Organised crime has been identified as a major threat to economies and polities as well as global peace. Many States therefore commit resources to and collaborate with other States in preventing and fighting organised crime across jurisdictions. In an effort to prevent and fight economic and organised crimes such as human trafficking, drug trafficking, money-laundering, and other organised crimes in Ghana, and to co-operate with relevant foreign or international agencies in furtherance of this fight, Ghana established the Economic and Organised Crimes Office (the "EOCO") in 2010, as a specialised State agency to monitor and investigate economic and organised crime and, on the authority of the Attorney-General, to prosecute these offences to recover the proceeds of crime among others.

The EOCO has two (2) main objects: (a) prevent and detect organised crime, and (b) generally to facilitate the confiscation of the proceeds of crime. This paper reviews the EOCO's operations in respect of these two (2) objects. The paper finds that, while there is sufficient evidence of EOCO's efforts towards achieving its second objective, i.e. facilitate the confiscation of the proceeds of crime, the current legal framework of EOCO undermines its ability to deliver on its first and primary object, i.e. the detection and prevention of organised crime. The paper recommends a reconsideration of our mindset and toolkit for our anti-graft campaign evidenced in our legal framework.
INTRODUCTION

The Economic and Organised Crime Office (EOCO) is part of the Public Services, and is established by law as a specialised agency to monitor and investigate economic and organised crime and, on the authority of the Attorney-General, to prosecute these offences to recover the proceeds of crime and provide for related matters. The EOCO replaces the Serious Fraud Office (SFO), which was established pursuant to the Serious Fraud Office Act, 1993 (Act 466). The EOCO, however, has a wider mandate than the defunct Serious Fraud Office. For example, whereas the SFO's mandate related to crimes that involved serious financial or economic loss to the State or to any state organisation or other institution in which the State has financial interest, the EOCO's mandate includes all of these crimes, as well as:

- money laundering;
- human trafficking;
- prohibited cyber activity;
- tax fraud; and
- other serious offences.

The EOCO held its maiden Stakeholder Engagement on its activities on July 10, 2019. On this occasion, the EOCO took the unprecedented step of opening itself up for institutional assessment by the writer and participating in such assessment, with a view to coming out with recommendations to enable it to better serve the Ghanaian public in accordance with its mandate. This paper represents the writer's assessment of the operations of the Economic and Organised Crime Office (EOCO) as a State institution, and has considered EOCO's written responses to some of the issues raised during the assessment.

The paper is in four parts: the first part gives a background to the legal framework for fighting organised crime prior to the establishment of EOCO. The second part deals with the circumstances that necessitated the setting up of the EOCO, and the legal framework of EOCO pursuant to the Economic and Organised Crime Act, 2010, (Act 804). The third part, the thrust of this paper, assesses EOCO's operations in the light of its objects pursuant to the EOCO Act. The final part contains the writer's observations, recommendations and conclusions.

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2 Section 2, the Economic and Organised Crimes Office Act, 2010 (Act 804).
3 See the preamble and Sections 2 and 3, ibid. of the EOCO Act, 2010.
BACKGROUND TO THE ESTABLISHMENT OF THE EOCO

A comprehensive legal regime aimed at addressing financial impropriety, which especially results in serious economic loss to the State in the Fourth Republic, began with the passing of the Serious Fraud Office, Act, 1993 (Act 466). This Act, which has been repealed, established the Serious Fraud Office (SFO) as a specialized agency of government to monitor, investigate and, on the authority of the Attorney General, prosecute any offence involving serious financial or economic loss to the State and to make provision for connected and incidental purposes. Although there were several legal provisions that criminalised economic, financial and organised crimes prior to the coming into force of the Serious Fraud Office Act, these provisions were scattered in various pieces of legislation. These pieces of legislation include: (i) the 1992 Constitution, (which requires that the national economy is managed in such a manner as to maximise the rate of economic development among others); (ii) the Citizens Vetting Committee Law 1982 (PNDC.1), (which set up the Vetting Committee to "investigate persons whose lifestyles and expenditures substantially exceeded their known or declared incomes"); (iii) the National Investigation Committee Law 1982 (PNDC.2), (which established the National Investigation Committee to investigate cases of corruption, where persons whose bank account revealed amounts of more than 50,000 cedis (the equivalent of US$16,000 at the time) were obliged to explain the source of their income and justify its genuineness or forfeit it to the State); and (iv) the Criminal Offences Act, 1960 (Act 29) and the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), (which criminalised conspiracy and abetment of crime among others).

