

COUNTRY REPORT - GHANA

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I. INTRODUCTION

Ghana formerly the Gold Coast is about 238,500 sq. km and our immediate neighbours are Burkina Faso in the North, Togo in the East, Cote D'Ivoire in the West and the part of the Atlantic Ocean called the Gulf of Guinea in the South. Currently the population of Ghana is close to 20 million.

My paper will attempt to highlight the various forms and manifestations of economic crime and the problems that it presents to our criminal justice system. The paper also covers the rules that are applicable, available mechanisms up to the institutions that are required to control economic crime.

I have also examined what I perceive to be preventive and counter measures to confront the crime. Also an examination of the existing provisions of the criminal code and the current manifestation of the problem has been highlighted to expose the uses to which the old provisions have been put as well as a consideration of their adequacy for the current task.

I have also examined the operations of the police, the court and other investigative agencies such as the serious fraud office and the securities regulatory commission.

II. WHAT IS ECONOMIC CRIME

Economic Crime may be defined broadly as the range of crimes that occur in the course of economic transactions, or crimes that result in loss of an economic nature to the victim while the perpetrator and or his/her accomplices become the ultimate beneficiary of the illegal economic or financial gain. The victim of the economic crime may be an individual, an institution or a state.

In recent times the field of economic crime has grown by leaps and bounds on account of globalisation and the changed nature of instruments of communication. The categories of crime of an economic nature in the past years when advancement in technology had not been so high were largely those of officials or other agents who handled other people's money or other economic resources hence the name 'white collar crimes'. As the name suggested these were crimes committed by those of the clerical and administrative class of employees and other agents by reason of their pen-pushing occupations. Such crimes did not require physical presence or contact with the property, only ability to have access to and deal with the property on paper. Thus the offences were mostly of a financial nature such as embezzlement, fraud by agents, fraud by false pretences, counterfeiting, issuing false prospectuses, etc. The range of offences was also limited in sphere because the perpetrator had to be the custodian or trustee before the crime could be possible.

These days, owing to the advancement in technology, globalisation and improvements in communication and computers as well as the developments in financial markets, credit financing and the scope of international trade, many economic crime possibilities have opened up.

The range and variety of crimes of a financial nature have so multiplied that the term 'white collar crime' has become too narrow and the more general term 'ECONOMIC CRIME' reflecting the current trends and nature of the activity appears to be a more appropriate term to describe the myriad of criminal activity in the economic domain with which the Police and other law enforcement agencies must now contend.

'White Collar Crime' has ceased to be an appropriate term for the other reason that as the categories of fraud have so been opened up by technological advancement and developments, so has the profile of the offender or perpetrator changed. With emphasis shifting from pen and paper to telephone, facsimile and computer, the economic criminal has ceased to be the one who has to be well educated to have the necessary access and opportunity to commit the crime. In consequence in economies with high illiteracy rates such as ours those capable of perpetrating economic crimes may no longer be the 'white collar' type.

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III. ECONOMIC CRIMES UNDER THE GHANA CRIMINAL LAW

Our Criminal Code recognises several forms of economic crime, the oldest of course, being fraud. Sections 131-135 of the Criminal Code act 29/1960 deal with fraud. They are:

- (i) Fraud by false pretences
- (ii) Stamp offences
- (iii) Falsification of accounts
- (iv) Fraud in sale or mortgage of land
- (v) Fraud as to boundaries or documents
- (vi) Fraud as to things pledged or taken in execution
- (vii) Fraud in removing goods to evade legal process
- (viii) Fraud by agents.

A. What Is Fraud

Fraud occurs when an act is done by one person with the intention that it should deprive another person of some value to which the person is otherwise entitled and when it in fact causes such loss.

To establish fraud under Ghana's Criminal law one must prove a conscious act done, as well as intention on the part of the actor that he or she should acquire some gain with a corresponding loss to the victim i.e. the act must be done with intent to defraud. An intent to defraud is defined under section 16 of our criminal code Act 29/1960 as follows:

An intent to defraud means an intent to cause, by means of such forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense of any other person.

From the definition it is clear that fraud is about acquiring a financial or other benefit capable of being quantified in monetary terms, at the expense of the other person. All of these frauds also contain an element of dishonesty since the intent of the fraudster is to bend another's will by trickery or other devious means to do an act which benefits the one unjustly, to the detriment of the victim's own interests.

