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# ASSESSMENT OF THE EFFECTIVENESS OF THE ANTI-CORRUPTION AUTHORITIES: A CASE STUDY OF ACHIEVEMENTS AND PROSPECTS OF THE SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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## 1. INTRODUCTION

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Typical of other social science disciplines concepts, there are divergent opinions on what constitutes corruption. The concept of corruption according to Akindele (1995) has long been ideologically, morally, culturally, politically and intellectually elusive to the point of losing sight of its detrimental and parasitic influence on the people and the society at large. (M. A. Aluko, 2002:394). Akindele defined corruption as any form of reciprocal behavior or transaction where both the office/power holder and can respectively initiate the inducement of each other by some rewards to grant (illegal) preferential treatment or favor against the principles and interest of a specific organization or the public within the society.(ibid). Corruption is widely seen as one of the biggest impediments to economic growth, investment, and poverty reduction in developing contexts. According to World Bank (2007), “corruption is the use of public office for private gain”, and elaborates a number of faces: bureaucratic corruption, nepotism and patronage and state capture, often equated with political corruption (The World Bank Report, 2012 at 2).

It has often been argued that corruption is a cankerworm that has eaten into the fabric of Ethiopian society. It has caused decay and dereliction within the infrastructure of government and the society in physical, social and human terms (Aluko, 2002 at 400). Corruption has contributed immensely to unbridle the FC and looting most especially in public offices. (ibid).

According to one study, (FDRE and UNDP Report, 2011 at p. 4), Ethiopia fares a lot better than many of its neighbors in Sub-Saharan Africa when it comes to corruption.

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However, that is not to say that Ethiopia is free from corruption and evidence points to the fact that ordinary citizens see corruption on the rise. According to corruption survey of public perceptions carried out by Addis Ababa university in 2001, “...fraud, trickery, cheating, embezzlement, extraction, nepotism, bribery and theft “ were found to be the major features by which corruption manifested itself in the country.

As corruption becomes increasingly sophisticated, the fight against it demands well integrated , multi-disciplinary strategy. In this regard, more and more governmental and international actors are creating specialized entities to combat corruption (ArsemaTamiyalew, 2010 at 1). These entities, usually called anti-corruption authorities, come in different forms. However, the mere creation of such entities in itself does not eradicate the source of corruption because anti-corruption authorities are usually created after corruption is widespread. In this study, Anti-corruption authorities are simply defined as those specialized entities established by the government to combat corruption.

There appears to be general agreement that a centralized, coherent and coordinated anti-corruption regime is superior in all aspects to a diffuse and dislocated modus operand ( Arsema, 2010). In 2001, Ethiopia joined the global trend by establishing an anti-corruption authority in the form of Federal Ethics and Anti-corruption Commission by proclamation number 235/2001 with the following objectives: to create awareness among the Ethiopian society that corruption should not be condoned or tolerated by promoting ethics and anti-corruption education, to prevent corruption offenses and their improprieties, and to strive to create and promote integrity in public services by detecting, investigating and prosecuting suspected cases of corruption offenses and other improprieties (ibid). The above law was amended in 2005 with the proclamation no. 433/2005 to ensure that the commission’s operations and activities are transparent and accountable which also resulted in the modification of its objectives.

Besides the Federal Ethics and Anti-corruption Commission in Ethiopia, there are also regional anti-corruptions including the SNNPR Ethics and Anti-corruption Commission, which is the subject of this study. Since its establishment in 2002, the commission has undertaken some encouraging achievements in preventing and fighting against corruption. It has, for example, undertaken a number of successful awareness creation activities on the threat of corruption and dire need to counter it. However, the commission is not free from challenges when it seen against the objective for which it is created. So, the present study attempts to appraise the achievements and challenges of the regional anti-corruption commission since its commencement as an entity.

## STATEMENT OF THE PROBLEM

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In the present day world order, it has been reached to a consensus that corruption is a global concern, a crime that affects human beings across the world. There is no country or sector that is immune from corruption, and its devastating effects on every faces of life (UN Convention on Corruption, 2003). It hinders efforts to achieve developmental targets like UN Millennium Development Goals (MDGs), it undermines democracy and rule of law; it leads to human rights violations, distorts markets, erodes quality of life, and allows organized crimes, terrorism and other threats to human security to flourish (id). Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to a governmental instability particularly in poor countries such as Ethiopia. It attacks the foundations of the democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes (Blein Girmay, 2012).

Reflecting these complicated problems flowing out of corruption, the UN Convention was adopted in 9 Dec. 2003. Ethiopia has adopted this convention by promulgation of proclamation no. 544/2007. This convention, as the only binding universal anti-corruption instrument, marks a critical move towards eradicating the scourge of corruption through its covering of prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange ( ibid).

To this end, in order to combat corruption effectively, Ethiopian government established the Federal Ethics and Anti-corruption Commission (FEACC) as an independent federal government agency. Post-2002 years in Ethiopia saw widespread establishment of regional ethical and anti-corruption commissions to fight, prevent and prosecute corruption crimes in their respective jurisdictions. Each regional anti-corruption office has autonomy in managing its own operations and budgets. The SNNPR Ethics and Anti-Corruption Commission was also established as an autonomous regional government organ to prevent and fight corruption with SNNPR proclamation No. 48/2002 ( Dehub Negarit Gazetta, 2002).

Since its establishment in 2002, the SNNPR ethics and anti-corruption commission has made some encouraging achievements in fighting and preventing corruption through the implementation of different activities such as awareness creation activities on the threat of corruption and on the dire need to counter it. The regional EACC was able to make the issue of fighting corruption a popular agenda.

Needless to say, the blatancy of corruption in Ethiopia brings the SNNPR Ethics and Anti-Corruption Commission as a regional premier anti-corruption institution in to sharp relief. Although the commission has openly began its mission, it still faces multi-faced problems in the endeavor to achieve the national fight against corruption of which this research work is going to reveal.

This study represents an attempt to comprehend the SNNPR Ethics and Anti-Corruption Commission in the context of national and globalized anti-corruption discourse. The study aims to analyze the efficacy and challenges in the Ethiopia's regional and national socio-economic and political milieu, in the hope of identifying those aspects of commission's operations, strengths and weaknesses which may be in need of improvement or development.

Furthermore, as to the knowledge of this researcher, this attempt to study regional anti-corruption authority probably is first of its kind to pursue to analyze and elaborate on regional basis. As it is widely known, many studies which come to research on Ethiopia's attempt to fight corruption mostly tend to focus on national level, and as such, a very little attention has been given to study and analyze the regional anti-corruption authority. This study represents a modest attempt to fill such prevalent gap in the area and it also aims to trigger scholarship in the area. Attempt has been made to construct the present case with the broader national anti-corruption policies, institutions and legal frameworks in the critical analysis of present case.

This study attempts to address the following major research questions: What are the basic aims of institutionalization of the SNNPR Ethics and Anti-corruption Commission? How does the commission discharge its institutional responsibilities in collaboration with other stakeholders without compromising its independent and autonomous status? What would be its contribution to combat corruption and help in the development and democratization endeavor of our country? What are the achievements of the commission, and challenges facing the commission and nature of challenges since its establishment? what would be the possible solutions to those challenges?

Concerning the sources of data, the three most common qualitative data gathering techniques such as participant observation, in-depth interviews of relevant regional executives of anti-corruption organ and focus group discussions are commonly employed; The empirical part of this research has also consumed different secondary sources such as regional anti-corruption commission's performance reports, its publications and case reports. Wherever analogy and parallel observations have been found important, that has been effectively utilized. Moreover, analysis of documents, case analysis and review of extensive literature, personal experience and observation have also got a relevant place as well.

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## 2. THE NATURE OF CORRUPTION: THE NEED FOR AUTONOMOUS ANTI-CORRUPTION AUTHORITIES

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### 2.1. INTRODUCTION

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The recent past decades have witnessed unprecedented efforts and growing body of literature on combating corruption. Anti-corruption action has produced a mountain of words and hardly a molehill of solid results in terms of positive change, or, reform, in institutional behavior.<sup>2</sup> Failure in this regard has much to do with the complexity, dynamism and pervasiveness of the corruption. Where corruption is choking development, a few with access systematically distort political and economic decisions which might be made (systematically) with conflict of interest at play. Largely unaccountable, small groups seize new opportunities – from banking schemes to drug trafficking – as swiftly as they develop.

Unprecedented efforts have been made to raise awareness about corruption, its insidious nature and the damaging effects it has on the welfare of entire nations and their peoples. As Bardhan (1997) noted, corruption not only distorts economic decision-making, it also deters investment, undermines competitiveness and, ultimately, weakens economic growth. Indeed, according to Johnston (1997), there is evidence that the social, legal, political and economic aspects of development are all linked, and that corruption in any one sector impedes development in them all. As observed by Heidenheimer and Michael (2002), there is now increasing recognition throughout the public and private sector that corruption is a serious obstacle to effective government, economic growth and stability. Consequently, in the mind of Njui (n.d) anti-corruption policies and legislations are urgently required at the national and international level.<sup>3</sup>

Although its effects on democratic institutions and economic and social development have long been apparent, the fight against corruption has only recently been placed high on the international policy agenda. Today, many international organizations are addressing the global and multi-faceted challenge of fighting corruption. The Organization for Economic Cooperation and Development (OECD) provided a major contribution to this important effort in 1997 with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>4</sup> Corruption is a

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<sup>2</sup>. Petter Langseth (1999): Prevention: An effective Tool to Reduce Corruption, UN Center for Int'l Crime prevention, Vienna.

<sup>3</sup>. Wycliffe Amukowa (2013): The Challenges of Anti-Corruption Initiatives: Reflections on Strategies of the Defunct Kenya's Anti-Corruption Commission, *Mediterranean Journal of Social Sciences*, vol. 4, no. 2. at pp. 481.

<sup>4</sup>. Organization for Economic Cooperation and Development (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, at pp. 3.

global phenomenon and has serious implications and consequences for the growth of democracy, promotion and protection of fundamental rights. There is a wide spread perception that the level and pervasiveness of corruption gains significance. Corruption in any form treated as an incurable disease is caused by many social and economic evils in the society.<sup>5</sup> It damages the moral and ethical fibers of the civilization. Undisputedly, corruption breeds many evils in the society. Once the seed of corruption starts growing, it takes roots slowly and gradually and cancerously. It passes through the whole Nation and becomes a perilous disease<sup>6</sup>.

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## 2.2. DEFINITION

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Defining corruption is important in the context of global efforts to reduce its influence in public life. But that is not an easy task. Corruption is a social, legal, economic and political concept enmeshed in ambiguity and encouraging controversy. Accordingly, literatures provide several of definitions of corruption from their perspective in which they treat the subject. I provide only some of the commonly accepted definitions hereunder.

The word corruption derives from the Latin *corrumpere*, and the term 'corrupt' invokes a range of images of evil and illegal activities; it designates that which destroys wholesomeness. Although there is no universally accepted definition of this phenomenon yet, the common factor among most of the existing definitions is the abuse of public office or power for private gain. The office is a position of trust, where one acts on the behalf of the institution through power and authority delegated to one.<sup>7</sup>

The Oxford Dictionary defines corruption as "Perversion or destruction of integrity in the discharge of public duties by bribery or favor". The Merriam Webster's Collegiate Dictionary argues it as "Inducement to wrong by improper or unlawful means (as bribery)." The succinct definition taken by the ADB (1999) and World Bank is 'the misuse of public or private office for personal advantage.' Similarly, the definition of Transparency International (TI) is "Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in whom they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them."<sup>8</sup>

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<sup>5</sup>. Srinivasa Rao Gochipata & Y. R. Haragoapal Reddy (2013): Institutional Arrangements to Combating Corruption: A Comparative Study of India's and Hong Kong's Independent Commission Against Corruption, NALSAR Law Review [Vol.7 : No. 1at 46

<sup>6</sup>. *ibid*.

<sup>7</sup>. Bashir Ahmed (2006): Combating Corruption: The Role of the Bureau of Anti-Corruption (BAC) in Bangladesh, Lund University Centre for East and South-East Asian Studies Masters Programme in Asian Studies, at 10.

<sup>8</sup>. Transparency International (TI), 19996., See also Bashir Ahmed, *ibid*, *supra* note 6.

Muthomi (2006) argued that the conception of corruption varies among scholars. The narrowest understanding of corruption sees the vice as the abuse of public office for private gain. Muthomi noted that broadly defined, corruption is the abuse of not only public office but also private or commercial office for private gain. According to him, it invariably involves giving something to someone in a position of power either in government or in a corporation, so that he will (ab)use his power and act in a manner favoring the giver. It involves the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person.<sup>9</sup> According to Ruhui (n.d), definition of corruption depends on one's own experience. However, whichever way one looks at it, it is a moral disease that permeates all the levels of the society.

The Ethiopian Revised Federal Ethics and Anti-corruption Commission Establishment Proclamation No. 433/2005 does not define what constitutes corruption. Robert Klitgaard (1988 and 1998) provides a useful tool to both identify the causes and combating corruption through his famous equation  $C=M+D-A-S$  where C stands for corruption, M for monopoly power, D for discretion, A for accountability and S for low salaries.<sup>10</sup> So, it can be understood from the above discussion that the concept of corruption is fluid which does not have single/universal definition. However, the World Bank's "the use of public power for personal gain" is the central point in the definitions.

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### 2.3. TYPOLOGY OF CORRUPTION

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Murphy, Shleifer and Vishny (1991) argued that corruption is well understood through its forms. They noted that many specific forms of corruption are clearly defined and understood, and are the subject of numerous legal or academic definitions. Miller (2001) agreed with Murphy, Shleifer and Vishny (1991) and added that many of the forms of corruption are criminal offences, although in some cases governments consider that specific forms of corruption are better dealt with by regulatory or civil law controls.<sup>11</sup> However, there are often differences between corruption and general criminal behavior, maladministration and mismanagement of affairs. A brief discussion about the typology of corruption is made to well comprehend the form it takes in this section, as it helps in the effective fight against its consequences.

Muthomi (2006) argued that corruption manifests itself in one or more of various forms, viz. bribery, extortion, fraud, embezzlement and other forms of malfeasance by public or corporate officials. He maintained that though universal in its existence, the

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<sup>9</sup>. Muthomi (2006) The Kenya's Anti-corruption and Economic Crimes Act 2003 at 2.

<sup>10</sup>. Bashir Ahmed (2006): Combating Corruption: The Role of the Bureau of Anti-Corruption, *ibid* at 11.

<sup>11</sup>. Wycliffe Amukowa (2013): The Challenges of Anti-Corruption Initiatives, *ibid*, *supra* note 2 at pp. 482.

pervasiveness of corruption varies across nations and organizations. Corruption occurs in different forms, in different types of organizations and at different levels. According to his discussions, typologies of corruption include Grand Corruption, Political Corruption, Corporate Corruption, Administrative Corruption and Petty Corruption. Petty corruption is the common man's version of corruption. It is said that petty corruption involves small sums paid to low-level officials to "grease the wheels" or cut through bureaucratic red tape.<sup>12</sup>

Generally four various kinds of illicit activities bribery, extortions, embezzlement and nepotism are regarded with the parameters of corruption. Heidedenheimer (1989:156-157) classified corrupt behavior in to 'petty corruption', 'routine corruption' (nepotism, graft) and 'aggravated' corruption (kickbacks and organized crime). Stapenhurst and Langseth (1997) categorized petty and grand corruption. Grand corruption typically involves senior officials, major decisions or contacts and the exchange of large sum of money. Petty corruption deals with mainly low-level officials, the provision of routine services and goods, and small sums of money. Corruption is further divided in various categories like syndicated, non-syndicated, systemic, political and bureaucratic corruption.<sup>13</sup>

Some of types of corruption discussed above can be summarized in the following ways. The distinctions can be useful in designing and in developing reform programs and strategies:

- *Petty corruption*: practiced by public servants who may be basically decent and honest individuals but who are grossly underpaid and depend on small bribes from the public to feed and educate their families;
- *Grand corruption*: high-level public officials and politicians make decisions involving large public contracts or projects financed by external donors. This corruption is motivated by personal greed. The money or assets from such corruption usually is transferred to individuals or political party coffers.
- *Episodic corruption*: honest behavior is the norm, corruption the exception, and the dishonest public servant is disciplined when detected; and
- *Systemic corruption*: channels of malfeasance extend upwards from the bribe collection points, and systems depend on corruption for their survival;

Corruption can also be categorized in other ways. A distinction can be made between benefits that are paid willingly (bribery) and payments that are exacted from unwilling clients (extortion). Another way to categorize is to differentiate between bribes paid for what a client has a legal right to receive and bribes paid to receive benefits belonging to others.<sup>14</sup>

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<sup>12</sup>. Muthomi (2006): The Kenya's Anti-corruption and economic crimes Act 2003, *ibid*, supra note 8 at 4.