It was considered that none of these scattered provisions among others adequately addressed the growing national security concerns that economic crimes posed to the country, and that the existing accountability agencies/institutions were not able to check financial impropriety, especially those that result in serious economic loss to the State. A case was thus made for the establishment of a specialised agency of Government with a mandate to monitor, investigate and, on the authority of the Attorney-General, prosecute offences involving serious financial or economic loss to the Republic. This saw the promulgation of the SFO Act, which established the Serious Fraud Office for this purpose. The Office consisted of: (a) an Executive Director; (b) Deputy Executive Directors; and (c) such officers and staff as the President may appoint for the Office under the SFO Act. It was governed by a seven-member board appointed by the President in consultation with the Council of State and the Minister of Justice and Attorney-General had responsibility for the SFO. The SFO was therefore not independent of the Attorney-General, and required the Attorney-General's written authorisation to institute and conduct any criminal proceedings arising out of investigations that it (the SFO) undertook.

The functions of the SFO were: (a) to investigate any suspected offence provided for by law that appears to the Executive Director on reasonable grounds to involve serious financial or economic loss to the State or to any state organisation or other institution in...
which the State has financial interest; (b) to monitor such economic activities as the Director considers necessary with a view to detecting crimes likely to cause financial or economic loss to the State; (c) to take such other reasonable measures as the Executive Director considers necessary to prevent the commission of crimes that may cause financial or economic loss to the State; and (d) to co-operate with such international agencies as the Executive Director considers appropriate for any of the purposes. The SFO was also to collect, collate and disseminate information from state agencies and other public bodies in the performance of these functions. The SFO's mandate thus did not extend to the investigation and prosecution of offences related to drug trafficking, money laundering and other organised crimes.

Furthermore, even though the Executive Director may, where authorised by the Attorney-General in writing, institute and conduct any criminal proceedings arising out of investigations conducted by the SFO, the punishment under the Serious Fraud Act was either a prison term or a fine (typical of successful criminal prosecutions). This meant that persons convicted under the Serious Fraud Act, 1993, (Act 466) of any serious financial crime or fraud got as punishment, (a) a prison, or (b) a fine or (c) both a prison term and a fine. They may afterwards return to enjoy the proceeds of the crimes they committed.

Moreover, advancement in technology and globalisation saw an increase in sophisticated criminal activities such as human trafficking, drug trafficking, money-laundering, and other organised crimes, and these crimes were not within the purview of the repealed SFO Act. The case was thus made for a review of the law to eliminate identified lapses, and for the establishment of a specialised agency with a mandate wider than that of the SFO. This saw the establishment of the Economic and Organised Crimes Office (EOCO) pursuant to the EOCO Act, 2010, (Act 804). So, although not the first legal provision on organised crime, the EOCO may be the first specialised agency dedicated to dealing with organised crime, human trafficking, and money laundering for the purpose not only of punishment for these crimes, but also for preventing them and recovering the proceeds of crime.
THE OBJECT OF EOCO

The EOCO was established to achieve two (2) main objects as follows: to

a. prevent and detect organised crime, and

b. generally, to facilitate the confiscation of the proceeds of crime.

The assessment of EOCO's operations shall seek to find to what extent EOCO has achieved these two objects. It is, however, important to first consider the legal framework of EOCO as this determines EOCO's operations, financing and governance, among others.

LEGAL FRAMEWORK OF EOCO

EOCO is established by law as a body corporate with perpetual succession. So, it can sue and be sued in its own name. It is governed by a nine-member board, comprising: (a) seven (7) institutional representatives; (b) a chairperson; and (c) the Executive Director. Of the institutional representatives, five (5) are state institutions, and two (2) are professional bodies. The five state institutional representatives are: (i) one representative of the Inspector-General of Police not below the rank of Assistant Commissioner; (ii) one representative of the Narcotics Control Board not below the rank of Director; (iii) one representative of the Attorney-General's Office not below the rank of Principal State Attorney; (iv) one representative of the Ghana Revenue Authority not below the rank of Director; and (v) one person with an intelligence background and not below the rank of Director nominated by the Minister responsible for National Security. The two (2) professional bodies' representatives are: one lawyer in private practice with at least ten years' experience at the Bar and nominated by the Ghana Bar Association, and (ii) one chartered accountant with at least ten years' experience nominated by the Institute of Chartered Accountants. All of the members of the EOCO Board are appointed by the President in accordance with Article 70 of the 1992 Constitution; and while the institutions nominate their representatives for appointment by the President, the President directly appoints the Executive Director.

There is an Executive Director who is responsible for the day to day administration and operations of the Office, and, s/he is answerable to the Board in the performance of the functions under the EOCO Act. The Executive Director is directly appointed by the President, and shall hold office on the terms and conditions specified in the letter of appointment.

The effect is that the Executive Director does not have a security of tenure, and may be terminated by the President in accordance with his or her letter of appointment. In other words, the grounds of termination and notice of termination of the Executive Director may be contained in the letter of appointment of the Chief Executive Office. It must be
noted that this letter is not in the public domain. This paper therefore suggests that the tenets of transparency require that the letters of appointment of Executive Directors (or Chief Executive Officers) of State Institutions such as EOCO be a matter of public record; or, at the very minimum, there ought to be a model letter of appointment of Executive Directors/Chief Executive Officers in the public domain.