Fraud by False Pretences

The commonest form of defrauding is the art of the confidence trickster, who adopts or uses false pretence to induce the victim to part away a benefit or his property. This offence, which is a second-degree felony under our criminal Code, attracts a maximum penalty of twenty-five years when convicted. The offence is committed if a person misrepresents an existing state of facts such that the misrepresentation induces another person to consent to parting with the ownership of any chattel. The representation may take the form of either 'written or spoken words' or by any conduct, sign or means of whatever kind. It can also be about anything and may even be misrepresentation of a right, liability, authority, ability, dignity or ground of credit or confidence. It can also cover impersonation of another as well as consciously deriving benefit from a situation of mistaken identity. It is also applicable to a person who by reason of identical name obtains advantages and privileges that would not have otherwise been granted had the fraudster not been mistaken for the more famous namesake. It is not only confidence tricksters of the more obvious sort who can be prosecuted under this head. The scope of the offence extends into the world of commerce and covers those who induce people to extend them credit when they actually have no intention of ever paying for the commodity or services rendered.

In Ghana and some parts of Africa, rampant political corruption and entrenched corruption in public life coupled with the need to launder the money so acquired has produced a new brand of confidence trickster. So common is this brand of fraud in Nigeria in particular that every person on the street of Nigeria knows it is called '419' after a section of the penal code under which provision for the offence of defrauding by false pretence is made. Unfortunately the perpetrators of the offence have found fertile grounds in Ghana and the net for victims has also spread over to Ghana. This type of fraud by false pretences is based on the well known fact that African Politicians and junior public servants loot their national treasury and then seek to transfer the money into foreign banks in order to be able to travel abroad in the course of time and live in luxury. Persons claiming to have some such resources then seek the assistance of a foreigner resident in another country, who would not have ready opportunity to effect background checks, and then defraud them.

Typically, it begins by one person usually from Nigeria writing to a Ghanaian businessman whom he has never met. The letter would typically inform the person/businessman of some funds corruptly obtained which needed to be laundered and a promise of a percentage cut to the collaborator. The request would then be made for the businessman's account number to be given for the 'slush' funds to be deposited therein. Once the account number is given the account's holder/businessman is impersonated and the account cleared of whatever it contained.

Another variation of this trick is to indicate that the illicit monies have been deposited in a trust and that it would be necessary to 'unlock' the trust.

Subsequently, a letter demanding some advanced payments written on the forged letterhead of a reputable bank would be received by the victim. Once the so-called advance payments begin they never stop because several unforeseen expenses necessary to complete the 'unlocking' process emerge. By the time the victim realises that it is a scam a lot of money would have been parted away to the fraudsters. Several millions of dollars have been lost this way by victims of this particular trick. Clearly the scenario is that the person who seeks to profit from the wrongdoing of another rather becomes the victim of this crime.

B. Falsification of Accounts

Those who handle financial resources of others in the capacity of servant or agent also have opportunities for committing economic crimes. Obviously falsification of accounts is usually a preparatory step in some criminal enterprise, usually acts of dishonest appropriation. Section 140 of the criminal code provides as follows:

Whoever being a clerk, a servant or public officer and whoever being an officer of any partnership, company or co-operation, does any of the acts herein after mentioned, with intent to cause or enable any person to be defrauded, or with intent to commit or to facilitate the commission, by himself or by any other, of any crime, that is to say:

- (a) Conceals, injures alters or falsifies any book, paper, or account kept by or belonging or entrusted to his employers or to such partnership, company or corporation or entrusted to him, onto which he has access, as such clerk, servant or officer, or omits to make a full and true entry in any account of anything which he is bound to enter therein; or
- (b) Publishes any account, statement or prospectus relating to the affairs of such partnership, company or corporation, which he knows to be false in any material particular, commits an offence.

The provision clearly covers a wide range of offences and includes, those employed by private companies as clerks or servants and the state as public officers. It also covers any officer of any partnership company or corporation. The code also provides a definition of 'officer', which is also very wide.

Any officer, chairman, director, trustee, manager secretary, treasurer, cashier, clerk, accountant or other person provisionally, permanently or temporarily charged with or performing any duty or function in respect of the affairs of the company or corporation, whether for or without any remuneration.

The categories of personnel set down in the provision are wide enough to cover even gratuitous volunteers who are involved in the running or organisation of the affairs of the entity. In effect the entire group of persons who are employed in the public or private sector in whatever capacity could be liable for the offence extending even to officers of voluntary welfare associations or other charitable groups.

