast on national television, the committee presented its report to the President on 23rd December, 2009. The government studied the report of the commission and President Mills issued a white paper on the report in which the recommendations of the Commission were accepted.

The implementation of some of the recommendations has resulted in a series of legal tussles between the state and some individuals connected to the Ghana@50 National Planning Committee and the Secretariat. The Commission was also seen by a section of the public as a means by the National Democratic Congress intimidate or harass members of the New Patriotic Party. Therefore, the work of the commission further politicised the issue of corruption in the country.

3.7 Conclusion

From the above discussions, it is clear that several strategies have been tried in Ghana to combat corruption. However, the Fourth Republic has witness a shift towards the use of legal and institutional approach to fighting the menace. It is hoped that proper enforcement of the laws and strengthening of the institutions would help reduce the incidence of corruption in society. The implementation of anti-corruption strategies must be backed by strong leadership and political will to achieve the desired results.

REFERENCE

- Agyeman-Dua, B. (2008). *Curbing Corruption and Improving Economic Governance: The Case of Ghana*. CDD: Accra Accessed on 9th December, 2010 from <<http://www.cddghana.org/documents/Curbing%20Corruption%20and%20Improving%20Economic%20Governance.pdf>>
- Akowitz, E. (2005). The Auditor-General's Position on his Role in the Implementation of Article 286/Act 550 in CDD (ed) *Enhancing the Credibility of the Public Office Holders Asset Declaration Regime*. CDD Briefing Paper Vol.7 No.3 (June, 2005)
- Bosman, A. (2007). *Promoting and Protecting Human Right, Ensuring Administrative Justice and Fighting Corruption in Ghana*. A paper presented at Commonwealth Conference of National Human Rights Institutions Marlborough House, London. 26th-28th February, 2007.
- Ayee, J. R. A (2000b). Ghana: the Continuing Search for Cures in the Fight Against Corruption in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Ayittey, G. B. N (2000). Combating Corruption in Africa: Analysis and Context in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Oduro, F. (2001) An Evaluation of CHRAJ 1993-1999: MPhil Thesis, University of Ghana
- Gyimah-Boadi, E. (2002) *Confronting Corruption in Ghana and Africa*. CDD Briefing Paper, Vol.4. No.2, CDD:Accra
- Keith, A. (2005). *Invigorating Ghana's Lagging Anticorruption Agenda: Instruments for Enhanced Civic Involvement*. CDD Briefing Paper Vol.7 No 2. CDD: Accra.
- Kututwa, N. (2005). African Anti-corruption Commitments: A review of Eight NEPAD Countries. AHSI paper 7

<kms1.isn.ethz.ch/serviceengine/Files/ISN/.../2005_01_01.pdf> accessed on 20th

January 2012.

Diamond, L (1999). Fostering Institutions to Contain Corruption. PREMnote 24, June, 1999.

World Bank

Parliamentary Centre (2009). The Public Accounts Committee of the Parliament of Ghana.

Parliamentary Centre: Accra Available on < http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Public_Accounts_Committee_Ghana_Book_EN.pdf > accessed on 12th July, 2011.

Republic of Ghana (1992) The 1992 Constitution

Republic of Ghana (1998) Public Office Holders (Declaration of Assets and Disqualification)

Act (1998), Act 550'

Republic of Ghana (2000), Audit Service Act (2000), Act 584

Republic of Ghana (2003a) 'Financial Administration Act (2003), Act 654

Republic of Ghana (2003b) Internal Audit Agency Act (2003), Act 658.

Republic of Ghana (2003c) Public Procurement Act (2003), Act 663

Republic of Ghana (2006) Whistleblowers Act (2006) Act 720

CHAPTER FOUR

ACT 663 AND CORRUPTION IN GHANA

4. 1 Introduction

The Public Procurement Act establishes the five basic pillars of public procurement (World Bank 2003): (1) comprehensive, transparent legal and institutional framework; (2) clear and standardised procurement procedures and standard tender documents; (3) independent control system; (4) proficient procurement staff; and (5) anti-corruption measures.

This chapter examines the provisions of the Public Procurement Act and how it seeks to promote competition, transparency, accountability, fairness and ethical behaviour in the procurement process. The various procurement structures such as the Public Procurement Authority, Procurement Entity and Tender Review Boards are also examined.

This chapter also discusses how the implementation of the Public Procurement Act has contributed to combating public sector corruption. It also discusses the challenges or the limitations of the Act in fighting corruption. The chapter is divided into sections which include methods of procurement and competition; monitoring and supervision by the Public Procurement Authority; complaints, Appeals and Disputes resolution mechanism; procurement structures and political patronage; Training and professional Development; Provisions on Accountability, Transparency and Ethics; Independence of the Public Procurement Authority and Contract management.

4.2 The Public Procurement Board

The Public Procurement Act establishes a Board with the objective “to harmonise the processes of public procurement in the public service to secure a judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is

carried out in a fair, transparent and non-discriminatory manner” (Republic of Ghana,2003c).

Towards the achievement of its objective, the Board has been assigned 21 functions under section 3 of the Act. Among these functions are:

- ensure policy implementation and human resource development for public procurement;
- monitor and supervise public procurement and ensure compliance with statutory requirements;
- publish a monthly Public Procurement Bulletin which shall contain information related to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information;
- advise Government on issues relating to public procurement;
- investigate and debar from procurement practice under this Act, suppliers, contractors and consultants who have seriously neglected their obligations under a public procurement contract, have provided false information about their qualifications, or offered inducements of the kind referred to in section 32 of the Act;
- maintain a list of firms that have been debarred from participating in public procurement and communicate the list to procurement entities on a regular basis;

Per the Act, the Public Procurement Board is the “statutory advisory and co-ordinating body on Procurement” (PPA,nd). All procurement structures under the Act are obliged to abide by technical guidelines and regulatory instructions issued by the Public Procurement Board.

The Board consists of ten members appointed by the President in consultation with the Council of State. The members of the board hold office for four years and are eligible for re-appointment for another term only. However, the Chief Executive Officer who is also a member of the ten member board is not subject to the term limited the Act imposes on the other members of the board. The Chief Executive Officer is in charge of administration of the

Board and is appointed in accordance with Article 195 of the constitution. He is in charge of implementing decisions of the Board.

Pursuant to section 3(c) of the Public Procurement Act, the Board has developed a procurement manual which provides guidelines and step-by-step procedures to assist procurement entities to undertake public procurement in accordance with the Act. The manual is designed to ensure transparency and accountability in all procurement operations. The publication of the manual has been able to prevent procurement entities from interpreting the law to satisfy their own interest and has also reduced discretion on the part of entities. The manual also contain a comprehensive list of actions which are considered as unethical conduct and prohibited under the Act. It also includes sanctions for non-compliance with the Act. The Auditor-General reports are abound with recommendations for refund of various sums of money to the state by entities for who are found to flouted the procurement guidelines.

The Board has also been publishing a monthly procurement bulletin in pursuant to section 3 (g) of the Act. The bulletins contain information on invitation for tenders, contract award and articles written by procurement practitioners on issues bordering improving the public procurement system. Therefore, the bulletins are a good source of information for entities and contractors or suppliers alike. The publication of the bulletins has increase access to information by actors in the procurement system which key fighting corruption in public procurement. However, the major limitation of the bulletins is that, as an electronic bulletin (e-bulletin), it is accessible to only people who have access to internet. Publication of a hard copy form of the bulletins will certainly help entities, contractors and suppliers without access to the internet also benefit from the valuable information contained in the bulletins.

Furthermore, Pursuant to section 3(h) of Act, the board has been conducting annual assessment of procurement entities to ensure that the entities comply with the law. However, due to the large number of procurement entities in the country, the Public Procurement Authority have to always sample some of the entities for the annual assessments. These assessment have offered the opportunity to the PPA to identify the challenges the entities are facing in the implementation of the Act in order to design appropriate policy interventions.

Towards the broad of objective of harmonising the processes of public procurement, the Board has introduced standard tender documents which are used by all public procurement. These standardised documents are also accompanied by standard procedures by which all public procurement is carried out. This has created a level playing field for all bidders in the procurement process since they are all required to fill the same documents and provide the same kind of information by which their bids are evaluated. The openness exhibited at the tender opening has introduced transparency into the system.

4.2.1 Independence of Public Procurement Authority

The independence of a regulatory institution such as PPA is very essential to ensure its efficient functioning. In an interview with an official of GII, he doubted the independence of the PPA. This doubt stems from the fact that the chief executive officer of the PPA is appointed by the president and his tenure of office is coterminous with that of the president. This may create a situation where the regulator (PPA) may renege on its duties to satisfy the whims and caprices of the ruling government.

The official of the GII lamented this seems to be the bane of most public sector institutions. He therefore suggested that the appointment of chief executive officer of by the public services commission would be appropriate to ensure that the chief executive officer has the free hand to run the Public Procurement Authority. A definite tenure of five or six years

which is not coterminous with that of the ruling government will help ensure the independence and security of tenure of the Chief Executive Officer.

The mode of appointment of the board of the Public Procurement Authority is another area that raises questions about the independence of the PPA. The procurement Act provides for a ten member board appointed by the president in consultation with the council of state. In this way, the board is likely to compromise its stance when they receive directives from the executive.

It is suggested by officials of GII and GACC that the act should be amended to allow the constitution of the board by elected members of stakeholders groups such as Association of Road Contractors, Ghana Real Estate Development Association, Chartered Institute of Engineers, Institute of Surveyors and Institute of Architects.

4.2.2 Training and Professional Development

Among the functions of the board spelled out in the Act is to facilitate the training of public officials involved in public procurement at various levels and to ensure human resource development for public procurement. This is in recognition of the fact that the success of a procurement system hinges on the availability of well-trained procurement staff. As Soriede (2002) points out, a well-functioning procurement process is dependent on a degree of professionalism among responsible public officials. Irrespective of how robust the law on procurement is framed, its effective implementation lies on skilled professionals who are trained to apply the law with a great sense of transparency, fairness, accountability and best practice (PPA, 2011).

The Public Procurement Authority in fulfilment of the above functions, since 2007 has organised training programmes nationwide. These programmes were to afford the various

stakeholders with appreciable level of understanding of the provisions of the procurement law. According to the PPA's 2007 Annual Procurement Report, 8246 persons were trained in the implementation of the public procurement law. As at February, 2011, about 20 000 participants have received training from the Public Procurement Authority. In an interview with an official of the PPA, it was revealed that the training programmes are tailored to the specific needs of procurement entities, contractors and suppliers to enable them effectively handle their roles in the procurement process.

To ensure that the human resource is developed in the area of public procurement, the board with support from Millennium Development Authority (MiDA) has developed three-tier curricula for the training of procurement specialists. The curricular includes (a) a three to six months training programme leading to a Chartered Institute of Purchasing and Supply (CIPS) level 4 qualification, (b) ten months training for HND Purchasing and Supply graduates leading to level 5 and 6 CIPS certificate and award of Bachelor of Science Degree, and (c) three and four-year degree programme in Procurement and Supply Chain Management which leads to a bachelor of science degree and a graduate diploma final level of CIPS (PPA, 2011).