**DEPUTY EXECUTIVE DIRECTORS**

There must be Deputy Executive Directors appointed by the President in accordance with article 195 of the Constitution. The Act does not state the number of Deputy Executive Directors that the EOCO must have, but it states that the Deputy Executive Directors will head the divisions of the office. It is therefore legitimate to state that the number of Deputy Executive Directors to be appointed for the EOCO must be informed by the number of Divisions at the office. As noted above, the Deputy Executive Directors are also directly appointed by the President in accordance with article 195 of the 1992 Constitution. Article 195 of the Constitution provides that "subject to the provisions of this Constitution, the power to appoint persons to hold or to act in an office in the public services shall vest in the President, acting in accordance with the advice of the governing council of the service concerned given in consultation with the Public Services Commission". The effect of this article is that it is the President who has the legal authority to appoint each and every person who holds a public office or acts in a public office, and he does this in consultation with the Public Services Commission.

**OTHER STAFF**

All other staff of the Office that are necessary for the proper and effective performance of the functions of the Office are appointed directly by the President in accordance with article 195 of the 1992 Constitution. Other public officers may also be transferred or seconded to the Office.

**ADVISERS**

The EOCO may engage the services of advisers on the recommendation of the Board. It is thus clear, that with the exception of Advisers, it is the President who must appoint all of the staff of the EOCO, whether directly or indirectly.

**FUNDS OF THE OFFICE**

The funds of the Office include (a) moneys approved by Parliament, and (b) donations, grants and any other moneys that are approved by the Minister responsible for Finance. There is, as well, the curious provision in section 66 of the Act pursuant to which EOCO is reported to have been paid part of monies that were realized on sale of confiscated properties or realized properties. These monies are to be applied to defray the cost of EOCO. Section 66 (1) of the EOCO Act provides that:

*The Court shall direct that an amount be paid to the Registrar of the Court out of the*
It is reported that pursuant to the above-cited section 66, the Court, EOCO and the Attorney-General have been paid part of the monies that were realized on the sale of confiscated properties or realized properties. This means that the Court interpreted the above-cited section 66(1) as meaning that the Court must direct that: (i) an amount be paid to the Registrar of the Court out of the proceeds of the realisable property, and (ii) an amount be paid to the EOCO to be applied to defray its expenses. It is submitted that this is an incorrect interpretation of section 66(1) of the EOCO Act.

A correct interpretation of section 66(1) would be that it is the part of the amount paid to the Registrar of the Court out of the proceeds of the realisable property that is to be applied to defray the expenses of the Office; rather than a part ought to be paid to the Court Registrar, and a different part paid to the EOCO to defray its expenses. It is the writer's considered view that, once the Act did not provide that the Court is entitled to a part of the proceeds to 'defray expenses of the Court', to so do under the guise of interpretation is to import into section 66(1) of the Act. Furthermore, an interpretation that implies that it is the part of the amount paid to the Registrar of the Court out of the proceeds of the realisable property that is to be applied to defray the expenses of the EOCO is not only consistent with the rules of interpretation of statutes 29, it also avoids a situation of conflict of interest between the Court, EOCO, and the accused person. This is because the current interpretation has fuelled the perception that the Court is usually inclined towards granting on order for realisation in anticipation of its share of the proceeds, rather than on the merits of the case. This perception is not unfounded, as being entitled to a share of the proceeds makes the Court an entity that "has an interest" in the property to be realised. It is a fundamental principle of justice that justice must not only be done, it must be seen to be done. For this reason, the proper thing would be for an accused person not to have a legitimate reason to doubt that the Court is an impartial arbiter, which has no interest, pecuniary or otherwise, in the outcome of the matter. An interpretation that implies that an amount ought to be paid to the Registrar of the Court for purposes of defraying the expenses of the Court, and that a part is to be paid to EOCO to defray its expenses, is therefore not a correct interpretation of the provision as it is not consistent with the principles of justice. For this reason, it will be recommended (below) that a separate account be statutorily created so that proceeds of realised properties are paid into this account for purposes of disbursement in accordance with stated rules. This eliminates the appearance of any conflict of interest between EOCO, the Court and the accused person. Section 66 of the Act therefore ought to be amended.
FUNCTIONS

The functions of the EOCO are to:

i. investigate and, on the authority of the Attorney-General, prosecute serious offences that involve:
   a. financial or economic loss to the Republic or any State entity or institution in which the State has financial interest,
   b. money laundering,
   c. human trafficking,
   d. prohibited cyber activity,
   e. tax fraud, and
   f. other serious offences;
ii. recover the proceeds of crime;
iii. monitor activities connected with the offences specified above to detect correlative crimes;
iv. take reasonable measures necessary to prevent the commission of crimes specified above and their correlative offences;
v. disseminate information gathered in the course of investigation to law enforcement agencies, other appropriate public agencies and other persons the Office considers appropriate in connection with the offences specified above;
vi. co-operate with relevant foreign or international agencies in furtherance of this Act; and
vii. perform any other functions connected with the objects of the Office.
ASSESSMENT OF THE OPERATIONS OF EOCO

The EOCO was set up in 2010 to replace the SFO; and began operations thereafter with the Executive Director of the defunct SFO, Biadela Kweku Mortey Akpadzi, as its first Chief Executive Officer. The EOCO has thus been in existence for less than a decade. This notwithstanding, it is important to take stock of the EOCO’s operations, and, to assess how it, (the EOCO) has fared so far in the pursuit of its two (2) main objectives, i.e. (a) prevention and detection of organised crime, and (b) generally to facilitate the confiscation of the proceeds of crime. To determine whether or not EOCO has achieved its first and primary objective of preventing and detecting organised crimes, it is necessary to define what organised crime is.

