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IS EOCO FIT FOR PURPOSE?

by Dr. Michael Ofori-Mensah*

Summary

The growing sophistication of economic and organised crime in Ghana, particularly those relating to money laundering, financial loss to the state and cyber fraud poses a critical challenge to the country. The Economic and Organised Crime Office (EOCO) was established in 2010 to monitor and investigate such crimes, and on the authority of the Attorney-General, prosecute serious offences. This paper assesses whether EOCO is fully capable of carrying out its functions. The approach taken involves evaluating the legislative and institutional framework, as well as examining the resource capacity of the Office to carry out its mandate. The paper argues that EOCO has strong legal backing to undertake its functions. The evidence suggests that, to date, the Office has demonstrated promise despite some initial setbacks. But the broad range of its capabilities and powers are yet to be tested. The Office, however, faces constraints that may hinder it from fulfilling some of its functions. In this regard reforms to unlock its potential are proposed. Overall, EOCO has filled a gap in Ghana's institutional landscape due to the changing nature and complexity of economic and organised crime. The downstream implications of such crimes, including reputational damage and its ability to affect Ghana's quest for foreign direct investment could be dire. It is hoped that policy makers will realise there is a compelling case for making EOCO succeed and implement reforms with urgency.



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 $Tel. + 233 - 302\,244716/226333/226359/226388, 030\,7010713/4.\,Fax: + 233 - 302\,22231.$

Email: iea@ieagh.org, ieaghana@yahoo.com

Website: www.ieagh.org

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INTRODUCTION

At the end of the year 2010, the ruling National Democratic Congress (NDC) administration published a document listing its top 50 achievements. The document, also known as 'Green Book 1', detailed grand accomplishments of the government after two years in office.1 This included improvements in healthcare delivery; outstanding macroeconomic performance; expansion of road infrastructure and an "impressive World Cup performance" by Ghana's national team, the Black Stars (Ministry of Information, 2010). This mid-term report, which was a selfassessment, was probably a move to reassure Ghanaians that the NDC's programme for government, the 'Better Ghana Agenda', was on course. While opposition political parties dismissed sections of Green Book 1 as questionable, there was consensus in some areas. The governance section of the document noted, among others, that the government had "transformed the Serious Fraud Office (SFO) into an Economic and Organised Crime Office (EOCO) with more powers and independence." In fact, the growing sophistication of organised crime in Ghana, ranging from cyber fraud to money laundering involving proceeds from drugs, poses serious challenges to the country. With no specific or specialised agency to deal with these interrelated challenges, the consensus on all sides of the political divide was that an institution with the requisite powers to deal with such crimes was timely.

Indeed several reports suggest Ghana needs to sharpen measures aimed at tackling economic and organised crime. First, Akyeampong (2005:446) reminds us that "geographically", West Africa has assumed the role of a "middleman" for the trafficking of drugs - from Asia and South America, to Europe and North America. Along this line, Ghana, over the last decade, has become a major transit point for the trafficking of cocaine, heroin and cannabis. Mary Carlin Yates, a senior official at the United States Africa Command (AFRICOM), also makes the claim that eight percent of illegal drugs intercepted in Europe are trafficked through Ghana (Daily Graphic, 3 March 2009). Second, the recurrent reports in the media about cyber fraud in Ghana (known locally as sakawa) also show that decisive action is required, as the associated reputational risks could affect the country's ambitions of attracting foreign investment. Third, successive regimes in Ghana's Fourth Republic have accepted that corruption remains a major public policy issue and a key obstacle to economic development. All these challenges combined underscore the need for a specialised institution such as EOCO.

¹The full title of the Green Book 1 is 'Better Ghana Agenda: Top 50 Achievements of the Prof. John Evans Atta Mills Led Government in his First Two Years in Office.' (Ministry of Information, 2010). In April 2012, the NDC administration published its Green Book 2, which adds more accomplishments to the government's record.