An internship programme is also included in the training programmes to provide hands-on experience in public procurement management. This programme is meant for Purchasing and Supply graduates who are attached to public institutions. A tutor of Department of Purchasing and Supply of Accra Polytechnic, said as a training institution, practical training is very essential, therefore the department assists students to find internship positions in both public and private sector organisation. This, it is believed, will enhance the skills of students in the area of procurement.

In order to promote professionalism in public procurement, there is the need to establish a career path for public procurement practitioners and professionals. In 2011, the Public

Procurement Authority established a career path that would allow procurement personnel to progress through the ranks from the lowest level to a rank equivalent to a Chief Director within the public service.

The Ministry of Finance and Economic Planning is expected to create a directorate that will be in-charge of recruitment, placement and training of procurement personnel in the civil service. The Local Government Service and other MDAs are to appoint Head of procurement unit in their set up to coordinate all procurement related issues. The Public Service Commission is expected to issues guidelines for the creation of procurement class and the establishment of procurement units in the public service.

However, Soriede (2002) argues that professionalism in public procurement is difficult to achieve when the level of education is low and remuneration in the public sector is lower as compared to remuneration in the private sector. Therefore, the establishment of career path for procurement personnel should be done with better remuneration in mind so as not to compromise professionalism of procurement personnel due to poor remuneration.

4.2.3 Monitoring Other Public Procurement Bodies

The board is also mandated by section 3(d) of the Public Procurement Act to monitor and supervise public procurement to ensure compliance with statutory requirements. In this direction, the Public Procurement Authority has established Monitoring, Evaluation and Benchmarking Directorate, which is responsible for monitoring and evaluating the activities of procurement entities. This is to ensure that the procurement entities carry out their procurement activities in line with the Public Procurement Act. Considering the number of procurement entities to be monitored by the Authority, the questions which arise are:

- (1) Does the authority have the human resource capacity to monitor the numerous entities across the country?
- (2) How effective is the monitoring by the authority?

In an interview with an official of the Public Procurement Authority, it was revealed that inadequate staff is a major challenge to the Authority. Therefore, the workload is more than what can be handled efficiently and effectively by the personnel availability. This has also affected the capacity of the authority to effectively monitor the thousands of procurement entities across the country.

To improve accessibility and effective monitoring, the Public Procurement Authority has established zonal offices in Kumasi and Takoradi. The Kumasi office is responsible for Ashanti, Brong Ahafo, Northern, Upper East and Upper West Regions whereas the Takoradi office is responsible for Western and Central Regions. According to the official interviewed, plans are underway to establish another zonal office in Tamale to take responsibility for the Northern, Upper East and Upper West Regions. This is to ensure that the Authority effectively monitor the activities of procurement entities to guarantee compliance with the procurement law.

For the Public Procurement Authority to do effective monitoring there is the need to improve access for stakeholders in the procurement process. The establishment of the Zonal Offices is in the right direction; however the problem of inadequate staff needs to be tackled to reduce the work load on the existing staff.

4.3. Procurement Structures

The procurement entity is a critical structure in the procurement process. The procurement entity is responsible for direct procurement. All units within the procurement entity are

required to contribute to procurement decisions as stipulated in section 15(3) of the Act. However, the head of the procurement entity has the responsibility to ensure that the provisions of the Act are complied with as stipulated by Section 15(4) inter alia “the head of an entity is responsible to ensure that provisions of this Act are complied with; and concurrent approval by any Tender Review Board shall not absolve the head of entity from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of this Act.”

Each procurement entity is required to have a procurement unit which will manage the day-to-day procurement functions of the entity. Entity Tender Committees are required to set up by procurement entities as stipulated in section 17(1) of the Act in accordance with the structure set out in schedule 1 of the Act. The Entity Tender Committee (ETC) is charged to ensure that the entity complies with the law, exercise sound judgement in making procurement decisions and seek the concurrent approval from the appropriate Tender Review Board (TRB) for procurement above its threshold. The ETC is therefore one stop shop for concurrent approvals, awards and management of contracts. In performing its function, the ETC may make use of external consultants.

The Entity Tender Committee is assisted by Tender Evaluation Panel (TEP) which is made of people with expertise to evaluate tenders based on pre-determined and published evaluation criteria. The TEP is required to make recommendation for award of contract solely on the basis of information and evaluation criteria provided in the tender documents or request for proposals.

A close examination of the composition of the tender committees of Central management Agency/Ministry/ Co-ordinating Council and Metropolitan/Municipal/District Assemblies (MMDAs) as well as state Enterprises reveals the dominance by politicians.

The tender committees for the Central Management Agencies or Ministries, the Regional Coordinating Councils and MMDAs are all chaired by the political heads of these institutions. These political heads also have power of casting vote. They therefore have enormous power in the award of contracts. Although the various Tender Review Boards are there to subject the decisions of the entity tender committees to scrutiny, the mode of appointing members of these boards has also painted a partisan picture, giving course to question whether they can perform professionally without political bias.

In the midst of all the political power given to the political heads of entities, the question that arise is “do the structures established by the public procurement Act create a condition for political patronage?” Officials of GII and GACC in an interview conceded that the procurement structures set up by the Act is a recipe for political patronage. A case where a parliamentary candidate who lost his parliamentary bid was made a Regional Minister, with such enormous power in the award of contracts, would like to use his position to improve his chance of being elected in the subsequent elections. The tendency of such a person to award contracts to party faithful irrespective of competency is very high because he would like to improve his ratings especially among party faithful.

The official of GII cited the “2011 Voice of the People Survey” and said that political affiliation play an important role in the award of contracts in the public sector. As he puts it “at times you see them advertise contracts but the truth is that they already know how they are going to award those contracts. Party affiliation is a factor, it is wrong but that is the true situation.” This situation is further exacerbated by the fact that the political heads of these entities can award contracts within a certain threshold without going through the Tender Committee and concurrent approval by the Tender Review Board.

However, according to an official of PPA, the politicians also argue that it is right and proper for political heads of entity to be given such discretionary powers under the Act because the Act holds them accountable for any breach of the procurement law. He explained further that the politicians are made chairpersons of various tender committees of entities they head, because section 15(4) holds them accountable for any breach of procurement procedure irrespective of the concurrent approval by any Tender Review Board. It is therefore not fair to make someone accountable for breach of procedures that he/she does not have control over.

Another important procurement structure under the Act is the Tender Review Board (TRB). The TRBs are established under section 20 of the Public Procurement Act. There are four levels of tender review boards namely the District, Regional, Ministerial and Central Tender Review Boards. The composition and functions of the various Tender Review Boards are set out in schedule 2 of the Act.

It is also argued that though the political heads have dominance over the tender entities, the Tender Review Board is also there to check that procurement procedures are duly complied with. However, the mode of appointment of the members and indeed the chairpersons of the various Tender Review Boards (TRBs) raises concerns about check and balances.

Apart from the enormous powers given to the heads of entity, section 14 (1) (a) also empower the Minister of Finance and Economic Planning to decide on the use of different procurement procedure if it is in the national interest to do so. However, Azeem (2007) argued that it does not augur well for good procurement practice since it leaves too much discretion in the hands of an individual.

The dominance of politicians in the procurement process has often “led to political patronage and allegations of corruption” (Azeem, 2007). In an interview with an official of GII, it was revealed that some members of political parties especially the ruling party who are not

contractors get contracts and sell them to contractors. Leaving the procurement process in the hands of politicians who are constantly under pressure from party faithful to satisfy their demands including demands for contracts is a recipe for corruption.

4.4 Methods of Procurement and Competition

Scholars have often pointed out monopoly as one of the cardinal causes of corruption. Open competition often results in better quality and lower cost in procurement (Ware et al, 2007). As Lambsdoff (1999) opined “the less competitive a market environment, the higher will be the amount of corruption by giving public servants the incentive to extract some of the monopoly rents through bribes.” Therefore, to reduce corruption there must be competition. The Public Procurement Act seeks to promote competitions as one of the ways to combat corruption in the public sector.

The methods of procurement are mainly geared towards promoting competition among bidders. The International Competitive Tendering (ICT), National Competitive Tendering (NCT) and Request for Quotation (RFQ) are the main methods of procurement that are aimed at promoting competition. However, there are non-competitive methods which are used by procurement entities but only with prior approval of the Public Procurement Authority. Each of the methods has certain conditions that will necessitate its used.

International Competitive Tendering (I C T) is one of the preferred methods of procurement under the Act. The International Competitive Tendering is used for high value or complex procurements where the nature of goods and works is unlikely to attract adequate local competition. The I C T is used for procurement of goods above fifteen (15) billion cedis , works above twenty (20) billion cedis and Technical service above two (2) billion cedis as stated in schedule three (3) of the Act.

The National Competitive Tendering (NCT) is the other preferred tendering method under the Act. N C T is used for lower value procurement or where the nature and scope of works and goods are not likely to attract foreign competition. It can also be employed if procurement entity can justify the restriction of tendering to domestic suppliers and contractors.

The N C T is employed subject to the thresholds provided under schedule three (3) of the Act. It is therefore used where the value of goods ranging from twenty thousand Ghana cedis (GH¢20,000) to two hundred thousand Ghana cedis (GH¢ 200,000), works ranging from fifty thousand Ghana cedis (GH¢ 50,000) to one thousand five hundred Ghana cedis (GH¢1,500.00) and technical services ranging from twenty thousand Ghana Cedis (GH¢ 20,000.00) to two hundred thousand Ghana cedis (GH¢200,000.00).

Request for Quotation (RFQ) involves comparing price quotation obtained from several suppliers, usually at least three to ensure competitive prices. Request for Quotation (RFQ) are used for goods that are available on the open market or items of standard specification and of low value. The use of this method by a procurement entity is subject to the thresholds specified in schedule three (3) for the Act. Therefore for a procurement entity to employ RFQ, the value of the goods, works and services shall not exceed twenty thousand Ghana cedis (GH¢20,000), fifty thousand Ghana cedis (GH¢ 50,000) and twenty thousand Ghana cedis (GH¢20,000) respectively.

The annual assessment of public procurement in Ghana by the Public Procurement Authority reveals the methods employed by procurement entities in the table below.

Table 1: Methods of Procurement used from 2006 to 2009

Year	I C T	N C T	R F Q	R T	S S
2006	12.02%	37.04%	38.72%	9.17%	3.05%
2007	0.51%	22.72%	66.00%	2.18%	8.58%
2008	1.02%	15.59%	75.13%	1.53%	3.19%
2009	3.98%	28.72%	57.28%	4.69%	5.33%

Source: compilation from 2006 to 2009 PPA Annual Reports.

In 2006, the competitive methods (I C T, N C T and R F Q) of procurement constituted 87. 78 per cent while the non-competitive methods (Single Sourcing and Restricted Tendering) of procurement constituted 12.22 per cent. In 2007, the competitive methods constituted 89.23 per cent, non-competitive methods constituted 10.78 per cent. In 2008, procurement entities employed 91.74 per cent of competitive methods. In 2009, 89.98 per cent of the methods employed by procurement entities were competitive methods while 10.02 per cent were non-competitive methods.

