



## Curbing illicit financial out-flow from Africa: the phenomenology of institutions in Ghana

Nene-Lomotey Kuditchar

To cite this article: Nene-Lomotey Kuditchar (2021) Curbing illicit financial out-flow from Africa: the phenomenology of institutions in Ghana, *Journal of Contemporary African Studies*, 39:1, 56-69, DOI: [10.1080/02589001.2020.1849581](https://doi.org/10.1080/02589001.2020.1849581)

To link to this article: <https://doi.org/10.1080/02589001.2020.1849581>



Published online: 10 Dec 2020.



Submit your article to this journal [↗](#)



Article views: 169



View related articles [↗](#)



View Crossmark data [↗](#)



## Curbing illicit financial out-flow from Africa: the phenomenology of institutions in Ghana

Nene-Lomotey Kuditchar 

Department of Political Science, University of Ghana

### ABSTRACT

Transactions of illicit financial out flow (IFoF) in Africa and elsewhere are steeped in secrecy and controversy. They are also burdened by normativism in research; consequently, the likely dimensions of their instrumental worth has not received much attention. Using relativism and institutional phenomenology, focusing on Ghana, this paper attempts to tease out the nature of transactions around IFoF regulatory state institutions. Findings from elite elicitation interviews and secondary data show that IFoF in Ghana is high and enabled by a shadowy network of transactions between state agencies and regulated entities with the implication of a blurred and porous boundary between the two sectors. This suggests that the legal system of state regulatory agencies has been short circuited and their mandates tamed as a result. These findings call for further investigation into how, inter alia, the politics of IFoF induced transactions between state agencies and the private sector is maintained.

### ARTICLE HISTORY

Received 30 July 2020  
Accepted 6 November 2020

### KEYWORDS

Illicit financial out-Flow;  
relativism; institutional  
phenomenology; Africa;  
Ghana

### Introduction: IFoF- the hidden hydra, guesstimates, and the burden of normativism

The Panama and Paradise Papers, leaked in 2016 and 2017, respectively (Wilson-Chapman, 2019; International Consortium of Investigative Journalists, 2017), published names and firms explicitly linked with illicit financial outflows (IFoF). The leaks gave clear insight into the anonymous world of global financial transactions from the 1970s and identified frontline nations and personalities who are publicly known to be crusaders against graft (International Consortium of Investigative Journalists, 2017). Further, the International Consortium of Investigative Journalists recently published evidence which shed light on shell companies with global reach and associated with Isabel dos Santos (Hallman, 2020), the daughter of Angola's former President, José Eduardo dos Santos. This exposé also gave observers another opportunity to learn more about the dynamics of the obscured world of international finance. Going by data from Transparency International's *Corruption Perceptions Index*, an analysis of the dos Santos IFoF system reveal that its hubs are located in countries with relatively low levels of financial secrecy and corruption. As a result, the conclusion was drawn that 'places that score well' on secrecy and corruption 'indicators are actually the places where people want to keep illicit wealth'

(Collin, 2020). These developments and findings highlight the essential complexities of IFoF in terms of *processes* (Bonanomi and Musselli, 2016; Lemaître, 2018; Boyce and Ndikumana, 2012; United Nations, 2020), *developmental impact* (Africa Renewal, 2020; Herkenrath, 2014) and *means of curtailment* (Boyce and Ndikumana, 2012; Fjeldstad, Jacobsen, Ringsted, and Ngowi, 2017; Sharman, van der Does de Willebois, and Harrison, 2011) and affirms the fact that the phenomenon remains a mysterious hydra. Same can be said about the meaning of 'illicit' as used in conjunction with 'financial outflows'. When it comes to the distinction between *narrow* and *broad* IFoF, the implied meaning of 'illegality' associated with the use of 'illicit' is lost.

While *narrow IFoF* (for example tax evasion) is said to be an unambiguous infraction of law (illegal), *broad IFoF* (tax avoidance, for instance) is said to mean unregulated, unethical conduct which can be accommodated in law; that is, unregulated legal but unethical conduct. Even this popularly accepted conceptualisation is contested and steeped in controversy since the *narrow* and *broad* IFoF distinction is said to be deceptive. This is because whether or not IFoF is *narrow* or *broad* is a matter of subjective circumstantial interpretation in dynamic regulatory contexts (Bonanomi and Musselli, 2016). Then again IFoF is said to be detrimental to development (Herkenrath, 2014; United Nations, 2020) since the loss of revenue attending the process can undermine economic growth and by extension financial development, two tendencies Abu-Bader and Abu-Qarn (2008) and others (Kar and Ağır, 2011) have empirically demonstrated go hand-in-hand. But it is also a fact that banks and tax haven economies benefit from IFoF processes and associated transactions (Baker, 2005; Schjelderup, 2009; Garcia-Bernardo, Fichtner, Takes, and Heemskerk, 2010). Further, it is accepted that IFoF leads to graft and corrupt practices (AU/ECA Conference of Ministers, 2016; Baker, 2017; United Nations, 2014) but then, again international legal systems and firms, often by default, facilitate IFoF transactions and make them low-risk activities (Lemaître, 2018; Goredema, 2018; Sigler, Martinus, Iacopini, and Derudder, 2020). Lawyers, being the engineers of transactions often find themselves having to strike a delicate balance between *fidelity to law* and *fidelity to clients* with the said balance often resolved in favour of the latter with the agency to do so granted by tax havens and secrecy jurisdictions (Goredema, 2018; Christensen, 2012; Kolstad, 2017). When it comes to determining the extent of revenue loss (and gain) from IFoF, the best available figures are disputed guesstimates (United Nations, 2020) which are mainly useful for purposes of advocacy. The OECD's risk assessment figures, for instance, have hardly been translated into effective international frameworks to curb IFoF transactions. This inability (either intended or otherwise) is often justified with the reason that international coordination is difficult to attain (Erskine and Eriksson, 2018). Meanwhile, international advocacy groups at the fore of campaigns to curb IFoF seem to have infected scholarly research with their normativity preferences. Consequently, debates about IFoF are said to be trapped in 'ought to' discourses with the 'what is' dimension having little or no attention. As noted by Forstater (2018:12), IFoF debates are stuck in a 'broad-brush narrative' leading to 'heightened ... expectations and confusion' and I will add, misunderstanding and policy disagreements on the dynamics of IFoF. Particularly, much remains to be understood about the extent to and ways in which IFoF has instrumental value, for better or for ill, especially at the micro-level. Perhaps, even if for speculative reasons, insights gained from an instrumental analysis of IFoF may help clarify the reasons why, either intended or unintended the IFoF persists.