There are varied definitions of organised crime, however it can generally be described as involving individuals, normally working with others, with the capacity and capability to commit serious crime such as money laundering, drug trafficking, human trafficking, cyber-crime, etc. on a continuing basis. Involvement in this context includes elements of planning, control and coordination, and benefits those involved. The motivation for organised crime is often, but not always, financial gain. Under the EOCO Act, 'Organised Crime' is defined as a recurring serious offence committed by two or more persons working in concert. In this paper, a reference to 'organised crime" is as it is defined in the EOCO Act.

Organised crime in West Africa has been attributed to: (i) the colonial pattern of exploitation and trade; (ii) widespread corruption among post-independence rulers that created economic mismanagement and political crisis, (iii) structural adjustment policies that led to high unemployment, impoverishment, and (iv) exclusion of a significant proportion of the population, especially among the youth; (v) weak regulatory framework; (vi) corrupt and inefficient enforcement and judicial officials, among others. Research suggests that organised criminal groups infiltrate governments, businesses, and political and economic systems. They undermine the effectiveness of these systems, sometimes through corruption and violence. Economic globalisation also shapes new opportunities for illicit transfers of funds and money laundering involving local and transnational networks. Organised crime therefore has dire economic and social costs for a nation, such as: reducing tax revenue; pollution; or causing damage to individuals, communities and businesses, whether through the physical and emotional harms caused to victims, the financial losses incurred through disruption of business or the direct losses incurred, etc. Effectively and efficiently working with other security agencies to detect and prevent organised crime in Ghana can therefore not be overemphasised. To this end, Ghana deserves an effective and efficient legal framework that facilitates the prevention and detection of organised crime in Ghana. Such legal framework must be one that is deliberately designed to address the lapses that have gravely undermined the effectiveness and efficiencies of anti-graft institutions in the Fourth Republic as borne out by Ghana's history. How has the EOCO carried out its mandate to detect and prevent organised crime since its set up?
To be able to achieve its first and primary object (i.e. prevent and detect organized crime), EOCO must be able to prevent the crime from happening in the first place. So, an assessment of EOCO's operations with respect to this first object must assess how well the EOCO has prevented and detected organized crime. There is evidence that the EOCO has taken some steps towards delivering on this mandate, particularly with respect to warning the public against cyber-crime and financial and economic scams such as pyramid schemes, gold scams, as well as romance scams. For example, the EOCO has sought to be proactive in warning the Ghanaian public against investing with pyramid schemes in Ghana such as Loom. This, the EOCO has sought to do by issuing notices to the general public and warning the general public to desist from investing and patronizing "pyramid schemes". The EOCO has also issued other warnings of this nature in respect of other gold scams and romance scams. So, there is some evidence that the EOCO is willing to carry out its mandate to detect and prevent organised crime.

It must, however, be noted that, despite these efforts, there has been some level of dissatisfaction among some members of the Ghanaian public with respect to how the EOCO has conducted its affairs, especially in the wake of the Financial and Banking crisis that hit Ghana between 2016 (DKM, etc.) and 2019 (the banking and financial crisis). There is similarly the view that the EOCO has been selective in its investigations and issuance of public notices in respect of financial and economic scams. For example, there is the current financial concerns of some members of the Ghanaian public who have invested with the Gold Coast Securities, but whose investments the Company has failed to repay upon maturity.

The EOCO's omission to speak to this issue, when it was speaking on other potential loss of money through investments, has fuelled already held perceptions that the EOCO is selective as to whom they investigate; and are more likely to proceed against persons who are not very influential or "powerful", but unlikely to proceed against "powerful people" or people who have influential friends within the government of the day. This is particularly so given that Gold Coast Securities is part of the Groupe Ndoum group of companies whose 'acknowledged owner' is Papa Kwesi Ndoum, a former Member of Parliament, (on the ticket of the Convention People's Party), former Minister of State (under the ruling NPP government), and former presidential candidate on the ticket of the Progressive People's Party.