The above breakdown indicates that the competitive methods of procurement are being employed by entities, which is good for fighting corruption. However, respondents pointed out that the figures may not necessarily represent the true picture on the ground. The respondents indicated that other factors such as political affiliation and cronyism play important part in the procurement of goods, works and services in the public sector.

The Auditor General reports have also raise issues bordering on non compliance with the procurement law by procurement entities. For instance, procurement of goods which are to done through request for quotation is done without recourse to the law. According to the

Auditor-General's Reports on District Assembly Common Funds, in 2008 GH¢ 413 750.67 went to uncompetitive purchases which should have been done through RFQ. Amount of GH¢ 544 616.12 involving 15 DAs, GH¢ 496 258.97 involving 19 DAs and GH¢ 854 896.84 involving 14 DAs in 2009, 2010 and 2011 respectively went in uncompetitive procurement instead of adhering to regulations on RFQ. Often, such purchases have resulted in the high prices of goods and services. Therefore, the State could have saved money, if these DAs had adhered to the procurement law.

Bureaucrats and political heads of institutions often skew procurement processes to favour people they wish to award contracts to. Before a notice of procurement is published or advertised, contractors who are favourites of bureaucrats and politicians are informed in advance. A respondent indicated that the sale of bid documents is the source of manipulation of the procurement process. A contractor may arrive at the venue for the sale of bid documents, five minutes after the sale has begun but will not get the bid documents to buy.

The manipulation in the sale of bid documents is not only limited to bureaucrats and politicians but also contractors and suppliers. Some contractors form syndicates that buy all the bid documents on offer. This is done with or without the knowledge of officials of the procurement entities. The bid documents are then prepared in such a way that a particular contractor wins the bid. The process is rotated until all the members of the syndicate have had their turn. This is referred to as collusion or bid rigging. This practice predates the passage of Public Procurement Act and still persists today. Procurement audits indicate that there were instances a single contractor bought all the bidding documents and securing many contracts under different contracting names (Anvuur and Kumaraswamy, 2006).

Politicians and bureaucrats connive with contractors to manipulate the public procurement process to their advantage. The "Voice of the People" Survey conducted by Ghana Integrity

Initiative in 2011 indicates that there are other factors that influence the award of contracts other than merit. About 70 per cent of the respondents in the survey perceived party loyalty as the factor that influences the award of contracts. Also, 52.7 per cent and 43.7 per cent perceived bribes and kickbacks respectively as the factors that influence the award of contracts. Whereas, 52.6 per cent perceived ethnicity/nepotism as a factor that influence the award of contracts (GII, 2011: 16).

Politicians and bureaucrats usually have companies registered in the names of family members and friends which are given preferences in the bidding process. These politicians and bureaucrats serve as agents for such companies because of the interest they have in them. Transparency International points out that, “the participation of bidders owned fully or partly by government officials can introduce additional risks if appropriate systems for transparency and accountability are not ensured” (2006:22). The situation is exacerbated by the provision in the Public Procurement Act which allows entity heads to award contracts within a certain threshold (i.e. GH¢ 5,000 for goods, technical and consulting services and GH¢10,000 for works) without recourse to the entity tender committee. This form of discretion is not good ensuring fairness since it depends solely on the moral judgement of the entity head not to abuse it.

Again, an official of GACC in an interview pointed out that a look at the construction market indicates that any time there is a change of government, new contractors emerge. Some of the contractors who were active under the previous government virtually go on leave because they cannot win contracts without their party in power. This indicates that party loyalty plays an important role in the award of contracts as confirmed by the 2011 Voice of the People Survey by Ghana Integrity Initiative.

The non-competitive methods of procurement are employed subject to the approval of the public procurement Authority. These non competitive methods of procurement are the single source procurement and restricted tendering. The use of both methods is subject to approval by the Public Procurement Authority.

Single source procurement as a non-competitive method is provided for under sections 40 and 41 of the Public Procurement Act. This method does not involve competition and is used subject to the approval of the public procurement Board. Section 40(2) reserves the right for approval to the Public Procurement Authority in order to prevent abuse by entities. It is considered appropriate when dealing with emergency situation, for instance where vaccines are needed to control an epidemic. It is also used where the goods or services required can only be supplied by one source. Where national security concerns are involved and where there is urgent need for goods and services that any other method or procurement is impracticable to obtain the goods or service at the appropriate time, then single source can be used.

The table below indicates the number of requests received from entities by the Public Procurement Authority from 2006 to 2009. It also indicates the number of requests approved and rejected over the period.

Table 2: Sole Sourcing Request from 2006 to 2009

YEAR	Requests Received	Requests Approved	Conditional Approval	Requests Rejected
2006	135	68	-	67
2007	192	159	-	33
2008	342	318	-	24
2009	269	124	108	37

Source: compilation from 2006 to 2009 PPA Annual Reports

In 2006, out of the 135 requests from procurement entities for the use of sole sourcing, 68 requests representing 50.3 per cent were approved while 67 requests representing 49.7 per cent were rejected. In 2007, out of the 192 requests made, 159 requests representing 82.8 per cent were approved while 33 requests representing 17.2 per cent were rejected by the Public Procurement Authority. Out of the 342 requests put in by procurement entities in 2008, the Public Procurement Authority approved 318 requests representing 93 per cent while 24 requests representing 7 per cent were rejected. In 2009, the Public Procurement Authority received 269 requests for sole sourcing; only 37 requests representing 14 per cent were rejected. The Authority however approved 124 requests representing 46 per cent while 108 requests representing 40 per cent were granted conditional approval.

Restricted Tendering is one of the non-competitive methods provided for in the Act. Under Restricted Tendering, a direct invitation is made to a shortlist of pre-qualified or pre-registered suppliers or contractors to submit tenders. The use of this method by a procurement entity is subject to the approval by the public procurement Board. It can also be used subject to the thresholds in schedule three (3) of the Act.

Two-Stage Tendering is a method which is not used frequently. A procurement entity may request bidders to contribute to the specifications of goods and works. After consultation and review of the specification, the procurement entity will issue a restricted tender to all bidders who were not rejected after the first stage. The two-stage tendering is used appropriately for goods and works which are subject to rapid technological advances.

Table 3: Restricted Tendering Requests from 2006 to 2009

YEAR	Requests Received	Requests Approved	Conditional Approval	Request Rejected
2006	140	80	-	60
2007	125	106	-	19
2008	173	166	-	7
2009	179	125	42	12

Source: Compilation from 2006 to 2009 PPA Annual Reports

With respect to restricted tendering, the Public Procurement Authority received 140 requests from entities in 2006, out of which 80 were approved and 60 rejected. In 2007 and 2008, the Public Procurement Authority received 125 and 173 requests respectively. Out of these, the Public Procurement Authority approved 106 and rejected 166. In 2009, 179 requests were received of which 125 were approved and 42 rejected.

The above analysis indicates that the Public Procurement Authority has been exercising its mandate under sections 30 and 40 (2) of the Public Procurement Act. However, Transparency International points out that “any process short of open public tendering risks manipulation and less economic pricing” (2006:105). A respondent from Ghana Anti-corruption Campaign Coalition also indicated that the use of sole sourcing is prone to abuse by procurement entities in spite of the mandated approval by the Public Procurement Authority. He added that procurement entities can deliberately create a condition that will necessitate the approval by Public Procurement Authority.

A case was cited in which the Ministry of Education in August 2005 applied for the use of sole sourcing to procure textbooks for 2005/2006 academic year. This request was based on section 40 (1) (a) which requires that there is unforeseen circumstance giving rise to urgency. It is difficult to understand why the Ministry of Education which fixes the reopening dates for

schools had to wait until August to procure textbooks for schools re-opening in September (Azeem, 2007). However, the Public Procurement Authority granted the request of the Ministry to sole source the textbooks from Messrs Macmillan Ltd. This sparked agitation from local publishers who pointed out that such a decision by the Ministry is an affront to fair competition.

According to OECD (2007), the non-competitive procurement contracts raise “concerns for reasons of transparency, democratic oversight, value for money and corruption risks” (2007:21). In interview with an official of GACC, he advocated that the use of sole sourcing should be scrapped since it is a recipe for corruption. However, there is needed for the state to sometimes use non-competitive methods of procurement to achieve public good. Therefore, there should be a well regulated usage of the non-competitive methods such that it will not create conditions for corruption to take place in the procurement process.

4.5 Methods for Procurement of Consultancy Services

Part VI of the Public Procurement Act deals with the engagement of consultants or consultancy services. Consultancy services are services of an intellectual and advisory nature provided by firms or individuals.

There are two routine features of procurement and selection of consultants. These are Two Envelope Tendering and Merit Point system. The Merit Point system is based on point scoring to determine the winning bidder. The bidders’ technical abilities as well as their financial capabilities are scored. The bidder with the highest score is recommended for engagement. The Two Envelope Tendering involves the submission of the technical and financial proposal in two different envelopes. This is to avoid the possibilities of the bidder’s price influencing the technical evaluation. The Technical proposals are evaluated first before the financial proposals are opened.

Various methods are applied under the Public Procurement Act, (Act 663) to select consultants for engagement. These are (1) Quality Based Selection (QBS), (2) Quality and Cost Based Selection (QCBS), (3) Least Cost Selection (LCS), (4) Fixed Budget Selection (FBS), (5) Selection Based on Consultant's Qualification (SBCQ) and (6) Single Source Selection (SSS).

The Quality and Cost Based Selection (QCBS) uses the Merit Point score system. It involves the scoring of the technical abilities and experience of the consultants and the quality of the proposals submitted. The consultants whose technical proposals achieved the required minimum technical score will have their financial proposals considered. The aggregate of financial and technical scores is then used to determine the winning tender for the award of contract.

Quality Based Selection (QBS) is used in selecting consultants for complex or highly specialised assignments, where the best expertise is needed without consideration of the price. The technical proposals are evaluated and the highest ranked tenderer is invited for negotiation on the cost. The two envelope system may also be adopted where the tenderers submit both technical and financial proposals in separate envelopes. In this case, after the evaluation of technical proposals, the financial proposal of the highest ranked technical proposal is opened. The rest of the financial proposals are returned to the unsuccessfully bidders without opening them, after negotiations with the highest ranked bidder is concluded successfully.

Fixed Budget Selection (FBS) is employed for simple and clearly defined assignment where limited budget is available for the services. Invitation for proposals is made to consultants who are expected to submit their best technical proposal within a fixed budget. The highest scoring technical proposal within budget is awarded the contract. In the Request for Proposal

(RFP), the available budget and the required tasks are declared. The bidders are required to submit technical and financial proposal sealed in separate envelopes. The consultants who submit the highest ranked technical proposal within the stated budget will be awarded the contract.

Least- Cost Selection (LCS) is used to selected consultants where the assignment is standard and there is well established practice and professional standard. It is also used when the contract value is small. The Two Envelope System is used when LCS is adopted for selecting consultants. The shortlisted consultants are requested to submit technical and financial proposals in separate envelopes. The technical proposals are evaluated and those that score below the minimum qualifying score are rejected. The financial proposals are opened in public and the proposal with the least price is selected for award of contract.

Selection Based on Consultant's Qualification (SBCQ) is used for small assignment where elaborate evaluation of competitive proposals is not justified. Information on consultant qualification and experience relevant to the assignment is requested. The consultant with the most appropriate qualifications and experience is selected. The consultant is then requested to submit technical and financial proposal together. Then negotiation leading to contract award follows.