<sup>13</sup>. Bashir Ahmed, *supra*, *ibid* at 12.

<sup>14</sup>. Petter Langseth (1999): Prevention: An effective Tool to Reduce Corruption, *supra* note 1, at 5.



Examples of corrupt behavior would include: (a) bribery, (b) extortion, (c) fraud, (d) embezzlement, (e) nepotism, (f) cronyism, (g) appropriation of public assets and property for private use, and (h) influence peddling. In this list of corrupt behavior, activities such as fraud and embezzlement can be undertaken by an official alone and without involvement of a second party. While others such as bribery, extortion and influence peddling involve two parties –the giver and taker in a corrupt deal. The two party type of corruption can arise under a variety of circumstances.

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## 2.4. CAUSES OF CORRUPTION

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Without proper vigilance and effective countermeasures, corruption can occur anywhere. Recent corruption cases exposed in the World Bank (1997, 2004, 2012) and the United Nations (2004) have shown that any society or organization is susceptible, even where well established checks and balances are in place. Combating corruption, building integrity and establishing credibility require time, determination and consistency. When anti-corruption strategies are first instituted, a long-term process begins, during which corrupt values and practices are gradually identified and eliminated.<sup>15</sup> In most cases, a complex process of interrelated elements is involved: reforms to individual institutions take place in stages as problems are identified; countermeasures are developed and implemented; personnel are reoriented and retrained. Corruption is generally connected with the activities of the state and especially with the monopoly and discretionary power of the state.<sup>16</sup>

Drawing upon the concepts described above, Klitgaard (1998) sets out a corruption equation as follows:

$$C = R + D - A$$

In the above equation, C stands for corruption, R for economic rent, D for discretionary powers, and A for accountability. The equation states that the more opportunities for economic rent (R) exist in a country, the larger will be the corruption. Similarly, the greater the discretionary powers (D) granted to administrators, the greater will be the corruption. However, the more administrators are held accountable (A) for their actions, the less will be the corruption, and hence a minus sign in front of A.

Stated differently, the equation tells us that a fertile ground for growth of a thoroughly corrupt system will emerge in a country if it satisfies the following three conditions<sup>17</sup>:

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<sup>15</sup> . Wycliffe Amukowa (2013): The Challenges of Anti-Corruption Initiatives, *ibid*, at 485.

<sup>16</sup> . *ibid*.

<sup>17</sup> . U Myint (2000): Corruption: Causes, Consequences and Cures, *Asia-Pacific Development Journal Vol. 7, No. 2, December 2000, at p. 39.*

- (i) It has a large number of laws, rules, regulations, and administrative orders to restrict business and economic activities and thereby creates huge opportunities for generating economic rent, and especially if these restrictive measures are complex and opaque and applied in a selective, secretive, inconsistent and non-transparent way.
- (ii) Administrators are granted large discretionary powers with respect to interpreting rules, are given a lot of freedom to decide on how rules are to be applied, to whom and in what manner they are to be applied, are vested with powers to amend, alter, and rescind the rules, and even to supplement the rules by invoking new restrictive administrative measures and procedures; and
- (iii) There are no effective mechanisms and institutional arrangements in the country to hold administrators accountable for their actions.<sup>18</sup>

Corruption also has a political dimension, which can arise from the way in which politics are financed and power is managed, either in an authoritarian or pluralistic and democratic way. In some countries, the distribution of economic rents is used both to payoff political constituencies and enrich elites. When corruption is deeply rooted in a society, the fight against it is a long-term challenge which involves both institutional and attitudinal reform. The challenge requires establishment of transparent procedures, holding both public and private sector actors accountable, strengthening the judicial system to handle corruption cases efficiently, but also the active participation of the civil society in all its forms in the anti-corruption battle.<sup>19</sup> Despite the long-term nature of the anti-corruption struggle, the government can take many actions in the short term to reduce policy-generated “economic rents” that are the source of much corruption, thereby demonstrating to the citizenry its commitment to its anti-corruption campaign.<sup>20</sup> Therefore, corruption needs a fertile ground to widespread in the society.

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## 2.5. CONSEQUENCES OF CORRUPTION

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Scholars argue that corruption is not endemic to a given society or state. Corruption can be found in all walks of life. Combating corruption is instrumental to the broader goal of achieving more effective, fair, and efficient government. When there is inadequate transparency, accountability, and probity in the use of public resources, the state fails to generate credibility and authority. Systemic corruption undermines the credibility of democratic institutions and counteracts good governance. There is a high correlation between corruption and an absence of respect for human rights, and between

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<sup>18</sup>. Ibid, at 40.

<sup>19</sup>. World Bank (1998): Ethiopia: Anti-corruption Report: Poverty Reduction and Social Development Unit Africa Region, at pp. 3.

<sup>20</sup>. Ibid.

corruption and undemocratic practices. Corruption alienates citizens from their government.<sup>21</sup> Literatures on the corruption show that its consequence is not only limited to the economic aspect in any given state. It has a wide range bearing on economic, social, political, developmental, human rights issues, and in what follows, I will present only the economic consequences of corruption which is more prevalent and devastating.

### **a). Economic Consequences**

#### ***Grand corruption***

When one considers the economic consequences of corruption, the adverse impact of grand corruption comes readily to mind. Corruption on a grand scale associated with some dictators and their cronies can involve embezzlement of huge sums of public funds, and the mismanagement, wastage, inequity, and social decay that come along with it, can be disastrous for an economy. There are familiar tales of fortunes in gold, gems and jewelry stashed away in secret hiding places by corrupt officials and hundreds of millions of dollars spent in acquiring real estate abroad and in depositing into their foreign bank accounts.<sup>22</sup> The devastating impact of misconduct on such a massive scale, especially for poor countries that are facing perennial and severe foreign exchange shortages, is obvious and requires no further comment. But corruption does not have to be on a grand scale to inflict serious damage. There are other adverse effects that can be just as damaging for a poor country. These deserve a closer look and are taken up below.

#### ***i). Rise of the underground economy***

Underground economic activities exist in all countries. They are of two types. First, there are those that are illegal such as engaging in the drug trade or the smuggling business. The second consists of those activities that are legal but are not officially recorded to evade taxes or for some other reason. Corruption gives rise to both these types of activities and contributes directly to the rise of the underground economy.<sup>23</sup> When large portion of an economy goes underground, official macroeconomic data which mostly cover only the formal sector, become unreliable to assess economic performance, or to provide a basis for policy making and analysis. Official foreign trade statistics, for example, no longer reflect a country's true volume, or value, of exports and imports because of large illegal and unrecorded movements of goods and services across the border in a thriving smuggling business.

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<sup>21</sup>. Petter Langseth (1999): Prevention: An effective Tool to Reduce Corruption, *supra* note 1 at pp. 4.

<sup>22</sup>. U Myint (2000): Corruption: Causes, Consequences and Cures, *supra* note 16, at 45.

<sup>23</sup>. Although underground economic activities exist in all countries, they become pervasive where corruption is widespread. See also U Myint, *ibid*.

### *ii). Income distribution*

U Myint noted that under a corrupt system, the privileged and the well-connected enjoy economic rent.<sup>24</sup> As such, there is a tendency for wealth to be concentrated in the hands of a tiny minority of the population. Income distribution, therefore, becomes highly uneven. In addition, the burden of corruption falls more heavily on the poor as they cannot afford to pay the required bribes to send their children to a decent school, to obtain proper health care, or to have adequate access to government provided services such as domestic water supply, electricity, sanitation and community waste disposal facilities.

### *iii). Consumption pattern*

Closely associated with an unequal income distribution and concentration of wealth in the hands of a few, there emerges a distorted consumption pattern aimed at meeting the lifestyle of the new and extremely rich urban elite.

### *iv). Impact on investment*

Corruption's adverse impact on private investment, both domestic and foreign, is considered to be particularly harmful for a developing economy. Bribes may have to be given before any investment takes place and upon entering into negotiations for the establishment of an enterprise. More payments usually follow in the process of setting up the business. Procurement of leases for land and buildings; permission to engage in activities such as production, transport, storage, marketing, distribution, import and export; obtaining connections for water, gas, electricity, and telephone; having access to telex, fax and e-mail facilities and so on; can involve payment of substantial bribes at various stages and may require the services of agents with specialized expertise on how to get around complex rules and procedures to acquire these things.<sup>25</sup> Unfortunately, these agents and middlemen, instead of being part of the solution can often become a part of the problem. For a poor country, talented local business people, managers, entrepreneurs, and industrialists represent a scarce and valuable resource. Their talents should not be wasted in rent seeking activities.

According to U Myint, at a more fundamental level, corruption makes it difficult for a low income country to establish and maintain domestic and internationally acceptable "rules of the game" which are necessary for orderly and proper conduct of investment and business activities. This deficiency is believed to be an important reason why the least developed countries in the world are poor. It is also believed to be a reason why some of them will remain that way.<sup>26</sup>

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<sup>24</sup> . Economic rent, by definition, represents abnormal or monopoly profits and can bestow large benefits.

<sup>25</sup> . . U Myint (2000): Corruption: Causes, Consequences and Cures, *supra note 16 at pp. 47.*

<sup>26</sup> . Klitgaard (1998), as cited in U Myint at pp. 49.

*v). Effect on the government budget.*

Corruption can have undesirable consequences on both the revenue and expenditure sides of the government budget. The consequences on the revenue side are more familiar. Paying bribes to reduce taxes, fees, dues, custom duties and public utility charges such as for water and electricity, are common in many countries.<sup>27</sup> Bribes are also used to make illegal water, electricity, gas and telephone connections to have access to these facilities without paying for the services obtained. All these result in serious losses of revenue for the government. Fraud, embezzlement and misappropriation of public funds add to the losses.

Corrupt regimes therefore tend to devote a large share of their national budget expenditures on acquiring sophisticated military hardware and on large projects, and less on education and health, and on other priority needs that would contribute towards overcoming critical bottlenecks in the economy and help ease hardships that most ordinary people face in their daily lives.<sup>28</sup>

*vi). Social costs*

In any society, there are laws and regulations to serve social objectives and to protect the public interest, such as building codes, environmental controls, traffic laws and prudential banking regulations. Violating these laws for economic gain through corrupt means can cause serious social harm. There are many instances of this throughout the different parts of world regions.

*vii). Impact on economic reforms*

Unfortunately, corruption places severe constraints on a country's capacity to undertake economic reforms. This is because reforms require greater transparency, accountability, free and fair competition, deregulation, and reliance on market forces and private initiative, as well as limiting discretionary powers, special privileges, and price distortions – all of which will reduce opportunities for economic rent on which corruption thrives.<sup>29</sup>

According to Kaufmann and Siegelbaum (1996), where corruption is perverse, injustice is perpetrated because those with an unethical orientation get privileged access to resources and services to which others are excluded. It is in this regard that Kaufmann and Siegelbaum held that this aggravates social injustice and increases poverty while this social and economic exclusion translates into class disharmony. Exclusion maintaining the tensions increases to the extent that the whole society is under

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<sup>27</sup> . *ibid.*

<sup>28</sup> . U Myint, *ibid* at 50.

<sup>29</sup> . The rich and the powerful, the main gainers of a corrupt system, will therefore oppose reforms. See U Myint, 52.

structural strain. Societies in which exclusion is reinforced by corruption do experience instability that may result in violence and massive destruction.<sup>30</sup>

### 3. THE NEED FOR AUTONOMOUS ANTI-CORRUPTION AUTHORITIES

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#### 3. 1. INTRODUCTION

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Corruption is a scourge that affects everyone. It can no longer be ignored. Indeed, across the globe, governments, businesses and NGOs are increasing the pressure on eradicating bribery and corruption and bringing those responsible to account. And rightfully so. Nobody can deny the impact of corruption on the world's poorest and most vulnerable populations; basic services become unaffordable or inaccessible, livelihoods are threatened and justice is denied.<sup>31</sup> In the developing world, the specter of corruption reduces government effectiveness and ravages economic growth. Businesses in both the developed and the developing world also suffer as the impacts of corruption bite into the bottom line and – in a growing number of cases – become a significant reputational and operational risk. In response, a number of governments have created Anti-Corruption Commissions, charged with identifying, pursuing and prosecuting those responsible for corruption at all levels of society.<sup>32</sup>

One of the best known specialised anti-corruption institutions - the Hong Kong's Independent Commission against Corruption - was established in 1974. The Commission has contributed significantly to Hong Kong's success in reducing corruption. Inspired by this success story, many countries around the world, including in Eastern Europe, decided to establish specialised bodies to prevent and combat corruption. Establishing such bodies was often seen as the only way to reduce widespread corruption, as existing institutions were considered too weak for the task. Recent international treaties against corruption require their member states to establish specialised bodies dedicated to fighting and preventing corruption.<sup>33</sup> The United Nations Convention against Corruption requires the existence of two types of anticorruption institutions:

- a body or bodies that prevent corruption;

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<sup>30</sup>. Wycliffe Amukowa (2013): The Challenges of Anti-Corruption Initiatives: Reflections on Strategies of the Defunct Kenya's Anti-Corruption Commission, *Mediterranean Journal of Social Sciences*, vol. 4, no. 2. At pp. 487.

<sup>31</sup>. But corruption also has a massive impact on governments and corporations.

<sup>32</sup>. KPMG International (2012): Anti-Corruption Commissions: Taking a serious approach to tackling corruption, [kpmg.com](http://kpmg.com), at pp. 1.

<sup>33</sup>. Organization for Economic Cooperation and Development (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, at pp. 9.

- a body, bodies or persons specialised in combating corruption through law enforcement.

Both the prevention of corruption and combating corruption through law enforcement involves a large number of multidisciplinary functions. Therefore, it can be argued in this research that there seems to be general agreement that a centralized, coherent and coordinated anti-corruption regime is superior in all aspects to a diffuse and dislocated *modus operandi*.<sup>34</sup> Evidently, the dedicated Anticorruption Authority (ACA) is already an item of “growing institutional imitation and isomorphism” and appears to enjoy widespread preference to spearhead national anti-corruption movements. By extrapolation, the international campaign against corruption is unlikely to make significant headway without the support of a worldwide corps of functioning ACAs. Needless to say, therefore, the structure and capacity of ACAs require critical evaluation and their performance constant monitoring.<sup>35</sup>

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### 3. 2. SOURCES OF INTERNATIONAL STANDARDS FOR ANTI-CORRUPTION AUTHORITIES: REVIEWING INTERNATIONAL LEGAL INSTRUMENTS

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In the mid-1990s the problem of corruption was recognized as a subject of international concern and drew the attention of numerous global and regional intergovernmental organizations. The last decade witnessed a growing constellation of international “hard law” (treaties and conventions) and “soft law” (recommendations, resolutions, guidelines and declarations) instruments elaborated and adopted within the framework of organizations such as the United Nations, the Council of Europe, the OECD, the Organization of American States, the African Union, and the European Union.<sup>36</sup> According to literature available to this researcher, the multitude of international legal instruments on corruption varies in scope, legal status, membership, implementation and monitoring mechanisms.