The recent UN report that Africa loses an estimated at \$89 billion per-annum (United Nations, 2020), a tendency which has become a normal revenue loss aberration, despite international efforts to stop such losses, gives compelling reasons for the interrogation of domestic contexts for the sake of deeper understanding of the phenomenon. Indeed, the likelihood of micro-level institutional settings being the epicenters of informal transactions which count as corrupt has been pointed out by Kunicová (2006), Fisman and Gatti (2006) and Mishra (2006). Another important observation which affirms the said likelihood of institutional settings of corruption is a recently published corruption risk assessment report issued by the Special Prosecutor of the Government of Ghana on a Government proposed gold royalties monetisation investment plan known as *Agyapa Miners Royalties Deal* initiated by the Ministry of Finance and Economic Planning (Amidu, 2020; Ministry of Finance and Economic Planning, 2020). The risk of IFOF was cited in the report as one dimension of corruption which can be enabled by the investment plan. Even though the deal, as argued by government, was structured in line with the laws of the country governing such initiatives, it turned out that the *Agyapa Deal* involved firms owned by family relations of the sitting President, the son of a high ranking government official and promoted in spite of the Government's Attorney General cautioning that the terms of the plan was not in the state's interests. Noteworthy is also the fact that, the Ministry of Finance and Economy Planning's political head, the Minister of Finance is a family relative of the sitting President (Adomonline, 2020; Ghana Web, 2020a, 2020b). All these together give credence to the fact that there is *prima facie* justification for micro-level institutional settings to be investigated to uncover IFOF dynamics. This piece seeks to use the case of Ghana to explore the likely instrumental worth of IFOF by focussing on the interface of regulatory state institutions and their environment. I attempt this endeavour guided by the frame of thought of relativism and institutional phenomenology. These viewpoints privilege contextual pressures, transactions and actor consciousness as framed by institutional experiences.

### **The promise of relativism and the path of institutional phenomenology**

Relativism (Boghossian, n.d.) rests on the assumption that standards of rationality and truth vary between contexts and dominant interests and therefore border on interpretation. Adherents of relativism, who subscribe to the unattainability of a universal solution to developmental challenges contend that solutions emerge from, are customised or adapted to suit contextual pressures and necessities. Therefore, whether a policy or any experience of it works or not should not be judged subject to universal frames of reference but based on an actor's knowledge as derived from *in situ* assessments. Relativism complements phenomenology (Carr, 1987; Drummond, 2000; Merleau-Ponty, 2005): the science of establishing subjective insights of essences through interpretation. If institutions are 'the rules of the game ... or, ... devised constraints that shape human interaction' as suggested by North (1990:1), the validity of this assertion will ultimately be settled in the court of an actor's subjective assessments; by the interpretative experiences of actors who were/are strategically placed and therefore can judge if institutional intent pans out in its actual operations just as it was encoded to be. The analytical space provided by institutional phenomenology (Gehman, 2020; Rubin, 2002) manifests by way of (internal and external) incentive structures imposed on institutions and a given actor's interpretation.

Incentive structures presuppose a clash of contradictory objectives, which also implies the possibility of negotiations. Within institutional settings, negotiations may work to, at least, preserve the exterior integrity of structures while internal regimes may be subject to recreation or alteration. It is this tendency which makes the inner essence of institutions dynamic, notwithstanding the fixed outward structure of their regimes. The usefulness of relativism and institutional phenomenology lies in the fact that it approaches reality, IFFoF for that matter, by providing a receptive space for a first-hand assessment of experiences within institutional settings by taking due cognisance of *in situ* creative interactions.

Kraus (1991), Frimpong-Ansah (1992), Killick (1997) and Akonor (2006, 10–13) note that the quest by the Bretton Woods Institutions (BWI) to restructure policy making in Ghana within the remit of neoliberalism and specifically along the lines of *good governance* principles based on anti-corruption measures such as transparency and accountability were adapted to suit the political interests of the governing coalition at the time. Indeed, the authors argue that more often than not the Government of Ghana got away with not complying with BWI conditionalities. A similar observation has also been made with respect to Rwanda (ROAPE, 2017). Be that as it may, the foregoing proves the worth of Leftwich's (2006) and the assertion of others (Roche, Hudson, and Marquette, 2018; Grebe and Woermann, 2011; Oduro, Awal, and Agyei Ashon, 2014) that politics and processes of cultural incentives are important determinants of institutional dynamics. Further, the strength of political transactions to shape the regulatory effect of institutions is demonstrated by the endurance of informal arrangements within formal settings (Goodfellow, 2019; Yami, Vogl, and Hausera, 2009). Against this background, Ayee's (2019, 177–178) observation that governance failures in Ghana serve a political purpose perhaps best explains why the country's vibrant democracy is also characterised by a culture of institutionalised corruption (Bersselaar and Decker, 2011). It has been suggested by Mansfield and Snyder (2012) that the theorised prospect for democratic peace is contingent upon factors such as institutional coherence, the political will to make democracy function, rule of law and electoral integrity. However, it is also worthy of note that the said contingent factors which mediate the democracy-peace connection are not inert; they are prone to being shaped by the interest and capacity of dominant actors in any given context. Ultimately, the institutional dynamic of public life is determined by the political logic of statecraft given the imperatives at hand. This assertion is particularly germane in the African context where actors routinely navigate contradictions set up by the fused intricacies of official rules, kinship allegiance and unofficial codes of social reciprocity (Chabal and Daloz, 1999; Chazan, Mortimer, Ravenhill, and Rothchild, 1992; Berman, 1998; Paul, 2008; Lonsdale, 1986). Given the nature of such complex dynamics, relativism and institutional phenomenology have the advantage of reducing the analytical risks of normative value judgments and the dangers associated with the de-politicization of phenomena whose essence draw on the dynamics of power, which is what IFFoF is.