The Single Source Selection (SSS) defies the principle of transparency and is prone to abuse. The Act therefore restricts its use. Clearance must be sought from the Public Procurement Board before Single Source Selection is used. Under Single Source Selection, one consultant or firm is contacted to provide the services without tendering.

All the methods of selecting consultants except single source selection involve two envelope tendering. This allows the technical proposal and financial proposal to be evaluated separately, at times by different evaluation panels. The technical proposals are often

evaluated first so as to avoid the possibility of the financial proposal influencing the technical evaluation. The Single Source Selection defies the principle of competition therefore there is a restriction to its use. It is required that approval is sought from the Public Procurement Authority before the Single Source Selection is employed. This is to ensure that it is not abuse by procurement entity.

4.6 Provisions on Transparency, Accountability and Ethics

The ultimate goal of the Public Procurement Act is to harmonize the process of public procurement in the country to achieve fairness and transparency. The procurement must ensure that public funds are used to achieve the highest value of works services possible. To this end, the Public Procurement Act provides for sanctions for breaches of its provisions by actors involved in the procurement process. Transparent, accountable and ethical behaviour is therefore imperative.

Accountability is essential element of a good procurement process. Stakeholders in the procurement process ought to be accountable for their actions and inactions. Transparent and accountable behavior is an imperative for good procurement process. To ensure accountability, the Act places responsibility on the head of procurement entity. The head of entity must ensure that the procurement rules are followed. In an event where a contract awarded is inconsistent with the Act, the head of entity is held accountable irrespective of the participation of the tender committee and tender review board in the procurement process. . This is a good initiative in the Act since it ensures that somebody is held accountable for procurement decision.

However, according to an official of the Public Procurement Authority, there is no record of a head of procurement entity having been sanctioned for contravening the procurement rules.

Apart from the normal Audit queries which may not even be corrected, there is nothing punitive enough to ensure that accountability in Public Procurement is guaranteed.

Periodic procurement audits are necessary to ensure accountability. Section 91 of the Public Procurement Act mandates the Auditor-General to conduct annual audits of the procurement entities. Section 91 (2) states that “the Auditor-General shall carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants with procurement requirements.....” Transparency International (2006) suggests that whenever such audits points to corruption on the part of contractor, supplier or consultant, appropriate punitive measures should be taken. However, it is not clear as to whether or not such audits have taken place with resultant sanctions under the Public Procurement Act. Audit reports are submitted to Parliament for examination by the Public Account Committee.

Section 3(q) and(r) empowers the Public Procurement Authority to investigate and debar suppliers, contractors, and consultants who have not fulfilled their obligations under public procurement contract, offered inducement or falsify information about their qualifications. The Authority is also to maintain a list of firms that have been debarred and communicated such list to procurement entities. Ware et al opined that “accountability requires the existence of a credible sanctioning system for violation of rules, consistent with due process” (2007:298). The breach of procurement rules must attract the necessary sanctions from the regulatory body to deter would-be offenders.

According to Transparency International, “debarring economic operators that have been found to be corrupt, from participation in the competition for future public contracts has been proven to be a very effective sanction against business people” (2006:58). However, an official of the legal department of PPA, indicated in an interview that the PPA has not debarred any company and therefore does not have a list of debarred companies. This may

indicate that companies in Ghana have not been contravening the procurement rules or the sanctioning regime prescribed by the Public Procurement Act has not been applied as it should. The latter looks more probable. The website of the PPA links to a list of debarred companies by the World Bank. These companies may not have anything to do in Ghana.

To ensure transparency, the Act provides that the tendering is made is advertised. The opening of tenders is done in the presence of all bidders who can attend. In the presence of the bidders or their representatives, the tenders are opened one after the other. The name of the contractor or supplier and his/her bid price is announced to those present. Bidders who are not able to attend the tender opening shall upon request be furnished with the names of contractors and their bid prices. Apart from the public opening of tenders, the disclosure of evaluation criteria before the start of tendering process is also meant to ensure transparency in the process.

Offences relating to procurement and corrupt practices are dealt with under Sections 92 and 93 of the Act. Section 92(2) points out certain offences such as collusive agreement among contractors, suppliers or consultants, resulting in quotation of higher prices than could have been without collusion. Also, any direct or indirect influence or attempt to influence the procurement process in any way to obtain unfair advantage in the awards of contract constitutes an offence under the Act. This include offer of gifts and inducement to officials involved in the procurement process.

The procurement manual gives a comprehensive list of unethical conduct by actors. These include:

- Revealing confidential or “inside information” either directly or indirectly to any tenderer or prospective tenderer;

- Discussing procurement with any tenderer or prospective tenderer outside the official rules and procedures for conducting procurements;
- Favouring or discriminating against any tenderer or prospective tenderer in the drafting of technical specifications or standards or the evaluation of tenders;
- Destroying, damaging, hiding, removing, or improperly changing any official procurement document;
- Accepting or requesting money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from tenderers or prospective tenderers;
- Discussing or accepting future employment with a tenderer or prospective tenderer;
- Requesting any other Public Servant or Government official representing the Procurement Entity in a procurement to violate the public procurement rules or procedures;
- Ignoring evidence that the Code of Ethics has been violated by a member of the Tender Committee, Public Servant or other employee or representative of the Procurement Entity;
- Ignoring illegal or unethical activity by tenderers or prospective tenderers, including any offer of personal inducements or rewards.

Section 92 (1) provides that anybody who contravenes any provision of the Act commits an offence. In case a penalty is not prescribe for such an offence under the laws of Ghana, the person is liable on summary conviction to a fine not exceeding 1000 penalty units¹ or a term of imprisonment not exceeding five years or to both.

Section 93(2) situated the definition of corrupt practices within the meaning of corruption as defined in the Criminal Code (1960), Act 29. This implies that penalties applicable under the Criminal Code are applicable to corrupt practices committed under the procurement Act.

¹ One penalty unit is GH ¢ 12, therefore 1000 penalty units translate to GH¢ 12,000.

Section 93(1) entreat procurement entities and participants in the procurement process to abide by Article 284 of the 1992 Constitution which states that “a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

Section 32 also enjoins procurement entities to reject tenders, proposal or quotations if the supplier, contractor or consultant who submitted the tender offer to give or give any current or former officer or employee of the procurement entity or other governmental authority, (a) a gratuity in any form; (b) an offer of employment; or (3) any other thing of service or value as inducement with respect to anything connected with a procurement entity and procurement proceedings.

4.7 Procurement Procedures

The Public Procurement Act provides for standard procedures by which public procurement should be carried out. Parts III-V of the Act specify these procedures which include tender packages, invitation and evaluation of tender and contract award. This is to ensure that there is level playing ground for all bidders and also transparency in public procurement process in Ghana.

Section 22 provides for pre-qualification of suppliers and contractors for large works and technical service. The Act also provides for specific methods of procurement which are justified based on certain conditions and thresholds specified in schedule two (2). All contracts are to be tendered in open tendered basis except provided for in section thirty-five (35) and forty (40) of the Act. Sections forty-nine (49) and fifty (50) stipulated that standard procurement documents shall be used in all public procurement. Procurement entity may make minimum changes to the standard document but such changes must be acceptable to the

Public Procurement Authority. There changes must be introduced only through tender or contract data sheet.

The tender evaluation shall be included in the tender invitation document as stipulated in section fifty (50) (3b). Under the evaluation criteria a procurement entity may grant a margin of preference for the benefits of domestic contractors or bidders for domestically produced goods or service as provided for in section sixty (60) and sixty-four (64) prohibit disclosure of information relating to the examination, clarification, evaluation and comparison of tenders to suppliers, contractors or anybody who is not officially involved in the process. Also, no negotiation shall take place between entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor except as provided for in section sixty-four (64)(2). The Act provides for procedures on the acceptance and entity into force of procurement contract in section sixty-five (65).

The procedures are meant to introduce transparency in to the procurement system and ensure that bidders are preview to information on evaluation criteria while saving business secrets of bidders. Generally the procedures are geared towards regulating the behaviour of actors in the procurement process.

4.8 Disposal of Stores, Plants and Equipment

Part VIII of the Public Procurement Act deals with disposal of stores, plant and equipment. Section 83 of the Act authorises the Head of Procurement Entity to dispose of stocks or equipment that have become obsolete, redundant and unserviceable or surplus to requirement.

Sections 83 and 84 of the Act and chapter 9 of Procurement Manual provide the guidelines for disposal of goods and equipment. According to the guidelines, the Head of Procurement Entity shall convene a Board of Survey to survey all goods and equipment. The Board of

Survey shall include a representative of the procurement entity's finance/administration department, the storekeeper and a senior officer from a public or private institution with special knowledge of items to be surveyed. The Board of Survey shall submit a report on the items explaining why the items have become obsolete, surplus and unserviceable, and recommend the mode of disposal. The recommendations of the Board of Survey shall be approved by the Head of Procurement Entity who shall instruct the stores department to take steps to dispose of the items in accordance with the recommendations of the Board of Survey.

Section 84 of the Public Procurement Act provides four modes of disposal of goods and equipment. These are (i) transfer to Government Department or other Public Entity, (ii) Sale by Public Tender, (iii) Sale by Public Auction and (iv) Destruction, Dumping or Burying.

Goods and equipment can be transferred to a Government Department or Public entity with or without financial adjustment. This is applicable where such goods and equipment can be usefully deployed by another procurement entity. Goods and equipment with an initial cost of GH¢ 5000 and above, and are less than 10 years old must be disposed through sale by public tender. The bidder with the highest price is offered the item subject to the reserve price.

Goods and equipment with estimated value of less than GH¢ 5000 shall be disposed off through public auction. There must be sufficient items for disposal to justify the costs of conducting the auction process. Where the goods and equipment are of no residual value, disposal by destruction, dumping or burying is recommended. To proper execution of disposal by destruction, dumping or burying, a committee shall be set up to supervise the disposal. The committee must seek approval from appropriate environmental agency before carrying out the destruction, dumping or burying of the items.

Disposal of stores, assets, plants and equipment which are obsolete, redundant and unserviceable or surplus to requirement is another area that corruption acts can easily be

perpetuated by officials involved. Sections 83 and 84 of the Public Procurement Act provide guidelines for the disposal of stores, plants and equipment.

In spite of the clear guideline on the disposal of equipments, two of the four methods – sale by public tender and sale by public auction are prone to abuse by officials involved. Goods and equipment are often valued far below their actual value. The methods are often skewed to favour people working in the public institution concerned or people with links to top echelons of the institution.

An official of GACC mentioned in an interview that disposal of public assets is mostly done by auction irrespective of value of the item. According to him, there was an auction where a five year old serviceable Nissan Pickup (hard body) was sold at two thousand Ghana Cedis (GH¢ 2000). He added that some cars are even sold at five hundred Ghana Cedis (GH¢ 500) and one thousand Ghana Cedis (GH¢ 1000). Therefore, auctions are often theatrical acts but nothing else since the auctions are skewed to exclude people from outside the organisation or without links to the organisation.

