
PARTICIPANTS' PAPERS

COUNTRY REPORT ~ GHANA

*Alfred Kofi Asiamah-Sampong**

I. INTRODUCTION

In the past the Criminal Code of Ghana Act 29 of 1960 was extensively used to protect individuals in the Country against the acts of aggression of others in relation to their person or their property, to maintain security of the State itself and to maintain peace and order within the territorial boundaries. However, in recent times the Criminal Law has been used to enforce the demands of the economy, for example, by the enactment of the Securities Industry Law of Ghana, PNDCL 333 of 1993 and the Finance Lease Law of Ghana, PNDCL 331 of 1993 in consonance with the changing economic philosophy of Ghana. Currently, there is also the tendency of criminalising acts that aim at destroying the general economic interest of the country as these acts have economic consequences which adversely affect the economic development of the whole country. Supplementary offences have been inserted in the Criminal Code of Ghana to deal with Public Officials and others whose acts cause financial loss, damage or injury to the property of the State.

In line with the international concept of providing measures to combat international crime, the Government of the Republic of Ghana is on the warpath to fight such crimes by promulgating laws to fight corruption, money laundering, and other economic crimes as well as the control of the international narcotic drug trade. In this way, the activities of the individual that hinder economic development can be seen and dealt with by the Criminal Law. Formerly, the nature of economic crime took the form of activities of Government officials and agents who handled other people's money or other economic resources. The offences were mostly of a financial nature such as embezzlement, fraud by agents, fraud by false pretences, counterfeiting, forgery, issuance of false prospectus and so on. Additionally, the range of offences was limited in sphere because one had to be a custodian or a trustee of the property before the crime could be committed.

Nowadays, many opportunities have been offered by technological advancement and globalization, improvement in communications, computers as well as developments in the financial markets, credit financing and the scope of international trade. These developments have opened up the possibilities for criminal economic activities so much so that there is a wide range of such crimes these days. The categories of fraud have opened up widely, so have the modus operandi of the perpetrators which has changed from pen and paperwork to telephone, facsimile and computer or internet communication, such that the activities of the perpetrators permeate the entire economy.

The measures for control and the prosecutions of economic crime are important to Ghana as a developing nation. Apart from providing protection and redress at the interpersonal level, there are also responsibilities at the national level to grapple with. In Ghana, the Government is still the largest employer, and as a result any breach of trust or any criminal act of a Public Servant will have direct repercussions on the fragile national economy. For instance, if a high government official allows a foreign investor to swindle a colossal amount of money from Government coffers and bolt with it in exchange for personal reward, on the face of it, it might seem to be a small favour done, but in terms of the effect on the economy, it would hamper economic development, because not only would the State lose that money but the social and economic benefits of the investment would have been lost completely to the citizenry.

It is therefore important for the Government of the Republic of Ghana to put measures in place to discourage such conduct among public officials by swift prosecution and imposition of heavy penalties on those who engage themselves in such criminal activities. With the growth of new technology and the opportunities that it offers to the perpetrators of economic crime, it is imperative for the criminal justice system in Ghana to provide the legal framework for preventive measures as well as curative measures to deal with these economic crimes. It has been recognised that even the types of offences which the law must take cognizance of have changed greatly. For instances, at the moment there is no law dealing with economic crime involving the illegal movement or sale of confidential information belonging to an individual.

* Senior State Attorney, Ministry of Justice and Attorney-General's Department, Accra, Ghana.

The Criminal Code, of Ghana gives the definition of illegal movement of property stipulated in section 122 (2) as follows: "Any moving, taking, obtaining, carrying away, or dealing with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof". A close look at the provision will show that it aims at handling someone's object or article physically and transferring its content to oneself. In the circumstance, taking the content of somebody's document and passing it on without destroying the document or browsing a computer and taking information from it without tampering with it would be impossible to successfully prosecute under this provision of the Ghana Criminal Code. The system therefore needs some changes to make it possible to prosecute such crimes.