There have been suspicions among some sections of the Ghanaian public whose investments have been locked up at the Gold Coast Securities Ltd that the EOCO had been compromised for which reason the EOCO had omitted to deal to the Gold Coast Securities issue. This suspicion is probably founded on the fact that the owner of Gold Coast Securities is an influential person. Such perceptions, if left to fester, will be unhelpful in the fight against organised crime. This is because an investigative institution such as EOCO thrives on information. The general public is unlikely to volunteer information that they may have if they do not have some level of trust in the institution. EOCO therefore needs to build confidence and trust among the general public as a state institution that will continue to work in the Ghanaian interest and that is ready to proceed against any person whether or not such person is an influential person. This is especially...
important because persons engaged in organised crime often infiltrate governments and other positions of influence. A perception that the EOCO is unwilling or unable to proceed against powerful and influential persons therefore undermines the entire reason d'etre of the EOCO as a state institution.

Furthermore, although the EOCO has warned the general public about the existence of financial and economic scams and proceeded to state the names of these scams, there have been no prosecutions against the persons behind the said scams. If the EOCO's investigations indeed confirmed that the stated investment products are 'scams', then there were good grounds to proffer charges against the persons behind these scams, as such would constitute serious fraud and therefore qualify as organised crime pursuant to the combined effect of sections 3(a)(v) and 74 of the EOCO Act.41

The Commission of Organised Crime necessarily includes the conspiracy and/or abetment of that crime 42. This is because such crimes would necessarily involve more than one person in their planning and execution whether in Ghana or outside of Ghana. Therefore, where the EOCO has successfully detected and prevented organised crime, charges of conspiracy to commit a crime may still be proffered whether or not the crime has been committed. In the instance where the crime has already been committed, the EOCO may proffer charges for same in addition to the charge of conspiracy and abetment. It is, however, the case that the persons behind the investment scams (e.g. DKM and Loom) have not been successfully prosecuted. The issuance of notices alone is therefore not considered sufficient efforts in the detection and prevention of crime because, by the time these notices are issued, the persons behind the scams would have already benefited from their crime. Sufficient efforts would thus mean that, in addition to the issuance of the notice, the EOCO would proffer the relevant charges against these persons for the purposes of both recovering the proceeds and punishing them for the commission of the crime. For the above reasons, it may therefore be noted that, although the EOCO has demonstrated willingness to deliver on its first objective, little evidence exists that it has been able to satisfactorily achieve this aim in accordance with the laws of Ghana. This inability may be attributed to a flawed legal framework and insufficient resources (financially and technically) among others, as discussed below.

The second ambit of the EOCO's object is that, having failed to prevent the commission of crime, it must facilitate the confiscation of the proceeds of crime. How well has EOCO carried out this mandate? The EOCO has chalked up quite a number of successes with respect to delivering on its second objective in spite of the challenges that it faces. Some of these successes include: (i) the EOCO secured a court order to freeze properties of Menzgold Ghana Limited as well as other associated companies following accusations of fraud and other accusations by some 60,000 persons who invested in the Menzgold firm, which has been described by experts as a Ponzi scheme 43; (ii) the confiscation of one of two properties identified by the State as proceeds of crime belonging to Nayele Ametefe 44. The building was one of two properties, identified by the State as the proceeds of crime, after the owner of the buildings (Nayele Ametefe) was convicted of drug trafficking offences 45; (iii) prosecuted several cases; (iv) reported to have recovered proceeds from financial fraud totalling about Gh¢99,165,369.29 (the amount represents
recoveries and other proceeds of crimes such as default taxes, royalties, unearned salaries, recovery from defrauding by false pretences, stealing and money laundering) between 2014 and March 2019)\textsuperscript{46}; (v) made a direct recovery of GH¢7.43 million from a total of 466 cases, which it investigated and prosecuted in 2018\textsuperscript{47}, among many others. It may therefore be said that the EOCO has been able to achieve its second objective better than it has its first object.

The EOCO has encountered credibility challenges from its perceptions as a hatchet man, allegations of abuse of office, and reports of financial impropriety that, to some extent, undermined confidence in the EOCO as a State institution with a mandate to prevent and fight organized crime in the interest of the Republic of Ghana. For example, EOCO targets mostly former public officers as compared to current public officers, and appears unable to prevent/prosecute economic crimes that may involve current public officers. It will be recalled that the EOCO suspended its Eastern Regional Director of EOCO, Fred Dzeny, for proposing that "before we can fight corruption in Ghana, the ruling government should be ready first and foremost to prosecute their own when the slightest incident of corruption is raised against the ruling government then they can also get the guts to prosecute the opposition".\textsuperscript{48} The EOCO Eastern Regional Director is reported to have made these comments at a public forum on the 'Youth in the fight against corruption'. He is also reported to have said at the forum that it is not just politicians who are corrupt, but that the public servants, civil servants were all corrupt, particularly because "it is the Chief Directors who prepare contract documents and other things so if we are blaming the Politicians, it is not right, it is the public servants generally."