4.9 Contract Management

Activities that take place after a contract has been entered into force, is as essential as the activities that led to the contract award. There are obligations for both the entity and the contractor to fulfil. A proper contract management would ensure that both parties live up to their obligations under the contract. In Ghana, contract management is said to be very poor (World Bank, 2003).

The Auditor- General's Report on the utilisation of the District Assemblies Common Fund (DAFC) and other statutory Funds indicates that contract management irregularities which include overpayment of contract sum, failure to tender, overpayment of mobilisation advance

and termination of contracts have cost the nation huge amounts tax payer money. The table below indicates the amount money lost through contract management irregularities and the number of assemblies involved.

Table 4: Cost of Contract Management Irregularities

2008		2009		2010		2011	
Amount (GH¢)	No of DAs	Amount (GH¢)	No of DAs	Amount (GH¢)	No of DAs	Amount (GH¢)	No of DAs
3,110,810.30	40	5,262,471.29	56	12,326,653.79	83	8,394,364.05	52

Sources: Auditor –General’s Report on DACF and other Statutory Funds for 2008, 2009, 2010 and 2011

From the table above, it is clear that poor contract management comes at a cost and constitutes a drain on the already scarce resource. It is instructive to add that these irregularities are as a result of the District Assemblies refusal to adhere to the provisions of the procurement law and other financial regulations. The district assemblies are not the only procurement entities which have been violating the procurement law; most of the audit reports on public institutions are abound with such in irregularities.

According to the 2009 Assessment Reports, Ghana scored 53.98% in terms of its performance under contract management with supervision and reporting of works and services contracts scoring the lowest in that category. Monitoring and supervision of contracts ensure that parties in the contract live up to their obligations in the contract.

According to Ware et al, monitoring the contracts and works completed is important for controlling corruption. Poor monitoring and supervision of contracts may lead to the public being short changed. Shoddy works, goods and services which do not meet the value (in terms of quantity and quality) of what has been paid for with limited public funds will be

delivered. Ware et al point out that “a contract that is not properly and frequently monitored leaves opportunity for individuals to siphon money without completing the necessary work or providing the quality of work expected” (Ware et al, 2007:315). Contractors, suppliers and consultants are business people and will be looking for means to maximise profit including cutting down on quantity and quality.

Contract supervision emerged as serious problem in an interview with an official of the Works Department of the Kasena Nankana West District. The officer cited logistics constraints and administrative lapses as reasons for poor supervision of contracts in the district. According to him there are instances contracts were awarded at national and regional level without notifying the district of deployment to site. There was a case where a renovation contract was awarded to a contractor by Regional Coordinating Council with the knowledge of the Works Department of the Assembly. However, the contractor was sent to site without notifying the Works Department. The presence of the contractor on site came to the notice of Works Department when a member of the community complained about some shoddy work on the site. He lamented “you see we were waiting for the RCC to inform us that contractor is ready so that we take him to the site but it did not happen. My brother, we cannot rely on only contractors and consultants for quality work. We must all be involved.”

From the interview with the official of the works Department of the Kasena Nankana West District, it also became clear that the involvement of the citizenry in ensuring that contractors deliver quality job is very important. But the problem is lack of information on contracts to the citizenry. How can you hold a contractor accountable when you do not know the contract specifications or the quality he is expected to deliver? Some level of information disclosure is therefore necessary for the citizenry to get involved in monitoring contracts in the various communities.

Another aspect of contract management that has not been handled well in most cases is the payment for works, supplies and services. There are often delays in the payment of contractors, suppliers and consultants. A local contractor in Upper East in an interview lamented that “at times, you finish work and have to chase the money for some time. It is frustrating because you also have obligations to meet and interest on your loans keeps increasing.” Azeem (2007) points out that the process for payment to contractors, suppliers and consultants is too long and at times contractors have to travel to follow up payments in Accra. This situation may force a contractor to give out bribe to facilitate or speed up the processing of payment.

Management of contract disputes is another aspect of contract management which is being poorly handled. Parties to a contract usually have the right to terminate the contract based on certain terms and conditions specified in the contract. However, it is uncommon to hear a minister of State on inspection tour of projects to declare on project site that contract is hereby terminated and will be awarded to another contractor. Although, this may aim at ridding the system of non-performing contractors, the way it is done without recourse to terms of the contract, opens up state institutions to damages in the form of judgement debts.

4.10 Complaints, Appeals and Disputes Resolution Mechanism

Disputes are inevitable part of every human institution and public procurement law therefore provides for disputes resolution process to ensure that complaints and contract disputes are resolved fairly. Disputes in the procurement process may be due to breach of conditions of a contract or unfair treatment of a contractor or supplier by a procurement entity.

To promote fairness, a review process is included in the Act. This is to accord suppliers, contractors and consultants the right to appeal against procurement decisions by procurement

entities. Two types of review are available under the Act. These are review by the procurement entity and administrative review by the Procurement Board.

A supplier or contractor who believes that he/she has suffered undue loss or injury due the actions of a procurement entity can submit a writing complaint to the head of the procurement entity. This must be done within twenty days after the supplier or contractor became aware of circumstance that gave rise to the complaint. The head of the procurement entity shall thereafter deal with the complaint as stated in section 79 of the Act. A supplier or contractor can also seek administrative review by submitting a complaint to the Public Procurement Authority in line with the conditions set out in the section 80(1) of the Act. The procedure for handling the review process by the Public Procurement Authority is spelt out in section 80 (2), (3), (4) & (5), and sections 81 and 82 of the Act.

The critical question is “how often do service providers (suppliers, contractors and consultants) make use of the review process to settle disputes?” An official of the Public Procurement Authority in an interview stated that he thinks that the review process or the complaints and disputes resolution process is not being fully utilised by the stakeholders. The 2008 Annual Report of Public Procurement Authority, points out the difficulty faced by service providers and the procurement entities with regards to making use of the disputes resolution mechanism. While service providers are reluctant to use the complaint mechanism for fear of being blacklisted; entities have difficulty with how to handle the complaints that come to them.

An interview with a local contractor in Upper East Region revealed that contractors are actually reluctant to resort to review process because “there is no need to put yourself in the bad books of entities that you will go to another time to bid for contracts. So you only hope that next time the tendering process would favour you.” This indicates that there is need for

education to enable suppliers, contractors and consultants understand the review and disputes resolution mechanisms, so as to fully utilise the process to ensure fairness and transparency.

Apart from the review process provided for by the Act, contracts that have disputes are resolved by the Public Procurement Authority resorting to the dispute resolution procedures outlined in the conditions of contract governing those contracts. The Public Procurement Authority resolved 73 per cent, 100 per cent and 75 per cent of contract dispute received in 2007, 2008 and 2009 respectively (PPA, 2008; PPA, 2009; PPA, 2010).

4.11 Conclusion

From the discussions above, it is clear that the Public Procurement Act provides a good framework for promoting competition, accountability, transparency and fairness which are essential for combating corruption in the procurement process. However, structural weaknesses in the law and deliberate manipulations of system by the stakeholders have reduced the potency of the Public Procurement Act to combat corruption in the procurement process in Ghana's public sector.

REFERENCE

- Anvuur, A., Kumaraswamy, M. and Male S (2006), *Taking Forward Public Procurement Reforms in Ghana*. CIB W107 Construction in Developing Economies International Symposium “Construction in Developing Economies: New Issues and Challenges” January 18th – 20th; 2006 – Santiago, Chile
- Available on
< http://ppaghana.org/documents/FINALMANUAL_PPB.pdf?story_id=27 > accessed on 10th May, 2011.
- Azeem, V. (2007). Impact of Public Procurement Act, 2003(Act 663) in GII’s Perspective. Special Forum on *Improving efficiency and Transparency in Public Procurement Through Information Dissemination*. August 22, 2007 National Theatre: Accra
- Ghana Integrity Initiative (2011), ‘The Voice of the People Survey’. Available at < <http://www.tighana.org/giipages/publication/voiceofthethepeoplesurvey.pdf> > Accessed on 23rd May, 2012.
- Interview with a local contractor in Upper East on 20th December, 2012
- Interview with a tutor from the Department of Purchasing and Supply, Accra Polytechnic on 30th July, 2012
- Interview with an official of Ghana Anti-corruption Campaign Coalition on 18th July 2012
- Interview with an official of Ghana Integrity Initiative on 27th June, 2012
- Interview with officials of PPA, 30th July 2012
- Lambdoff, J.G (1999). Corruption in Empirical Research- A Review. Available at
< http://www1.worldbank.org/publicsector/anticorrupt/d2ws1_jglambsdorff.pdf >
Accessed on 5th June, 2010.
- Organisation for Economic Cooperation and Development (2007), *Bribery in Public Procurement: Methods, Actors and Counter-Measures*. available at

<http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44956834.pdf> accessed on 20th May, 2011.

Public Procurement Authority (2007), 2006 Annual Procurement Report

Public Procurement Authority (2008), 2007 Annual Procurement Report

Public Procurement Authority (2009), 2008 Annual Procurement Report

Public Procurement Authority (2010), 2009 Annual Procurement Report

Public Procurement Authority (2011) Building Relevant Skills for Public Procurement,
Electronic Bulletin Jan—Feb 2011 Vol. 2, Issue 1

Public Procurement Authority (2012), Obtaining Value Through Effective Contract
Management. Electronic Bulletin May-June 2012, Vol.3 Issue 3

Public Procurement Authority (nd), Manual- Public Procurement Act, 2003(Act 663).

Republic of Ghana (2003c). Public Procurement Act (2003), Act 663. Assembly Press: Accra

Republic of Ghana (2009). Report of the Auditor-General on the Management and Utilisation
of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year
Ended 31 December 2010

Republic of Ghana (2010). Report of the Auditor-General on the Management and Utilisation
of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year
Ended 31 December 2009

Republic of Ghana (2011). Report of the Auditor-General on the Management and Utilisation
of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year
Ended 31 December 2010

Republic of Ghana (2012). Report of the Auditor-General on the Management and Utilisation
of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year
Ended 31 December 2011

Søreide, T. (2002), *Corruption In Public Procurement: Causes, Consequences And Cures* <
<http://bora.cmi.no/dspace/bitstream/10202/185/1/R%202002-1.pdf>> (accessed on 10th
October, 2010)

Transparency International (2006), *Curbing Corruption in Public Procurement: a handbook*.

Available at

http://www.transparency.org/whatwedo/pub/handbook_for_curbing_corruption_in_public_procurement on 10th October, 2010.

Ware G. T, Moss S., Edgardo J. C. and Noone G.P. (2007) *Corruption in Public Procurement: A Perennial Challenge*, In Edgardo, J.Campos and Sanjay Pradhan (eds) *The Many Faces of Corruption: Tracking Vulnerabilities at Sector Level*. World Bank: Washington D.C

World Bank (2003), *Ghana 2003 Country Procurement Assessment Report*, Washington, DC:
Ghana Country Department, the World Bank

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the summary of the findings of the study. Based on the findings, conclusions are drawn and recommendations are made to enhance the role of the Public Procurement Act in combating corruption in the public Sector. The study set out to find out the capacity that the Public Procurement Act (2003), Act 663 to combat public sector corruption. To this end, the objectives of the study were as follows:

- To find out how the Public Procurement Act has contributed to fighting corruption.
- To identify the weakness of the Public Procurement Act and examine its effects on the effort towards combating public sector corruption in Ghana.
- To make recommendations to enhance the role of the Act in fighting public sector corruption in Ghana.