When the Economic and Organised Crime Act, 2010 (Act 804) was enacted in September 2010 it was done without fanfare. This was in stark contrast to the passage of the SFO law in 1993, which sparked public debate and protests from opposition political parties, civil society groups and eminent jurists.² Act 804 mandates EOCO to monitor and investigate economic and organised crime, and on the authority of the Attorney-General, prosecute such offences. The organised crimes specifically noted in the legislation include money laundering, prohibited cyber activity, tax fraud and human trafficking among others. It is worth pointing out that the Serious Fraud Office Act, 1993 (Act 466) did not cover offences relating to cyber crimes, money laundering and human trafficking. The SFO law charged the agency to focus on offences involving "serious financial or economic loss to the State" or any other entity in which the State had a financial interest.

Almost two years have passed since the EOCO law came into force; this is a limited time frame to conduct a comprehensive evaluation of the effectiveness of the new legislation. All the same, it is crucial to assess whether EOCO is fully capable of carrying

out the functions it is intended to undertake. In essence, is EOCO is fit for purpose? The main focus of this paper is thus to assess the capabilities and potential of the Office taking into account its legal mandate, as well its resource capacity.³ This will be done by evaluating the legislative and institutional framework, as well as assessing the capacity of EOCO to undertake its mandate as outlined in Act 804. Where necessary, this paper will draw on case studies and the experiences of the SFO to put lessons in perspective. Overall, this paper is aimed at contributing to the effectiveness of EOCO and to promote a better understanding of the Office among policy makers.

INSTITUTIONAL AND LEGAL FRAMEWORK

In terms of the organisational structure, EOCO is an agency under the Ministry of Justice and Attorney-General's Department. EOCO has its Head Office in Accra, an office in Tema and all other regional capitals. The EOCO Board is the governing body of the Office and is granted the power to formulate policies that will enable the Office to carry out its functions. The Board

² The initial scepticism surrounding the SFO's establishment (by the Jerry Rawlings NDC administration) partly revolved around the suspicions that it was a reincarnation of the infamous National Investigations Committee (NIC) which had existed under the military backed Provisional National Defence Council (PNDC). The NIC had, arguably, been used to pursue political opponents of the regime. Section 24 of the SFO law dissolved the NIC and consequently repealed the National Investigation Committee Law, 1982 (PNDC Law 2). The SFO act also legalised the transfer of 'qualified' NIC officials to the SFO.

³ Act 804 repealed the Serious Fraud Office Act, 1993 (Act 466). Section 77 of Act 804 which outlines the transitional provisions, specifies that the rights, assets, liabilities and properties together with employees of the SFO are transferred by the new law to EOCO.

comprises a chairperson and 8 members. It is instructive to note that apart from two seats on the Board allocated to representatives from the Ghana Bar Association and the Institute of Chartered Accountants, all other members and are directly or indirectly government appointees.4 All the same, the representation of these two key professional bodies on the Board is significant as this was not the case under the SFO law. Further this representation could help strengthen the independence of the Office. On the other hand, section 6 (5) of the EOCO law allows the President to revoke the appointment of a Board member simply in writing. This lack of security of tenure, together with the fact that a majority of Board members are government appointees raises questions about autonomy. An Executive Director manages the operations of the Office and is answerable to the Board. The Executive Director and Deputy Executive Directors are appointed by the President.

Section 2 of Act 804 spells out that the key objectives of EOCO are to: (a) prevent and detect organised crime and (b) generally to facilitate the confiscation of the proceeds of crime. The Attorney-General's Office explains that "the mandate to investigate any suspected fraud is inherent in [EOCO] and

can be activated by the Executive Director without reference to any other authority or agency of the state"5. The mandate and enhanced powers EOCO is given to investigate the increasing number of economic and organised crimes including offences relating to handling the proceeds of organised crime are considerable. Section 18 of Act 804 confers the powers and immunities of a police officer on the Executive Director and officers the Director authorises. It is important to point out that these powers include the request for information. The Executive Director or authorised officers of EOCO have the power to summon individuals or representatives of any entity under investigation to appear before the Office and/ or produce relevant documentation that may assist with investigations. Concealing or refusing to produce requested documents amounts to an offence that carries the possibility of a fine or imprisonment on conviction. The Office is further granted power to apply to the law court⁶ for a warrant to enter a designated premise in order to search and remove such documents where an individual or entity fails or refuses to produce requested documents. Similarly, the Office may apply to the court for a search warrant where it