Ghana's criminal justice system therefore needs vigorous and aggressive changes to meet squarely the new crimes that the world is witnessing today otherwise, as it is currently, any effort to deal with economic crime within the criminal law "would be pitiful" as one Professor of law puts it. At this juncture, it is appropriate to examine some of the economic crimes engulfing society in these days of technological advancement. The obvious starting point is fraud, one of the conventional economic crimes which has traditionally been provided for in all legal systems.

II. FRAUD

Under the Criminal Code of Ghana there is a long list of types of fraud, provided in sections 131-145. They include fraud by false pretences, stamp offences, falsification of accounts, fraud in sale or mortgage of land, fraud as to boundaries of documents, fraud as to a thing pledged or taken in execution, fraud in removing goods to evade legal process and fraud by agents. Though the list is long it does not exhaust in any way the types of fraud that the world is witnessing these days. Section 132 of the code defines fraud by false pretences as follows: "A person is guilty of defrauding by false pretences if, by means of any false pretence or by impersonation he obtains the consent of another person to part with or transfer the ownership of anything".

A. Fraud by False Pretences

From the foregoing definition it is clear that fraud is about obtaining a financial or other benefit in terms of money at the detriment of another person. All of these frauds contain an element of dishonesty since the intent of the fraudster is to use dubious means to do an act which benefits him or her at the expense of the interest of the victim.

Fraud by false pretence occurs if a person misrepresents an existing state of facts such that the misrepresentation induces another to consent to parting with the ownership of a thing. The essence of this offence is that the false representation induces the victim to consent to part with or give the fraudster access to his or her property. A case in point is how a Ghanaian defrauded a French national in Ghana. He was arrested and brought to court for trial. The perpetrator of this crime is a Managing Director of a company in Accra, known as Diamond Motors and Enterprise Limited. In 2002 he met the French national in London and informed him that he dealt in gold and therefore had in his possession, 250 kilograms of gold ore valued at 51.562 million. The fraudster told his victim to test a sample of the ore to verify its genuineness in Switzerland, to which he complied. The victim who agreed to buy the consignment after a successful test, was assured by the fraudster it would be exported to him in Switzerland and that payment should be made after five days of export. The fraudster sent a pro forma invoice to his victim but failed to deliver the consignment on the appointed day. When he was confronted, he explained that the chiefs and elders of the town, where the ore was to be obtained had filed a writ in the High Court, restraining him from exporting the consignment. Meanwhile the fraudster had already collected \$156,250 which represented ten percent (10%) of the total amount from his victim, with the excuse that he was going to use it to influence the chiefs and elders to withdraw the legal suit. This turned out to be false. There is the need for an efficient mechanism for the verification of claims of people. Prospective investors should also be educated on the need to be careful who they do business with.

B. Revenue Related Fraud

One other fraud that relates to State revenue is the one which involves altering and falsification of bills of lading and invoices, receipt or other documents showing evidence of quantity, character or condition of any property or the receipt and disposition of or the title of any person to any property as provided under the

Criminal Code of Ghana in section 142 (b). This provision is so wide that customs and Excise Duties as well as Value Added Tax (VAT) depend on the provision. The Value Added Tax of Ghana, 1998, Act 546 provides provisions that deal sections 57, 59 and 70 under part XII of the Act. These offences and penalties have been made available in the Act because as the Act provides for refunds for exported goods, there is bound to be increased attraction for fictitious documents to show such transfers.

C. Fraud by Agents

There is also Fraud by Agents, who may be Government officials or the employees of private businessmen. This is an area with great potential for abuse of power and corruption. Under the Criminal Code of Ghana, section 145 (a) deals with financial inducements offered by third parties to agents so that they might show favour in dealing with them. The provision states as follows; “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’s affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business, he shall be guilty of a misdemeanour”.