In order to ensure that entities, which do not have separate legal existence from their owners, are not excluded, the code defines 'Company' not in the technical legal sense, but also includes:

Any partnership or association whether corporate or incorporate, and whether the purposes thereof be or be not the carrying on of any trade or business and whether it be in course of formation or be actually formed or be in course of dissolution, winding up as liquidation.

The entity need not be fully in existence; whatever its stage of formation it can be the victim of such offence if the people at the helm of affairs misconduct themselves. In committing the offence, the person must tamper with entries made on paper or into books of account or must have failed to make a full and accurate entry into such book of account.

Indeed 'tampering' which is the crux of the offence could take the form of concealing the document in question, cutting away part of or burning it in whole or in part, altering part of the document and falsifying any book i.e. changing the content such that it gives false information.

From this, it is inferred that the information contained in a 'document', is usually on a paper or scroll or other material in which information is written which is tampered with. Therefore the types of conduct that can be criminalized are visible physical records that can be falsified. The present situation however is different. These days 'accounts' are kept on computers. The problem is if one gains unauthorised access to a computer network by entering a password or a number into a computer, given the definition of a document which apparently does not cover material visible on a computer screen which is tampered with; can he be effectively tried under this law?

The offence of falsification of accounts may also be committed in respect of acts involving the flotation of companies, or securing fresh investment for an existing company. Usually the motive for tampering with or making false entries with books of accounts is to give such a favourable impression of the financial status of the company, as would make potential investors take the bait. Therefore, the law provides that it is an offence to publish any account, statement or prospectus relating to the affairs of such partnership, company or corporation which he knows to be false in any material particular. There is thus criminal liability for fraudulent misrepresentation in respect of accounts or other documents related to investments.

C. State Revenue Related Frauds

Invoicing/Vat Frauds

One of the frauds we have been contending with and believe will grow in importance relates to altering and falsification of bills of lading and invoices, manifests, receipts or other documents, evidencing quantity, character or condition of any property, or the receipt or disposition of or the title of any person to any property. This is because not only do customs and excise duties depend on them, but also the appropriate Value Added Tax (VAT) payable or refundable on such goods. Since there are refunds for such goods there is bound to be an increased possibility for fictitious documents evidencing such transfer.

D. Fraud by Agents

In Ghana this is an area with great potential for abuse of power and corruption. Agents could be officers of the state or employees of private persons. Agents of the state are usually entrusted with a lot of power because they either do not have adequate rules to work with or have extensive discretion in granting exemptions from the application of rules. In Ghana these officials are usually grossly underpaid thus creating both opportunity and motive for extortion, corruption and abuse of office. I believe that the officials or agents' will to resist extortion and corruption must be shored up by our criminal law.

In Ghana the offence is provided for under section 145 of the code and covers financial inducements offered by third parties to agents or taken by them in order that they might show favour to that person or they would forbear to do what they are required to do by their principal. In our context, agents cover those in the private sector, servants of the state such as civil servants and officers of the District Assemblies. As the provision goes (section 145):

Any agent who dishonestly accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to his principal, affairs or business or forbearing to show favour or disfavour to any person in relation to his principals affairs or business shall be guilty of a misdemeanour.

From the provision, a civil servant who takes or demands a 'kick back' (or the usual 10% commission) in order to grant a contract to a particular contractor is guilty under the law. Turning a blind eye to an infraction or not taking appropriate sanctions because of the gift or consideration given is also punishable under the provision. Third parties are equally guilty and punishable under the law. The reason for including them stems from experience that third parties sway agents from their duties with tempting offers.

The making of such offers or the agreement to give consideration must therefore be tackled as a potent contribution to the offence of fraud by agents.

The following are typical happenings in Ghana in the contract business that the various categories of agents handle.

- (a) Contract sums are usually padded up.
- (b) Receipts which evidence payment are sometimes lower than the sums stated therein.
- (c) Receipts which reflect payments which have not been made.
- (d) Accounts that reflect services that have not been contracted and paid for, even though the services may not have been performed.
- (e) Goods paid for that may not have been delivered.

Financial appropriations made for goods and services never yield value for money because they are either misapplied or used for shoddy jobs, which soon require re-doing.