### A note on method

There have been several institutional innovations in Ghana on issues related to curbing IFFoF which seem to have been triggered by OECD and African Union (AU) initiatives. In this regard, the establishment of the Ghana Revenue Authority (GRA, n.d.)<sup>1</sup> set up in 2009 is the most noteworthy. The GRA was born out of a merger of four previously

autonomous tax agencies: the Customs Excise and Preventive Service (CEPS), Internal Revenue Service (IRS), Value Added Tax Service (VATS) and the Revenue Agencies Governing Board (RAGB). The GRA, through the leveraging of information technology, works in collaboration with the Tax Policy Unit (TPU) of the Ministry of Finance and Economic Planning and has a Large Taxpayer Unit (LPU) dedicated to firms with the largest contribution to tax revenue generation. The GRA also has an operational relationship with the Financial Intelligence Center (FIC, 2019) established by the 2008 Anti-Money Laundering Act (Act 749). The FIC was activated in 2010 under the supervision of the Bank of Ghana (BoG). It specialises in the tracking of financial transactions of firms, to ascertain the extent of their legal compliance in order to detect tax evasion, money laundering, among others.

This paper is a qualitative study based on a combination of secondary and primary data. The said approach is adopted due to the nature of the subject matter of interest which involves transactions which do not easily lend themselves to open scrutiny. Besides, even though some work has been done on the phenomenon of IFoF, its illegalities as well as deleterious economic effects in Ghana (see for example Baker, R. (2014) and Amidu, M., Coffie, W., and Acquah, P. (2019)), the question of the likely instrumental worth of leakages and the incentives which sustain same within the context of regulatory agencies has been left unattended. Thus, this study counts as a greenfield research initiative to map out IFoF hotspots and transactions across institutional boundaries to prepare the way for the utilisation of quantitative methodologies if need be.

The secondary data, generated from reports, legal documents and articles, served a scoping purpose to identify the likely productive entry point into the research context. This done, the primary data generation phase was advanced through elite elicitation interviews (Hogan, Hinrichs, and Hornecker, 2015). Originally developed by Vermersch, elicitation interviews seek to engender a retrospective narration of experiences within a specific context. It differs from other forms of interviews due to its style of fielding open-ended questions meant to trigger freewheeling iterative thinking on subjects toward a mental 're-enactment' of contextual experiences.

Respondents of the study were drawn from active and retired senior-level administrative personnel and political appointees of state agencies who were selected through a purposive chain-link strategy. I used the phrase 'what is the level of risk of IFoF in your (former) agency' to kick start and prime my conversations with the intent to trigger respondent's reflection on the effectiveness of institutional mandates in containing IFoF. My entry point institution was the GRA. I chose it first because of its status as the hub of IFoF countermeasures in Ghana. Respondents of the GRA provided leads to subsequent respondents associated with the FIC, the Minerals Commission (2019)<sup>2</sup> (the Commission, hereafter) and the Precious Minerals Marketing Corporation (n.d.) (PMMC) as well as the Ghana Cocoa Board (n.d.).

## **Findings and analysis: legal short-circuits and tamed institutional mandates**

Feedback from the GRA indicated that the risk of IFoF is high due, paradoxically, to the restructuring of Ghana's revenue mobilisation agencies, especially from year 2000. The establishment of the GRA with the intent of enhancing the efficiency of tax mobilisation and information sharing rather led to the emergence of an informal system which

facilitated the efficient granting of wavers and selective application of accountability mechanisms. For example, firms (local and foreign) who partner with government in the pursuit of flagship initiatives are given politically negotiated wavers and rights as well as preferential treatments under 'partnership agreements'. Regarding the latter, respondents reported that firms consistently export wavers and rights granted under Public Partnership Agreements (PPP)<sup>3</sup> to sectors which fall outside the remit of originally consummated PPPs.

Further, respondents suggested that there is no unity of purpose between GRA's government appointees and technocrats when it comes to investigating and prosecuting alleged cases of IFoF activities. Commissioners of the GRA, over the years, are said to be more attentive to supervision from the government than monitoring the full compliance of firms with the country's tax laws; they seem to be more interested in facilitating the commencement and execution priority PPPs than examining the books of firms. This imbalance in attention and direction of purpose is facilitated by the Commissioner's discretionary powers and the lack of a water-tight statute of limitation regime in the relations between the GRA and firms on tax reporting timelines.