⁴The full lists of board members are as follows: a chairperson, the Executive Director and representatives of the Inspector-General of Police, Narcotics Control Board, Attorney-General's Office, Ghana Revenue Authority. The three remaining members are made up of nominees of the Minister for National Security, Ghana Bar Association and Institute of Chartered Accountants

⁵ Ministry of Justice and Attorney-General's Department (<u>http://www.mojag.gov.gh/en/agencies/economic-and-organized-crime-office.php</u>) [Accessed 17 July, 2012]

⁶'Court' in this paper refers to a High Court or Circuit Court. The EOCO law also stipulates that these courts have jurisdiction to try offences under Act 804.

believes that giving advance notice will prejudice its investigations.

The EOCO law has elaborate sections dealing with the proceeds of crime and grants the Office powers to seize currency and property suspected to be linked to (organised) crime. It is important to point out that the law is well balanced to protect people's rights. For example, in the case of property seized, a court order for continued seizure can only be made for not more than three months at a time; the total period of seizure cannot exceed two years. At the same time, individuals with an interest in a seized property may apply to the court for return of their property within thirty days of seizure. There is also ample provision of checks and balances in the law to ensure that EOCO does not overstep its authority and due process is followed in others areas such as freezing of assets. However, it is important to note that EOCO cannot prosecute cases without deferring to the Executive branch of government. Article 88 (3) of Ghana's 1992 Constitution confers the power to initiate and conduct the prosecution of criminal offences solely on the Attorney-General. In Ghana, the Attorney-General's Department is combined with that of Minister for Justice and this may limit the scope for prosecuting senior officials of an incumbent regime.

Overall, Act 804 provides EOCO with strong legal backing to undertake its functions. How has EOCO applied these powers? The next section provides an overview of three cases

covering tax fraud, financial loss to the state and human trafficking in order to offer an insight into how the Office has applied its mandate.

EOCO INACTION.

On 7 December 2010, EOCO raided the offices of the Ghana Football Association (GFA) and took away documents and nine computers. EOCO explained the search was necessary to assist its investigation into alleged financial malpractices involving sponsorship and violation of tax laws. The Office further justified the raid by clarifying that the GFA had failed to submit important documentation - in spite of repeated requests. (It is worth noting that EOCO obtained a search warrant from the High Court). The raid halted football activities in the country as the GFA closed its offices. With football being Ghana's unofficial national sport, EOCO, through its actions, had set itself up as a prime target of public anger. What further underscores the almost untouchable nature of the GFA was the speed with which government sought to distance itself from EOCO's raid. Akua Sena Dansua, then Sports Minister, swiftly released a statement which firmly noted that government had no role in EOCO's action. This puts into perspective that the action of EOCO was a brave move. For all intents and purposes, this operation was going to be a vital test of EOCO's capabilities, as it had only been in existence for three months.

The GFA promptly sought redress and sued EOCO in court on the basis that the manner of the investigative body's invasion of its office was "illegal and in breach of its fundamental human rights". In May 2011, an Accra High Court upheld the GFA's suit and awarded the Football Association GH? 50,000 in damages, which EOCO was ordered to pay. Counsel for EOCO argued that the Office would appeal the ruling. (There is no information available as to whether an appeal has been filed). On the whole, despite the court ruling, the GFA case signals that EOCO is prepared to carry out investigations involving high profile institutions. This is a step in the right direction.