It was baffling that an anti-graft institution would suspend its Director for suggesting the obvious, (i.e. that prosecutions for corruptions must include people within the ruling government). The suspension was thus widely condemned by sections of the Ghanaian public as "a dent on the image of a government that came into office with the promise to fight corruption head-on". It is worth noting that the Presidency subsequently requested the EOCO to reinstate the suspended Fred Dzeny with immediate effect. Another example is the EOCO's omission to speak to the Gold Coast Securities issue, when it was speaking on other potential loss of money through investments (discussed above). Inability or unwillingness to investigate current public office holders perpetuates perceptions that EOCO is a "hatchet man" used by persons in government against their opponents. The EOCO must thus endeavour to investigate and prosecute current public office holders as it does former public office holders and private persons where the need arises.

Furthermore, there have been reports of financial malfeasance against the EOCO. For example, it is reported that the EOCO admitted to using funds it seized from people it is investigating to run the organisation (the EOCO)\textsuperscript{49}, an act that amounts to an abuse of office and financial impropriety. Although Mr. Mortey Akpadzi noted that he stopped this phenomenon when he assumed office, there are still claims among certain lawyers who have represented persons who encountered EOCO, that this practice still goes on\textsuperscript{50}. There was also the Auditor-General's Report of 2014, which revealed that twenty Officers who were either dismissed, resigned, died or vacated post were wrongly paid a...
total unearned salary of GH₵53,974.05 for the period under review. It is however worthy of note that the EOCO has stated, in response to these publications, that an Audit query acknowledged that the office of the Controller and Accountant General was given notification about these officers when they were separated from the Office but did not act timeously to avert the payment of the unearned salaries. It is the EOCO's case that an amount of GH₵17,782.72 has since successfully been recovered and same transferred to the Controller and Accountant General's Department, while it continues to make efforts to recover the rest of the amount.

A third example is the report that amounts in different currencies totalling US$50,000.00, and GH₵1,518,410.10 paid into EOCO Exhibit Dollar, Exhibit Cedis and two Government of Ghana (GoG) accounts, respectively, between June and November 2012 from various payees were not covered with official receipts. In response to this, the EOCO admitted that, initially, official receipts were not issued to cover the transactions, but Auditors identified and confirmed payments and lodgement of the money into EOCO Exhibit accounts.

These and allegations of abuse of the use of freezing order/extension of freezing order among others have, to some extent, undermined the credibility of the EOCO as an anti-graft state institution. It is submitted that the EOCO needs the confidence and trust of the Ghanaian public if the Ghanaian public is to be an ally in the supply of information that may aid the EOCO in its duties. For this reason, it is important that the EOCO not be in the news on account of financial or economic malfeasance. Where, in spite of genuine effort, such accounts do come up, the EOCO must expedite efforts to address such concerns and report to the public on such issues. It is therefore recommended that, although not statutorily required, the EOCO must endeavour to publish reports for the benefit of the Ghanaian public at least twice in a year.

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1. Section 3, the EOCO Act, 2010 (Act 804).
3. Section 74, EOCO Act.
5. See EOCO warns public against Loom ...says it is a scam, thebftonline.com l Ghana, June 14, 2019
6. The Bank of Ghana revoked the licences of about five (5) banks and three hundred and eighty-six (386) insolvent microfinance and microcredit companies on the grounds that they had, among others, denied depositors access to their deposits, thereby constituting a threat to the stability of the financial system. There were also reports of financial malfeasance against some of the directors and shareholders of these defunct banks and savings and loans companies.
8. The Ghanaian public is not sufficiently apprised of licensed and unlicensed financial institutions. A lack of information on the different regimes applicable to these in the face of what seems like similar concerns, (i.e. non-payment of deposits thus creates the perception of selectivity).
9. A serious offence includes serious fraud, and organised crime means a recurring serious offence committed by two or more persons working in concert as noted above. Financial and economic scams therefore constitute organised crime under the EOCO Act.
10. The commission of organised crime necessarily includes the conspiracy and/or abetment of that crime, as such crimes would necessarily involve more than one person in its planning and execution whether in Ghana or outside of Ghana. The crime of ‘conspiracy to commit crime occurs’ where two or more persons agree or act together with a common purpose for or in committing a crime, whether with or without any previous concert or deliberation.
11. A person within the jurisdiction of the Ghanaian courts can be guilty of conspiracy by agreeing with another person who is beyond the jurisdiction, for the commission or abetment of any crime to be committed by them or either of them, or by any other person, either within or beyond the jurisdiction. Abetment of organised crime, on other hand, is committed abetment of a crime. This crime is committed where a person directly or indirectly, instigates, commands, counsels, procures, solicits, or in any manner purposely aids, facilitates, encourages, or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain.
12. Every person who abets a crime shall, if the crime is actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime, if the crime is not actually committed, be punishable as follows, (i) where the crime abetted was punishable by death the abettor shall be liable to imprisonment for life; and (b) in any other case the abettor shall be punishable in the same manner as if the crime had been actually committed in pursuance of the abetment. Every person who, within the jurisdiction of the Courts, abets the doing beyond the jurisdiction of an act which, if done within the jurisdiction, would be a crime, shall be punishable as if he had abetted that crime.
OBSERVATIONS

RETHINKING OUR MINDSET AND TOOLKIT FOR OUR ANTI-GRAFT CAMPAIGN: A CASE FOR AN INDEPENDENT EOCO

The Memorandum to the EOCO Act makes it clear that the main problem that necessitated the setting up of the EOCO was the increase in the spate of financial, economic and organised crimes, with the resultant financial loss to the State. Often, but not always, these crimes are related to corruption. This is because, when organized crime acquires a dominant position, corruption within the public sector is bound to grow. Since organized crime and corruption in the public sector "feed" each other, a specialized anti-corruption body in the nature of EOCO was thus needed to focus on the sole onus of economic crime prevention, detection, investigation and prosecutions.