The provision relating to frauds by agents cover these offences even though the designation of some of them as misdemeanours only attracts lighter criminal sanctions compared with the harm that could be caused to the economy. In Ghana the list of such acts, which amount to corruption, may be endless.

E. Special Offences

In the light of the foregoing considerations and the apparent lighter punishments for these crimes, a new breed of offences known as the 'SPECIAL OFFENCES' were enacted in the middle of the 1980s. These offences, largely economic in nature, were lifted from a group of offences under the same name in a previous legislation as our response to the increasing world of economic crime. These special offences are considered so serious that they are punishable by a fine not less than five million cedis and or imprisonment not exceeding ten years. The text of the provision is as follows:

1. Any person who by a wilful act or omission causes loss, damage or injury to the property of any public good or any agency of the state commits an offence.
2. Any person who in the course of any transaction or business with a public body, agency of the state intentionally causes damage or loss whether economic or otherwise to the body or agency commits an offence.
3. Any person through whose wilful, malicious or fraudulent action or omission:
 - (a) The state incurs a financial loss;
 - (b) The security of the state is endangered commits an offence.

From the provisions, it is difficult to get a clear picture of the specific acts, which the provisions seek to proscribe. However, it covers a wider ground of the categories of offences relating to fraud by agents. In Ghana, however some human rights activists have argued that the provision offends the principles of the Ghana Constitution and that even though the harm caused by economic crime is deeply appreciated the State in its desperation should not make such laws.

F. Investment Fraud

One other worrying crime that is emerging from globalisation, which can cause chaos to any country's economy, is investment fraud. Ghana experienced a sudden wave of this type of fraud in and around 1995. The offence is growing in importance as people seek ways of investing surplus income without the necessary familiarity with the complexities of the financial world. In Ghana people were willing to invest money with some dubious financial firms, which promised them huge interest on sums invested. These so called financial institutions then folded up within no time and it became also difficult to track the fraudsters as they left either misleading addresses or no clues as to their whereabouts, leaving the investors with great financial losses.

G. Securities Fraud

The recent emergence and growth of the securities market in Ghana would undoubtedly produce certain economic offences. Market manipulation is known all over the world to be one of the more common forms of securities fraud. This is a wilful conduct intending to deceive or defraud investors by controlling or artificially affecting the price of securities. This is perpetrated by engaging in wash sales, matched orders or rigged prices that merely seek to mislead investors.

The market manipulator goes through four main stages namely, accumulation, price appreciation, promotion and sell off.

In the accumulation stage, the market manipulator identifies a non-existent company except in name in the stock market. He then acquires a lot of shares in that company by buying from private hands creating a situation where the public distribution of shares comes under his control. He then sets in motion, the appreciation stage, which also involves the false movement of shares into friendly hands in fictitious trading such that the prices appear to be going up. Massive promotional acts are done with the view to arousing investor interest in the shares. Advertisements are then made in attractive financial magazines and promoters are hired to promote the company by issuing news releases and doing other promotional activities. In this way more people are baited to buy into the company and the share prices go higher until they reach a peak. The manipulator begins to sell off his shares making profits from the genuine investors. In no time the profits are taken out, the company collapses and the real investors lose their money.

In Ghana, the Securities Industry Law in 1993 makes provision for some of these offences, but whether anybody has been tried and convicted is another thing. The various stages of the practice are made criminal by the act.

“A person who creates or causes to be created, or does anything that is calculated to create a false and misleading appearance of active trading into securities on a stock exchange in Ghana, or a false or a misleading appearance with respect to the market for or the price of such securities commits an offence.”

The law further provides that the person who by means of purchases or sales of securities that do not involve a change in the beneficial ownership of those securities or by fictitious transactions or devices maintains, inflates, depresses or causes fluctuation in the market price of any securities commits an offence.

Even though these economic criminal acts are not perpetrated on a large scale in Ghana, the laws have been made to protect the genuine investor. But again, are they deterrent enough to scare the economic criminal?

H. Advance Fee Frauds

The use of modern communications equipment and advancement in technology, enable persons in far distant locations on the globe to communicate and transact business without necessarily meeting. This has brought in its wake commercial frauds where goods ordered are not paid for because addresses used were false and letters of credit presented were forged. This type of fraud presents a real challenge to the world of commerce since the pace of life in the modern world does not permit extensive and thorough background checks on potential clients who operate thousands of miles apart. Two manifestations of advance fee fraud are discernible - those that have an international flavour and those with domestic characteristics.

