

2022 International Anti-Corruption Day Symposium
Topic: Curbing Corruption through a Rigorous Conduct of
Public Officers Law: the Perspective of CHRAJ by
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The Attorney-General and Minister for Justice,
The UN Resident Coordinator,
Commissioner and Deputy Commissioner of CHRAJ,
CEOs and Heads of Public Sector Institutions
Executive Secretary of GACC and reps of Civil Society,
Reps of the Media,
Distinguished Ladies and Gentlemen.

We are gathered here today to commemorate the IACD under the UN theme **“UNCAC @ 20: Uniting the World Against Corruption”**.

I believe our conversation on corruption should start with the Directive Principle of State Policy that deals specifically with corruption and Chapter 24 of the Constitution. Article 34(8) stipulates that, **“The State shall take steps to eradicate corrupt practices and abuse of power”**. This signifies that the State has the primary responsibility to do everything lawful to fight corruption and make its practice a high risk.

In Ghana, Chapter 24 of the Constitution is described as the Code of Conduct for Public Officers and provides the broad framework for dealing with conflict of interest, illicit enrichment and other prohibited unethical conduct that has the capacity to erode public confidence in Public Office.

The International Code of Conduct for Public Officials describes Public Office, as defined by national law, as a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.

Attempts have been made since 2008 with no success to pass the CoPO Law to elaborate on and give full effect to the anti-corruption ethos of Chapter 24 of the Constitution.

Let me take this opportunity to commend the Attorney-General and Minister for Justice for prioritizing the CoPO Bill immediately after assuming office, resulting in the drafting of the CoPO Bill, 2021. As we commemorate the IACD under the theme **“UNCAC @ 20: Uniting the World Against Corruption”** let us unite as a nation to strengthen the CoPO Bill to enable the nation to achieve the objectives of Chapter 24.

The Conduct of Public Officers Bill when passed into law will give expression to Chapter 24. But more importantly, it will serve as a reference and a benchmark for ethical conduct in the Public Service of Ghana. The delay in passing the Bill is certainly not in the public interest, and it stifles our collective efforts at helping public officers avoid compromising and conflicting situations in public office.

Article 287 of the Constitution provides that:

(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner of Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.

In the case of Okudzeto Ablakwa (No. 2) & Another V. Attorney-General & Obetsebi-Lampitey (No.2) 2 [2012] SCGLR, 845, the Supreme Court held that:

“The issue of conflict of interest raised here can easily be resolved by recourse to article 287 of the 1992 Constitution. Article 287 mandates that complaints against a public officer under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commissioner for Human Rights and Administrative Justice; and in the case of a complaint against the Commissioner for Human Rights and Administrative Justice, by the Chief Justice.”

As the Office designated by the Constitution to enforce the Code of Conduct under Chapter 24, CHRAJ had cause in the case of **ASEPA Vrs Jean Mensa** to make far reaching recommendations. With your permission I will refer to the recommendations:

“In the course of this investigation, the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) came under scrutiny again. The long title of Act 550 describes it as an Act to provide for the declaration of assets and liabilities by public office holders in conformity with Chapter 24 of the Constitution.

However, the same Act has been criticized several times for not having sufficiently elaborated or fleshed out the provisions of Articles 286 and 287 of the constitution.

Section 18(1) of Act 456 provides:

“Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation ...

the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and **shall make the recommendation that it thinks fit.**”

It would be remiss on the part of the Commission having identified some of the weaknesses in Act 550, if the Commission did not invoke its power under Section 18(1) of Act 456 to proffer the following recommendations to address the lacuna in the law for effectiveness of the Assets Declaration Regime in Ghana.

As observed earlier, sanctions are usually specifically prescribed by law, and one would expect that Act 550 would have been a bit more specific with the actions that would be considered appropriate for breaches, or provision for the same to be done in a subsidiary

legislation to the Act. However, that appears not to be the case, and the Commissioner or the Chief Justice as the case may be, is expected to take such action as he considers appropriate in respect of the results of investigation or admission. Given the wide discretion, the Commissioner or the Chief Justice would naturally be careful to ensure that any action taken is appropriate, proportionate, and enforceable, in order not to abuse the discretion. The flip side is that out of abundance of caution some of the actions taken may turn out to be mild. As a rule, Codes of Conduct laws are not criminal in nature. Codes of Conduct are regulatory standards or conduct that function as first line of defence or protection for an organization, group or society. It follows therefrom, that sanctions under Codes of Conduct are civil or administrative in nature, and not criminal.