However, all aim to establish common standards for addressing corruption at the domestic level through its criminalization, enforcement of anti-corruption legislation and preventive measures. In addition, international legal instruments also aim to identify and promote good practices and facilitate co-operation between member states. From the very beginning of this process, it was apparent that merely strengthening legislation would not be sufficient to effectively control corruption.<sup>37</sup> The complex,

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<sup>34</sup>. Tewodros Mezmur and Rymond Koen (2011):The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment, Law Democracy and Development, vol, 15, at pp. 2.

<sup>35</sup>. Tewodros Mezmuret. al (2011):The Ethiopian Federal Ethics and Anti-Corruption Commission: *ibid*, at 2.

<sup>36</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, *ibid*, at pp. 17.

<sup>37</sup>. *ibid*.

multifaceted phenomenon of corruption signals a failure of public institutions and good governance.

There is consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialized bodies and/or personnel with adequate powers, resources and training. Mechanisms need to be in place to secure a high level of structural, operational and financial autonomy of institutions and persons in charge of the fight against corruption to guard them from improper political influence.<sup>38</sup> As stated in the Conclusions and Recommendations of the First Conference for law enforcement officers specialized in the fight against corruption, which took place in Strasbourg in April 1996, “corruption is a phenomenon the prevention, investigation and prosecution of which need to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, civil engineers, etc.). Each State should therefore have experts specialised in the fight against corruption. They should be of a sufficient number and be given appropriate material resources.”<sup>39</sup>

In the European context, one of the first sources of “soft” international standards that highlighted the need for specialised institutions and persons in the area of detection, investigation, prosecution and adjudication of corruption offences were the Twenty Guiding Principles for the Fight against Corruption, adopted in 1997 within the Council of Europe. In 1998 most of these standards were translated into the Council of Europe Criminal Law Convention on Corruption. Anti-corruption instruments initially focused on promoting specialization of law enforcement and prosecution bodies, aiming at more effective enforcement of anti-corruption legislation. It was the United Nations Convention against Corruption<sup>40</sup> (UNCAC) that put prevention in the spotlight and, as the first global international treaty in the area of corruption, required member states not only to ensure specialization of law enforcement, but also to establish specialised preventive anti-corruption bodies. This researcher provides a few key articles of these international instruments as listed below.

*i). Twenty guiding principles for the fight against corruption<sup>41</sup>*

From the regulations of the twenty guiding principles, principle three and seven are found to be important for our purpose and provided as follows;

*Principle 3:* Ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy

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<sup>38</sup> . *ibid.*

<sup>39</sup> . OECD, *ibid* at pp. 17.

<sup>40</sup> . United Nations Convention Against Corruption, adopted on 9 Dec. 2003. Ethiopia adopted this Convention by promulgating proclamation no. 544/2007.

<sup>41</sup> . Twenty Guiding Principles for the Fight against Corruption, adopted in 1997 within the Council of Europe.



appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

*Principle 7:* Promote the specialization of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

***ii). Council of Europe Criminal Law Convention on Corruption***

In this international document<sup>42</sup>, Article 20 provides;

*Article 20 – Specialised authorities*

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

***iii). United Nations Convention against Corruption***

*Article 6 – Preventive anti-corruption body or bodies*<sup>43</sup>

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and co-coordinating the implementation of those policies;
- (b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

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<sup>42</sup>. It was adopted on 4 Nov. 1998 and entered into force in 2002.

<sup>43</sup>. United Nations Convention Against Corruption, adopted on 9 Dec. 2003, *ibid*.

## *Article 36 – Specialised authorities*

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

There are other regional instruments that include provisions relating to specialized institutions. These include the following:

### *iv). African Union Convention on Preventing and Combating Corruption<sup>44</sup>*

*Paragraph 5 of Article 20:* State parties are required to “ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.”<sup>45</sup>

### *v). Inter-American Convention against Corruption*

*Paragraph 9 of Article III<sup>46</sup>*

Calls are made for “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.” The sources of international standards, although different in scope, contents and objectives, define a clear international obligation for the countries to ensure institutional specialization in the area of corruption.

It is worth noting that the obligations on institutional specialization under the Council of Europe Criminal Law Convention on Corruption and the UNCAC are mandatory. The UNCAC further requires that countries ensure the specialization in two areas, prevention (including education and public awareness) and law enforcement. States are therefore obliged to secure the existence of:

- Specialised bodies in charge of prevention of corruption; and
- Specialised bodies or persons in charge of combating corruption through law enforcement.

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<sup>44</sup> . This Convention was adopted in July 2003.

<sup>45</sup> . Article 4 of the Southern African Development Community (SADC) Protocol Against Corruption also provides that “Amongst other preventive measures “an obligation to create, maintain and strengthen institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption” is listed.

<sup>46</sup> . This instrument was adopted in March 1996 and entered in to force in March 1997.

There is, however, a notable difference between the two areas. According to the UNCAC, prevention needs to be addressed at the institutional level, by creation or dedication of a specialised body (or bodies) with anti-corruption prevention and coordination functions. Criteria on specialization in the area of law enforcement, according to the UNCAC and the Council of Europe convention, can be fulfilled either by creation within existing institutions. The international standards also set basic benchmarks for specialization. The main benchmarks are the following: independence and autonomy, specialised and trained staff, adequate resources and powers.<sup>47</sup>

Finally, international standards neither offer a blueprint for setting up and administering a specialised anti-corruption institution, nor advocate a single best model or a universal type of an anti-corruption agency. From this perspective, provisions of international law relating to the institutional framework for prevention and suppression of corruption are considerably less developed and precise than, for instance, provisions relating to the elements of corruption offences, such as active and passive bribery or offences concerning trading in influence and abuse of official position.<sup>48</sup> However, the aforementioned conventions define features and set important benchmarks according to which anti-corruption institutions should be established. Furthermore, international monitoring mechanisms have developed a valuable body of assessments and recommendations, which provide a useful set of best international practice in this area.<sup>49</sup>

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### 3. 3. MODELS OF ANTI-CORRUPTION AUTHORITIES

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The question of which model of anti-corruption institution a particular country should endorse is very difficult to answer. Any country that considers establishing a specialized anti-corruption institution and discusses the selection of the model must acknowledge a proven fact: institutional transplants from foreign systems are likely to fail if they are not adequately adapted to the local political, cultural, social, historical, economic, constitutional and legal background.<sup>50</sup> It is noteworthy that the centralized multi-purpose agencies of Hong Kong, Singapore, and even Latvia and Lithuania, which are often cited– and sometimes lauded by international experts – as examples of good models, function in a very specific context (*e.g.* in small countries where corruption has been a problem, but not an always endemic one, at a particular stage of democratization, transition and integration into the global markets). Efforts to copy this

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<sup>47</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, at pp. 19 & 20.

<sup>48</sup>. Ibid.

<sup>49</sup>. A Review of Evaluations and Recommendations, in Esser, Albin and Kubciel Michael (2004): Institutions Against Corruption: A Comparative Study of the National Anti-corruption Strategies, [www.greco.coe.int](http://www.greco.coe.int).

<sup>50</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid*, at pp. 35.

model in bigger or federal states, or countries with endemic corruption and other important different characteristics have so far brought mixed results.<sup>51</sup> This section briefly discusses some factors which should be taken in to consideration when one state chooses institutional model.

Accordingly, the first rule is to adapt the model and form of specialised anticorruption preventive and repressive functions to the local context.<sup>52</sup> The following factors should be taken into consideration:

- ❖ *Estimated level of corruption in the country:* For example, a low level of corruption would not necessarily mandate a response in the form of a strong multi-purpose agency with extensive powers. By contrast, endemic corruption might overwhelm a minor agency.
- ❖ *Integrity, competence and capacities of existing institutions:* The anti-corruption institution should perform or strengthen those functions that are missing or particularly weak in the existing overall institutional framework. Low integrity of existing institutions may require higher level of independence of the new anti-corruption institution as an “island of integrity” or “island of competence”.
- ❖ *Constitutional framework:* In many countries, creating an independent institution would face constitutional barriers.
- ❖ *Existing legal framework and the national system of criminal justice:* Criminal justice systems worldwide differ significantly in the exact distribution of competencies and models responsibilities among different actors – police, prosecution, investigative magistrate courts –especially in relation to preliminary investigation and pre-trial phase.
- ❖ *Available financial resources* Reforming or creating new institutions is a costly task. It is important to assess beforehand whether the national budget and other sources can provide sufficient and sustainable funding for such institutional measures, especially in cases when decision is taken to establish a strong central multi-purpose agency.

It is crucial that the decision to set up a specialised anti-corruption body and the selection of a specific model be *based on analysis and strategy*. The country must first take stock of where it is, decide on where it wants to go, and finally elaborate a detailed roadmap. While these steps might seem obvious, it is surprising that many countries have established anti-corruption agencies without proper evaluation or strategy in a context where basic legal, structural and financial prerequisites were not in place. The initial vicious circle (in the absence of a specialised institution there is no one to perform a credible evaluation and draft a viable strategy, prerequisites for the establishment of

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<sup>51</sup> . Ibid.

<sup>52</sup> . Camerer (2002), Doig (2004), as cited in OECD.

the specialised institution) does sometimes present a problem, but should not present an excuse.<sup>53</sup>

Considering the multitude of anti-corruption institutions worldwide, their various functions and in particular the arguments about their actual performance, it is difficult to identify all main patterns and models. However, some trends can be established based on different purposes of anti-corruption institutions (viewed through their functions). These trends are reflected in different types / models of institutions. These models are presented below. Specialisation may take different forms. *International standards do not imply that there is a single best model for a specialised anti-corruption institution.*<sup>54</sup> The international standards, while requiring the establishment of specialised bodies or persons in the field of prevention and law enforcement, do not directly advocate for institutional specialization at the level of courts. Furthermore, there is no strict requirement of a dedicated institutional entity for the fight against corruption through investigation and prosecution. Strictly speaking, a designation of an adequate number of specialized persons within existing structures meets the requirement of international treaties.<sup>55</sup>

A comparative overview of different types of specialised institutions encompasses a multitude of approaches and solutions. Various approaches can be summarized and analyzed according to their main functions, as follows:

- ✓ Multi-purpose agencies with law enforcement powers and preventive functions;
- ✓ Law enforcement agencies, departments and/or units;
- ✓ Preventive, policy development and co-ordination institutions.<sup>56</sup>

### 3 .3.1. MULTI-PURPOSE AGENCIES WITH LAW ENFORCEMENT POWERS

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This model represents the most prominent example of a single-agency approach based on key pillars of repression and prevention of corruption: policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation. Notably, in most cases, prosecution remains a separate function to preserve the checks and balances within the system (given that such agencies are already given broad powers and are relatively independent). The model is commonly identified with the Hong Kong Independent Commission against Corruption and Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents; this model exists in Lithuania, , New South Wales, Australia Botswana and

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<sup>53</sup> . (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid* at pp. 36.

<sup>54</sup> . *Ibid*.

<sup>55</sup> . It is the responsibility of individual countries to find the most effective and suitable institutional solution adapted to the local context, level of corruption and existing national institutional and legal framework.

<sup>56</sup> . OECD, *ibid*, at p. 26

Uganda). A number of other agencies (*e.g.* those in Korea, Thailand, Argentina and Ecuador), have adopted elements of the Hong Kong and Singapore strategies, following them less rigorously.<sup>57</sup>

### 3.3.2. LAW ENFORCEMENT TYPE INSTITUTIONS:

The law enforcement model takes different forms of specialization, and can be implemented in detection and investigation bodies, in prosecution bodies. According to OECD, This model can also combine specialised anti-corruption detection, investigation and prosecution in one body. Sometimes the law enforcement model also includes elements of prevention, co-ordination and research functions. This is perhaps the most common model applied in Western Europe. Examples of such model include: Norway, Belgium, Spain, Croatia (Office for the Prevention and Suppression of Corruption and Organized Crime), Romania, and Hungary.<sup>58</sup>

This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Two good examples of such bodies include Germany (Department of Internal Investigations) and the United Kingdom (Metropolitan Police / Anti-corruption Command).

### 3.3.3. PREVENTIVE, POLICY DEVELOPMENT AND CO-ORDINATION INSTITUTIONS

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This model includes institutions that have one or more corruption prevention functions. They can be responsible for research in the phenomena of corruption; assessing the risk of corruption; monitoring and co-ordination of the implementation of the national and local anti-corruption strategies and action plans; reviewing and preparing relevant legislation; monitoring the conflict of interest rules and declaration of assets requirement for public officials; elaboration and implementation of codes of ethics; assisting in the anti-corruption training for officials; issuing guidance and providing advice on issues related to government ethics; facilitating international co-operation and co-operation with the civil society, and other matters. Examples of such institutions include France, “The former Yugoslav Republic of Macedonia”, Albania (Anti-corruption Monitoring Group), Malta, Montenegro / Serbia and Montenegro, the United States, India, Philippines, and Bulgaria<sup>59</sup>.

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<sup>57</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid* at pp. 32.

<sup>58</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid* at pp.32-33.

<sup>59</sup>. *ibid*, at pp. 32.

To conclude this sub-section, multitude of anti-corruption commissions in the world are designated by different models by looking at their functions and to which branch of government the commission is accountable. Four types of anti-corruption commissions are distinguished<sup>60</sup>: first is the *universal model* with its investigative, preventative, and communicative functions. The universal model is typified by Hong Kong's Independent Commission Against Corruption (ICAC). Second, *the investigative model* is characterized by a small and centralized investigative commission as operates in Singapore's Corrupt Practices Investigation Bureau (CPIB). Both the universal and investigative models are organizationally accountable to the executive. Third, *the parliamentary model* includes commissions that report to parliamentary committees and are independent from the executive and judicial branches of state. The parliamentary model is epitomized by the New South Wales Independent Commission Against Corruption that takes a preventative approach to fighting corruption. Finally, the multi-agency model includes a number of offices that are individually distinct, but together weave a web of agencies to fight corruption.

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#### 3.3.4. MAIN FEATURES OF ANTI-CORRUPTION AUTHORITIES (ACAS)

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We considered in this thesis above that the anti-corruption authorities play a wide range of roles in the struggle to combat corruption. In order to ensure that the specialised anticorruption bodies are effective in their operations, the authorities must ensure that they have all the necessary means. This section briefly takes up this issue.

Both the United Nations and the Council of Europe anti-corruption conventions , which we have dealt with in previous sections, establish criteria for effective specialised anti-corruption bodies, including *independence, specialization, adequate training and resources*. In practice, many countries face serious challenges in making these broad criteria operational. Available experience provides further guidance.<sup>61</sup> OECD's study provides the following key issues.

- ❖ **Independence:** primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, *genuine political will* to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive *anticorruption strategy*. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the *structural and operational autonomy* that is important, along with a clear legal basis

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<sup>60</sup>. John R.Heilbrunn (2004): Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?, World Bank Institute, at pp. 2.

<sup>61</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid* at pp. 10.

and mandate for a special body, department or unit. This is particularly important for law enforcement bodies.