In maritime frauds, which are international by nature, persons who claim to be shipping agents contact victim companies to transact business and to tranship commodities at an agreed fee. Some advances are then paid for processing so that the goods could be shipped. Once the fee is paid, the shipping agent disappears and the goods are not shipped.

In Ghana, various forms of domestic advance fee frauds are perpetrated on a regular basis. The shortage of housing units in Ghana, have contributed to some extent to the increased spate of the crime. People, who do not own buildings, purport to rent out non-existent buildings after making false representations and succeed in taking monies from potential tenants. Others pose as estate agents, locate houses that are on the rental market and under false representation succeed in stringing the victims along till they themselves give up after having parted with good money. Others who do not have enough funds to complete their buildings, put their building on the rental market, enter into an agreement with potential tenants by which they take rent advances of the equivalent of about two years rent to complete the building. Once the building is completed the owners rent them to other people at higher rates and refund the initial advance payment to the disappointed party. Many people have been victims in this way who have been made to finance other peoples building, while they still remain homeless.

One common advanced fee fraud that has also become very popular but very disturbing in Ghana is related to gold transactions. Local Ghanaians purporting to be private businessmen often lure foreigners from their home countries with attractive business connections in gold in Ghana and then defraud them. The usual practice is for the so-called businessman to obtain samples of the gold which he shows to the foreign business partner with the promise of buying greater quantities from small scale licensed miners or winners,

usually, in the gold mining areas in the hinterlands. Usually the foreigner becomes satisfied once the initial sample turns out to be gold and becomes less cautious and parts away with huge sums of money in the belief that his so-called businessman would supply the gold as promised. By the time he realizes that he has been defrauded the fraudster has vanished into thin air. It is not only persons living outside Ghana who have fallen victim to this sort of scam but other genuine foreign investors in the country who are not familiar with the intricacies of the gold business. A number of foreign businessmen have sadly left the country after having gone through this ordeal. The other common fraud which has also emerged on the scene is related to travel documents. Ghana is a relatively poor country and it is a common practice for the unemployed youth to seek to travel outside especially the United States, Western Europe and Japan among others for greener pastures. The situation has produced another brand of the confidence trickster who parades as having contacts with the various Embassies and High Commissions and then under false pretence of assisting in securing travel documents notably visas for unsuspecting victims defraud them of the monies paid by them. Indeed in the past few years the CID has been inundated with several of these cases.

I. Trademark and Copyright Fraud

Illegal infringement on trademarks and copyright is on the increase owing to international trade and the vast profits that are made if a scheme to copy other people's products is successful. In consequence, big markets have flourished for imitation goods, be it pharmaceutical, food and beverages or music. Initially, in Ghana, these acts have been subject to civil actions at common law or action for damages under the Ghana Trademarks Acts of 1965. However, civil remedies have been seen not to be enough of a disincentive considering the vast amount of profits that the violator of trademark and copyright stands to gain.

The criminal law has thus had to enter the stage to control the extent of infringements on account of the damage that these activities pose to the economy of the state or to the individual whose creativity and ingenuity produced those commodities. Even though the copyright law of Ghana prescribes the criminal sanction, these are merely ridiculous in light of the illegal profits that are made and the extent of consequential injury that may be inflicted upon the victims in particular and the economy as a whole.

IV. MONEY LAUNDERING

Illegal trade and activities, such as the narcotics trade that produce huge profit, engender money laundering. The laundering involves not just individuals but sometimes major banks. The money accrued from illegal trade is transferred into spurious or fake businesses so as to distance it from its source. The illegal act of money laundering may be committed not just by private individuals but also usually with the connivance of respectable banking or other financial institutions.

In Ghana it is an offence for anyone to engage in laundering of the proceeds of the narcotic trade. The law states:

“No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner, any property or proceeds or any property with intent to conceal or convert that property or those proceeds knowing that all or part of that property was obtained or received directly or indirectly as a result of ... the commission of a drug offence”.