5.2 Summary of Findings

The study revealed that the Public Procurement Act provides for methods of procurement which seeks to promote competition among bidders. The National Competitive Tendering, International Competitive Tendering and Request for Quotation are the main methods employed to ensure competition among bidders. The non-competitive methods are also used but not without prior approval of Public Procurement Authority. The sole sourcing has been used with prior approval of the Public Procurement Authority. However, it is being abused because procurement entities deliberately create conditions that will necessitate the approval by the Public Procurement Authority.

The study revealed that despite the fact that the Act provides clear procedures for procurement process, there is still some manipulation of the procurement system by

politicians, bureaucrats and contractors. The manipulation of the procurement system is done with or without the knowledge of the officials of the procurement entities.

It was further revealed that there is political interference in the work of PPA. The Chief Executive Officer is appointed by the President and the tenure of office is coterminous with that of ruling party. A change in government means an appointment of a new Chief Executive Officer. This compromises the office of the Chief Executive. The regulator may renege on its duties to satisfy the whims and caprices of the ruling government.

Again, the study identified that the procurement structures created by the Act are dominated by politicians or political appointees. This is a recipe for political patronage. The political heads of Ministries, Department and Agencies (MDAs) as well as Metropolitan Municipal and District Assemblies (MMDAs) are also heads of their respective procurement entity tender committees. As heads of ETC, they also have cast vote. The mode of appointment of members of Tender Review Boards also paints a partisan picture, casting doubt on their ability to critically scrutinise the decisions of the Entity Tender Committees without political basis.

It was revealed that contract awards have been often taken partisan lines. Contracts are awarded to politicians who are not contractors and they in turn sell the contracts to contractors. This confirms the popular perception that one must belong to the ruling party in order to win contracts. Contracts are awarded to set of contractors and when there is change of government, there is a new set of contractors who win contracts. Therefore, if your party is not in power, then you virtually go on holidays. Contractors who play their cards well are able to maintain a good relationship with the major political parties. Therefore, they are able to win contracts irrespective of which party is in power.

Disposal of stores, Assets and equipment emerged as one area that has been abused by procurement entities. Though, the Act provides in sections 83 and 84, guidelines for the disposal of stores, plants and equipment, officials of procurement entities often skew the process to favour themselves or relatives. For example, a five year old serviceable Nissan Pick-up (hard body) was sold at two thousand Ghana Cedis (GH¢2000).

It study also revealed that sanctioning regime under the law is not been applied adequately. Even though, the Public Procurement Act provides sanctioning of stakeholders who contravene the provisions of the act, the sanctions have not been adequately used. No contractor, supplier or consultant have been debarred as per section 3(q) and (r) of the Act. The website of the Public Procurement Authority rather links to companies debarred by the World Bank.

Contract management is another area that is performing poorly in Ghana. Contract monitoring and supervision is very poor. This often led to shoddy work, poor quality of goods and service delivered by contractors. Poor monitoring and supervision of contracts may therefore lead to the public being short changed.

The study also revealed that the involvement of citizens in ensuring that contractors deliver quality job is very important. However, due lack of information on contract specifications and cost such an exercise is impossible. This is because a citizen cannot challenge a contractor on his job without knowing what the contractor is required to do under the contract specifications.

Management of contract disputes is another aspect of contract management that is poorly handled. Even though, the Act provides for guidelines in managing disputes, contracts are terminated unilaterally by entities without recourse to the terms of the contracts. This often opens up public sector institutions to damages in the form of judgement debts.

Training of procurement personnel has been given serious attention. A good procurement system hinges on professional competence of personnel handling the procurement processes. The Public Procurement Authority has developed curricula for training procurement personnel which has been adopted by some educational institutions. However, there is still the need to continue in-service training for personnel who handle procurement processes in the various public sector institutions. Contractors, suppliers and consultants need more education on their rights and responsibilities under the Act.

There is also the issue of delay in the payment of contractors for work done. Contractors have to sometimes chase for their money. This often creates a situation where contractors are forced to pay bribes to facilitate early payment of their payment certificates.

5.3 Lessons Learnt

In an academic exercise such as this, the lessons learnt are very important since they will inform readers of some important information from the finding of the study.

1. An efficient procurement system depends on the professionalism of bureaucrats and other actors who handle procurement process.
2. Independence of public procurement regulator such as the Public Procurement Authority is essential in combating corruption.
3. The politicisation of public procurement system is detrimental to combating corruption in the Public Sector
4. Monitoring and supervision of contracts are important in ensuring value for money.
5. Access to information is essential to ensuring transparency in the procurement process, yet business secrets are to be protected.

5.4 Conclusions

The Public Procurement Act (2003), Act 663 as a piece of legislation defines what constitutes corruption in the procurement process and provides the basis for detecting procurement related corruption, and also prescribes sanctions for corrupt activities in the procurement process. The Act also incorporates procurement methods which are geared towards promoting competition among bidders.

Even though, there are implementation challenges, the Act has introduced standardised procedures, transparency, accountability, fairness and competitiveness which are essential elements in any anticorruption drive into the public procurement process. However, there are still some loopholes in the law that are being exploited by stakeholders in the procurement system to their advantage. The loopholes in the law and deliberate manipulation of the system by actors in the procurement system have reduced the potency of the Public Procurement Act to combat corruption in the public sector in Ghana.

5.5 Recommendations

The findings from the study indicate clearly that the procurement system is highly politicised and there are several implementation challenges of the Act as well as deliberate manipulation of the system by actors in the procurement process. The following recommendations are therefore proposed in order to ensure that the Public Procurement Act plays its anti-corruption role effectively.

In order to reduce political patronage as a result of the dominance of the political heads including the Metropolitan, Municipal and District Chief Executives in their Entity Tender Committees, a senior Public servant in the various organisations should be made to head

these ETCs. This will reduce pressure on political appointees by their party members which is a recipe for political patronage.

Inclusion of elected representatives of stakeholder groups such as Institute of Architects, Institute of Surveyors, Institute of Engineers, Association of Road Contractors and Ghana Real Estate Developer Association on the board of Public Procurement Authority will reduce the dominance of politicians on the board. This will also introduce more professionalism into the activities of the board.

The appointment of the Chief Executive Officer should be depoliticised. Political independent, neutral, impartial appointment body such as the Public Services Commission should be given the mandate to recruit the Chief Executive Officer. This will ensure that a professional and competent person is appointed to the position. A definite tenure of five or six years which is not coterminous with that of the ruling government should be accorded the Chief Executive Officer to ensure independence of that office.

The human and infrastructure resources of the Public Procurement Authority should be enhanced. This will ensure effective monitoring of activities of procurement entities. Offices should be also established each regions. This will ensure effective monitoring of procurement entities which are far from Accra, Takoradi and Kumasi. It will also improve the accessibility of the PPA to the procurement entities.

Contract supervision and monitoring should be strengthened to ensure the efficient use of public resources and to ascertain the causes of shoddy works. Public officials who supervise shoddy works and certify payment certificates for payments should be sanctioned. Also provision should be made for the involvement of civil society in tracking resource flow and monitoring procurement processes and project execution. This will ensure transparency and access to information on contract specifications and costs.

Periodic procurement audits should be conducted to ensure that procurement entities, contractors, suppliers and consultants adhere to the provisions of the Public Procurement Act. The Public Procurement Authority should consider applying appropriate sanctions to actors in the procurement process who have contravene the provisions of the Act. The PPA should start debarring / blacklisting bidders who have breach the provisions of the act or engage in acts of corruption. Public officials who also engage in irregularities should be made to face the appropriate sanction.

The guidelines for use of sole sourcing in procurement should be reviewed to ensure that Procurement entities do not deliberately create conditions that will necessitate the approval by the Public Procurement Authority. Procurement entities which deliberately create such conditions should be sanctioned.

The guidelines for payment of contractors should be streamlined and decentralised. Timetable for payments should be provided to interested parties to a contract to reduce the time and cost of chasing payments by contractors. This will reduce the tendency for contractors to pay bribes to facilitate the collection of their cheques.

Finally, Corruption Vulnerability Assessment (CVA) should be conducted on projects which involve huge amount of money. The CVA will help in identifying at each stage of procurement process, the kind of corrupt activity that likely to occur and propose measures to mitigate the situation. There is the need to revisit CVA report at each stage of project implementation to ensure that the project does not fall victim to corrupt activities.

BIBLIOGRAPHY

- Ackerman, S. R.(1997). Political Economy of Corruption in Kimberly Ann Elliot (ed) *Corruption and the Global Economy*. Institute for International Economics: Washington DC
- Ackerman, S. R. (2004). The Challenge of Poor Governance and Corruption. *Copenhagen Challenge Paper.2004*,
[http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_\(0.7mb_version\).pdf](http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_(0.7mb_version).pdf) accessed on 9th December, 2010
- Agyeman-Dua, B. (2008). *Curbing Corruption and Improving Economic Governance: The Case of Ghana*. CDD: Accra Accessed on 9th December, 2010 from
<<http://www.cddghana.org/documents/Curbing%20Corruption%20and%20Improving%20Economic%20Governance.pdf>>
- Agyeman-Duah, B (1987), Ghana, 1982-6: The Politics of the PNDC. *The Journal of Modern African Studies*, Vol. 25, No.4 (Dec, 1987), pp 613-642.
- Akowuah, E. (2005).The Auditor-General's Position on his Role in the Implementation of Article 286/Act 550 in CDD (ed) *Enhancing the Credibility of the Public Office Holders Asset Declaration Regime*. CDD Briefing Paper Vol.7 No.3 (June, 2005)
- Alexis, A. (2012), Senegal: Background and U.S. Relations. Congressional Research Service, Report R41369. <http://www.fas.org/sgp/crs/row/R41369.pdf> accessed on 22nd June, 2012.
- Bossman, A. (2007). *Promoting and Protecting Human Right, Ensuring Administrative Justice and Fighting Corruption in Ghana*. A paper presented at Commonwealth Conference of National Human Rights Institutions Marlborough House, London. 26th-28th February, 2007.

- Anvuur, A, Kumaraswamy, M. and Male S (2006), *Taking Forward Public Procurement Reforms in Ghana*. CIB W107 Construction in Developing Economies International Symposium “Construction in Developing Economies: New Issues and Challenges” January 18th – 20th; 2006 – Santiago, Chile
- Awoonor, K. (1984), *The Ghanaian Revolution: Background Account from a Personal Perspective*. Oasis publishers: N.Y
- Ayee, J. R. A. (2000a). *Saints, Wizards, Demons and Systems: Explaining The Success or Failure Of Public Policies And Programmes*, Accra: Ghana Universities Press
- Ayee, J. R. A (2000b). Ghana: the Continuing Search for Cures in the Fight Against Corruption in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Ayittey, G. B. N (2000). Combating Corruption in Africa: Analysis and Context in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Azeem, V. (2007), Impact of Public Procurement Act, 2003(Act 663) in GII’s Perspective. Special Forum on *Improving efficiency and Transparency in Public Procurement Through Information Dissemination*. August 22, 2007 National Theatre: Accra
- Balboa, J and Mendalla E. M. (2006) Anti-corruption and Governance: The Philippine Experience. <http://www.apec.org.au/docs/06ASCC_HCMC/06_9_1_Balboa.pdf >
Accessed on 10th April, 2011.
- CDD (2000), *The Ghana Governance and Corruption Survey: Evidence from Households, Enterprises and public Officials*. CDD: Accra
- Diamond, L. (1999). Fostering Institutions to Contain Corruption. PREMnote 24, World Bank: Washington D.C
- Edgardo Buscaglia and Van Dijk (2003). Controlling Organised Crime and Corruption in the Public Sector. *Forum on Crime and Society*, Vol.3 No.1 and 2, December 2003.