EOCO's preliminary investigations into the payment of GH?51 million (between February 2010 and September 2011) as judgement debt to Alfred Agbesi Woyome, a businessman and self acclaimed financier of the ruling party, the NDC, uncovered evidence suggesting that several senior public officials had a case to answer. As there are pending civil and criminal court cases, this paper will not comment directly on this matter. It is, however, instructive to draw attention to some of the findings detailed in the Office's preliminary report. findings alleged that Woyome capitalised on the negligence of public officers and "put in a claim for an amount which by his own documentary submissions he was not entitled to" (EOCO 2012:15). This unambiguous statement was a direct contradiction to what certain senior figures in the ruling party had publicly indicated. Indeed, although it does not go as far as outwardly challenging the incumbent regime, the fact that it made such public finding reveals a measure of independence. For the most part, EOCO has taken a firm stance on the investigations and in March 2012 obtained a court order to freeze all the financial assets and bank accounts of Woyome.7 On the other hand, the initial refusal by members of the erstwhile New Patriotic Party (NPP) administration to assist EOCO with its investigations underlines the suspicion that the Office is an appendage of the government. EOCO has work to do in this respect in terms of building cross party support, and indeed public confidence, in its work.

EOCO has also applied its mandate in the area of anti-human trafficking. It was reported in May 2011 that the Office, in collaboration with the security services and a non-governmental organisation, had rescued 116 trafficked children. Conducting such joint operations with other agencies is a commendable approach, as effective collaboration between EOCO and anti-crime agencies, particularly with

⁷ See Daily Graphic 9 March 2012

See Daily Graphic [Online Edition 13 May 2011]. Available at: www.graphic.com.gh/news/page.php?news=12921# [Accessed 17 July 2011]

reference to sharing intelligence is crucial. For example, there is strong potential for EOCO to tap effectively into expertise from specialist institutions like the Financial Intelligence Centre (FIC) in the areas such as money laundering. The FIC was established under the Anti-Money Laundering Act, 2008 (Act 749) with the key function of identifying proceeds of unlawful activity and combating money laundering activities. In this regard, the FIC is required to collect information and make it available to investigating authorities. With the passage of Act 804, EOCO falls under the relevant investigating authorities. In general, the above case studies have shown that EOCO has made some initial progress. However, the Office faces constraints that may hinder it from fully fulfilling its objectives. In this vein, the next section outlines a few of EOCO's limitations and proposes reforms that will enhance its capabilities.

UNLOCKING POTENTIAL

There are three key constraints which could weaken EOCO's effectiveness - if not addressed swiftly. The first is in regards to the independence of the Office. Whilst EOCO has displayed signs of autonomy since its establishment, it will be useful to draw lessons from the SFO in order to provide us with the possibilities that may ensue. EOCO shares a similar institutional structure with the erstwhile Fraud Office, which for most of its existence it did not have a permanent

Executive Director (appointees were given the job on a temporary basis). The insecurity of tenure, arguably, made its Directors cautious with regards to investigating an incumbent regime and consequently dented public confidence in the Office. Although EOCO's current Executive Director is confirmed in his role, it will be constructive for the security of tenure of this position to be written into law. Act 804, as it stands, allows the President to simply remove the Director without having to justify such an action. Providing safeguards to enhance the autonomy of the office is crucial. This paper proposes the option of making the terms and conditions of office - including removal consistent with that of a Justice of the Court of Appeal, which sets a high bar and to an extent shields the Office from undue political interference.

The second limitation relates to technical and financial resource constraints. Indeed, the nature of crimes the Office is meant to tackle implies that its staff will require continuous skills development in areas such investigating cyber crime where change is constant. Salifu (2008) reminds us that "developing countries suffer greatly from the activities of internet crime than their developed counterparts" owing to the lack of adequate technology, infrastructure and technical expertise. All the same, it is instructive to acknowledge that some capacity building support has already taken place. In 2011 the Audit Service provided 80

personnel of EOCO with training in auditing and forensic accounting among others. Ghana's development partners have taken an interest in the Office and helped with initial capacity building. The US Embassy, for example, has organised relevant training for EOCO and related government institutions such as FIC, and Bank of Ghana. This obviously is in line with the strong interests of the US in Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT). Support for EOCO has also featured in Multi Donor Budget Support (MDBS) discussions. Donor Budget Support (MDBS) discussions.