Consequently, a Civil Servant who demands or takes a bribe in order to perform his duty is guilty under this provision. Section 145 (b) of the Code also makes provision for those who dishonestly give or agree to give any gift to any agent as an inducement or reward. Any person found to have committed such a crime can be prosecuted and consequently convicted.

As a measure against fraudulent deals by public officers and corruption by Government officials, or any other person, there has been the inclusion in the Criminal Code of Ghana, of “Special Offences”. These offences, which are largely economic in nature, were created as a result of the increasingly complex nature of economic crime. They are provided in section 179A (1)-(3) 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 agency of the state commits an offence.
- (2) Any person who in the cause of any transaction or business with a public body or 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 action or commission, malicious or fraudulent
 - (a) The state incurs financial loss; or
 - (b) The security of the State is endangered, commits an offence”.

It can be clearly seen that the provisions cover areas of fraud attributed to any person whether Government officials or private individuals. Perhaps these offences were created to cover the economic crimes that were emerging which could not be catered for by the existing legislation in the fight against economic crime.

D. Securities Market Fraud

The securities market has its own kind of fraud relating to economic crime. With the growth of the securities market in an emerging market like Ghana, market manipulation associated with the securities industry is bound to occur. Market manipulation is where the price of securities is controlled or artificially affected by the wilful conduct of officials to deceive or defraud investors. This kind of crime causes a lot of pain and hardship to people who invest their earnings in the hope of improving their resources. The Securities Industry Law of Ghana, 1993, PNDCL 333 makes provisions and penalties for such offences relating to investment fraud. Thus the acts of officials involving the creation of a false impression of price appreciation of shares is made punishable in section 122 as false trading as follows: “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 in securities on a stock exchange in Ghana or a false or misleading appearance with respect to the market for, or the price of such securities commits an offence”.

In the same vein, the Securities Industry Law can punish any person who distorts the market either by artificially inflating a price or lowering the price or even keeping a stable price when the market price would have dictated otherwise. While the law creates offences, at the same time it provides for defences in a situation where a person’s act, which is alleged to amount to false trading on the stock market, may not have

been done with the intention to create a false picture of active trading, but for some other legitimate purpose. In such circumstances the person will be exonerated, if he is able to prove that his action was for a legitimate purpose and not to defraud anyone.

In the securities industries, there is what is known as insider trading where persons who are involved in the industry or management of companies occasionally use information that they have to obtain financial rewards by using such information to buy or sell securities. This conduct is generally prohibited because it distorts the market and enables those with such information of the companies to act at the expense of the investing public. The Securities Industry Law prohibits this conduct under section 128. The reason for the prohibition is to allow the price of the securities to be determined by the interplay of the forces of demand and supply in a free atmosphere without any interferences or artificial mechanism. The law also provides offences for those who obtain information from people who have any association or dealings with the companies trading on the stock market for their own benefit.

E. Advance Fee Fraud

There is yet another type of fraud known as Advance Fee Fraud (a.k.a - 419). The use of modern communication equipment all over the world enables businessmen to communicate and enter into business negotiations without physical contact. This system has bred a type of economic crime where goods ordered are not paid for because of false contact addresses or forged letters of credit, etc. This type of fraud throws a real challenge to the commercial world since quite often those who engage in international commercial transactions may not be able to check the background of their clients who may be separated by distances of thousand of miles. Such an offence comes under section 131 of the Criminal Code.

F. Intellectual Property Fraud

There is also copyright of intellectual property fraud where the infringement of intellectual property has achieved new dimensions in view of international and domestic trade. The imitation of goods ranges from pharmaceutical products to food and pirated works such as music. In the past copyright owners only had to fight for their rights against their infringement in the civil courts. However, by the promulgation of the Copyright Law, which recognised the problem associated with the enforcement and the prosecution of rights of authors and music makers, the Copyright Law of Ghana, PNDCL 110 of 1985 made the infringement of copyright a criminal offence. Studies have shown that even though the Copyright Law has stringent provisions for infringement of copyright, prosecutions have been minimal.