- ❖ **Transparent procedures** for *appointment and removal of the director* together with proper human resources management and internal controls are important elements to prevent undue interference. Independence should not amount to a lack of *accountability*; specialized services should adhere to the principles of the rule of law and human rights, submit regular performance reports to executive and legislative bodies, and enable public access to information on their work. No single body can fight corruption alone; *inter-agency co-operation, co-operation with civil society and business* are important factors to ensure their effective operations.
  
- ❖ **Specialisation-** of anti-corruption bodies implies the availability of *specialised staff with special skills and a specific mandate for fighting corruption*. Forms of specialization may differ from country to country; there is no one successful solution that fits all.<sup>62</sup> For instance, the Council of Europe Criminal Law Convention on Corruption clarifies the standard for law enforcement bodies, which can be fulfilled by the creation of a special body or by the designation of a number of specialised persons within existing institutions. The study of international trends indicates that in OECD countries *specialisation is often ensured at the level of existing public agencies and regular law enforcement bodies*. Transition, emerging and developing countries often establish *separate specialised anti-corruption bodies* due to high level of corruption in existing agencies.<sup>63</sup>

Specialisation is essential for the effective fight against corruption. Corruption needs to be approached at various levels and requires specific expertise, knowledge and skills in a variety of fields, including law, finance, economics, accounting, civil engineering, social sciences, and other domains.<sup>2</sup> There are few criminal phenomena, if any, that require such a complex approach and a *combination of diverse skills*. These skills are normally scattered across various institutions, but are rarely concentrated in any particular body concentrated on tackling corruption.<sup>64</sup>

- ❖ **Resources and powers** should be provided to the specialised staff in order to make their operations effective. *Training and budget* are the most important requirements.

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<sup>62</sup>. *ibid.*

<sup>63</sup>. In addition, in these countries, creation of separate specialised bodies is often in response to pressure by donor and international organisations. See for example OECD (2008), *ibid* at 11.

<sup>64</sup>. When all these skills are brought together in a specialised institution, this brings a level of *visibility and independence* to those dealing with corruption. Without an adequate level of independence, the fight against serious corruption is destined to fail. See for example OECD, *ibid* at 23.



In addition to the key criteria mentioned above, another important element required to properly focus the work of specialised anticorruption bodies is *the delineation of substantive jurisdictions among various institutions*. Sometimes, it is useful to *limit jurisdiction to important and high-level cases* as well. In addition to specialised skills and a clear mandate, specialised anticorruption bodies must have sufficient power, such as *investigative capacities and means for gathering evidence*; for instance they must be given legal powers to carry out covert surveillance, intercept communications, conduct undercover investigations, access financial data and information systems, monitor financial transactions, freeze bank accounts, and protect witnesses. The power to carry out all these functions should be subject to proper checks and balances. *Teamwork of investigators and prosecutors, and other specialists, e.g. financial experts, auditors, information technology specialists, is probably the most effective use of resources.*<sup>65</sup>

In summary, anti-corruption agencies are part of a number of strategies that together can reduce venality in a government. Some of these strategies are absolutely crucial, including first the independence of a commission. Second, commissions need a clear reporting hierarchy that comprises executive officials, parliamentary authorities, and oversight committees. Third, governments must have a commitment to enact reforms that may be politically difficult.<sup>66</sup> John Heilbrunn (2004) argues that how a government is able to enact these strategies requires negotiations among key actors in the government, civil society, and the media. It is apparent from the cases above that the capacity to enact controversial reforms is problematic and many governments fail in their efforts to do so.<sup>67</sup>

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### 3.3.5. ASSESSING THE PERFORMANCE OF SPECIALISED ANTI-CORRUPTION INSTITUTIONS

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Researchers and practitioners are still struggling with the crucial question: “How can we determine with any confidence the value-added of any anti-corruption institution (let alone of a particular model of such institutions) in carrying out its mission to contribute towards reducing corruption?” No anti-corruption institution, notwithstanding its mandate, functions, powers and management will succeed alone to eradicate corruption in a given country. Its purpose is, however, to play a leading role in the reduction and control of corruption.

Linking the success of an anti-corruption institution with the level of corruption in a given country entails a number of risks. With regard to measuring corruption, we

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<sup>65</sup>. Ibid, at p. 11.

<sup>66</sup>. John R.Heilbrunn (2004): Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?, World Bank Institute, at PP. 14

<sup>67</sup>. Ibid, at pp. 15.

primarily rely on perception studies (such as the well-known Transparency International Perception Index). On the other hand, the World Bank has developed and has been using the Governance Measurement System which includes a Rule of Law Index. Both produce rigorous, comparable scores, but do not provide much information about the performance of a single institution. Measuring performance of an anti-corruption institution is a complex task. Many countries facing a serious corruption problem lack expertise and resources to carry out this task. At the same time, showing results might often be the crucial factor for an anti-corruption institution to gain or retain public support and fend off politically-motivated attacks.<sup>68</sup>

The performance of an anti-corruption institution should be measured against a carefully designed set of *quantitative indicators* (statistical data and measures of public perceptions) and *qualitative indicators* (expert assessment and surveys) based on the functions that the institution carries out. Statistical data (*e.g.* on number of complaints received, investigations and prosecutions opened and completed, convictions achieved, administrative orders, guidelines and advice issued, laws and regulations drafted or reviewed) is an objective indicator that provides valuable information. However, there is a need for a grain of healthy skepticism in regard to such statistical data as they reveal little about the quality of justice or governance. Accordingly, this quantitative information has to be complemented with public perception and attitude studies, independent expert surveys, and monitoring evaluations from international bodies, such as the GRECO and the OECD.<sup>69</sup>

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### 3.3.6. CRITERIA FOR EFFECTIVE ANTI-CORRUPTION AUTHORITIES

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This section will discuss key factors that affect the effectiveness of Anti-corruption Authorities (ACAs) based on a review of the literature. In order for ACAs to be effective, it is crucial that they have strategic partnerships with other government agencies, civil society organizations, the private sector, donors, the media, and other relevant actors. Furthermore, it is important to have an effective legal framework in place as the effectiveness of ACAs is challenged when a government institution underperforms and there is an inadequate legal framework (Doig et al. 2007). In addition, the credibility and effectiveness of ACAs depend on the behavior of the anti-corruption agency itself<sup>70</sup>.

However, despite the differing characteristics of various ACAs, according to the contemporary literature, there are certain factors that need to be in place for ACAs to

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<sup>68</sup> . Valtis Kalnins (2005): Assessing Trends in Corruption and Impact of Anti-corruption Measures, A Discussion paper, [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).

<sup>69</sup> . OECD ( 2008), *ibid*, at 33.

<sup>70</sup> . International Monetary Fund (IMF), 2000.

function effectively (Johnston 1999, De Sousa 2009, Quah, 2009, De Speville, 2008, Doig et al., 2007, De Speville 2000, Pope and Vogl 2000, Dionisie and Checchi 2007, De Sousa 2006). These factors can be broadly classified into two categories: exogenous and endogenous factors. Exogenous factors are external issues that affect the agency's institutional effectiveness, while endogenous factors are internal conditions that affect an ACA's ability to fight corruption successfully<sup>71</sup>. These factors are discussed below and will serve as the basis for assessing the effectiveness of the Federal Ethics and Anti-corruption Commission (FEACC) of Ethiopia and SNNPR Ethics and Anti-corruption Commission (the subject of this research) .

The exogenous factors comprise of political will, economic conditions, donor initiations, public confidence and trust in the ACAS and relationship with civil society actors. The endogenous factors, on the other hand include independence, permanence, country-specific objectives, appropriate staffing, sufficient resources, etc.

### 3.3.7 ANTI-CORRUPTION AUTHORITIES, CIVIL SOCIETY

#### AND THE MEDIA

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Nowadays it is accepted as a truism that an anti-corruption strategy is incomplete if it does not integrate such non-state anti-corruption campaigners as non-governmental organisations, the media, and community and religious groups. These bodies not only inject energy and commitment into the crusade against corruption but also play a crucial role in the promotion and sustenance of corruption-free governance.<sup>72</sup>

Even comprehensive institutional efforts against corruption are prone to fail without the active involvement of the civil society and the private sector. Accordingly, one of the important features of specialised bodies promoted by different international instruments is co-operation with civil society. This standard applies not only to the preventive and education bodies, but also to the law enforcement bodies.<sup>73</sup> An anti-corruption body cannot function in a vacuum and none can perform all tasks relevant for the suppressions and prevention of corruption alone. Efforts to achieve an adequate level of *co-ordination, co-operation and exchange of information* should take into account the level of existing "fragmentation" of the anti-corruption functions and tasks divided among different institutions. However, even multi-purpose anti-corruption agency with

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<sup>71</sup>. Arsema, Tamyalew (2010): A Review of the Effectiveness of the Federal Ethics and Anti-corruption Commission of Ethiopia, European Union and World Bank, at pp. 3.

<sup>72</sup>. Tewodros Mezmur and Rymond Koen (2011): The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment, Law Democracy and Development, vol. 15, at pp. 18.

<sup>73</sup>. (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, *ibid* at 28.

broad law enforcement and preventive powers cannot function without institutionalised (and mandatory) channels of co-operation with other state institutions in the area of enforcement, (financial) control and policy-making. Co-operation is naturally of crucial importance in systems with a multi-agency approach where preventive institutions are not institutionally linked with law enforcement bodies.<sup>74</sup>

Non-state bodies are central to strategies aimed at changing the perception of corruption and combating social tolerance of the phenomenon. Civil society anti-corruption programmes range wide, from promoting awareness of corruption through monitoring government compliance with its anti-corruption commitments to assisting official anti-corruption institutions with the investigation and prosecution of corruption offences.<sup>75</sup> There is much to be said for Transparency International's submission that "governments could not hope to tame corruption without the help and support of their people".<sup>76</sup>

Strong and well-functioning inter-agency *co-operation and exchange of information among different state law enforcement bodies and control institutions* (e.g. financial control institutions, tax and customs administration, regular police forces, security services, financial intelligence units, etc.) are among the last, but important, features defined in international standards.<sup>77</sup> Problems in this area are plentiful and range from overlapping jurisdictions and conflicts of competencies to the lack of competencies (where institutions refuse jurisdiction in sensitive cases and shift responsibilities to other institutions). If this area is overlooked (as it often is) in the process of designing the legal basis of the new institution, it will likely seriously hinder the performance of the institution and taint its relations with other state institutions in the future.<sup>78</sup>

### 3.3.8. WHY DO ANTI-CORRUPTION AUTHORITIES FAIL?

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Researchers and practitioners are still struggling with the crucial question: "How can we determine with any confidence the value-added of any anti-corruption institution (let alone of a particular model of such institutions) in carrying out its mission to contribute towards reducing corruption?" No anti-corruption institution, notwithstanding its mandate, functions, powers and management will succeed alone to eradicate corruption in a given country. Its purpose is, however, to play a leading role

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<sup>74</sup>. Ibid.

<sup>75</sup>. Tewodros Mezmur and Rymond Koen (2011): *The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment*, Law Democracy and Development, vol. 15, at pp. 18.

<sup>76</sup>. Ibid, at 18.

<sup>77</sup>. (OECD) (2008): *Specialized Anti-corruption institutions: A Review of Models*, *ibid*, at 22.

<sup>78</sup>. Ibid.

in the reduction and control of corruption.<sup>79</sup> And in defense of current anti-corruption interventions progress has been made in the following ways:<sup>80</sup>

- Awareness and knowledge has deepened, and diagnostic tools have improved, thus making conversations about corruption a taboo only in a handful of cases.
- International and national legal frameworks (conventions) have been improved.
- International and transnational aspects of corruption such as illicit capital flight and money laundering are more in the limelight.
- Promising long-term reforms of public institutions are underway in a great number of countries.
- An understanding has developed that the demand side of reforms in general and in civil society in particular can play a vital role if linked to supply side interventions.
- There is greater recognition of the importance of collaborations and partnerships (Paris & Accra).
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Overall, then, we can say that there is a mixed picture, but with widespread (though sometimes only partial) failure. Unfortunately, these past anecdotes of success and failure seem contradictory, and the many contested notions lead to endless and indeed fruitless discussions and take our focus away from learning how to create successful interventions.<sup>81</sup>

Many countries facing a serious corruption problem lack expertise and resources to carry out this task. At the same time, showing results might often be the crucial factor for an anti-corruption institution to gain or retain public support and fend off politically-motivated attacks. The performance of an anti-corruption institution should be measured against a carefully designed set of *quantitative indicators* (statistical data and measures of public perceptions) and *qualitative indicators* (expert assessment and surveys) based on the functions that the institution carries out.<sup>82</sup> According to OECD, Statistical data (*e.g.* on number of complaints received, investigations and prosecutions opened and completed, convictions achieved, administrative orders, guidelines and advice issued, laws and regulations drafted or reviewed) is an objective indicator that provides valuable information. However, there is a need for a grain of healthy skepticism in regard to such statistical data as they reveal little about the quality of justice or governance. Accordingly, this quantitative information has to be complemented with public perception and attitude studies, independent expert surveys, and monitoring evaluations from international bodies, such as the GRECO and the OECD.<sup>83</sup>

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<sup>79</sup> . OECD (2008), *ibid*, at 33.

<sup>80</sup> . U4 Brief (2011): Understanding success and failure of anti-corruption initiatives, No. 2.

<sup>81</sup> . U4 Brief (2011): Understanding success and failure of anti-corruption initiatives, No. 2.

<sup>82</sup> . (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, *ibid*, at 33.

<sup>83</sup> . OECD, *ibid*, at 33.

Even an incomplete inventory of different existing models illustrates that anticorruption institutions worldwide are numerous and their ranks are growing; recently adopted international treaties requiring state parties to establish such institutions will likely accelerate the growth in numbers. At the same time, reviews of these institutions indicate more failures than successes. Analysts of anti-corruption institutions worldwide have identified various reasons why many initiatives to set up and administer specialized anti-corruption institutions fail.<sup>84</sup>

While the reasons differ in depth and length, they generally refer to a list of political, economic, governance, legal, organisational, performance and public confidence factors, also known as “Seven Deadly Sins”<sup>85</sup> According to Doing Alan (2004), these reasons include;

- ❖ *Political sins* -A lack of genuine political commitment (rather than supporting the anticorruption agenda to appease the donor community, international monitoring bodies, foreign investors or domestic public) will hamper either the establishment or the proper functioning of any anti-corruption institution.
- ❖ *Economic sins*- a highly state controlled economy with macro-economic instability
- ❖ *Governance sins* No anti-corruption institution can work in a vacuum. An institution’s effectiveness is closely linked to the overall performance of other institutions.
- ❖ *Legal sins* These include a number of factors related to the general state of the Rule of Law in a particular country, the functioning of the criminal justice system, and in particular the courts – all of which has an indirect impact on the performance of any anticorruption institution. Similarly if an institution’s status, responsibilities and powers are determined by an inadequate legal basis, the institution vulnerable to pressure.
- ❖ *Organisational sins* Inappropriate organisational structures (e.g. modelled on foreign models without adequate appreciation of local specificities), priorities and focus can significantly contribute to the failure of anti-corruption institutions. As mentioned above, there no one-size-fits-all solution. Often focus on investigation is detrimental to important preventive, analytical and educational measures.
- ❖ *Public confidence sins* In the first place, the public should be aware of the existence, mandate, functions and performance of an anti-corruption institution. Well-established civil society organisations, free media and a relatively high level of public confidence in the institution as well as the institution’s openness to and co-operation with the civil society, are considered important barriers against improper political attacks.

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<sup>84</sup> . Ibid.