Although a breach of the Code of Conduct can occasion a criminal offence, not all code of conduct offences is criminal. Again, the procedures for dealing with criminal offences are completely different from code of conduct offences. The standard of proof required for criminal conviction is proof beyond reasonable doubt, whilst that for establishing culpability in breaches of Codes of Conduct is on the balance of probability.

Further, procedures for investigation and prosecution of criminal offences are strictly regulated by the Criminal and Other Offences Procedure Act, (Act 30), whilst that of Codes of Conduct are usually prescribed by the Codes themselves. If a person is in breach of the Code of Conduct and the said breach also constitutes an offence under the Criminal Offences Act, (Act 29) the person can be prosecuted under the Criminal Offences Act if we opt for criminal prosecution, but it would not be acceptable to prosecute the person under a Code of Conduct.

It is not by accident that the Constitution describes Chapter 24, under which Assets Declaration Regime is provided for in Ghana, as the Code of Conduct for Public Officers, and it is important we are careful not to distort the spirit and letter of the law. Whilst some jurisdictions may treat violations of the Assets Declaration Regime as criminal offences, the 1992 Constitution makes clear that in Ghana it is conceived as a code of conduct offence, and not a criminal offence.

If Act 550 is ineffective, as has been pointed out time and again, we should cure the lacuna by replacing it with a more comprehensive legislation that adequately fleshes out or elaborates the provisions of Chapter 24 of the Constitution as the Conduct of Public Officers (CoPO) Bill

2018 presently before Parliament seeks to do. Parliament as the law-making Arm of Government should demonstrate the necessary political will and pass the Conduct of Public Officers Bill, which has gained notoriety as the second oldest Bill after the RTI Law, to address the shortcomings in our current Assets Declaration Regime.

A robust CoPO Bill should ensure that Article 286 is sufficiently expounded to make adequate provision for civil or administrative sanctions or to make provision for same to be made in subsidiary legislation, but more importantly, the Bill should strengthen the mechanisms for incentivizing and compelling compliance.

For example, it should be possible for the CoPO Bill before Parliament to expound the provision “before taking office” in Article 286(1)(a) in a manner that addresses the weaknesses in Act 550 and strengthens compliance with the Assets Declaration Regime. One of the effective ways to ensure speedy compliance is to disable relevant public officers from ‘taking office’ or receiving any emolument or benefit from office until they can show that they have complied with Article 286(1) (a).

The Bill should specifically provide those appointing authorities should require proof of declaration of assets and liabilities before appointees are allowed to take office. In the case of elected officials like the President and Members of Parliament, the Bill should specifically provide that they show evidence of having declared their assets and liabilities before they are sworn into office, since there is sufficient time between when they are elected and when they are sworn into office to comply with Article 286(1) (a). The Bill should also specifically provide that elected or appointed public officers to whom Article 286 applies shall not be entitled to any emoluments or benefits of office until they have complied with Article 286(1) (a).

In respect of Article 286(1) (b) (i.e., at the end of every four years), the Bill should disable persons who fail to declare their assets and liabilities at the end of every four years from receiving any emoluments or benefits from office unless they comply with (1) (b).

In respect of Article 286(1) (c) (i.e., at the end of his term of office), the CoPO Bill should disable persons who fail to declare their assets and liabilities at the end of their term of office from receiving any entitlements or benefits from office until they comply with (1) (c).

These, undoubtedly, could be the watershed that could incentivize or compel relevant public officers to comply with Article 286 with little fuss. Again, a clear provision of that nature would empower the Commissioner or the Chief Justice as the case may be to apply the appropriate administrative action of having persons who receive emoluments or other benefits before fulfilling this condition of office to refund same. Having said that, we equally counsel that in strengthening the law on the Assets Declaration Regime, we should be careful not to distort the spirit and letter of the law by importing criminal sanctions into the COPO Bill.””

Whilst commending the AG&MFJ for prioritizing the CoPO Bill, it is also important to state here and now that the nation deserves a robust CoPO Bill that is capable of stemming corruption and unethical practices in Public Office and help secure for ourselves the Public Office we want.

With these initial comments I will now turn to the CoPO Bill, 2021.

Ladies and Gentlemen, Corruption is a system that thrives where effective preventative and enforcement systems are lacking. Again, COC can only be effective to curb corruption in Public Office when we have in place a framework that

clearly delegates authority for implementation, compliance, enforcement and sanctioning powers to specified integrity agency or agencies, which have in place rules, policies and procedures for inter-agency cooperation.