The punishment which the Copyright Law provides is nothing to talk about. Sections 44-48 of the law provide that any person who infringes any copyright or neighbouring right shall be liable on summary conviction to a fine ranging from c10,000.00 to c1,000,000 (i.e. \$1. to \$100) and a term of imprisonment of up to two years. In addition to this, the courts may order seizure and disposal of all infringing material and equipment involved in the infringement of the copyright. The statute therefore needs to be amended so as to impose a heavy penalty on those who infringe the law.

G. Abuse of the Financial System

Banking and non-banking institutions are not left out - with frauds in the form of abuse of the financial system. Frauds in the banking system can be stated as misappropriation of assets or intentional misrepresentation of financial information by one or more individuals among management, employees or third parties. This kind of fraud takes the form of manipulation, falsification or alteration of records or documents, suppression or omission of the effects of transactions from records or documents, recording of transactions without substance and sometimes misapplication of accounting policies. Computer fraud in the banks is on the ascendancy and it takes the form of manipulation of electronic data to facilitate and cover up the fraud.

The introduction of Automated Teller Machines (ATM) in the banking system has come with its own type of economic crime with the use of fake ATM cards by unscrupulous employees of the banks for the withdrawal of money from customers' accounts. As Ghana is trying to catch up with the fast developing electronic technology of this age, electronic fraud of such a nature, where most bank employees can obtain internal records to produce additional bank ATM cards for themselves or customers, will become rampant. With the use of these fake but functional cards, an employee or his accomplice can withdraw funds from any ATM. The negative aspect of the operation of the ATM system should be identified so that measures can be

put in place to check its occurrence. A case in point is the case of *Tsegah v. Standard Chartered Bank (Gh.) Ltd. No.C602/99*, where a customer of the Bank sued the Bank for a refund of monies withdrawn from his bank account apparently through the use of a fake ATM card. A whopping sum of c13.1 million. (\$1,360) was fraudulently withdrawn from the customer's account. It was found that the plaintiffs pleading did not indicate the area of Law the action was founded on. This is indicative of the fact that the legal system of Ghana has not made inroads into such a new economic crime pervading the banking system.

Currently, the Bank of Ghana Act, 2002, Act 612 and the Currency Act, 1964, Act 242 have provisions governing the printing, use and offences relating to cash. Similarly, the Bill of Exchange Act, 1994, Act 55 and the Criminal Code, 1960, Act 29 deal in part with cheques.

In the area of electronic payments, Ghana did not have legislation that regulated electronic transfer of funds or cheque abuses, even though computer related frauds abound in both domestic and international payments. The Evidence Decree of Ghana, 1975, NRC.D. 323 is silent on the admissibility of electronically stored information as evidence in Law. Although section 51 of the Evidence Decree gives direction to the court to accept relevant evidence. A payment Act should remove any doubt surrounding the admissibility of electronically stored information as evidence. It could be seen that the law did not take cognizance of the opportunities that were opened up for criminals' technological advancement, therefore there was the need to protect society particularly users of the payment systems.

Having seen the need for new legislation to deal with the payment system, the Parliament of Ghana has recently passed into Law a modern Payment Systems Bill known as the Payment Systems Act of 2003. (Act 662). The Law provides the statutory framework for electronic banking in Ghana and prevents the manipulation of the bank accounts of customers.

III. MONEY LAUNDERING

The concept of money laundering has been in existence for a long time and it is principally tied down to monies and assets acquired from illicit trade (e.g. illicit drug trade) by criminals. This laundering involves not just individuals, but sometimes major banks. The money the criminals obtain is transferred into various accounts or invested in legal businesses to disguise the origin of their criminal money so they can avoid detection and the risk of prosecution when they use it. Invariably, the criminals invest such monies by purchasing real estate or establishing big projects, especially in countries with legislation in support of secrecy of bank accounts. The launderers usually deceive the governments concerned with employment creation for their nationals and a contribution to national revenue. Through these processes, a criminal tries to transform the monetary proceeds derived from illicit activities into funds with an apparently legal source.