- Short, E. (2009). Reporting corruption and Whistleblower Protection in *Uniting Against Corruption*. Report of proceedings of 5th National Governance Workshops, GACC: Accra
- Oduro, F. (2001) .An Evaluation of CHRAJ 1993-1999 , MPhil Thesis, University of Ghana
- Fraser-Moleketi, G. (2005), ‘The African Union Convention on Corruption and NEPAD’s African Peer Review Mechanism’ a paper presented at *6th Global Forum on Reinventing Government towards Participatory and Transparent Governance*, 24 – 27 May 2005, Seoul, Republic of Korea.
- Freille, S. (2007). Essays on Corruption and Economic Development. <<http://en.scientificcommons.org/43794789>> Accessed on 10th April, 2011
- Gbenga, L. (2007). Corruption and Development in Africa: Challenges for Political and Economic Change. *Humanity and Social Science Journal* 2(1):01-07
- Ghana (1966). Apaloo Commission Report on Enquiry into Kwame Nkrumah Properties. Ghana Publishing Corporation: Tema
- Ghana (1969a). Annie Jaigge (Assets) Commission Report. Ghana Publishing Corporation: Tema
- Ghana (1969b). Manyo-Plange (Assets) Commission Report. Ghana Publishing Corporation: Tema
- Ghana (1969c) , Sowah (Assets) Commission Report. Ghana Publishing Corporation:Tema
- Ghana Integrity Initiative (2011), ‘The Voice of the People Survey’. Available at <
<http://www.tighana.org/giipages/publication/voiceofthethepeoplesurvey.pdf>> Accessed on 23rd May, 2012.
- Gyimah-Boadi, E. and Rothchild, D. (1982). Rawlings, Populism, and the Civil Liberties Tradition In Ghana. *A Journal of Opinion*, Vol. 12, No. 3/4 (Autumn - Winter, 1982)
- Gyimah-Boadi,E.(2002). Confronting Corruption in Ghana and Africa. *CDD Briefing Paper*, Vol.4. No.2, CDD:Accra

Heywood P. (1997). Political Corruption: Problems and Perspectives. *Political Studies*, XLV, 417-435

Hunja, R.(2003) . Obstacles To Public Procurement Reform In Developing Countries.<www.wto.org/english/tratop_e/gproc_e/wkshop_tanz../hunja2a2_e.doc>
Accessed on 10th April, 2011

Interview with a local contractor in Upper East on 20th December, 2012

Interview with a tutor from the Department of Purchasing and Supply, Accra Polytechnic on 30th July, 2012

Interview with an official of Ghana Anti-corruption Campaign Coalition on 18th July 2012

Interview with an official of Ghana Integrity Initiative on 27th June, 2012

Interview with an official of PPA, 30th July 2012

Interview with an official of the Works Department of the Kasena Nankana West District on 18th December, 2012.

Jenkins R. (2007). The Role of Political Institutions in Promoting Accountability in Anwar Shah (ed) *Performance Accountability and Combating Corruption*. World Bank: Washington D. C.

Kaufmann D. (2000), Revisiting Anti-corruption Strategies: Tilt Towards Incentive Driven Approaches in *Corruption and Integrity Improvement Initiatives in Developing Countries*. UNDP/ OECD: New York

Keith, A. (2005) Invigorating Ghana's Lagging Anticorruption Agenda: Instruments for Enhanced Civic Involvement.CDD Briefing Paper Vol.7 No 2. CDD: Accra.

Kempe, R. H (2000), Corruption and Development in Africa in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

- Kempe, R. H and Chikulo C.B (2000) Introduction in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Khan,M. H.(1996). A Typology of Corrupt Transactions in Developing Countries. *IDS Bulletins* 27(2). pp12-21
- Khan M. H. (2006). Governance and Anti-corruption Reforms in Developing Countries: Policies, evidence and Ways Forward. G-24 Discussion Paper Series, No. 42, November, 2006
- Kututwa N. (2005). African Anti-corruption Commitments: A review of Eight NEPAD Countries. AHSI paper 7
<kms1.isn.ethz.ch/serviceengine/Files/ISN/.../2005_01_01.pdf> accessed on 20th January 2012.
- Lambdoff, J.G (1999). Corruption in Empirical Research- A Review. Available at <http://www1.worldbank.org/publicsector/anticorrupt/d2ws1_jglambsdorff.pdf>
Accessed on 5th June,2010.
- Maipose, G.S (2000). Aid Abuse and Mismanagement in Africa: Problems of Accountability, Transparency and Ethical Leadership in in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Matechack J P (2010), *Fighting Corruption in Public Procurement* <www.cipe.org/pdf/publications/fs/matechak.pdf> (accessed on 1 April 2010)
- Mauro Paolo (1997), Why Worry About Corruption.*Economic Issues* 6, IMF
- Mbaku, J.M. (2000). Controlling Corruption in Africa: A Public Choice Perspective in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London

- Mensah. S., Aboagye, K., Addo E and Buatsi S. (2003), *Corporate Governance and Corruption in Ghana: Empirical Findings and Policy Implication*. ACMF: Accra
- Montinola, R. G. and Jackman, R. W. (2002), Sources of Corruption: A Cross-Country Study. *British Journal Political Science*. 32,147-170
- Ocquaye. M (2001), Government and Politics in Contemporary Ghana (1992-1999), A study. *Governance series volume.1 No.1, 2001, Africa Governance Institute: Accra*
- Ojukwu C.N. (2009). Legal and Institutional Mechanisms Combating Corruption in Nigeria.
<<http://www.isrcl.org/Papers/Ojukwu.pdf>> Accessed on 20th January 2012.
- Olowu, D. (2007), Public Accountability, Good Governance and Constitutional Validation in Commonwealth Africa, *African Journal of Development Studies* 1(12) 1-31.
www.enelsyn.gr/papers/w16/PaperbyDr.OladejoOlowu.pdf#page=16&zoom=auto,0,77
Accessed on 12 June, 2011.
- Organisation for Economic Cooperation and Development (2007), Bribery in Public Procurement: Methods, Actors and Counter-Measures. Available at
<http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44956834.pdf> accessed on 20th May, 2011.
- Osei- Hwedie, B. Z. and Osei- Hwedie, K. (2000). The Political, Economic, and Cultural Bases of Corruption in Africa in Kempe Hope and Chikulo Bornwell (eds) *Corruption and Development in Africa: Lessons from Country Case studies*. Macmillan Press Ltd: London
- Owusu, M. (2008). *Money and Politics: The Challenge of Democracy in Ghana*. Ghana Speaks Lecture/ Seminar Series No. 4. IDEG: Accra
- Parliamentary Centre (2009), The Public Accounts Committee of the Parliament of Ghana. Parliamentary Centre: Accra Available on < http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Public_Accounts_Committee_Ghana_Book_EN.pdf > accessed on 12th July, 2011.

- Pieth, M. (1997). International Cooperation to Combat Corruption in Kimberly Ann Elliot (ed) *Corruption and the Global Economy*. Institute for International Economics: Washington DC
- Pope, J. & Vogl, F.(2000). *Making Anticorruption Agencies More Effective* <<http://www.imf.org/external/pubs/ft/fandd/2000/06/pope.htm> > (accessed on 10th October, 2010)
- Pope, J. (1999a). Enhancing accountability and Ethics in the Public sector in Stapenhusrt Rick and Sahr J.Kpundeh (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C.
- Pope, J. (1999b). Elements of a Successful Anticorruption Strategies in Stapenhusrt Rick and Sahr J.Kpundeh (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C
- Public Procurement Authority (2007), 2006 Annual Procurement Report
- Public Procurement Authority (2008), 2007 Annual Procurement Report
- Public Procurement Authority (2009), 2008 Annual Procurement Report
- Public Procurement Authority (2010), 2009 Annual Procurement Report
- Public Procurement Authority (2011). Building Relevant Skills for Public Procurement, *Electronic Bulletin* Jan—Feb 2011 Vol. 2, Issue 1
- Public Procurement Authority (2012), Obtaining Value Through Effective Contract Management. *Electronic Bulletin* May-June 2012, Vol.3 Issue 3
- Republic of Ghana (1992). The 1992 Constitution
- Republic of Ghana (1998). Public Office Holders (Declaration of Assets and Disqualification) Act (1998), Act 550'
- Republic of Ghana (2000). Audit Service Act (2000), Act 584
- Republic of Ghana (2003a). 'Financial Administration Act (2003), Act 654
- Republic of Ghana (2003b). Internal Audit Agency Act (2003), Act 658.

- Republic of Ghana (2003c). Public Procurement Act (2003), Act 663
- Republic of Ghana (2006). Whistleblowers Act (2006) Act 720
- Republic of Ghana (2009). Report of the Auditor-General on the Management and Utilisation of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year Ended 31 December 2010
- Republic of Ghana (2010). Report of the Auditor-General on the Management and Utilisation of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year Ended 31 December 2009
- Republic of Ghana (2011). Report of the Auditor-General on the Management and Utilisation of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year Ended 31 December 2010
- Republic of Ghana (2012) Report of the Auditor-General on the Management and Utilisation of District Assemblies Common Fund (DACF) and Other Statutory Funds For the Year Ended 31 December 2011
- Shah A. and Schacter, M. (2004). Combating Corruption: Look Before You Leap. *Finance and Development*. (IMF) 41(4):10-14
- Søreide, T. (2002). *Corruption In Public Procurement: Causes, Consequences And Cures* < <http://bora.cmi.no/dspace/bitstream/10202/185/1/R%202002-1.pdf>> (accessed on 10th October, 2010)
- Stapenhurst, R. and Sedigh, S. (1999). Overview of the Costs of Corruption and Strategies to Deal with It, In Stapenhurst Rick and Sahr J.Kpundeh (eds) *Curbing Corruption: Towards a model for Building National Integrity*. World Bank: Washington D. C.
- Tanzi, V. (1998). Corruption around the World: causes, Consequences, Scope and Cures. *IMF Staff Papers*, Vol. 45, No. 4 (December, 1998)
- Tashakkori, A., & Teddlie, C. (Eds.) (2003). *Handbook of mixed methods in social & Behavioral Research*. Thousand Oaks, CA: Sage.