More often Commissioners keenly ensure maximum compliance with government timelines and directives than conducting forensic investigations into the information provided by firms. Once a file is labelled as *authorised* all systems of scrutiny are said to become blunt and with such dossiers treated with dispatch. The pervasiveness of this institutional culture is said by respondents to have shaped the career goals of some technocrats who have tied their career advancement and job security to being compliant with the said institutional culture rather than to be seen to contradict it. By and large, the GRA's prevalent technocratic culture is one of silence and caution rather than active and vigilant technocratic collaboration across all levels to deepen understanding of IFoF dynamics in Ghana and ensure its reduction over time. Respondents also intimated that the foregoing has little to do with tax administration incapacity and awareness but rather more to do with the *de facto* role of the GRA as a political handmaiden of the government in the management of sanctioned favours.

By the assessments of (active and retired) respondents of the FIC, the second institution in the sampling sequence, IFoF risk in Ghana is high due to the disinterest of government in firmly pursuing cases of IFoF to their utmost logical conclusion. To begin with, the FIC is mandated to oversee the legal compliance of financial and non-financial institutions by requesting, receiving, analysing, interpreting and sharing findings on financial transactions with the government's Attorney General (AG). Respondents see this specific role of the AG as a severe limitation. Respondents suggested that delays in the AG's outfit in the rendering advice have made uncountable leads into IFoF activities go cold and with numerous cases of being *killed-off*. And that even going by the legendary bureaucratic delays in the public sector, that of the AG's office is exceptional. The respondents noted that the limitations of the FIC are not due to human or financial resource constraints, but rather lack of ample agency to act to arrest suspected cases of IFoF. As examples, respondents referred to a (classified) database on a category of entities the FIC refers to as *Designated Non-Financial Businesses and Professions* (DNFBP). Several firms in the DNFBP database are reported by respondents as being involved in transactions which contravene Act 749 and have investments in high-end real estate, earth moving equipment as well as the purchase of shares and stocks in a named Ghanaian

private equity firm. Also, one respondent suggested that the FIC has documented evidence of irregular links between a named international casino, a named purified water production firm and a named export-oriented polyvinyl chloride pipe production company. Also, respondents made known transactions between firms owned by named government officials at the helm of a named state institution who used their official mandate to grant tax exemptions to companies they own and subsequently acted in contravention of the terms of the tax waiver.

To a follow-up question of whether the FIC can take cross-agency collaboration for granted, one respondent suggested that there is very little partnership beyond government agencies responding to specific requests for information; as the respondent pointed out 'there currently exists 'correct', 'by the letter' official relationships which, rather than facilitating the urgent treatment of tasks at hand, are subjected to normal public sector ethics and procedures which sometimes compromises investigations.' Given these frustrations, the respondents reported that the FIC has proposed to the government to grant it autonomous prosecutorial powers. This notwithstanding, respondents cited cases where the government had acted swiftly on their advice: a 2017 GH¢ 160 million tax assessment levied on Vodafone-Ghana when it was detected it had engaged in transfer-pricing; a 2018 background work leading to the Ghana- Cote d'Ivoire 'Abidjan Declaration' aimed at cocoa price harmonisation to curb smuggling; an exposé which uncovered and documented the quantum of revenue loss from undervalued gold exports to the United Arab Emirates (UAE). This led to the establishment of the PMMC as the government assayer in 2018.

Respondents of the Commission gave contradictory answers to the lead question. While active officials said the level of IFoF risk is low, former associates suggested the level of risk is high. However, interactions further afield confirmed the high-risk assessment point of view. The Commission's officers who said IFoF risk is low cited proactive initiatives of the government in recent times as efforts to plug channels of IFoF leakages. As evidence of this, respondents noted that mining firms are now cooperative and transparent. They also exhibited documentary proof of several cases of renegotiated mining agreements in line with local content laws.

Former associates of the Commission suggested that there exists a network of business transactions between the Commission's officers and mining firms. It was reported that a substantial number of employees of the Commission own businesses which service mining firms as sub-contractors. These engagements range from catering services, the supply of office consumables, machinery, and staff recruitment to high-end activities such as facilitatory legal services between government and mining concerns as well as lobbying. Also, there is said to be an informal institutional regime with which the Commission's officials engage in tributary small-scale mining on concessions allocated to multinational corporations. Further interactions (and sighted documents in a pending court case) in the Eastern region of Ghana confirmed the alleged involvement of the Commission's officers in tributary small-scale mining on a gold mining concession. It included a named government official who doubles as a board member of the concessionaire.

Another respondent, a retired lawyer of the Commission, suggested that the risk of IFoF in Ghana's mining sector is high simply because corporations do not need to actively flout tax laws to evade their revenue obligations to the state. He attributed this to the fact that the legal bar of the regulatory system is set low, is lax, and opportunistic. Also, he

reported having been witness to mining firms being the most stringent and insistent in ensuring that Ghana's tax regimes are adhered to even when the Commission's officers, tend not to critically look hard and long enough; as he put it 'they always work with a wink to mining companies.' As a way of buttressing his assertions, this respondent cited the example of a turf war between the PMMC and the Ghana Standards Authority (GSA) when government signalled its intention to set-up Ghana's first-ever national assayer. The said turf war was eventually settled in favour of the PMMC through the intervention of a high-ranking government official even though at the time, unlike the GSA, the PMMC had no independent high-end mineral certification capabilities. That PMMC prevailed over the GSA in 2017 was due to a murky arrangement between it and the Ghana Chamber of Mines (GCM, 2019). As part of the bargain, the GCM offered initially to lend its facilities to and later invest in the PMMC to enable it to execute its mandate as the national assayer if it is mandated as such by the government. The respondent noted that the PMMC's recent admission to the GCM is a fall out from this settlement after it assumed its mandate as the government's assayer.