<sup>85</sup> . Doing, Alan (2004): A Good Idea Gone Wrong? Anti-corruption Commissions in the Twenty-First Century, EGPA

Assessment of the performance of specialised anti-corruption institutions needs to take into account the broader context in which they operate. Therefore, qualitative and quantitative indicators of the performance of a given institution, have to be complemented by indicators assessing “Seven Deadly Sins” in a given country.<sup>86</sup>

### 3.4. CORRUPTION AND ANTI-CORRUPTION INSTITUTIONS IN ETHIOPIA

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#### 3.4.1. THE LEVEL OF CORRUPTION IN ETHIOPIA

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Different reports undertaken by different institutions, both national and global, produce different figures about the level of corruption in Ethiopia. For example, UNDP claims that:

“Ethiopia fares a lot better than many of its neighbors in Sub-Saharan Africa when it comes to corruption. Traditionally and historically, Ethiopian society is well-ordered and hierarchical, where rule following is the norm, and where deviation from this is not tolerated. This has meant that the endemic rent-seeking that blights many other countries is not a feature in Ethiopia. However, that is not to say that Ethiopia is free from corruption and evidence points to the fact that ordinary citizens see corruption as on the rise.”<sup>87</sup>

A corruption survey of public perceptions of corruption conducted by Addis Ababa University in 2001 revealed that “... fraud, cheating, trickery, embezzlement, extraction, nepotism, theft and prejudice” were believed to be the major features by which corruption manifested itself in the country. What is clear is that corruption is a complex issue, in a state of constant flux, where the exact nature of corrupt practices develops, and is, in part, reactive to changes of context.”<sup>88</sup>

On the other hand, different studies claim that corruption is rampant and deep-rooted in Ethiopia.<sup>89</sup> Corruption is rampant in Ethiopia. According to the Global Integrity

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<sup>86</sup> . OECD (2008), *ibid.*

<sup>87</sup> . FDRE and UNDP (2012): Strengthening the Capacity of the Ethiopia’s Federal Ethics and Anticorruption Commission Sub-Programme (2008 – 2011), at pp. 5.

<sup>88</sup> . *ibid.*

Report of 2006, corruption is considered a norm of social, economic and political intercourse in Ethiopia.<sup>90</sup>The culture of corruption has sunken such deep roots in Ethiopia that the country has been tagged “a land of ten per cent – meaning hardly anything can be accomplished without adding this amount as a kick-back”.<sup>91</sup> The high water mark of this ten per cent mentality is to be found in the Ethiopian curiosity “where a taxpayer is requested to pay a bribe simply to pay tax, duty or other bills to the government.”<sup>92</sup>

Despite some economic progress over the last few years, Ethiopia remains one of the poorest countries in the world. What is more, the widespread corruption referred to above has been a melancholy fixture of the modern history of the country.<sup>93</sup>During the Imperial and Derg regimes corruption had a devastating impact on Ethiopian society and economy. The Derg regime came to power on an anti-corruption ticket and actually did launch a number of anti-corruption initiatives. However, these were short-lived, owing mostly to inadequate resources, both financial and human, and to political interference. Regrettably, therefore, corruption retained a debilitating grip on national life in Ethiopia.<sup>94</sup>According to the most recent report by the TI<sup>95</sup>, 48% of people have paid a bribe to one of nine service providers in Ethiopia, and no much progress has been witnessed.

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### 3.4.2. CAUSES OF CORRUPTION IN ETHIOPIA

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According to World Bank, government of Ethiopia “recognizes that corruption in Ethiopia does not approach the levels obtained in other Sub-Saharan Africa (SSA) countries, and is determined to take measures to prevent its growth. With many large, public-sector contracts with foreign firms on the horizon, the Government is aware of the risks of bribery in international procurement, and wants to take a proactive approach to preventing it. It acknowledges the widespread existence of petty corruption but believes that moving forward with the Civil Service Reform Program (CSRP) should lead to its progressive reduction.”<sup>96</sup>

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<sup>89</sup>. Tewodros Mezmur and Rymond Koen (2011):The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment, Law Democracy and Development, vol, 15, at pp. 2.

<sup>90</sup>. See Global Integrity Report, Ethiopia, A Corruption Handbook (2006), at pp. 6.

<sup>91</sup>. Alemayehu (2008): The Perception of Corruption and Its Unique Features in Ethiopia.

<sup>92</sup>. Alemayehu, 2008, *ibid*.

<sup>93</sup>. Megiso Shamebo (2007): Anti-corruption Efforts in Ethiopia, at pp. 2.

<sup>94</sup>. Tewodros Mezmur and Rymond Koen (2011):The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment, Law Democracy and Development, vol, 15, at pp. 3.

<sup>95</sup>. Transparency International, (2011). Daily Lives and Corruption: Public Opinion in Ethiopia, at pp. 2.

<sup>96</sup>. World Bank (1998): Ethiopia: Anti-corruption Report: Poverty Reduction and Social Development Unit Africa Region, at pp. V.



In government's view, the following are the major determinants of corruption: a poorly functioning legal and judicial system inconsistent with the 1994 Constitution; an overregulated bureaucracy, emphasizing regulation rather than service delivery; a low-paid civil service; yet rudimentary government, based on a federal structure; and weak budgetary and financial control, with an outdated procurement structure, and poorly trained financial staff. While Government has strong ownership of its multi-faceted program to curb corruption, implementation is proceeding slowly<sup>97</sup>.

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### 3.4.3. CONSEQUENCES OF CORRUPTION IN ETHIOPIA

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During the Imperial and the Derg Regimes, corruption is said to have resulted in undermining the legitimacy of the governments and weakening their structures, reducing productivity, hindering development, worsening poverty, marginalizing the poor, creating social unrest and finally speeding up their downfall. Unfortunately, it has continued to pose threats to the Country's development and democratization processes. Currently, corruption is believed to be one of the major factors that significantly contribute to the reduction of government revenue. The consequences of the corruption which is elaborately discusses in previous section is also equally applicable here. Moreover, it can also negatively affect the on-going poverty reduction programme at the national level.<sup>98</sup>

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### 3.4.4. AREAS WHERE CORRUPTION IS BELIEVED TO BE RAMPANT

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According to the outcome of the corruption survey conducted in 2001, the areas where corruption is believed to be rampant are those where financial resources are transferred from the private to the public sector and vice versa. Other agencies where corruption is believed to be flourishing include those engaged with the allocation of land and government housing, provision of telephone and electric services, granting of loans, licensing and issuance of permits, collection of taxes and procurement of consumable and fixed assets. Customs and excise offices are also believed to be highly affected by corrupt practices.<sup>99</sup>

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### 3.4.5. THE BIRTH OF FEDERAL ETHICS AND ANTI-CORRUPTION

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<sup>97</sup> . World Bank, *ibid* at vi.

<sup>98</sup> . See generally Megiso, Shamebo (2007): *Anti-corruption Efforts in Ethiopia*.

<sup>99</sup> . For the most recent sectoral study of corruption in Ethiopia, see World Bank (2012): *Diagnosing Corruption in Ethiopia: Perceptions, Realities, and the Way Forward for Key Sectors*, Janelle Plummer (ed.).

## COMMISSION (FEACC)

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By 2001, the problem of corruption had become conspicuous enough to prompt the Ethiopian government to commission a Corruption Survey with a view to understanding the severity of the problem and its impact upon the country. In the result,

“[t]he Survey revealed, among other things, a generalized dissatisfaction with the performance of the public sector. People working in customs, land distribution, public housing, telephone, water, and other public services were reported to be engaged in institutionalized corrupt practices.”<sup>100</sup>

One of the responses of the Ethiopian government to the Corruption Survey was to launch a Civil Service Reform Programme, which included an ethics sub-programme with a focus on corruption. Research conducted by the University of Addis Ababa for the ethics sub-programme “brought the sufferings of the Ethiopian public to light”.<sup>101</sup> Such exposés sparked donor pressure to combat corruption. In response to this litany of unflattering developments the Ethiopian parliament on 24 May 2001 established the FEACC, charged with the unenviable task of being the nation’s anti-corruption watchdog and ethics custodian.<sup>102</sup> This could not have been more timely, for in 2002 Ethiopia was ranked a lowly 59th out of 102 countries in the global Corruption Perceptions Index produced by Transparency International.<sup>103</sup>

The FEACC was established in the context of the globalisation of anti-corruption discourse and its existence expressed the spirit and purport of international anticorruption law. Ethiopia is party to two major international anti-corruption instruments, namely the African Union Convention on Preventing and Combating Corruption (AU Convention) and the United Nations Convention against Corruption (UNCAC). Although the FEACC came into existence prior to the adoption of these conventions, its creation may be taken to signify Ethiopia’s pre-emptive concurrence with conventional obligations regarding ACAs.<sup>104</sup>

Once a state has elected to establish an ACA, its physiognomy has to be decided. Needless to say, and despite the trend towards “institutional imitation and isomorphism”, there is no single best model for an ACA. Hence it is the responsibility of each state to find the most effective institutional solution for its domestic context. The FEACC resembles Khemani’s model of a *multiple-purpose institution* with law

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<sup>100</sup> . See African Development Bank Group (2003): *Combating Corruption In Africa*, at pp. 16.

<sup>101</sup> . Megiso (2007), at 2.

<sup>102</sup> . Tewodros Mezmur et al (2010): *The Ethiopian Federal Anti-corruption Commission*, *ibid* at 3.

<sup>103</sup> . Transparency International (TI) (2002): *Corruption Perceptions Index 2002, Surveys and Indices*.

<sup>104</sup> . Tewodros Mezmur, *ibid* at 4.

enforcement and prosecutorial powers.<sup>105</sup> This model combines investigative, preventive, educational and prosecutorial functions. It is notable as the ACA format which incorporates a more comprehensive set of anti-corruption powers than any other.<sup>106</sup>

The FEACC is a product of the specificities of the Ethiopian condition and its structure reflects the exigencies of that condition. Its creation has an important symbolic function, proclaiming anti-corruption to be an attribute of government. However, while the establishment of an appropriate institutional framework is significant in and of itself, the litmus test of success, as always, is the practice of anti-corruption. Needless to say, therefore, the FEACC must be judged in terms of the practical impact of its work on the fight against corruption in Ethiopia.<sup>107</sup>

The FEACC has produced achievements in many respects including expanding ethics and anti-corruption education; preventing corruption; investigating and prosecuting corruption offences and others.

In sum, this section discussed the nature, causes and consequences of corruption in Ethiopia in some detailed manner since the researcher believes that it will help to understand the general situation of corruption in the country. Moreover, this section also discussed the establishment, powers/responsibilities strategies and achievements of the Federal Ethics and Anti-corruption which operates at the federal/national level. This section does not discuss about the challenges/failures of the federal ethic and anti-corruption commission deliberately. This is because the challenges that face the commission at the federal and regional level appear to be similar, if not identical, to some extent and, hence, the task is postponed to the empirical chapter of this study which is going to evaluate the achievements and challenges of the southern region's anti-corruption commission.

## PART TWO

### 4. THE CASE OF SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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<sup>105</sup> . Kheman (2009): Anti-corruption Commissions in the African State, pp. 17-18.

<sup>106</sup> . Tewodros, *ibid*, at 4.

<sup>107</sup> . *Ibid*, at 5.

## 4.1. INTRODUCTION

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In the mid-1990s the problem of corruption was recognized as a subject of international concern and drew the attention of numerous global and regional intergovernmental organizations. And the last decade witnessed a growing constellation of international “hard law” (treaties and conventions) and “soft law” (recommendations, resolutions, guidelines and declarations) instruments elaborated and adopted within the framework of organizations such as the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development (OECD), the Organization of American States, the African Union, and the European Union. These recent international treaties against corruption require their member states to establish specialised bodies dedicated to fighting and preventing corruption. As amply discussed under the preceding chapters of this study, from the very beginning of this process, it was apparent that merely strengthening legislation would not be sufficient to effectively control corruption. The complex, multifaceted phenomenon of corruption signals a failure of public institutions and good governance.

Therefore, there is a consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialized bodies and/or personnel with adequate powers, resources and training.<sup>108</sup> It was the United Nations Convention against Corruption (UNCAC) adopted in 2003 that put prevention in the spotlight and, as the first global international treaty in the area of corruption, required member states not only to ensure specialization of law enforcement, but also to establish specialised preventive anti-corruption bodies.<sup>109</sup>

Ethiopian government embarked on the establishment of its anti-corruption commission by the name FEACC in 2002 even before the commencement UN convention which appeared late in 2003. As demonstrated in theoretical part of this study, before the establishment of the FEEACC, the government of Ethiopia implemented an ambitious civil service reform program which also included corruption and ethics sub-sector. The primary objective of the FEACC is to combat corruption “through investigation, prosecution and prevention”. Its establishment was motivated by the belief that “corruption and impropriety are capable of hindering the social, economic and political development” of the country<sup>110</sup>, and that the FEACC was necessary to address the threat posed to Ethiopian development by such corruption and impropriety.

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<sup>108</sup> . See Generally OECD (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia.

<sup>109</sup> . Ibid.

<sup>110</sup> . See generally the Profile of the FEACC (2008), at 8.

Following the establishment of the federal ethics and anti-corruption commission at federal level, the post-2002 years also saw the growing emergence of ethics and anti-corruption counterparts at regional level in Ethiopia. By the year 2007, seven of the nine regional states have established their own Ethics and Anti-corruption Commissions (EAC) to fight and prevent corruption in their respective regions. Each regional office has autonomy in managing its own operations and budget.<sup>111</sup>

The Ethiopian SNNP Regional State government also embarked on establishing its regional Ethics and Anti-corruption commission (the subject of this study) immediately after the emergence of its federal counterparts, in 2002. So, in the foregoing, this study now turns to assess the modus operandi of this institution in the heightened context of national anti-corruption struggle in the country.

In order to have clear image, this introductory section also provides the notion of corruption under the Ethiopian legal system. Formerly, anti-corruption laws were not separately treated in the country's Penal Code. They were located here and there in isolation. They were inseparably mixed with other criminal provisions, making it difficult to deal with corruption offences in isolation using those laws. To make matters even worse, there weren't clear provisions to address some of the corruption offences. It was, therefore, very difficult to prosecute some of the globally serious crimes like terrorism, drug trafficking and money laundering.<sup>112</sup> The afore-mentioned problems, compounded with other deficiencies in the Old Penal Code, prompted the Ethiopian Government to amend it as part of the on-going judicial reform.<sup>113</sup>

The Ethiopian Government did everything in its capacity to include all anti-corruption provisions in the amended Penal Code (which came into effect as of 9th May 2005), covering almost all sorts of corruption offences. Some 23 articles are included in the New Criminal Code to address the issue of corruption in isolation. Most importantly, a good number of anti-corruption laws are placed together. There are also provisions stating which offences fall under the category of corruption offences and which ones come under other categories. This sealed off the afore-mentioned loophole in the legal system, making it difficult for corruptors to get away with their criminal acts. According to the new Criminal Code of the Federal Democratic Republic of Ethiopia,<sup>114</sup> the following criminal acts, among others, are presumed to be corruption offences.

1. Corruption Crimes Committed by Public Servants : Abuse of power, acceptance of undue advantages, maladministration, unlawful disposal of object in charge, appropriation and misappropriation in the discharge of duties, traffic in official

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<sup>111</sup> . See Arsema Tamyalew (2010): A Review of the Effectiveness of the Federal Ethics and Anti-corruption Commission of Ethiopia, European Union and World Bank, at pp. 8.

<sup>112</sup> . See the Profile of FEACC (2008), at pp. 31.

<sup>113</sup> . *ibid.*

<sup>114</sup> . The new Criminal Code (2005) included some 23 articles on the issue of tackling corruption.

influence, illegal collection (e.g. taxes) or disbursement, undue delay of matters, taking things of value without or with inadequate consideration, granting and approving license improperly and possession of unexplained property fall under the category of "Corruption Crimes Committed by Public Servants in Breach of Trust and Good faith".