Money Laundering can have devastating economic and social consequences for countries, especially those in the process of development and those with a fragile economy like Ghana. It has been observed that the economy, society and ultimately the security of the countries used as money laundering platforms are all at risk. This is due to the fact that laundered money from criminal mining and exploitation of natural resources are known to have been used to buy weapons used in various civil wars in Africa. The civil conflicts have dislocated the economy and caused widespread disease and the death of millions of people.

Before 1990 the term money laundering did not feature frequently in discussions of offences we know as money laundering today. Ghana therefore, showed a limited response to money laundering when it enacted the Narcotics Drug (Control, Enforcement and Sanctions) Law, 1990, PNDCL 236. Section 12 of this Law criminalised money laundering in the area of narcotic drugs. Ghana began to take a serious look at money laundering in 1997 when the Bank of Ghana, and the Inspector General of Police, with the support of the Government, formed a Committee for co-operation between Law Enforcement Agencies and the Banking Communities (COCLAB) to provide a platform for members to exchange ideas, knowledge and information about criminal syndicates and the process of obtaining evidence to track down and find culprits involved in money laundering. The committee has influenced Ghana's anti-money laundering programme by identifying illegal activities, contributing to a draft statutory framework for the prohibition of money laundering (now pending before Parliament) and organizing seminars on money laundering, and other economic crimes, to sensitise the banking and non-banking financial community and the law enforcement agencies.

In spite of the fact that Ghana currently has no legislation to deal effectively with the offence of money laundering, it has put in place institutional arrangements to combat money laundering. The law enforcement agencies, the Attorney-General's Department and the courts on one side, and the financial regulators on the other, are the established institutions involved in the monitoring, investigating and prosecution of suspicious transactions.

Ghana's position is that the attention given to the issue of money laundering should now move beyond a comprehensive anti-laundering programme, hence the drafting of the Money Laundering (Proceeds of Crime) Bill, which when passed into Law will deal effectively with this socio-economic menace.

IV. INSTITUTIONS AND MEASURES SET UP TO DEAL WITH ECONOMIC CRIME IN GHANA.

A. Police

The Police are the most effective antidote or barrier for all types of crime. Traditionally it has operated in areas where its activities are useful for the detection and investigation of criminal activities. It has been found that given the wealth and resources at the disposal of modern economic criminals, the quality of criminal investigations need to be improved so as to equip them with the necessary skills to deal effectively with the sophisticated modern criminals. In order to be abreast with operations of the modern criminals, Ghana Police personnel are constantly undergoing training in the areas of modern economic crime. To catch up with the modern trend of crime, especially in the areas of the abuse of the financial system, the Ghana Police need a sound understanding of financial operations as well as accounting and other forms of expertise and the requisite equipment for investigations.

Currently pending before the Parliament of Ghana is the whistleblower Bill which seeks to provide a way in which individuals may in the interest of the public disclose information that relates to, corruption or other illegal conduct or practices of others in society and to make sure that the persons who make the disclosures are not subjected to victimization. In Ghana where impropriety in both public and private sectors, as well as society in general is common, the need for such legislation is paramount. Under the Bill, written copies of the disclosure of information about criminal activities of persons should be submitted to the Attorney-General who in turn causes investigations to be conducted into the cases, for prosecution if the need arises.