This same respondent also noted that he is witness to incidents where stabilisation clauses in mining agreements have been triggered to stop or discontinue interventions that may be used to plug revenue loopholes. By way of a reply to a comment to draw the respondent's attention to widely publicised government intentions to abolish stabilisation clauses, the respondent suggested that such clauses are used by newly elected governments to get mining firms to finance priority projects to enhance the garnering of votes during national elections. He also added that even though there is a standing committee to work out the modalities for the abolition of stabilisation clauses, the said committee is in a state of suspended animation and is sometimes either activated or threats made to that effect by government officials when it is prudent to do so. Hence, he thinks stabilisation clauses are nothing but bargaining chips between governments and mining firms.

Respondents of the GCB, the next institution to be sampled, were unequivocal that even though the risk of IFoF is low, there are leakage opportunities associated with the use of analogue bean weighing equipment used by private cocoa purchasing firms. Steps taken to ascertain the nature of the said leakage process associated with the purchase of cocoa beans yielded information which indicated the existence of an informal scheme through which named international bean purchasing companies engage in the export of cocoa beans alongside the state monopoly, the GCB, using its transportation, purchasing agents, storage and port facilities. The GCB respondents also specifically noted that the said companies with facilities in Ghana's Free Zone enclave export first-grade beans which is supposed, by law, to be exported only by the GCB. They pointed out that in between the purchasing centres in the rural areas and the exit ports, it is difficult to distinguish between cocoa beans belonging to the GCB and private cocoa purchasing firms.

These experiences, refracted through the analytical matrix of institutional phenomenology shows that there is a legal short-circuit around the institutions mandated to track IFoF in Ghana. To be sure, none of the respondents cited clear breaches of the mandates of institutions surveyed. However, their insights provide evidence of a divergence between the posture of public duty bearers and private accountability obligations on one hand and institutional intent on the other. Respondents' suggestion that the institutional amalgamation which led to the GRA has rather facilitated informal cross-sector utilisation of PPP wavers is relevant in this respect. Again, the fissure between political

appointees and technocrats seems to indicate that government political intent is prioritised over institutional mandates and integrity. This implies politically negotiated settlements are important (if not the main) drivers of institutional transactions rather than mandated agency codes of conduct. This assertion holds given respondents' suggestion that firms and government officials tend to utilise the discretionary power of the GRA Commissioner-General when need be.

Put together, the pattern of responses from informants of the GRA, FIC, Minerals Commission and the Ghana Cocoa Board suggests that the risk of IFoF from Ghana is high. When juxtaposed with the other institutions, the FIC seems like a control case. It is the only institution out of the number sampled whose respondents said IFoF risks in Ghana is high, think their relationship with government (the AG) limits their agency (even though past collaborations have led to positive results) and seem to have a high sense of confidence in their ability to deliver on their mandate. Also, the pattern of responses from the Minerals Commission and the GCB seems to suggest the existence of a shadow economy involving officials of regulatory agencies and the private sector. If one should add the PMMC's reported membership of the Ghana Chamber of Mines, it can be concluded that the boundary between state regulators and regulated entities is indeed either blurred or porous at best.

All in all, the findings of this study indicate *prima facie* evidence which suggests the existence of opportunistic institutional logics maintained to fetch informal transactional advantages. This seems to be particularly so given that the legal architecture of the institutions sampled seem to have been short-circuited with an incentive structure of collaborative networks which have tamed the regulatory potential of agencies and therefore has rendered state institutions captive of the entities they are expected to regulate. With the notion of political phenomenology in mind, the likely productive lines of enquiry against the background of this study's findings which may deepen an understanding of institutional responses to IFFoF include research into the experiences of institutions with a history of prosecuting cases of illicit financial dealings, the structure of the shadowy symbiotic economic links between regulatory and regulated institutions and the political incentive structure of relations between regulatory agencies and regulated entities. The proposed lines of enquiry will also shed light on how formal and informal engagements emerge, interface and are adapted to suit instrumental rationalities, especially around IFoF transactions.

Be that as it may, this study's findings recast existing efforts aimed at stemming African IFoF leakages in a different light and brings to the fore Khan's (2020) notion of *strategic realism*. Given that persistent laudable *good governance* campaigns against the leakage phenomenon, have not led to their intended results in the context of developing countries (Khan, 2006a), Khan advises caution in anti-corruption initiatives which seek to systematically enforce the discipline of *rule of law* since such efforts most likely will engender the resistance of actors whose economic interests thrive on informal regimes (Khan, 2006b). Hence, he suggests that the feasibility of anti-corruption measures depends on ascertaining the alignment of incentives and interests through an audit of the relative power of institutions as well as a determination of how institutional logics preserve the (informal) economic interests of actors. Such an initiative will enable a sense of *what* can be done, *where* and *when* to begin. Through what he calls *radical incrementalism*, small, indirect changes stand a good chance of being implemented without raising

alarm and engendering a turf war of resistance. Over time, with the dynamic of *radical incrementalism* gaining traction, the credible commitment of actors may be formally mobilised toward institutional integrity. This said, the question of *what can be done*, as a first step in the name of research and policy remains. Amundsen's (2019) distinction between *political* and *bureaucratic* corruption in Africa is relevant at this juncture: the former has instrumental worth beyond personal wealth accumulation and provides the resources with which governing coalitions exert power over the state. In this sense, political corruption serves a power preserving function and therefore unlikely to be successfully dismantled. However, the latter, akin to lower level deviations from laid down administrative procedures, is amenable to management through, for example, technological retooling and enhanced professional confidence through training. As an entry point, curbing bureaucratic corruption as part of a longer-term strategy to stem IFFoF looks promising even though this claim needs to be ascertained through further research.