2. Crimes against Public Office by Third Parties : Soliciting of corrupt practices, giving things of value without or with inadequate consideration, acting as a go-between, using pretended authority and traffic in private influence come under the section "Crimes against Public Office by Third Parties".

3. Others : In addition to the above-mentioned ones, the crimes of corruption also include corrupt electoral practices, forgery or falsification of public or military documents, aggravated breach of trust, the commission of and aiding in money laundering, and aggravated fraudulent misrepresentation committed by public servant. It is beyond the scope of this thesis to provide detailed discussions about the crime of corruption under the Ethiopian criminal law.

Therefore, the SNNPR Ethics and Anti-corruption Commission is established as an autonomous anti-corruption institution at a regional level to deal with these corruption offences provided as crime under the Ethiopian 2005 Revised Criminal Code.

#### 4.2. THE ESTABLISHMENT OF THE SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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As it has been presented under the preceding chapters, the Ethiopian government realized the highly entrenched and detrimental consequences of corruption and regarded it as a compulsive necessity to prevent it. Accordingly, the FEEACC emerged in 2001 as a national anti-corruption authority in the struggle to create a corruption-free society. This echoed also the establishment of the anti-corruption commissions in the respective member regional states of the Ethiopian federation. Being a federal polity, Ethiopia has two levels of governments-federal and regional/state-hence there are federal and regional anti-corruption commissions.

Accordingly, the SNNPR Ethics and Anti-corruption Commission was established in 2002 with the establishing law, proc. No. 48/2002 with the objective of creating a society which can no longer shoulder corruption and unethical practices; prevent corruption; and investigate and prosecute corruptors. This establishing law was later amended by the new law- proc. No. 142/2012. This later law brought about some modifications in the objectives and general situations of the regional anti-corruption commission. The preamble of the new proclamation mentions the need to shift towards efficiency and

effectiveness in anti-corruption tasks which is also brought about by the implementation of Business Processing Re-engineering (BPR) in the regional governmental working procedures. This also necessitates the change in legal frameworks which is compatible with the changed working atmosphere.<sup>115</sup>

The later law also aimed at better fighting against corruption as it hinders social, economic and political progress of the society; to fostering democracy and good governance, and ensuring rapid economic growth which is sustainable and equitable. There has been also the need to ensure transparency and accountability in the working procedures of the commission which enables the commission to better discharge its regional responsibility.<sup>116</sup>

### 4.3. OBJECTIVES, POWERS AND RESPONSIBILITIES OF THE COMMISSION

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#### 4.3.1. THE OBJECTIVES;

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The objectives of the commission are provided mainly under Art. 6 of proc. No. 142/2012; and also in the preamble. Accordingly, the objectives include;

- In cooperation with relevant bodies, to strive to create an aware society where corruption will not be condoned or tolerated by promoting ethics and anti-corruption education;
- In cooperation with relevant bodies, to prevent corruption offences and other improprieties;
- To expose, investigate and prosecute corruption offences and improprieties;
- To the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state;
- To accelerate the ongoing development, foster democracy and good governance;
- To create a society founded on ethical principles who cannot tolerate corruption.

#### 4.3.2. THE POWERS AND RESPONSIBILITIES OF THE COMMISSION

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The major powers and responsibilities of the commission is provided under article 7 of the establishing law; it can also be collected from the preambles of the proclamation.

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<sup>115</sup> . See generally the Preamble of the SNNPR Ethics and Anti-corruption Establishment Proc. No. 142/2012.

<sup>116</sup> . Ibid.

The powers/functions of the regional commission is predominantly similar/same, if not identical, with that of its federal counter-parts only structured to fit regional context and limited to state jurisdiction. Like its federal parallel, the commission has adopted Hong Kong's three-pronged approach to fighting corruption, which includes the functions of ethics education, corruption prevention, and law enforcement, and has tailored the model to fit the SNNPR state context. Accordingly, the commission has, among other things, the following powers responsibilities;<sup>117</sup>

In cooperation with relevant bodies, to combat corruption and impropriety by raising public awareness about the disastrous effects of corruption and by promoting ethics in public services and among the society. It is also duty-bound to prevent corruption by studying the practices and working procedures in public offices and public enterprises thereby ensuring the revision of methods of work, which may be conducive to corrupt practices. Following the finalization of its studies, the Commission is legally authorized to put forward corrective measures and recommendations and follow up their implantation.

According to the proclamation, the commission is responsible for investigating any complaints of alleged or suspected serious breaches of codes of ethics in regional public offices or public enterprises administered by the regional state and following up the taking of proper measures. Similarly, the investigation and prosecution of any alleged or suspected corruption offences specified in the Criminal Code or in other laws, where they are committed in public offices or public enterprises, which fall within the power of the Commission. It is also the duty of the Commission to investigate (where there is reasonable suspicion in connection with corruption offences) and obtain information about any bank account of suspected persons and cause the attachment, with court order, of same where necessary. In a similar vein, the commission is duty bound to freeze, by court order, the assets of any person who may be under investigation for corruption and cause, through court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction.<sup>118</sup>

In cooperation with relevant bodies, the Commission has the legal power and authority to register the assets and financial interests of public officials and public employees compellable to do so as specified by law.<sup>119</sup> It is also responsible to protect witnesses and whistle blowers and reward persons or offices that are successful in fighting and preventing corruption. The tasks of preparing codes of ethics for public offices and public enterprises (apart from legislative and judicial bodies), undertaking research on

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<sup>117</sup> . The Powers and Responsibilities of the commission are summarized from Art. 7. of the proclamation no. 142/2012 and other provisions.

<sup>118</sup> . See Art. 7(7) of the Proclamation..

<sup>119</sup> . Regional state council has promulgated 'Disclosure and Registration of Assets Proclamation' No. 138 in 2011.



ethics and corruption, following up the enforcement of anti-corruption laws, supporting regions and cooperating with similar bodies also come under the jurisdiction of the Commission. Additionally, the Commission is tasked with coordinating other components of the ethical infrastructures; providing the necessary support to the public offices and public enterprises in the establishment of ethics liaison units; and liaising and cooperating with national, regional, and international bodies with similar objectives.

#### 4.4. ORGANIZATIONAL STRUCTURE OF THE SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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##### 4.4.1. INDEPENDENCE

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As it has been argued in preceding chapters, there is a directly proportion relationship between the independence of Anti-corruption authorities and their success. Thus, the sovereignty of these bodies must be promoted and protected as far as possible and they must be given the opportunity to perform their mandates free of political interference. Accordingly, the regional ethics and anti-corruption commission not subsumed legally under any government office; it is “established as an independent regional Government body”<sup>120</sup>. Originally, although the commission was accountable to the regional state president, it enjoyed formal freedom from interference in the pursuit of its objectives.<sup>121</sup> Now it may be well commendable, even desirable, to afford the regional president-chief executive of the region- the power to assist the commission in the fulfillment of its mandate. However, power always is potentially problematic, and the power at issue here may well pose a threat to the independence of the commission. Given that so much corruption is located in the public sphere, a significant dimension of the commission’s work necessarily concerns the integrity of public officials.

There is an evident need for the commission to have as little interference as possible in its operations from the executive. If a successful ACA must be independent, then the “most important sign of independence is the absence of political intrusion into the agency’s operations.” The problematic of political interference in the commission’s operations will be taken up later in this chapter.

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<sup>120</sup> . See Art. 3 of proc. No. 142/2012.

<sup>121</sup> . Interview with Abayneh Adato, the Deputy Commissioner and Owner of corruption Investigation and Prosecution Core work process, March 06/2014, 2:40 pm, Hawassa.

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#### 4.4.2. ACCOUNTABILITY

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Many countries appreciate the need for their ACAs to be answerable for their decisions and have devised oversight regimes to promote and implement accountability. In this regard it is regrettable that Ethiopia has not sought to foreground the accountability of its anti-corruption commission<sup>122</sup>. The commission is accountable only to the regional state president,<sup>123</sup> to whom the Commissioner is required to submit performance and financial reports. This arrangement was selected over two proposed alternatives: for the Commission to be accountable to state council or to a committee representing all three branches of government. On the one hand, it is widely acknowledged that it is within the ranks of the executive that corruption in Ethiopia has found its most fertile breeding ground. On the other hand, the Commission is responsible to the head of the executive. There is a fundamental contradiction here which could lead easily to the undesirable situation where the Commission becomes imbricated in political gamesmanship to shield allies and to harass adversaries. The spectra of political favoritism lurks behind the accountability arrangement contained in Article 3(2) of the Revised Establishment Proclamation<sup>124</sup>. The controversial issue related with the accountability mechanism of the commission will be dealt with later in this chapter.

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#### 4.4.3. THE COMMISSION'S EXECUTIVES

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The regional anti-corruption commission has two established executive posts, namely, commissioner and deputy Commissioners<sup>125</sup>. There are also necessary staffs. The Commissioner is nominated by the president of the state and appointed by the SNNPR state council, while the proclamation does not clearly provide who appoints the Deputy Commissioners. But it is likely that it is the regional president who directly appointed the two deputy commissioners. This argument is also supported by the working procedures of the federal commission. It is apparent that these executive positions are both political appointments, in which the wishes of the president loom large.

Here it bears noting that Transparency International has recommended that an appointment mechanism which operates through parliamentary consensus, together with an external accountability mechanism such as multi-party Parliamentary Select Committee, can reduce opportunities of abuse of the appointments process or biased

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<sup>122</sup>. See Tewodros Mezmur and Rymond Koen (2011):The Ethiopian Federal Ethics and Anti-Corruption Commission: A Critical Assessment, Law Democracy and Development, vol, 15. at pp 12.

<sup>123</sup> . See Art. 11(2) of the proclamation.

<sup>124</sup> . See Tewodros Mezmur et al (2011), *ibid* at pp. 12.

<sup>125</sup> . See Art. 10 of proc no. 142/2012.

appointments.<sup>126</sup> 44 Parliament could then assume responsibility for compiling a shortlist, and the Prime Minister or regional president at state level could make the appointments from parliament's shortlist. An appointments procedure structured along these lines would see the Prime Minister filling the executive positions of the FEACC on the advice of Parliament, after Parliament has relied upon the public nominations process to identify potential appointees. The point is that an appointments process which is rooted in public participation is likely to attract public confidence in the successful candidates, thereby enhancing the chances of the Commission achieving sustainable success in its operations. However, this mechanism is not employed in the case of federal and SNNPR Ethics and Anti-corruption commission, this likely hampers the credibility of the appointment procedures.

The Commissioner shall be the chief executive of the Commission and, as such, shall organize, direct and administer the activities of the Commission; to exercise the powers and duties of the Commission specified under article 7 of this Proclamation; employ and dismiss personnel; prepare work programs and budget; to authorize, in accordance with the law, any officer of the commission to carry out investigation or prosecution or to arrest persons who are suspected of corruption; to represent a commission in its dealings with third parties; submit performance and financial reports to the regional president.<sup>127</sup> The deputy commissioners are there to assist the commissioner. The Deputy Commissioners, shall: assist the Commissioner in planning, organizing, directing and coordinating the functions of the commission, follow up part of the Commission's departments by sharing functions in accordance with the structure of the Commission; act on behalf of the Commissioner in the absence of the latter.<sup>128</sup>

The term of appointment of the commissioner and the deputy commissioner is six years, and these officials may be reappointed. Once appointed, the commissioner and deputy commissioner can only be removed from their duties in the following cases:<sup>129</sup>

- ❖ Upon his/her own request,
- ❖ In the event that he/she has violated the provisions of the relevant codes of conduct,
- ❖ In the case that he/she has shown manifest incompetence and inefficiency, or
- ❖ If he/she can no longer carry out his/her responsibilities due to mental or physical illness.

As intimated above, the Revised Establishment Proclamation introduces code of conduct violations and manifest incompetence and inefficiency as grounds for the removal of an executive officer of the regional Commission. Code of conduct violations

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<sup>126</sup> . See Pope (2000) at 97 as cited in Tewodros, *ibid*.

<sup>127</sup> . See Art. 11 of the proclamation no. 142/2012.

<sup>128</sup> . See Art. 12 of the same proclamation.

<sup>129</sup> . See Art. 13, *ibid*.

usually are patent and hence do not raise any serious concerns as a ground of removal. Removal founded upon manifest incompetence and inefficiency enjoys historical legitimacy. However, they are not as readily proved or disproved as is, for example, a criminal conviction. In other words, this ground of removal is not anchored objectively and hence is prone to manipulation.<sup>130</sup>

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#### 4.4.4. THE INTERNAL ORGANIZATIONAL STRUCTURE OF THE COMMISSION

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The SNNPR ethics and anti-corruption commission is led by a commissioner. In the organizational structure, the commissioner is supported two deputy commissioners. In the current organizational set up, the commission is organized in to three core and six supportive work processes. These core and supportive work processes include;  
Core work processes:

- ✓ Corruption and impropriety prevention core work process,
- ✓ Ethics infrastructure coordination core work process,
- ✓ Corruption offence investigation and prosecution core work process.

These core work processes of the commission are supported by the facilitative and supportive work processes which are currently six in Number. These are;

- ❖ Human resource management supportive work process;
- ❖ Development, planning, coordination and evaluation supportive work process;
- ❖ Finance, procurement and resource management supportive work process;
- ❖ Information communication Technology supportive work process;
- ❖ Public relations supportive work process;
- ❖ Human resource statistics data supply supportive work process.

These core and supportive work processes are supported by services and necessary staff. The newly introduced Asset Disclosure and Registration affair is not instituted as a work process but dealt with in other offices. Moreover, the commission has been undertaking different re-organization works to cope with changed situation of the time. Partly, reorganization was aimed at keeping in line with the regional civil service reform program that the regional Commission carried out in collaboration with the government beginning in 2004-2005. However, when the civil service reform program did not achieve the desired results nationally as well as at the commission level, a decision was made to implement a Business Process Reengineering Program (BPR) in

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<sup>130</sup> . See Tewodros Mezmur et al, *ibid* at pp. 8.

all government offices. According to the Deputy Commissioner<sup>131</sup>, some notable accomplishments of the reengineering program have been the empowerment of employees in the decision-making process, streamlining of work procedures, and the definition of more specific objectives of the Commission.

In addition, investigation and prosecution activities that were formerly carried out in two separate departments were brought under a single work process, and the Commission's prevention activities were reoriented to follow a problem-solving and cost-effective approach.- interview. Despite these achievements, the 2007 study process also revealed some weaknesses. This was largely attributed to the minimal participation of employees and the inadequate number of people included in the BPR working team. Furthermore, the study team did not receive the necessary training before the study began, and department directors were not part of the team that implemented the BPR study team, which consisted of change management staff. Regardless of the achievements and weaknesses identified, the process is seen by the Commission not as a one-time effort, but rather as a continuous assessment and improvement processes. Needless to say, the Commission aims to improve the BRP by correcting identified weaknesses. In what follows, I will present some of the powers and performances of the commission's major work processes.

#### ETHICS EDUCATION AND AWARENESS CREATION CORE WORK PROCESS

The Ethiopian Government has adopted the preventive approach as a major course of action and line of thought in its fight against corruption, with curative measure reinforcing it. Given the cost-effective, sustainable and participatory nature of this approach, no wonder the government took it as a primary direction of stamping out corruption at the national level.<sup>132</sup>

The Prevention work process seeks to prevent corruption by studying the practices and work procedures of public offices and public enterprises (see Table 4). It further attempts to examine work methods that may be lead to corrupt practices and follows up on the implementation of recommended suggestions. This work process conducts research and studies on corruption prevention and its findings are used to guide the Commission's activities. In sum, the work process, also called Directorate, is in charge of carrying out the following activities:

- Conducting researches on corruption prevention,
- Distributing and dispatching findings of researches and studies,
- Studying and examining working procedures and processes in key service delivery institutions in a comprehensive manner and

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<sup>131</sup> . Interview with Mr. Abayneh Adato, Deputy Commissioner, *ibid*.