- Tellis Wiston (1997). Application of a Case Study Methodology. *The Qualitative Report*, Vol.3 No. 3 Sept.1997. < <http://www.nova.edu/ssss/QR/QR3-3/tellis2.html>> Accessed on 1st May, 2013
- Thai, K.V. (2008). Measuring Losses to Public Procurement Corruption: The Uganda Case, in the Proceedings of 3rd International Public Procurement Conference, 28th -30th August, 2008. Pp 1067-1095
- Transparency International (2006). Curbing Corruption in Public Procurement: a handbook. Available at http://www.transparency.org/whatwedo/pub/handbook_for_curbing_corruption_in_public_procurement on 10th October, 2010.
- United Nations (2003). Monterrey Consensus of the International Conference on the Financing for Development. Monterrey, Mexico 18-22 March, 2002
- United Nations (2004). United Nations Convention against Corruption. UN: New York < http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> accessed on 21st June, 2011
- United Nations (2010). 'Good Practices In The Prevention Of Corruption In Public Procurement' *Open-ended Intergovernmental Working Group on the Prevention of Corruption* Vienna, 13-15 December 2010
<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2010-December-13-15/V1056970e.pdf> accessed on 27th May, 2012.
- Ware, G. T., Moss, S., Edgardo, J. C. and Noone G. P. (2007). Corruption in Public Procurement: A Perennial Challenge, In Edgardo, J.Campos and Sanjay Pradhan (eds) *The Many Faces of Corruption: Tracking Vulnerabilities at Sector Level*. World Bank: Washington D.C

- Wei Shang-Jin (2001), Corruption in Economic Transition and Development: Grease or Sand? <www.unecce.org/ead/sem/sem2001/papers/Wei.pdf> Accessed on 20th January, 2012.
- Werlin H.H. (1972). The Roots of Corruption:the Ghanaian Enquiry. *The Journal of Modern African Studies*, Vol. 10. No. 2 (July, 1972), pp247-266.
- World Bank (2003), *Ghana 2003 Country Procurement Assessment Report*, Washington, DC: Ghana Country Department, the World Bank
- Yin, R. K. (2009) *Case Study Research: Design and Methods* (4th edition) Applied Social Research Methods Series Vol.5 Los Angeles: Sage Publications
- Zaidah, Z. (2007), Case Study as a Research. *Jurnal Kemanusiaan* bil 9, Jun 2007. http://eprints.utm.my/8221/1/ZZainal2007-Case_study_as_a_Research.pdf accessed on 1st May, 2013.

APPENDIX 1: INTERVIEW GUIDE

UNIVERSITY OF GHANA

DEPARTMENT OF POLITICAL SCIENCE

INTERVIEW GUIDE

I want to thank you for taking the time to meet with me today. My name is Pabia Isaac, MPhil final year student of the Department of Political Science, University of Ghana, Legon. I would like to talk to you about **“Combating Public Sector Corruption in Ghana: The Case of the Public Procurement Act”**. Specifically, the thesis seeks to assess the contributions of the Procurement Act, the weakness of the Act and ways by which the Public Procurement Act can be strengthened to fight corruption in Ghana. The interview will take about 25 minutes. The information provided will be used for only academic purposes and confidentiality is assured.

Interviewee

Date

1. How independent is the Public Procurement Authority?
2. Does the mode of appointment of the members of the Board have influence on the independence of the Procurement Authority?
3. Does the Public Procurement Authority have the Capacity to monitor the activities of all the procurement entities?
4. Do you think setting up offices in all the Regional Capitals would help the Authority to monitor procurement entities which are far from Accra?
5. In your view, contract management properly handled according to the provisions?
6. Do you think there are adequate qualified procurement personnel in the various entities to offer technical assistance to the Procurement entities?
7. Considering the popular perception that one must belong to the ruling party before one wins a contract especially at regional and district levels, does the position of the regional ministers and district chief executives on their respective tender committees reinforces this perception?
8. Considering that political heads of MMDAs are heads of entities, do you think that procurement within the threshold that they can approve without going through tender committee and without concurrent approval by the District Tender Review Board is a recipe for political patronage?

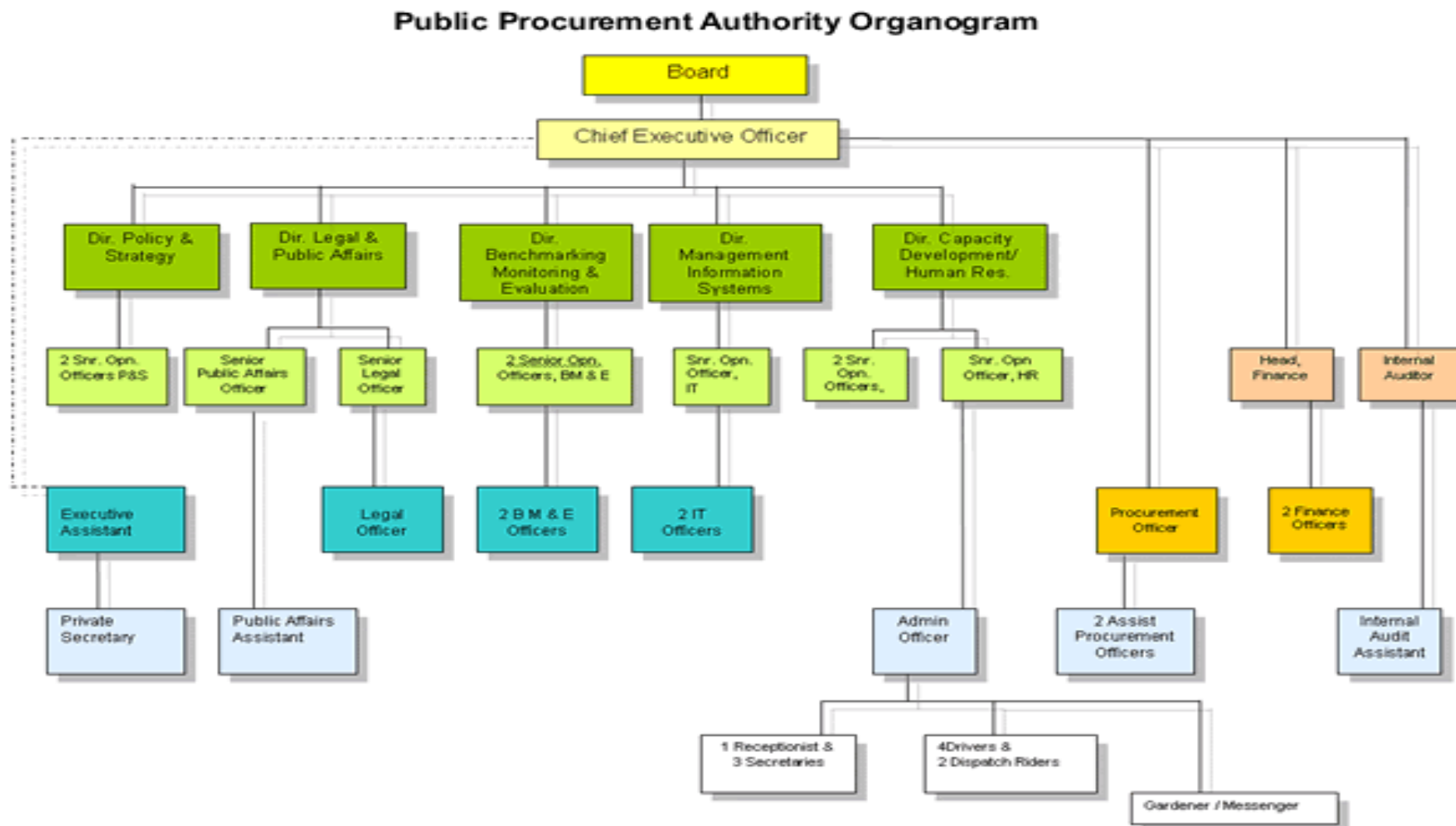
9. Do you think that the administrative review process in the Act is enough to promote transparency and fairness? If no, what can be done to improve transparency in the procurement process?
10. Do you think the Public Procurement Act has helped in reducing corruption in the public sector in Ghana? If yes how?
11. Will you consider e-procurement as a way to deal with corruption in public procurement
12. In your view, are the guidelines for disposing stores, equipment and assets enough to ensure that transparency in that area of public procurement?
13. In your view, what are the weaknesses of the Act in fighting corruption in the public sector?
14. In your view, what can be done to improve the procurement process?
15. Is there any other thing you like to say on the issues raised?

Thanks for your time.

SUPPLEMENTARY QUESTIONS ON TRAINING

1. Do you think the in-service training offered by Public Procurement Authority is adequate to solve the problem of technical expertise needed by the procurement entities?
2. Does your course content cater for the public procurement Act? (a) If yes which aspects of the Act are covered by the course content? (b) If no, you think tuning your course content to cater for the needs of procurement entities with regards to implement procurement Act and enhance the employable skills of your graduates?
3. What do need as an institution to be able to training procurement specialists for the country?
4. What do you think government should do to maximise value for money in procurement?
5. How often is procurement audits conducted into the procurement activities of procurement entities?

APPENDIX 2: PUBLIC PROCUREMENT AUTHORITY- ORGANOGRAM



APPENDIX 3: PROCUREMENT THRESHOLDS (SCHEDULE 3)

(Section 21, Section 42, Section 44, Section 66)

1. Thresholds for Procurement Methods

Procurement Method/Advertisement Contract Value Threshold

(1) Pre-qualification

- (a) Goods Above GHC 35 billion
- (b) Works Above GHC 70billion
- (c) Technical Services (not more than 10% of cost of works)

(2) International Competitive Tender

- (a) Goods AboveGHC 15.0 billion
- (b) Works Above GHC 20. 0 billion
- (c) Technical Services Above GHC 2.0 billion

(3) National Competitive Tender

- (a) Goods More than GHC 200 million up to GHC 2.0 billion
- (b) Works More than GHC 500 million up toGHC 15 billion
- (c) Technical Services More than GHC 200 million up to GHC 2.0 billion

(4) Restricted Tendering Subject to Approval by PB

(5) Price Quotation

- (a) Goods Up to GHC 200million
- (b) Works Up to GHC 500million
- (c) Technical Services Up to GHC 200million

(6) Single Source Procurement and Selection Subject to Approval by PB

(7) Advertisements for Expressions of Interest for Consulting Services in local newspapers
Above GHC 700million

(8) Least-Cost Selection Up to GHC 700million

(9) Selection based on Consultant's Qualifications Up to GHC 350m

(10) Single Source-Selection Subject to Approval by PB

2. (B1) Decentralised Procuring Entities - Thresholds for Review/Approval Authority (Amounts in GHC)

Authority	Goods	Works	Technical Services	Consulting Services
(1) Head of Entity	Up to 50m	Up to 100m	Up to 50m	Up to GHC50m
(2) Entity Tender Committee	>50m-250m	>100m-500m	>50m-250m	>50m-100m
(3) District Tender Review Board	>250m-1.0b	>500m-2.0b	>250m-1.0b	>100m-500m
(4) Ministerial and Regional Tender Review Board	>1.0b-8.0b	>2.0b-15.0b >	1.0b-8.0b	>500m-3.5b
(5) Central Tender	Above 8.0b	Above 15.0b	Above 8.0b	Above 3.5b