## Conclusion

This paper, on Ghana, with recourse to relativism, institutional phenomenology, and instrumentalist thinking, sought to go beyond the controversies surrounding the conceptualisation, process, impact and normativism which characterises views on IFFoF in Africa. Through elicitation interviews prompted with the question of the level of risk of IFFoF in respondents (former) agency, the net responses indicated that the level of IFFoF risk in Ghana is high. An analysis of the responses suggests findings which indicate that there is a blurred or porous informal boundary between state regulatory agencies and regulated entities which facilitates economic or instrumentalist interactions. Thus, there is a space at the interface between government institutions and the private sector where the tenets of law have little effect on behaviour. This has implications for policy measures aimed at containing IFFoF in Africa and Ghana in particular. Recourse to rule of law regimes are not likely to yield optimal results. Rather, drawing on the ideas of Khan and Amundsen, research aimed at mapping the alignment of actor incentives and interests around regulatory institutions will reveal the institutional logics which sustain informal IFFoF transactions. Also, for such initiatives to be feasible, combating bureaucratic corruption in IFFoF regulatory agencies can be a good start off point, since political corruption, given its instrumental value to governing elites in terms of preserving political power over the state, will not be amenable to dissolution at least in the short to medium term.

## Notes

1. See the GRA's website at <https://gra.gov.gh/> and the FIC's at <https://fic.gov.gh/index.php/about-us>; <https://www.bog.gov.gh/wp-content/uploads/2019/09/Revised-AML-CFT-Guideline-AS-AMENDED-Final.pdf>
2. See the Commissions website at <http://www.mincom.gov.gh/>, the PMMC's at <https://www.pmmc.gov.gh/pmmc/> and that of the GCB at <https://cocobod.gh/>
3. There is no overarching PPP legal framework available in Ghana at the time of writing. A 2013 PPP Draft Bill, however, is in the works. PPPs are governed generally by a Ministry of Finance and Economic Planning 'National Policy' document and the specific laws of sectors where PPP agreements are consummated. See <https://www.mofep.gov.gh/ecomomic%20reports/national-policy-on-public-private-partnership-PPP/2012-02-28>

## Acknowledgments

This paper was put together with the generous sponsorship of the University of Ghana based *Building A New Generation of Academics in Africa* “(BANGA-Africa)” Project. My profound appreciation goes to Dr. Fred Dzanku of the Institute of Statistical, Social and Economic Research (ISSER), University of Ghana, for his collegial support. The research process and the views expressed herein are however entirely mine.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

## Notes on the contributor

*Nene-Lomotey Kuditchar* is a senior member at the Department of Political Science, University of Ghana. His research interests include African politics, political economy and political ecology of artisanal mining.

## ORCID

*Nene-Lomotey Kuditchar*  <http://orcid.org/0000-0002-2453-0917>

## References

- Abu-Bader, S., and A. S. Abu-Qarn. 2008. “Financial Development and Economic Growth: Empirical Evidence from Six MENA Countries.” *Review of Development Economics* 12 (4): 803–817.
- Adomonline. 2020. “Agyapa Royalties agreement not in Ghana’s interest – AG’s office said in its recommendations” (Read Document). <https://www.adomonline.com/agyapa-royalties-agreement-not-in-ghanas-interest-ags-office-said-in-its-recommendations-read-document/>.
- Africa Renewal. 2020. “The Global Dilemma of Illicit Financial Flows: Time for Collective Action.” *Africa Renewal*, March 27. <https://www.un.org/africarenewal/news/global-dilemma-illicit-financial-flows-time-collective-action>.
- Akonor, K. 2006. *Africa and IMF Conditionality: The Unevenness of Compliance*. New York and London: Routledge.
- Amidu, M., W. Coffie, and P. Acquah. 2019. “Transfer Pricing, Earnings Management and Tax Avoidance of Firms in Ghana.” *Journal of Financial Crime* 26: 235–259.
- Amidu Martin, A. B. K. 2020. Report on the Analysis of the Risk of Corruption and Anti-Corruption Risk Assessment of the Processes Leading up to the Request for Approval and Approval of the Transaction Agreements and Tax Exemptions Granted by Parliament thereunder in Relation to the Gold Royalties Monetisation Transaction under the Minerals Income Investment Fund Act, 2018 (Act 978) And Other Related Matters Thereto. Accra: Office of the Special Prosecutor.
- Amundsen, I. 2019. “Extractive and Power-Preserving Political Corruption.” In *Political Corruption in Africa. Extraction and Power Preservation*, edited by I. Amundsen, 1–28. Cheltenham: Edward Elgar Publishers Ltd.
- AU/ECA Conference of Ministers. 2016. *Illicit Financial Flow Report of the High-Level Panel on Illicit Financial Flows from Africa*. Addis Ababa: African Union Commission.
- Ayee, J. R. 2019. “Six Decades of the Public Sector in Ghana.” In *Politics, Governance and Development in Ghana*, edited by J. R. Ayee, 167–190. Lanham: Lexington Books.
- Berselaar, Dmitri van den, and S. Decker. 2011. ““No Longer at Ease”: Corruption as an Institution in West Africa.” *International Journal of Public Administration* 34 (11): 741–752.
- Baker, R. W. 2005. *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free-Market System*. Hoboken: John Wiley & Sons, Inc.