<sup>132</sup> . See generally the profile of FEACC (2008).

➤ Consulting stakeholders on preventing and fighting corruption.<sup>133</sup>

The objective of the Ethics and Education core work process/Directorate is to create greater awareness in Ethiopian society that corruption should not be tolerated by promoting ethics and anti-corruption education. Its main responsibility is to disseminate ethics education, undertake public relations activities, and promote the Commission's objectives and activities through various outlets. This Directorate is comprised of public relations, media, ethics, and education teams. The Directorate disseminates its message through the following channels:

a). **Face-to-face training:** When we see the commission's annual report for the 2012/13 budget year,<sup>134</sup> (with respect to infrastructure coordination, the commission has delivered face to face and plasma training to over 3531 trainees and over 2662 different members of the community. For the year 2013/14 (half-year performance), the commission delivered a training for 3531 trainers and also trained 12 focal personnel for the pastoralist zones.<sup>135</sup> It also delivered awareness creation training for over 2503 anti-corruption club leaders, students and teachers through plasma delivery. It also trained page-to-page about 2662 different community members. In 2013/14, about 2503 community members, students and teachers were reported to have received awareness creation works by different liaison units of the commission. In 2013/14 budget year, the commission reported that more than 1,060,245 members of the community have got awareness on the corruption and related issues.<sup>136</sup>

b). **Training of Trainers** – Given its limited resources, the Directorate aims to train individuals who have the ability to train trainers. The duration of training is usually 3-5 days. This training involves the selection of appropriate trainees who will go on to train others.<sup>137</sup> To date, the unit has developed many training modules in collaboration with the federal ethics and anti-corruption commission.

c). **Panel discussions** – This activity is carried out through workshops, conferences, and the dissemination by the media of education on ethics and anti-corruption.

d). **Publicity and marketing** – This occurs through publications, posters, flyers, brochures, stickers, billboards, newsletters (internal and external), media, and magazines.

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<sup>133</sup>. The recipients of the services of the commission include government departments, regional anti-corruption institutions, ethics liaison units, non-governmental organizations, private sector, and other stakeholders.

<sup>134</sup>. Report by Nebyu Isayas- prevention core work process owner, See commission's bi-annual megazine 'Fanna Ethics/*Sine-migbar* Megazine', 2012.

<sup>135</sup> . See Fanna Ethics Megazine, vol. 3 no. 5 at pp. 11.

<sup>136</sup> . Ibid.

<sup>137</sup> . Interview with officer at the public relation supportive work process.

According to the Director of the Department, television and radio are the most effective ways to reach citizens. This is because the written media excludes illiterate people<sup>138</sup>. Dramatic and sports programs are well received by citizens, and have become the most successful vehicle for disseminating anti-corruption education. Moreover, the commission produced different modules and disseminated the ideas through hiring radio programmes in South FM 100.9 and other channels for over 10,920 minutes.<sup>139</sup>

## PREVENTION OF CORRUPTION AND OTHER IMPROPRIETIES CORE WORK PROCESS

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The branch works closely with all other work processes. Once the prevention Directorate detects a potentially corrupt practice, it collects evidence and conducts a study to determine the reasons for it. When there is enough evidence, it proposes solutions and works closely with all concerned bodies in implementing solutions, which includes among others, revision of work procedures or corrective recommendations. In this regard, it is worth mentioning that according to the Commission's Establishment Proclamation, public offices and public enterprises are obligated to cooperate with the Commission in dealing with corruption, and failure to cooperate is tantamount to obstruction of justice and punishable by law. However, there is no formal memorandum of understanding on how such cooperation should take place in practice. Regarding long-term prevention, the Prevention Directorate works closely with the Investigation Directorate to identify where most crimes occur and also evaluates the effectiveness of its services by analyzing any corrupt practices that have occurred in an area where the unit has previously conducted prevention activities. The research findings of the Department are believed to be very helpful in basing the Commission's activities on research findings, thereby raising its overall performance and efficiency.

For the 2012 budget year, the commission has undertaken a registration of assets of 10,529 government appointees and employees. In the next year, the commission registered assets of about 10,529 government employees. Moreover, the report of the commission indicates that it undertakes to prevent corrupt practices through identifying different areas where the corruption seems to be rampant. Accordingly, it has completed research and studies in different government sectors.<sup>140</sup> The commission enhances its performance and accomplishment through experience sharing forums at national and international levels.<sup>141</sup> The prevention task force not only concerns

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<sup>138</sup>. interview, *ibid*.

<sup>139</sup>. See Fanna Ethics Magazine, *ibid* vol .3 no. 5.

<sup>140</sup>. Such areas include Health Bureau and Medical purchase process, Safety net programmes, Procurement and payment systems in Agriculture Bureau, various aspects of work in regional Finance and Economic Development Bureau, Construction financing and resource management in Water Resource Bureau, Revenue Authority, Construction, Design and Building sector, Urban land administration and development in different municipalities and Zones ( such as Sidama ,Gedeo, Wolayita, Gamo-Goffa, Hadiya, Gurage, Sheka, Bench, Kaffa, Siltie, Dawuro, Segen, Hawassa. See for example Fanna Ethics Magazine, vol. 3 no. 5. Pp. 12-13.

<sup>141</sup>. *Ibid*, at pp. 13.

undertaking studies and awareness creation, but it also has a duty to advise on various issues. It has also duty to recover assets and forfeit it to the state. Accordingly, for the 2012 budget year, for example, the commission received information on the abuse of about 1, 853, 418.20 birr and transferred it to the investigation and prosecution department. For the same year, the commission recovered 12, 524,453.70 birr to state budget coffer.

## INVESTIGATION AND PROSECUTION CORE WORK PROCESS

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The Corruption Investigation and Prosecution Core work process is authorized to investigate or cause the investigation of any alleged or suspected corruption offences where they are committed in public offices or public enterprises. It is also obliged by law to investigate or cause the investigation of any complaints of alleged serious breaches of the codes of ethics in public offices or public enterprises and follow up the taking of proper measures.<sup>142</sup> The core work process receives tips-off from whistle blowers on alleged corruption offences and ethical infringements, investigates them in the order of their seriousness. If it deems it necessary, it may require of any federal or regional public office or enterprise to produce relevant documents and provide appropriate information for the examination of practices and working procedures.

Here, it is necessary to look at the mechanism through which the commission receives complaints about the corruption offence. According to the profile of the commission, the Commission established channels and mechanisms of making corruption complaints. Whistle blowers can present their complaints about alleged corruption offences, ethical infringements and improprieties in person, on telephone, through e-mail, on fax and through post office. Their identity could be withheld upon their request. The Commission will, in no way, disclose their identity without their permission and against their will. If the complainants prefer to present their complaints in person, they can directly go to office of the commission and do so. If they want to blow the whistle on fax, they can use 0462205863 and inform the Commission about alleged corruption offences.<sup>143</sup>

For those who want to do it on telephone, the Commission has already set up a new hotline (994) at which they can call and inform the latter about their cases free of charge. Then some sort of analysis will be made to check whether the alleged offences are corruption offences or not, and whether the allegation is well-founded or not. There is likelihood that some informers simply bring complaints either to hide their criminal acts or to revenge others in bad faith. So the commission should be cautious while analyzing the complaint.<sup>144</sup> Afterwards, the Commission is duty-bound to identify those

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<sup>142</sup>. See for example The Profile of FEACC (2008), pp. 12.

<sup>143</sup>. The e-mail and postal addresses of the Commission are [snnpreac@ethionet.et](mailto:snnpreac@ethionet.et) or [snnpreac@yahoo.com](mailto:snnpreac@yahoo.com) and 868 respectively.

<sup>144</sup> Interview, with the Deputy Commissioner and Owner of Investigation and Prosecution core work process.



cases which come within its jurisdiction and transfer them to the Department of Investigation and prosecution for further examination and scrutiny. The operational procedure of the Investigation and Prosecution core work process starts when the Directorate receives input or tips from civil servants or citizens.

The next step is to register all incoming cases and evaluate them as follows:

- ✚ Is there evidence of corruption?
- ✚ Should the case be handled by the Investigation and Prosecution Directorate, or should it be addressed by another government agency?
- ✚ If the Directorate handles the case, it tries to obtain additional information and evidences about the case.

All cases that fall under the Commission's jurisdiction are classified as one of three types of corruption: modest corruption offenses, serious corruption offenses, and very serious corruption offenses. This classification is based on the amount of money involved, the executive level of the person suspected of corrupt acts, and the effect of the corrupt practice on the country's national growth, poverty, sovereignty, economy, security, or social life.<sup>145</sup>

Subsequently, the Commission will press charges against those cases which are well-substantiated. Regarding the cases which fall out of the Commission's jurisdiction, they will be sent to the concerned bodies and organizations. It is also authorized to freeze, by court order, assets and wealth that are allegedly obtained through corruption and cause (through court order) their forfeiture and confiscation. If the court verdict goes in its favor, the Directorate shall dispose the assets and wealth (by or without public auction) and transfer them to the Government.<sup>146</sup> The Directorate works in close collaboration with Courts, prosecutorial organs, and other stakeholders.

So far, for example, for the year 2012, the commission received 1209 tip-offs of which 902 within its jurisdiction and 307 out of its jurisdiction. 26 individuals/whistle blowers requested for protection of which 6 were allowed according to the law. In the reported period, a suit comprising a total of 473 defendants, both civil and criminal, has been instituted. According to the annual report, about 12,524,453.70 birr has been recovered to state budget. 56 urban land plots, 4415 hectare rural land has been returned to state. For the next year, 2013/14, a commission has instituted about 110 cases in the court of law. 107 records have been rendered judgments.

In general, it has been argued widely that the commission has been not able to proceed with all the complaints forwarded to it given its limited capability in terms of budget, expertise personnel, etc. Accordingly, the focus of the commission has been targeting at grand corruptions delegating petty corruption to the other law enforcement

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<sup>145</sup>. See Arsema Tamyalew( 2010): A Review of the Effectiveness of the Federal Ethics and Anti-corruption Commission of Ethiopia, European Union and World Bank, pp. 15.

<sup>146</sup> . See the profile of FEACC 92008) pp. 8.

institutions.<sup>147</sup> Given the low level of commission's capacity, petty/minor corruption offenses are left undealt to reduce expenses. This reduces the commission success in the fight against corruption at all levels. Still there is difficult in the working process of the commission. It is reported above that the major target of the commission is grand corruption. In the federal amended proclamation, grand corruption is defined in Sub Article Nine of Article Two as follows:

1. Corruption offenses involving huge amounts of money committed in highly strategic public offices and public enterprises.
2. Corruption offenses involving a public official.
3. Corruption offenses causing grave danger to national sovereignty, the economy, security, or social life. Accordingly, the most common cases handled by the FEACC can be classified as 11 types of crimes.<sup>148</sup>

The investigation staff should be made up of individuals from diverse professional backgrounds including economists, social scientists, engineers, lawyers, accountants, managers, and police, while the prosecution staff consists of lawyers. During an interview with the Director of the Department, it was disclosed that staff members do not have the necessary skills to successfully investigate and prosecute corruption offenses though the problem is being in the reducing trend. In this regard, the Director indicated that there is a need for a long-term hands-on-education and training program. This lack of staff expertise has also meant that some cases have had to be outsourced to the investigation Directorates of the police or other institutions.

In the last eight years, the Commission has investigated more than 1,300 alleged corruption crimes, which has resulted in the conviction of 380 people who have received prison sentences ranging from 1 to 19 years. Those convicted include high-profile government officials, head of the Government Enterprises and Privatization Agency, company managers, land administration officials, and senior judges. Concerning the issues of whistle-blowers and witnesses, owing to its clandestine nature, corruption is difficult to detect and successfully prosecute. The problem is exacerbated by the fact that corruption often is a "victimless" crime, in the sense that there is seldom a readily identifiable victim who can trigger an allegation. So, the problems related with the witnesses and whistleblowers will be discussed in subsequent sections.

#### 4.5. ANALYSIS: ACHIEVEMENTS AND CHALLENGES OF THE SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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<sup>147</sup> . Yohannes Wanna (2009): The Anti-corruption Laws in Ethiopia: Laws and Practice in the SNNPR courts, p 164.

<sup>148</sup> . Abuse of power, gaining undue advantage, concealment, maladministration, owning assets whose source is unidentified, exercising others' power, forgery/fraud, betrayal of trust, embezzlement, bribery, and reprisal.

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## 4.5.1. ACHIEVEMENTS OF THE COMMISSION

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### 4.5.1.1. EXPANDING ETHICS AND ANTI-CORRUPTION EDUCATION

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Since its establishment in May 2002, the regional Commission has given face-to-face ethics and anti-corruption education for many Ethiopians drawn from various cross-sections of the society. In this regard, one of the approaches taken was to give sustainable and organized training on ethics and corruption prevention to a limited number of trainees who may be drawn mainly from public offices and enterprises and other ethics infrastructures. Then, these trainees will, in turn, train the greater public in their respective areas of concern.<sup>149</sup> Understandably, therefore, this approach is important to multiply the skills and knowledge (received by a limited number of trainees) on fighting and preventing corruption among thousands of Ethiopians. The Commission has put into practice its obligation to provide anti-corruption education to the citizens of Ethiopia. Its latest annual report shows that the Commission has remained diligent about this aspect of its mandate<sup>150</sup>.

The training programmes focus on equipping the trainees with the basic knowledge and skills on anti-corruption laws and strategies, corruption prevention strategies, and codes of ethics for civil servants and their managers. What is more, there are standardized training manuals under the new system. The ethics and anti-corruption education is being offered based on and supported by practical examples and real experiences. Such an approach is believed to motivate the public to participate in the struggle against corruption actively. Furthermore, the Commission is trying everything in its capacity to base its ethics education programme on research findings. It is also trying to be creative in employing various training methodologies during training of trainers. In this regard, the Commission is prepared to use the media aggressively in raising public awareness on providing tips-off, whistleblowers protection, and achievements of the Commission. Additionally, it reached millions of residents of the region through the media and tried to raise public awareness on the dire need to fight corruption. It also played a key role in the inclusion of ethics and civic education in the Country's formal education curriculum and the establishment of ethics and civic education clubs in schools in collaboration and partnership with the Ministry of Education.

The establishment of ethics liaison units in public offices and enterprises has also contributed to the expansion of ethics education and prevention of corruption, at least in those offices and enterprises. It also played a significant role in the development of textbooks and other materials on ethics and civic education. Moreover, awareness-

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<sup>149</sup> . Interview, with Deputy Commissioner.

<sup>150</sup> . See for example its annual report for the 2013/14 budget year, Fanna Ethics Magazine, Vol. 3 no. 5.

raising programmes have been launched through the media. With a view to enhancing the expansion of ethics and anti-corruption education, the Commission produced and distributed brochures, magazines, fliers and posters among government departments, public enterprises, and the general public at large. It has also been preparing and distributing bi-annual megazine, namely “Fanna Ethics” among the Commission’s staff and the public at large. The commission believes that a shift in popular thinking as the most important of all its achievements.

#### 4.5.1.2. STRENGTHENING THE LEGAL FRAMEWORK

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Since the commission’s establishment, the commission has been striving to force the government to reform laws and enhance legal framework. The Government has put in place substantive and procedural anti-corruption laws and regulations to tackle corruption. The Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation, Revised Federal Ethics and Anti-corruption Commission Establishment Proclamation, inclusion of provisions on the Protection of Whistleblowers and Witnesses, Proclamation to Provide for Disclosure and Registration of Assets, and Code of Ethics for Public Servants could be mentioned in this regard.