Organised criminal groups infiltrate governments, businesses, and political and economic systems. They undermine the effectiveness of these systems, sometimes through corruption and violence. Organised crime has been identified as a major threat to West African economies and polities as well as global peace. Thus, Ghana not only needs EOCO as an institution for the protection and growth of our democracy and our society, but also needs it to be well-functioning and well-resourced. The legal framework of EOCO plays a critical role in determining whether or not it will be able to effectively achieve its mandate. This is because it is the legal framework that determines issues such as appointment of the persons to constitute the EOCO, financing, operations, etc. Does the legal framework of EOCO facilitate its capacity to detect and prevent organised crime regardless of who is involved?

It is an acknowledged fact that the most effective way to fight corruption and organised crime is to prevent their occurrences. The main objective of any corruption prevention strategy is thus to reduce the opportunities for, and occurrence of corruption and rent-seeking behaviour. This includes the elimination of legislative loopholes and gaps in operational procedures, redefining and properly regulating discretionary power as well as removing the conditions that promote or enable corruption to thrive. For investigative authorities, seeking to prevent corruption and organised crime must therefore necessarily include the ability and commitment of these institutions to investigate current public officials for the simple reason that it is these persons (current public officers) who have the most opportunity to partake in corruption and rent-seeking behaviour. This means that, to be able to prevent organized crime within the public sphere, the EOCO must be able to investigate current public officers as well as past public officers and private persons. The several cases and allegations of corruption emanating from the Attorney-General's Department and other public officials against former government officials all relate to crimes allegedly committed while these persons were in public office, rather than after they exited public office. Furthermore, prosecution is usually a much more difficult task not only because one has to "prove their case beyond reasonable doubt", but also there are usually few rewards, as a conviction is unlikely to result in a full recovery of monies lost: only a possible prison term or fine or
both a prison term and a fine. This necessarily raises the question as to why the EOCO was unable to investigate, detect and prevent some of these economic crimes.

RECOMMENDATIONS

*What kind of legal framework is needed to facilitate the EOCO's ability to investigate current public officers, past public persons and private persons?*

An examination of the independence of civil servants from political pressure revealed that higher levels of political intervention in the appointment, dismissal and promotion of civil servants went hand in hand with higher levels of organized criminal activity.\(^{59}\) It is therefore obvious that a legal framework that sanctions higher levels of political intervention in the appointment, dismissal and promotion of staff, officers and members of the governing board of the EOCO will hinder, rather than facilitate, prevention of organised crime among current public office holders.\(^{60}\) As noted above, by law it is the President who appoints directly or indirectly, the members of the Board of EOCO, (except two nominated by the GBA and ACAG) as well as all the members of Staff of EOCO. The President also directly appoints the Chief Executive Officer, and such officer holds his appointment based on the terms of his/her letter of employment. This means that the President may dismiss the Chief Executive Officer of EOCO based on his/her letter. Meanwhile, the Chief Executive Officer is responsible for the day to day administration and operations of the Office, and bears ultimate responsibility for these (i.e. day to day administration and operations of the Office). None of the staff of EOCO therefore has independence from the Executive, as the CEO may be dismissed by the President in accordance with his letter of employment, and all of the other staff may be transferred or seconded from the EOCO to other public institutions. It follows that there is no security of tenure for the CEO of EOCO. The legal framework of EOCO therefore hinders, rather than facilitates, the institution's ability to detect and prevent organised crime where such crime involves current public office holders who are largely political appointees or persons with influence within the political party that forms the government at any given time.

This paper submits that the legal framework of the EOCO Act does not guarantee it the independence it needs to proceed against current public officers, thereby inhibiting its ability to effectively and efficiently achieve its first objective, which is the prevention of organized crime. This is because the legal framework of EOCO necessarily provides a framework that ensures higher levels of political intervention in the appointment, dismissal and promotion of key staff. If EOCO is to prevent financial loss, rather than only prosecute after the losses have occurred, then it must look to the persons who largely have opportunity to cause financial loss, i.e. current public office holders. This paper therefore recommends that EOCO ought to be autonomous, with the ability to hire and fire its officers in its own right. Such positions, including membership of the Board, ought to be subjected to transparent recruitment processes such as advertising the positions, conducting interviews, appoint its staff, including the Executive Director and her deputies, etc. The EOCO's loyalty must be to the State and the people of Ghana, rather than the political authority that appointed its members at any given time.
Independence and security of tenure is one of the steps to achieving this.