- Baker, R. 2014. *Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011*. Washington: Global Financial Integrity.
- Baker, R. 2017. "Illicit Financial Flows from Africa: Their Loss; Not Our Gain." In *Lifting the Veil of Secrecy: Perspectives on International Taxation and Capital Flight from Africa*, edited by O.-H. Fjeldstad, S. K. Jacobsen, P. H. Ringstad, and H. P. Ngowi, 57–59. Norway: Chr. Michelsen Institute.
- Berman, B. J. 1998. "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism." *African Affairs*, 97: 305–341.
- Boghossian, P. n.d. What is Relativism? <https://as.nyu.edu/content/dam/nyu-as/philosophy/documents/faculty-documents/boghossian/Boghossian-Paul-whatisrelativism.pdf>.
- Bonanomi, E. B., and I. Musselli. 2016, July 7. Illicit Financial Flows: Concepts and Definition. International Development Policy: <https://journals.openedition.org/poldev/3296>.
- Boyce, J. K., and L. Ndikumana. 2012. *Capital Flight from Sub-Saharan African Countries: Updated Estimates, 1970-2010*. Amherst: Political Economy Research Institute.
- Carr, D. 1987. "Phenomenology and Relativism." In *Interpreting Husserl*, edited by D. Carr, 25–44. Dordrecht: Martinus Nijhoff Publishers.
- Chabal, P., and J.-P. Daloz. 1999. *Africa Works: Disorder as Political Instrument*. Oxford: James Currey.
- Chazan, N., R. Mortimer, J. Ravenhill, and D. Rothchild. 1992. "State Institutions and the Organization of the Public Arena." In *Politics and Society in Contemporary Africa*, edited by N. Chazan, R. Mortimer, J. Ravenhill, and D. Rothchild, 37–72. London: Palgrave.
- Christensen, J. 2012. "The Hidden Trillions: Secrecy, Corruption, and the Offshore Interface." *Crime, Law and Social Change* 57 (3): 325–343.
- Collin, M. 2020, January 28. Angola and the Money Laundering Paradox. Brookings: <https://www.brookings.edu/blog/up-front/2020/01/28/angola-and-the-money-laundering-paradox/>.
- Drummond, J. 2000. "Political Community." In *Phenomenology of the Political*, edited by K. Thompson, and L. Embree, 29–53. Dordrecht: Kluwer Academic Publishers.
- Erskine, A., and F. Eriksson. 2018. Improving Coherence in the Illicit Financial Flows Agenda. U4 Illicit financial flows: <https://www.u4.no/publications/improving-coherence-in-the-illicit-financial-flows-agenda.pdf>.
- Financial Intelligence Center. 2019, December 3. About Us. Financial Intelligence Center: <https://fic.gov.gh/about-us/>.
- Fisman, R., and R. Gatti. 2006. "Bargaining for Bribes: The Role of Institutions." In *International Handbook on the Economics of Corruption, Volume One*, edited by S. Rose-Ackerman, 127–139. Cheltenham: Edward Elgar Publishing.
- Fjeldstad, O.-H., S. Jacobsen, P. Ringstad, and H. Ngowi. 2017. *Lifting the Veil of Secrecy Perspectives on International Taxation and Capital Flight from Africa*. Norway: Chr. Michelsen Institute.
- Forstater, M. 2018. Defining and Measuring Illicit Financial Flows. Global Governance to Combat Illicit Financial Flows. [https://www.jstor.org/stable/resrep21429.4?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/resrep21429.4?seq=1#metadata_info_tab_contents).
- Frimpong-Ansah, J. H. 1992. *The Vampire State in Africa: The Political Economy of Decline in Ghana*. Trenton: Africa World Press.
- Garcia-Bernardo, J., J. Fichtner, F. W. Takes, and E. M. Heemskerk. 2010. "Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network." *Scientific Reports* 7: 1–10.
- Gehman, J. 2020, April. Revisiting the Foundations of Institutional Analysis: A Phenomenological Perspective. [https://www.researchgate.net/publication/340436745\\_Revisiting\\_the\\_Foundations\\_of\\_Institutional\\_Analysis\\_A\\_Phenomenological\\_Perspective](https://www.researchgate.net/publication/340436745_Revisiting_the_Foundations_of_Institutional_Analysis_A_Phenomenological_Perspective).
- Ghana Chamber of Mines. 2019. <https://ghanachamberofmines.org/>.
- Ghana Cocoa Board. n.d. <https://www.cocobod.gh/>.
- Ghana Revenue Authority. n.d. Ghana Revenue Authority. <https://gra.gov.gh/>.
- Ghana Web. 2020a. "Agyapa Deal: We Did Everything Required by Law – Ofori-Atta Counters Amidu." <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Agyapa-deal-We-did-everything-required-by-law-Ofori-Atta-counters-Amidu-1098889>.
- Ghana Web. 2020b. Family and Friends Confirmed in Government's US\$2 Million Agyapa Transaction. <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Family-and-friends-confirmed-in-government-s-US-2-million-Agyapa-transaction-1047085>.