In terms of the financial constraints, the funding of EOCO has come from monies appropriated by Parliament, but this is inadequate and could affect the Office's effectiveness. This scenario has to be addressed by government bearing in mind that a well resourced EOCO has the potential to make substantial monetary recoveries. Notwithstanding donor support, without consistent and long term funding from government, lasting progress will be difficult to achieve.

The third limitation is the issue of reporting and public education. The Ministry of Justice

and Attorney-General's Department indicates that EOCO is mandated to create public education on effective economic crime prevention and strengthening public accountability.11 All the same, very little is known about the work of the Office. What is required is for EOCO to engage in sustained public education not only on crime prevention but, also, about its mandate and the value it provides to Ghana. The SFO's experience in this respect provides useful lessons. The erstwhile Fraud Office made a significant contribution to accountability including the recovery of embezzled funds and taxes evaded, but failed to highlight its success to the general public. Much of this owes to the SFO not making this data, which is contained in its reports easily available. (In 2003 and 2004, for example, the recoveries made by the SFO (in the old Ghanaian cedis) amounted to ¢3.4 billion and ¢5.97 billion respectively). 12 EOCO must avoid this path and sell its success. Doing so will present an opportunity to polish its current shadowy image and potentially turn public opinion in its favour.

On the issue of reporting, although there is a requirement for the Office to submit an

⁹ The US Embassy also provides technical assistance to the FIC and this will also be beneficial to EOCO.

¹⁰MDBS was set up in 2003 as an arrangement combining bilateral and multi-lateral donor support for direct contribution to the government's budget. It is worth noting that MDBS has served as a mechanism for donors to combine their efforts in the field of anti-corruption reform.

¹¹ See Ministry of Justice and Attorney-General's Department website: http://www.mojag.gov.gh/en/agencies/economic-and-organized-crime-office.php [Accessed 17 July 2012]

¹² These amounts are reported in the SFO annual reports for 2003 and 2004.

annual report to the Minister for Justice and Attorney-General for onward transmission to Parliament, there is little evidence that this has been done. If this failure to adhere to the reporting requirement persists, it will be difficult to monitor and evaluate the overall performance of the Office. This needs to be resolved and intervention by Parliament will be necessary.

CONCLUSION

EOCO was established under Act 804 to tackle economic and organised crime ranging from cyber fraud to money laundering. This paper set out to determine whether EOCO is fit for purpose. The evidence suggests Act 804 provides EOCO with strong legal backing to undertake its functions. To date, the agency has showed signs of promise to fulfil its mandate, but the broad range of its capabilities and powers are yet to be tested especially relating to senior members of an incumbent government. The big test for the Office will be its ability to assert independence in investigating all cases irrespective of the political standing of those involved. It will be a dent to public confidence in the Office if it is to follow in the SFO's stead, which attempted a few investigations of incumbents but failed to report back on findings. As outlined in the proposals for reform, addressing the lack of security of tenure for EOCO's leadership will be an important step in safeguarding the autonomy of the Office. Adequately resourcing the

Office remains crucial, as the financial constraints it faces has the ability to impact its effectiveness.

Act 804 is a timely addition to the statute books. The establishment of the Office has filled a gap in the institutional landscape due to the changing nature and complexity of economic and organised crime. The downstream implications of such crimes, including reputational damage and its ability to affect Ghana's quest for foreign direct investment could be dire. The NDC administration has highlighted the enactment of Act 804 as a major governance achievement under its Better Ghana Agenda. Indeed, this institutional reform is a step in the right direction. But more needs to be done to enable EOCO carry out its work effectively. Political will is integral to implementing reforms that will help unlock EOCO's full potential. Given what is at stake, it is hoped that policy makers will realise there is a compelling case for making EOCO succeed.

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