It is therefore important that all prohibited unethical conduct is adequately defined so officials know what behaviours are prohibited and what constitutes violations, and which agency is responsible for enforcing compliance, as well as prevention and detection systems.

The lack of clarity in these and other areas enables corruption to thrive while handicapping institutions responsible for prevention and detection. It also lowers credibility of Public Office and the Government as a whole and erodes trust that people want to have in public institutions and Government. Equally important is that the range of sanctions and penalties for breaches of the Code of Conduct for Public Officers are proportionate, dissuasive and effective.

Criminal Sanctions in the CoPO Bill

We should not use a Code of Conduct law to criminalise conduct. As explained in the Recommendation section in the CHRAJ decision, the CoPO Bill should focus on matters that fall within the ambit of Code of Conduct under Chapter 24 of the Constitution and leave criminal sanctions to offences

under the Criminal Offences Act. The Bill must rather make provision for administrative sanctions and penalties.

Declaration of Assets and Liabilities

The Bill must strengthen the mechanisms for ensuring compliance with the Assets Declaration Regime. Among others:

- In respect of Article 286(1)(a) on “**before taking office**”, the Bill should specifically provide that:
 - i. appointing authorities should require persons appointed to Public Offices to which the Act applies to produce evidence of having complied with Article 286(1)(a) before they are allowed to assume office;
 - ii. elected officials should produce evidence that they have complied with Article 286(1)(a) before they are sworn into office;
 - iii. elected or appointed public officers to whom Article 286 applies shall not be entitled to any emoluments or benefits of office unless they comply with Article 286(1) (a);
 - iv. any emoluments or benefits received in contravention of (iii) shall be forfeited to the State.

- v. Appointing authorities and Heads of MDAs and MMDAs should be held accountable to enforce this as a condition for holding office.
- In respect of Article 286(1)(b) the Bill should specifically provide that:
 - i. Public Officers who fail to declare their assets and liabilities at the end of every four years in office shall not receive any emoluments or benefits from office unless they comply with 286(1) (b).
 - ii. any emoluments or benefits received in contravention of (i) shall be forfeited to the State.
 - iii. Appointing authorities and Heads of MDAs and MMDAs should be held accountable to enforce this as a condition for holding office.
- In respect of Article 286(1)(c) the Bill should specifically provide that:
 - i. Persons who fail to declare their assets and liabilities at the end of their term of office shall not receive any entitlements or benefits from office until they comply with 286(1) (c).
 - ii. Any entitlements or benefits to which they may be entitled may be withheld by the State until 286(1) (c) is complied with.

The Bill should specifically provide for the Auditor-General to verify assets declaration to:

- (a) ascertain that all public officers who are required to submit their declarations have done so according to law;
- (b) review each declaration to ascertain if:
 - (i) the declaration is false, misleading or incomplete;
 - (ii) the assets of the person who submitted the declaration appear disproportionate to the person's known income;
 - (iii) the assets or liabilities of the person who submitted the declaration raise concerns of impropriety or conflict of interest.
- (c) If any of the conditions in subparagraph (b) raise questions or suspicions, the person who submitted the declaration shall be given an opportunity to give an explanation.
- (d) If no explanation is given, or if after considering any explanation the person who submitted the declaration may give, the Auditor-General is of the opinion that there are still doubts, the Auditor-General shall refer the matter to the Commissioner of CHRAJ who shall investigate the matter and take appropriate action on

the matter in accordance with clauses 42 to 45 of this Bill.

Clause 19 provides for sexual harassment. It is one of the clauses that does not say much except to define the offense in **clause 56** to include an unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Sexual harassment if left unchecked can create an intimidating, hostile, degrading, humiliating or offensive work environment leading to loss of valuable human resources in the Public Service. Therefore, it is decisive for the Bill to elaborate on the Sexual Harassment Policy and impose a duty on all public offices to have an anti-harassment policy which is openly displayed and enforced, and to which all public officers must sign up to uphold in their employment contract.

Further to this, the Bill must provide for Bullying and Retaliation. Often, sexual harassers have a habit of bullying persons who resist their sexual advances particularly in supervisor–subordinate scenarios. It is significant to have a provision against bullying, which may include repeated offensive behaviour that is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

Also, we must include a no retaliation clause to prohibit retribution against public officers who make good faith reports of suspected violations of the code of conduct.

Clause 20 deals with solicitation and acceptance of gift. However, the Bill provides no guidance on gifts offered by public officers. The Bill must include provisions that equally regulate gifts, favour or an advantage offered by public officer that has the potential to influence the proper discharge of the duties or judgment of a fellow public officer or a third party.