- Goodfellow, T. 2019. "Political Informality: Deals, Trust Networks, and the Negotiation of Value in the Urban Realm." *The Journal of Development Studies* 56: 278–294.
- Goredema, C. 2018. *Above the Law? The Role of Lawyers in Combating Money Laundering and Illicit Asset Flows*. Geneva: Global Initiative against Transnational Organized Crime.
- Grebe, E., and M. Woermann. 2011. Institutions of Integrity and the Integrity of Institutions: Integrity and Ethics in the Politics of Developmental Leadership. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2141762](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2141762).
- Hallman, B. 2020, January 19. Luanda Leaks. International Consortium of Investigative Journalists: <https://www.icij.org/investigations/luanda-leaks/>.
- Herkenrath, M. 2014, July 7. Illicit Financial Flows and their Developmental Impacts: An Overview. International Development Policy: <https://journals.openedition.org/poldev/1863>.
- Hogan, T., U. Hinrichs, and E. Hornecker. 2015, December. The Elicitation Interview Technique: Capturing People's Experiences of Data Representations. Elicitation Interview Technique Guide: <http://tactiledata.net/elicitation/>.
- International Consortium of Investigative Journalists. 2017, January 31. The Power Players. International Consortium of Investigative Journalists: <https://www.icij.org/investigations/panama-papers/the-power-players/>.
- International Consortium of Investigative Journalists. 2017, November 5. Paradise Papers: Secrets of the Global Elite. International Consortium of Investigative Journalists. <https://www.icij.org/investigations/paradise-papers/>.
- Kar, M., Ş Nazlıoğlu, and H. Ağır. 2011. "Financial Development and Economic Growth Nexus in the MENA Countries: Bootstrap Panel Granger Causality Analysis." *Economic Modeling* 28 (1-2): 685–693.
- Khan, M. H. 2006b. "Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis." In *International Handbook on the Economics of Corruption*, edited by S. Rose-Ackerman, 16–244. Cheltenham: Edward Elgar.
- Khan, M. H. 2006a. *Governance and Anti-Corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward*. Geneva: United Nations.
- Khan, M. 2020. Making Collective Action Effective: Possibilism versus Strategic Realism. <https://ace.soas.ac.uk/wp-content/uploads/2020/07/ACE-BriefingPaper011-200714.pdf>.
- Killick, T. 1997. "Principals, Agents and the Failings of Conditionality." *Journal of International Development* 9 (4): 483–495.
- Kolstad, I. 2017. Protected Tax Havens: Cornering the Market through International Reform? CMI Working Paper.
- Kraus, J. 1991. "The Struggle Over Structural Adjustment in Ghana." *Africa Today* 34: 19–37.
- Kunicová, J. 2006. "Democratic Institutions and Corruption: Incentives and Constraints in Politics." In *International Handbook on the Economics of Corruption*, edited by S. Rose-Ackerman, 142–160. Cheltenham: Edward Elgar.
- Leftwich, A. 2006. "Politics in Command: Development Studies and the Rediscovery of Social Science." *New Political Economy* 10 (4): 573–607.
- Lemaître, S. 2018. "Illicit Financial Flows within the Extractive Industries Sector: A Glance at how Legal Requirements Can be Manipulated and Diverted." *Crime, Law and Social Change*, 71: 107–128.
- Lonsdale, J. 1986. "Political Accountability in African History." In *Political Domination in Africa: Reflections on the Limits of Power*, edited by P. Chabal, 126–157. Cambridge: Cambridge University Press.
- Mansfield, E. D., and J. Snyder. 2012. "Democratization and the Arab Spring." *International Interactions*, 24: 722–733.
- Merleau-Ponty, M. 2005. *Phenomenology of Perception*. London and New York: Routledge.
- Minerals Commission. 2019. Minerals Commission. <http://mlnr.gov.gh/index.php/minerals-commission/>.
- Ministry of Finance and Economic Planning. 2020. Agyapa Royalties. [https://www.mofep.gov.gh/sites/default/files/news/Agyapa\\_Info\\_Graphs\\_v2.pdf](https://www.mofep.gov.gh/sites/default/files/news/Agyapa_Info_Graphs_v2.pdf).
- Mishra, A. 2006. "Corruption, Hierarchies and Bureaucratic Structure." In *International Handbook on the Economics of Corruption*, edited by S. Rose-Ackerman, 140–160. Cheltenham: Edward Elgar.

- North, D. 1990. *Institutions, Institutional Change and Economic Performance*. New York: Cambridge University Press.
- Oduro, F., M. Awal, M. Agyei Ashon. 2014. A Dynamic Mapping of the Political Settlement in Ghana. <https://gsdrc.org/document-library/a-dynamic-mapping-of-the-political-settlement-in-ghana/>
- Paul, A. T. 2008. "Reciprocity and Statehood in Africa: From Clientelism to Cleptocracy." *International Review of Economics*, 56: 209–227.
- Precious Mineral Marketing Corporation. n.d. Precious Mineral Marketing Corporation. <https://www.pmmc.gov.gh/pmmc/>.
- ROAPE. 2017. Faking It: The Rwandan GDP Growth Myth. <http://roape.net/2017/07/26/faking-rwandan-gdp-growth-myth/>.
- Roche, C., D. Hudson, and H. Marquette. 2018. *Inside the Black box of Political Will*. The Developmental Leadership Program: Birmingham.
- Rubin, E. L. 2002. "Public Choice, Phenomenology, and the Meaning of the Modern State: Keep the Bathwater, but Throw out that Baby." *Cornell Law Review* 87: 309–361.
- Schjelderup, G. 2009. *Tax Havens and Development*. Oslo: Norwegian Government Administration Services: Information Management.
- Sharman, J., E. van der Does de Willebois, and R. Harrison. 2011. *The Puppet Masters: How the Corrupt use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington DC.: The World Bank.
- Sigler, T., K. Martinus, I. Iacopini, and B. Derudder. 2020. "The Role of Tax Havens and Offshore Financial Centers in Shaping Corporate Geographies: An Industry Sector Perspective." *Regional Studies* 54: 621–633.
- United Nations. 2014, April 4. Illicit Financial Flows Reinforce Corruption, Deplete National Revenues, Warns Deputy Secretary-General during Meeting with Bretton Woods Entities. United Nations: <https://www.un.org/press/en/2014/ecosoc6607.doc.htm>.
- United Nations. 2020. *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa*. Geneva: UNCTAD/ALDC/AFRICA.
- Wilson-Chapman, A. 2019, April 3. What Happened after the Panama Papers? International Consortium of Investigative Journalists: <https://www.icij.org/investigations/panama-papers/>.
- Yami, M., C. Vogl, and M. Hausera. 2009. "Comparing the Effectiveness of Informal and Formal Institutions in Sustainable Common Pool Resources Management in Sub-Saharan Africa." *Conservation & Society* 7: 153–164.