The provision is aimed not only at the acquisition of removable property but at all forms of property, including money. Therefore all acts, that ensures the proceeds in the narcotic trade are concealed, transformed or converted within the economy with the intention of hiding the links with illegal narcotic trade have been made criminal,

V. EFFECTS OF ECONOMIC CRIME

Economic crime in its various forms inflicts economic loss, sometimes serious loss on the victim, while at the same time it provides an unjustifiable gain to the perpetrator. It can wreck whole economies and even make nations politically unstable. In Ghana, the various coup d'états that our nation has experienced beginning in 1966, have always been explained by the coup leaders as being due to the corrupt practices of the previous governments and their inability to stem the scourge. The scale of destruction that economic crime can unleash makes individual victims suffer irreparable injury. Ghana's traditional law uses monetary penalties and imprisonment as the usual sanctions. These fines and or imprisonments are not adequate compensation for the victim considering the scale of loss he may have sustained. Again a conviction must

first be obtained against the accused person who usually is wealthy enough to procure the best legal representation against the charges, and sometimes comes out clean. The concerns are; the laws themselves, the enforcement mechanisms and whether the traditional methods of punishment, as in Ghana, are adequate tools for effectively fighting this kind of crime?

VI. INVESTIGATIVE AND REGULATORY AGENCIES

In Ghana, the agencies tasked with investigation, prevention and detection are the police, the serious fraud office and securities regulatory commission. Indeed, as the nature and complexity of economic crime in its modern form has widened, so the battle to confront it needs to be intensified. Since many of these crimes depend on manipulation of figures and financial transactions, so has the need arisen to jointly use law and accountancy in solving these crimes. It has therefore become necessary, for more professionals with an accounting background to be roped into the investigations of economic crime. Consequently, instead of using a group of police investigators, it is now accounting experts that may be required to investigate the economic criminal. As a result certain agencies have been established in the criminal justice system, other than the traditional ones like the police, with a view to effectively and efficiently investigating economic crimes. In Ghana, even though agencies such as the securities regulatory commission, serious fraud office and regulatory arms of national banks have all been established and operate alongside the traditional police, the perpetrators of economic crime are undeterred and are keeping up the momentum.

In terms of international economic crimes, such as securities fraud, it is always better to nip in the bud the commission of the crime before it occurs or grows. Therefore these investigative agencies and other regulatory bodies have been mandated to investigate economic crime or monitor the conduct of dealers in the stock market so that potential manipulators and other fraudsters can be kept at bay. In spite of all these security, investigative and regulatory apparatus that have been introduced into the criminal justice system, the courts remain the potent weapon to deal the final blow to the perpetrators of the crime.

A. Securities Regulatory Commission

The securities regulatory commission was established under the securities industry law with extensive administrative, monitoring and investigatory functions. Among the many functions of the commission, set down in section 10, the ones that are of interest for the purposes of this paper are:

1. To maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities;
2. To formulate principles for the guidance of the industries; and
3. To protect the integrity of the securities market against any abuses arising from the practice of insider trading.

The commission has extensive powers to inspect goods of various persons and organisations that operate in the financial market. It can also procure a warrant from the court to inspect any premises on which books that have been ordered to be produced may have been hidden. These powers appear to be necessary on the grounds that there is really a thin line between legitimate activity and illegitimate conduct in financial dealings. Thus many of the activities that could be twisted to perpetrate a fraud could also be innocently done in the course of normal activity on the securities market. The commission's role is telling them apart, and bringing the weight of the law hard on to the potential fraudsters. Therefore, if the commission is to be effective in preventing the commission of securities fraud, then the watchword should be vigilance but the commission lacks the machinery to maintain the necessary level of vigilance.

B. The Serious Fraud Office

This investigative agency was established in 1993 to investigate "serious fraud". Apart from the general difficulty in defining exactly what serious fraud is the agency's functions revolves around investigations into acts that cause serious financial or economic loss to the state as well as political corruption and other acts calculated to defraud or affect the economy. This really means that unless there is a state-connected fraud, the agency would have no interest in interpersonal fraud, however great the extent, or ingenious the method. This is indeed a limitation that affects its ability to make a proper impact on the system.

The agency itself has had a credibility problem right from the start. It is unclear whether it is not just another state agency founded on the principle of political patronage and whether the officials have the

necessary expertise in the areas in which they are required to operate. Internal wrangling founded upon political differences, which have sometimes made front-page news, has not helped its situation. In addition, it has not as yet completed an investigation that has resulted in a successful prosecution, in all of its years of existence. Since, even the efficacy of its investigative methods has not as yet been tested by the courts, it is uncertain whether it is a toothless bulldog or sleeping giant, or neither. Consequently, it is not possible now to assess its contribution, if any, to the war on economic crime.