Another unhelpful feature of the legal framework for EOCO is that it can only prosecute on the authority of the Attorney-General. In practice, the EOCO's prosecutors are largely from the Attorney-General's Department. The EOCO can therefore not prosecute persons in the face of an express disallowance to that effect by the Attorney-General. Under Ghana's legal framework, the Attorney-General is a political appointee. Ghana has acknowledged that the Attorney-General is unable to effectively deal with corruption particularly where it involves members of her political party. It is submitted that, given Ghana's history of failure in dealing effectively with corruption, it is time for the country to consider an amendment of its laws, including an amendment of the 1992 Constitution to overhaul the current legal framework, specifically, articles 88 and 195 of the 1992 Constitution. These articles currently ensures extremely high levels of political intervention in the appointment of heads and key staff of State institutions, and gives the Attorney General an extremely wide discretion in deciding whether or not to prosecute for corruption, and the absolute discretion in deciding whether or not any prosecutions for corruption should be continued or discontinued. Such an overhaul ought to include a legal framework that ensures that anti-graft institutions are de-link from the Attorney General in the prosecution for corruption, and may prosecute for corruption in their own right and without giving power to the Attorney General to enter a nolle prosequi in such proceedings, (i.e. terminate prosecutions). It is the writer's considered opinion that a legal framework that makes the EOCO independent and empowers it to hire and fire its own staff in its own right will facilitate its ability and commitment to investigate, prevent and prosecute organised crime in its own right, rather than under the authority of the Attorney General. Such a legal framework will further strengthen the EOCO as an independent entity, and demonstrate real commitment to the fight against corruption and organised crime.

Secondly, the sophisticated nature of organised crime necessarily demands that EOCO be sufficiently sophisticated if it is to be able to deal with these crimes in the national interest. A specialised entity such as EOCO must therefore have specialised trained staff and equipment to facilitate its work to achieve its mandate. Under the current legal framework, staff may be transferred or seconded from other public institutions to the EOCO. It follows that staff may be seconded or transferred from EOCO to other public institutions. It is submitted that this arrangement, to some extent, hinders the retainment of specialised staff for the EOCO. Not only is it necessary to have a legal framework that grants EOCO independence to hire and fire its own staff through transparent and stated recruitment processes, it is also necessary to sufficiently equip EOCO to carry out this mandate. The issue of sufficient resources (financially and technically) can therefore not be overemphasised.

Third, as discussed above, the nine-member Board of EOCO comprises seven (7) institutional representatives, (five (5) are state institutions, and two (2) are professional bodies). This paper submits that, rather than institutional representation on the Board, EOCO must work to deepen institutional collaboration. Improvement in communication
and technology should advise the use of an electronic data base for certain data so the agencies are able to complement each other in serving Ghanaian society, rather than have institutional representation on the board. Board membership must therefore be open to competition based on pre-agreed criteria and rules devoid of political appointment. This will be helpful in strengthening EOCO as an institution and guarantee its independence from political interference or coercion.

Fourth, this paper recommends that, in the interest of fairness, upholding the citizens' right to an impartial determination of their case, reduce allegations/incidences of financial impropriety and perceptions of EOCO having a pecuniary interest proceeds of realisable property, a victims' account be statutorily created so that proceeds of realised properties are paid into this account for the purposes of disbursement in accordance with stated rules. For purposes of accountability, this account must be separate from the consolidated fund, managed independently of the EOCO, and have its own separate rules and controls. All funds seized under a mandate similar to that of the EOCO must be paid into this account. This eliminates the appearance of any conflict of interest between EOCO, the Court and the accused person in respect of the accused person's property.

Fifth, the EOCO must have an internal framework that deals with allegations of corruption against its staff or in respect of its internal processes. It is therefore recommended that EOCO's Service Charter must include in it, an effective complaint resolution regime dedicated specifically to reporting and resolving allegations of corruption involving its staff. Such process must be clearly defined, and provide clear guidance on: how to complain on corruption; contact details for corruption complaints, timelines within which complaint will be addressed, and, provide a report to the complainant on resolution of the complaint, and advise on the next steps should the complainant be dissatisfied with the report.
CONCLUSIONS

The main problem that saw the need for the establishment of the EOCO was the increase in the spate of financial, economic and organised crimes, with the resultant financial loss to the State. Often, but not always, these crimes are related to corruption. It is the Attorney-General who has the power of prosecuting crimes, including corruption, but more often than not, the AG is unlikely to prosecute her party members, who are largely the persons who form government. Prosecutions therefore largely happen after a party has lost power. Needless to say, such prosecution, even if successful would have been an attempt to lock the stable doors after the horse has bolted. This has contributed to a long-standing national failure in the fight against corruption, thus invariably making corruption a low risk and high gain venture in Ghana. It is therefore time to rethink our legal framework and toolkit for fighting corruption.
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