B. Serious Fraud Office

In Ghana, the Serious Fraud Office (SFO) was set up in 1993 by the Serious Fraud Office Act, 1993 (Act 466) as an investigative agency to investigate, monitor, and on the authority of the Attorney-General, prosecute any offence involving serious financial or economic loss to the state. Before the Serious Fraud Office (SFO) was set up, there was no particular state agency with the sole mandate to deal with Commercial and other economic crimes. Its establishment took into account the increasing sophistication of crimes committed by individuals in society, resulting from modern information technology, communications and complexity in economic crimes. The traditional mechanism of existing law, the police, and other institutions for fighting complex and serious economic crimes were found to be inadequate to cope with the modus operandi of modern criminals. The Serious Fraud Office has been framed to take advantage of skilled professionals in the areas of law, accounting, banking, taxation, etc, and to use their expertise and resourcefulness to counter the developing trends of sophistication in the commission of economic crimes.

C. Bank of Ghana

The Bank of Ghana has the Statutory Power to licence financial institutions. Its functions cover those who seek to operate as banks by taking in deposits and lending out money, such deposit taking being a potential route for investment fraud, the work of the Bank is to see to it that depositors are not deceived into putting money into a financial scam. It also ensures that operations in the financial sector are not conducted in a manner that harm the economy.

The Bank has supervisory authority over all the commercial banks and the non-banking financial institutions in Ghana. Its supervisory activities are carried out within the framework of Laws, Regulations and Conventions in force at any particular time. The Bank of Ghana Law, 1992, PNDCL 291 establishes the Banking Supervision and Research Department in section 51 of the Law. It provides in part as follows: "...be responsible for the supervision and examination of all banking institutions in the country".

With this tool in hand, the Bank was able to investigate the operations of the “Pyram” and “Resource 5” schemes. These are two companies which emerged on the financial scene in Ghana with investment schemes that promised about 30% interest a month on any sum invested. Their operations turned out to be one of the biggest financial scams in Ghana in 1995. During the Bank’s investigations into their operations, the companies folded up because they could not comply with the Bank’s regulations. People who invested their money in these schemes lost it when the schemes collapsed. In order to protect the depositors and investors and to maintain public confidence in the financial sector, the Bank has intensified its supervisory activities over the financial institutions in Ghana.

D. Courts

The Courts are the institutions that must come down hard on the fraudsters and other economic criminals who engage themselves in economic crimes, including money laundering. There should be more diligent prosecutions and aggressive sentencing on the part of the court in order to deter those whose intentions are to defraud and launder their ill-gotten money. It is the Attorney-General who has been given the mandate under Article 88 (3) of the 1992 Constitutions of Ghana to initiate and conduct all criminal cases in Ghana. The Attorney-General and his cohort of attorneys who have full control of the prosecution of criminals should therefore marshal resources to fight aggressively against the perpetrators of economic crime and money laundering in Ghana. In the circumstances, the trial of economic crimes should be swift and more aggressive.

It has been noted that economic crime inflicts loss on the victims and at the same time it provides unjustifiable economic gain to the perpetrator. Therefore the courts should switch from the traditional criminal law system of monetary penalties and imprisonment, which are not adequate to restore the loss of the victim, to confiscation of properties of the criminals which are gotten from the proceeds of their illegal activities, to enable the courts to make restitution orders in favour of the victims.

Efforts are being made to equip the courts in Ghana with modern equipment like computers, etc. and to train judges so as to become familiar with the intricacies of high finance to enable them to appreciate the importance of the issues involved in the prosecution of economic crime and money laundering. This has culminated in the setting up of the Automated Courts or the Fast Track Courts in Ghana to deal with cases, especially commercial and economic crime, so as to reduce long and slow methods of adjudication.

IV. CONCLUSION

Ghana shares the concerns of international organizations and governments on economic crime and money laundering. There is therefore the need for assistance, including the training of officials of law enforcement agencies and authorities from the financial and other related sectors. There is also the need for provision of financial and technical backup for the justice system and the Police and State Attorneys who handle criminal cases.

The criminal justice system of Ghana is in a battle against crimes on all fronts. The globalization of crime has come to stay with us and it is a great task for the criminal law and criminal justice system of Ghana to put themselves up in the fight against economic crime and money laundering. Ghana therefore needs the co-operation and support of the international community to address the challenges posed by economic criminals and money launderers.