C. The Bank of Ghana

The Bank of Ghana has statutory power to licence financial institutions and operations whether of the banking or non-banking sector. Its functions cover those who seek to operate as a bank by taking in deposits and lending out money. Such deposit-taking therefore seems to be a potential route for investment fraud. The work of the Bank, among others, is to ensure that potential investors are not deceived into depositing monies into financial “scams”. It also has the responsibility of ensuring that the operations in the financial sector are conducted so as not to be harmful to the economy. However, the Bank failed its major public test of protecting the public from financial scams when one of the biggest investment frauds occurred in Ghana in or around 1995 with the ‘Pyram’ and ‘R5’ schemes. The “scam” occurred when two companies emerged on the financial scene with investment schemes that promised about 30% interest a month on any sums invested. These companies did not comply with any of the official rules for operating investment schemes, but the Bank of Ghana did not react to the operations. Many people invested heavily in the schemes and they were even dubbed “wonder banks” in the local press. When the Bank of Ghana finally woke up to its responsibility and moved in to enforce the regulations, the companies folded up because they could not comply with the regulations. Most people lost their money when the scheme collapsed. The Bank itself, caught flat-footed, could only rake up such tame charges against the local Directors as “operating a non-banking financial institution without a licence”. In the meantime, the fraudsters had left the country with their money intact. It is not surprising that the ire of the investors, who had been left holding the empty can, turned on the Bank officials.

Clearly, the Bank was caught napping. Officials who were naïve enough to sit and watch what was happening even though the news about these “wonder banks” was common knowledge realised too late that they had been negligent. Should the Bank not have offered better protection to the general public than this? Did this event not bring the entire financial system of Ghana into disrepute? Will an institution that sits and waits for a formal complaint against a company that operates as a financial institution before moving its regulators in, be capable of protecting the public against investment frauds? Yet, if the Bank of Ghana cannot do this, then who can?

D. The Police

The Police are a much-maligned institution, but it is currently the most effective barrier against all types of crime. It has traditionally operated in an area where ordinary police skills of detection can be usefully employed. However, in the world of high finance, there are no bloodstained clothes or weapons, neither are there fingerprints or other telltale signs of interference. A sound understanding of financial operations as well as accounting and other forms of expertise are the requisite tools for investigation. The regular Ghana Police are indeed not familiar with the world of the sophisticated modern criminal or even equipped with the necessary skills needed to investigate the sophisticated economic crime.

E. The Courts

It is the courts that are going to have to come down hard on securities fraud and other economic crime. Obviously diligent prosecution and aggressive sentencing is a necessary deterrent to manipulation, as it is with other forms of economic crime. However, the efficacy of the traditional approaches to the processing of criminals has been called into question. The major issue then is whether our courts are equipped to deal effectively with the phenomenon of economic crime.

VII. PUNISHMENT/SANCTION

Fines and or imprisonment have been the traditional sanction systems employed by the criminal law in Ghana. However, in economic crimes they do not seem to serve the situation appropriately. Where a person fraudulently misappropriates another’s money imprisonment and heavy fines are usually the options that are imposed. However, none of these compensate the victim for the loss he has suffered. The fine when paid is paid into the consolidated fund. Therefore the victim has to live with the loss. Even though the courts may

impose heavy fines there are many occasions the court cannot exact a penalty as heavy as the loss, which has been caused. For example a person whose acts defraud another to the tune of one billion cedis could never be fined that amount. It is also noteworthy that the criminal law is strictly governed by statutes. And for many of these offences their current designation as felonies makes the perpetrators liable to imprisonment but not a fine.

Even though, imprisonment may be ordinarily a severe sanction and discourage potential criminals it appears inadequate for the purposes of the criminal law as well as the needs of the victim. This is because financial benefit illegally acquired by the criminal if properly invested could be doubled or trebled after the period of imprisonment. Having already been punished for the crime the criminal could return from prison and live in affluence on the illegally acquired wealth while the victim languishes in poverty. It is in the light of these concerns that other mechanisms have to be made, and be made available to the courts, to ensure that penalties imposed offer relief for the victim.

VIII. COUNTERMEASURES

Given the wealth and resources at the disposal of the economic criminal, the existing tools are inadequate to counter the menace posed by him or her. The need has therefore been felt to improve the quality of crime investigators, train adjudicators as well as improve the processes available for dealing with criminals. Indeed there is the need for more specialization in terms of the personnel who will investigate economic crime and also the structures of the court system.