The Bill must provide that all gifts, acceptable and prohibited, that are offered, received, or declined must be declared in a Gift Register. A gift register covers what was given, by whom, to whom, and on what occasion. The Register must be accessible online to Public Officials to download and use.

It is commendable practice to have in-house Ethics and Compliance Units to enforce compliance of COC. The Bill must provide for the establishment of Ethics and Compliance Offices in all MDAs/MMDAs headed by director or senior management personnel, with the mandate to build an ethical culture and implement the code of conduct, with CHRAJ providing oversight and guidance for effective functioning of all Ethics and Compliance Offices.

The director/management personnel must have autonomy, authority and resources to implement the COC and deal with issues that may arise. A Public Officer who has a dilemma as to whether a gift is acceptable or prohibited may seek guidance from the Ethics and Compliance Office or CHRAJ.

Conflict of Interest

Clause 23 deals with avoidance of conflict of interest. It is commendable practice for public officers to first conduct a conflict-of-interest check before performing any task particularly those involving third parties. Public officers who find that their personal interest conflicts with their official functions must make a mandatory declaration in a conflict-of-interest register. The Bill must make provision for COI Register to be maintained by all entities to serve as a record of all declared conflicts of interests immediately they occur. The Register must be accessible online for public officers to download and use.

Clause 24 deals with duty to report.

The Bill should place on every public officer mandatory duty to report a breach of the code of conduct attended by appropriate disciplinary action if a public officer fails to report breaches, he or she has become aware of.

It is commendable practice to have reliable reporting channels to receive reports confidentially and securely. It is important that reports are easily submitted from anywhere and at any time, so that third parties and the general public can have opportunity to submit reports as well.

Clause 40 deals with publication in the media. However, the Bill has no provision on how to behave online or on social media. It is important it is covered since most people live on social media. Also, it is observable that media is not defined under **clause 56**. It is important it is defined, and the said definition must include social media to keep up with the trends.

It is also important to provide for Acceptable Use of Social Media and Internet. The provision must stipulate what can and cannot be shared online or what can and cannot be done or watched online.

Second Schedule covers declaration of assets and liabilities form. The Personal Particulars of a public officer must be expanded to include the following:

- (a) Employment History
Designation

Name of employer

Nature of employment

(b) Marital status

(c) Full name of spouse or spouses, if any

(d) Employment History of Spouse or Spouses

Name of employer

Nature of employment

(e) Full names of dependent children

Omission of Solemn Declaration

The Bill must make provision for solemn declaration on the declaration of assets and liabilities form, as well as witness to the declaration.

Sanctions Regime:

The Bill should Sanctions

- Reprimand
- Suspension for a period
- Withholding of Salary
- Withholding of entitlements
- Demotion
- Forfeiture of benefits

- Removal from Office
- Disqualification from holding office

Ladies and Gentlemen, the issues raised above go to the root of the effective implementation of the Assets Declaration Regime and the enforcement of Chapter 24 of the Constitution. We need always to remind ourselves that it is not by accident that the Constitution describes Chapter 24 as the Code of Conduct for Public Officers, to which the Constitution has given the CHRAJ exclusive mandate for its enforcement. Criminalizing breaches of Chapter 24 of the Constitution under CoPO Bill will run counter to the exclusive jurisdiction of CHRAJ.

Before I conclude permit me to share an experience with you.

Findings from the 2021 Ghana Integrity of Public Services Survey (GIPSS) reveal that corruption is still rife in Public Service. Public trust appears to continue to diminish. The findings reveal that a greater proportion of adults in Ghana have more confidence in religious and traditional justice systems relative to the formal one.

Seven in every 10 (69.9%) adults hold the view that the religious and traditional leaders' system effectively

protect the rights of every citizen, a figure that is 10.8 percentage points higher than those who agree that the formal justice system effectively protects the rights of every citizen (59.1%).

This, obviously, should not be allowed to continue, and the ball is now in our court.

Ladies and Gentlemen, the public does not demand that public servants should be angels. Their revulsion is with the unruly manner we appear to manage their interests and their scarce resources. It may not always be the case, but appearances and perception alone can create disaffection and erode public confidence in public service. The Government and Public Service owe it to the People in whose name and on whose behalf, we exercise the powers of the State to put our house in order and restore confidence and hope to our People.

In conclusion, what is worth doing is worth doing well. We must work together to fashion out a robust CoPO Bill that can serve the nation well and curb corruption in Public Office.