Severe prison sentences remain significant even though not completely effective. Compensatory and confiscatory orders as well as other mechanism of restorative justice obviously seem better prospects for compensating the victim and creating a disincentive for the potential criminal. Although confiscations earned a bad name in the 1980s in Ghana when it became associated with the strong arm tactics of the revolution, it is now becoming an attractive weapon in generally fighting crime and drug related economic crime in particular. Again our criminal justice system has had to realise that even though it was not meant to be a debt collecting system the nature of modern economic crime is such that the system ought to be able to assist with the recovery of some of the money appropriated or misappropriated. Presently consideration is on restorative justice which means various means by which harm that has been done may be repaired or the victim adequately compensated. This consideration has become necessary because it is unrealistic to expect that after losing a lot of money to the perpetrator the victim would find more money to bring a civil claim against the perpetrator. Even in situations where this has been possible - delays in court processes result in a double victimization of the victim. Would it therefore not be more responsive to the needs of the time if an order of compensation could be made upon a conviction. In Ghana compensatory orders have become fashionable for physical injuries in assault cases. The courts have usually made compensatory orders when imposing fines on others. This makes it unnecessary for the victim to incur the extra expense of bringing a civil action for damages.

The making of compensatory orders has been extended by statute to enable the high court or regional tribunal to make such or other orders of reparation in situations where economic loss, harm or damage may have been caused to the state or any of its agencies.

In the era of the international drug trade the need to marshal resources to fight it has opened up other possibilities in the arsenal of the criminal justice systems. The realization that it is the extraordinary wealth which is available to the drug dealers which acts as the attraction for new recruits has led to a change of tactics. Instead of merely imprisoning such persons for long periods leaving the illegally acquired properties intact for enjoyment later there is now a worldwide trend to deprive them of their gains by confiscating these properties and other resources proven to have been acquired from illegal trade. In Ghana the property of a person who has been convicted of a narcotic offence may be confiscated under section 13 of the Narcotic Drug (Control) Enforcement and Sanctions Law 1990.

IX. PREVENTIVE MEASURES

The establishment of a commission on corruption with regulatory and investigative functions, as well as receiving information and complaints relating to economic crime and creating the necessary awareness in the Ghanaian society, is considered a pragmatic approach towards reducing the scourge. The media must

also be encouraged to give publicity and coverage to economic crime cases as a way of sensitising the public against the various forms of economic crime. The various bodies, such as the securities regulatory commission and the other regulatory arms of the Bank of Ghana, should be adequately resourced to maintain their levels of vigilance.

X. CONCLUSION

It must be stated that since criminality is a part of human existence, any development, whether technological or otherwise, has implications for the criminal law and criminal justice system. As the capacity for law enforcers has been increased by the use of technology so has it helped the criminal to improve his/her capacity for crime as well as creating new opportunities for criminal conduct. Indeed it would appear that it is largely technological developments that have succeeded in widening the gap between law breaking, lawbreakers and law enforcers. Consequently if economic crime and law enforcers are in an unequal struggle then it is because the opportunities for the criminal have really improved, whilst the certainty of being made to pay adequately for the crime has rather decreased. Therefore there is the urgent need to sharpen the tools that are currently available in order to hold its own or be ahead of the economic criminal. A good first step towards confronting economic crime is to identify and deal with the difficulties inherent in the system. There is the need to develop appropriate mechanisms and strengthen the requisite institutions. New institutions with wide powers of investigation need to be established to combat some forms of criminality. The capacity of existing institutions should be improved to enable them to adopt creative methods in handling the issues and also to be able to adapt to the current circumstances of economic crime. The personnel of these institutions need to be equipped both materially and intellectually to cope with the agile mind of the economic criminal.

Operatives with accounting skills have become important in detection and investigation of economic crime while lawyers and judges need to understand issues pertaining to the world of high finance. Clearly there are implications for the training of law enforcers and other personnel in the criminal justice system in the intricacies of modern technology, and in specialised areas such as management, accounting and stock brokerage.

The criminal justice system is indeed in the battle, which is weighted against it on several fronts. However improving its tools both in terms of capacity and logistics is the surest means by which the purposes of the criminal law can still be upheld. The globalisation of crime has come to stay and live with us, and it is up to the criminal law and the criminal justice system to brace up for the revitalised battle against economic crime.