#### 4.5.1.3. PREVENTION OF CORRUPTION

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As enshrined in the amended Establishment Proclamation of the Commission, examining the practices and working procedures in government departments and public enterprises and plugging loopholes that are believed to be conducive for corrupt practices is at the heart of the Country's corruption prevention programme. So far, the Commission examined the practices and working procedures in many different government departments and public enterprises, put forward corrective measures and followed up the implementation of the recommendations.<sup>151</sup> The areas where the commission has taken measures and recommended changes has been presented in the preceding sections. Researches were also conducted on procurement and petrol consumption in government departments and public enterprises after which corrective recommendations were given. The Commission was also following up the implementation of the recommendations by the respective public offices and enterprises. To make future projects in this area more fruitful and successful even before the implementation of the BPR, the Commission developed guidelines for prioritizing the examination of the working procedures and practices of public offices and public enterprises in their order of urgency and seriousness.

In the face of severe capacity limitations, the Commission cannot examine the practices and working procedures in all public offices and enterprises at a time and put forward corrective measures and recommendations. Unsurprisingly, therefore, it had to

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<sup>151</sup>. Interview with the officer at the Corruption prevention work process (name confidential).

prioritize its target areas and guide the reviewing and examination of working procedures in public offices and enterprises based on the priority it set and the guidelines it put in place. Therefore, putting the susceptibility index of the public offices and enterprises in place had to come first. The Commission used the following three criteria to determine the degree of susceptibility of public offices and enterprises to corruption: Vulnerability to corruption, impact of corruption, and scope of corruption.<sup>152</sup> Based on the afore-mentioned criteria, the Commission came up with a susceptibility index classifying public offices and enterprises engaged in different tasks.<sup>153</sup> Under the second category came courts, organizations that had a monopoly on providing a certain service, law enforcement departments, import-export organizations, loan and insurance enterprises and distributors of goods. The remaining public offices and enterprises fall under the third category.

The Commission has also begun reviewing the practices and working procedures of key public offices and enterprises by assigning experts on permanent basis. Such public institutions, which are believed to be pivotal in public service delivery, need to be given special emphasis. The Commission has also been doing its best to upgrade the capacity of ethics officers to the desirable level through training and experience sharing programmes so that they can examine working procedures that are believed to be conducive to corruption<sup>154</sup> in their respective public offices and enterprises.

#### 4.5.1.4. INVESTIGATION AND PROSECUTION OF CORRUPTION OFFENCE

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The Commission provided the public and other stakeholders with clear and sufficient information on the channels, mechanisms and procedures of presenting their complaints to it through various publications and the media. In the sections above, we have seen the procedural mechanisms of forwarding corruption complaint. Obviously, investigating such cases requires the skills and knowledge of a mix of professionals from various areas of specialization.

That is why increasing the diversity of professionals is high on the agenda of the Commission. In parallel with this, the Commission is prepared to raise the capacity of its investigators to the required level through sustainable training.<sup>155</sup> One other trend that needs to be changed in the years to come is the dependency of the Commission (almost entirely) on whistle blowers for spotting alleged corruption offences. For example the FEACC has, therefore, been considering the option of developing its own

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<sup>152</sup> . Interview with Mr Wone Hamesso, officer at the Public Relations Supportive work process, Hawassa.

<sup>153</sup> . Collecting taxes and revenue, building infrastructures, providing licenses and work permits, allocating land and managing the construction sector as the most corruption prone ones.

<sup>154</sup> . Currently the Commission has identified the following areas as prone to corruption: land administration and supply, construction sector, government procurement administration, income tax and tax administration, agricultural input supply and distribution, programmes for employment in towns and administration of justice .

<sup>155</sup> . interview with Deputy commissioner and owner of investigation and prosecution core work process, Hawassa.

intelligence and surveillance system for spotting and identifying reputed corruption offences thereby complementing the good job the whistle blowers are doing. Putting such a system in place will enable the Commission to identify a good number of suspected corruption offences by its intelligence and surveillance unit.

Formerly, also, prosecutors used to examine cases only after investigators finalized the investigation of those cases and sent the final results to them. In those days, files had to be sent back and forth between investigators and prosecutors for further investigation and explanation. Besides, the cases had to pass through various levels of leadership before they were readied for prosecution.<sup>156</sup> Under this system of investigation, mechanisms whereby prosecutors can participate in the investigation of cases right from the beginning have already been put in place. According to this procedure, prosecutors should give investigators a general guiding direction right from the beginning (without intervening in the professional independence of the latter) as to how the investigation of alleged corruption cases should be carried out.

Such a system is believed to have the following advantages over the previous one: For a start, the participation of prosecutors in the investigation of cases right from the beginning will help the Commission save a sizable amount of time, energy and resources that would have been wasted on gathering and organizing irrelevant information that doesn't contribute to the effective prosecution of cases. Secondly, the fact that the investigation of cases are conducted with the support and guidance of prosecutors will significantly reduce the probability of returning cases (by prosecutors) back to investigators for further investigation. Thirdly, the assignment of a particular investigator and a supporting prosecutor to the full investigation of a particular case right from the beginning will reduce the frequency of the movement of files back and forth among many individuals. As the prosecutor is involved in the investigation of the case right from the beginning and knows it very well, he will be able to pass a swift decision upon the completion of the investigation on whether the case is sufficiently substantiated for prosecution or still lacks in supportive evidence for prosecution.<sup>157</sup>

These days, the pre-investigation stage is not at all necessary, as the prosecutors will follow up the cases right from the beginning of the investigation. As mentioned earlier, the partnership of the prosecutor and the investigator will significantly enhance the effectiveness and efficiency of the investigation of corruption offences. Currently, the Investigation and Prosecution Department has given more emphasis on rating its performance based on the number of cases it may win in courts, not on the number of cases it may take to courts. Therefore, the Department will do the best it can to raise the conviction rate of the cases it takes to court.<sup>158</sup> The Commission will delegate the

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<sup>156</sup> . Such unnecessary and redundant process steps used to consume a lot of time, energy, and resources.

<sup>157</sup> . Interview.

<sup>158</sup> . The Deputy commissioner mentioned to this researcher that the conviction rate has reached 99% recently.

investigation and prosecution of some corruption offences to other investigating and prosecuting organs so that it can focus on tackling grand corruption.

#### 4.5.1.5 WORKING IN PARTNERSHIP WITH THE STAKEHOLDERS

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Since its inception, for example, the FEACC has been working in close partnership and collaboration with various stakeholders, including donors, development partners, civil society organizations, media, religious groups, ethics liaison units, regional states, foreign governments and public offices and enterprises. So is the regional commission as well.<sup>159</sup> Domestically, for example, the civil society has been participating in the organization and launching (though not to the desirable level) of training programmes as were religious groups in expanding ethics and anti-corruption education. The media were also supportive (though not to the required level) of the anti-corruption campaign in raising public awareness and blowing the whistle on corruption and impropriety. Different Ministries/bureaus such as former Ministry of Capacity Building/regional bureau and Education have also been working with the Commission in the areas of capacity building and expanding ethics education respectively.<sup>160</sup>

#### 4.5.1.6. ASSET REGISTRATION

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By definition, public officials are required to act in the public interest, and public resources ought not to become a source of private accumulation for public officials. Many governments seek to minimize this possibility by establishing a scheme of assets divulgence for public officials. Such a scheme is accepted generally as a viable anti-corruption technique aimed at developing and maintaining public trust by promoting accountability and transparency.<sup>161</sup> The Ethiopian Criminal Code devotes a provision to the criminalization of possession of unexplained property. Its definition of the crime transcends the conventional definition, considering as tainted not only assets controlled by the accused directly, but also those which he or she controls indirectly through other individuals. This extension is a most useful addition to the arsenal of anti-corruption investigators and prosecutors, whose work is facilitated somewhat by the possibility of pursuing illicit enrichment charges also against public officials who seek to evade justice by transferring their ill-gotten property to loyal proxies.<sup>162</sup>

Needless to say, the success of illicit enrichment prosecutions often will turn on the existence and implementation of a comprehensive programme of assets disclosure and registration. In this connection the Commission took the commendable step of

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<sup>159</sup>. The police, courts, Institution of Ombudsman, Human Rights Commission, Auditor-General, Parliament and the Regional President's Office Office are some of the Commission's partners.

<sup>160</sup> . See generally the Profile of the FEACC (2008).

<sup>161</sup> . See Tewodros Mezmur et al (2011): The Federal Ethics and Anti-corruption Commission, pp. 13.

<sup>162</sup> . See generally the Profile of FEACC (2008).

submitting a draft law to regional state council in 2010 which was enacted on 2011 as the Disclosure and Registration of Assets Proclamation No.138 of 2011. The Preamble to the Proclamation expressly recognizes the importance of a programme of assets disclosure and registration in combating corruption and constructing a public culture of transparency and accountability. Article 11 confers on the Commission powers of verification in respect of registration information which it reasonably suspects to be incomplete, inaccurate or false.<sup>163</sup> Proclamation 138/2011 provides the Commission with a simple but invaluable tool to enhance its efforts to root out corruption in the public sector. And it makes viable the relatively uncomplicated pursuit of unlawful enrichment charges against non-compliant public officials, especially those whose abuse of public funds amounts to grand corruption. The anti-corruption opportunities presented by the Proclamation were a long time coming, and it remains to be seen whether the Commission can and will exploit them to the full.

#### 4.5.1.7. PARTICIPATION IN THE NATIONAL ANTI-CORRUPTION COALITION

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The FEACC also established joint forums with the media institutions and associations, religious organizations, mass organizations, Ethiopian Chamber of Commerce and Sectoral Associations, federal institutions engaged in promoting rule of law, non-governmental organizations that incorporate anti-corruption as one of their objectives, and professional associations. Establishing bilateral forums has proved to be a good beginning.<sup>164</sup> However, the process of coalition building should be elevated to the next level. It is believed that it is a must for a country to have one national vision in addressing corruption. It needs to have a consensual national strategy devised by all stakeholders in the struggle against corruption. There should be a united front against corruption, which, in turn, necessitates the establishment of a national coalition against corruption.

#### 4.6. CHALLENGES FACING THE SNNPR ETHICS AND ANTI-CORRUPTION COMMISSION

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As the commission must be credited for its achievements in the national and regional endeavor to fight corruption, mention must also be made about some of the challenges the commission is bound to encounter. This section of the present study is devoted to take up such issues in the subsequent few pages.

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<sup>163</sup> . And Article 6(4) requires the Commission to issue registration certificates to public officials who have fulfilled their obligations under the Proclamation.

<sup>164</sup> . See for example profile of FEACC (2008) at 27.



## A). CAPACITY CONSTRAINTS

Special professional training is one of the most crucial requirements for the successful operation of an anti-corruption body, whether it is newly established or already existing.<sup>9</sup> Corruption is a complex and evolving phenomenon; prevention and prosecution of corruption require highly specialised knowledge in a broad variety of subjects. Furthermore, in-service training should be a norm. International exchange of best practices is often a valuable source of know-how for newly established bodies.<sup>165</sup> Many Anti-Corruption Commissions are mainly hampered by a lack of capacity to pursue the wide range of actors involved in corrupt activity. Grand Corruption often requires the participation of a large number of individuals which can severely strain the resources of an investigative unit and, all too often, key individuals are allowed to slip through the net due to constraints in manpower and resources. Anti-Corruption Commissions must therefore carefully consider the skills, capabilities and resources that will be required to achieve their objectives.<sup>166</sup>

The requirement to provide anticorruption institutions and their *personnel with adequate training and sustainable financial resources* is an obligation included in all international legal instruments cited in the previous section. The composition of personnel of an anti-corruption institution – the number of staff members, their professional profiles--should reflect the institution's mandate and tasks. For instance, enforcement bodies should not only employ prosecutors and/or investigators, but also forensic specialists, financial experts, auditors, information technology specialists, etc.<sup>167</sup>

Of all the problems, capacity constraints have, until now, been the most serious and challenging ones for the regional anti-corruption commission. There is lack of skilled work force in all areas in general and in the areas of investigation and prosecution in particular. Not surprisingly, the complexity of corruption offences and the existence of such capacity limitations have made things very difficult for the commission in its fight against corruption.<sup>168</sup> The fact that the investigation and prosecution of corruption offences is difficult to carry out using the usual techniques and procedures used to investigate and prosecute other criminal acts has made matters even worse. Some evidence suggests that the size of a country, either geographically or in terms of its population may explain the effectiveness of anti-corruption efforts-panacea 16.

In our regional context of diverse society and extensive geographical set-up, it would be really challenging for the commission to deal with corruption offences in the region

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<sup>165</sup> . See Generally OECD (2008): Specialized Anti-corruption institutions: A Review of Models: Anti-corruption Network for Eastern Europe and Central Asia, at pp. 3.

<sup>166</sup> . See generally KPMG International (2012): Anti-Corruption Commissions: Taking a serious approach to tackling corruption, kpmg.com.

<sup>167</sup> . See OECD (2008): Specialized Anti-corruption institutions: A Review of Models, at pp. 17.

<sup>168</sup> . Interview with one of the public Relations Officer at the commission, Hawassa.

with the population of over 15 million. Its technique of expanding ethics and anti-corruption education does not seem to be proportional with the demands of the time. Nor the face to face training or through publications or media are the real measure to judge its effectiveness given the fact that a predominant majority of the people of the region is illiterate and access to media/electronic and print in acute shortage. The problem is further complicated by the weak technical capacity and low resources of the Commission.

The problem of capacity can manifest itself in a number of ways: Firstly, weak handling of the cases at the investigations stage depending on inadequate or faulty information. Secondly, weak pleading of the cases in the courts, lack of interest or even death of the witness, loss or disappearance of evidence, frequent stay order from higher courts, make extremely difficult for the prosecution to prove the charges. Elsewhere, it has been argued that under such conditions the interests of public remain unprotected.<sup>169</sup> Moreover, as a deputy commissioner explained to this researcher, the above problems are further aggravated by lack of adequate awareness on the part of the predominant majority of population/community about the corruption, and its troublesome consequences has been a primary challenge of the commission.

#### B). THE COMMISSION'S LIMITED SPATIAL INSTITUTIONALIZATION

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As it stand currently, the SNNPR ethics and anti-corruption commission has no branch offices at the different part of the region. It is only institutionalized at the regional level.<sup>170</sup> Given the fact that the region boasts a wide variety of geography and demography, the commission's institutionalization only at the regional level is found to be circumventing its crusade against the region in the region. The commission, as stated above, is prone to lack of adequate qualified personnel and facilities even at the regional level-the regional office is also ill-staffed. As the same commission from the very center is required to deal with corruption cases at lower level of administration, it hinders the utmost good utilization of its power. The commission must open branch offices at lower level of state administration. According to the interview with deputy commissioner, in order to cope with such problems, the commission has undertaken the establishment of different ethics liaison units at different government offices and public enterprises so that it can assist the commission in the accomplishment of its objectives. However, this effort has not been fruitful so far and the commission must undergo a second thought to countervail the void.

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<sup>169</sup> . See generally for example Bashir Ahmed (2006): *Combating Corruption: The Role of the Bureau of Anti-Corruption (BAC) in Bangladesh*, Lund University Centre for East and South-East Asian Studies.

<sup>170</sup> . Interview with Deputy commissioner and Investigation and Prosecution work process owner, Hawassa.

## C). LACK OF JURISDICTION TO DEAL WITH CORRUPTION COMMITTED IN THE PRIVATE SECTOR

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The SNNPR Ethics and Anti-corruption Commission, like its federal parallel, has no jurisdiction to deal with same acts of corruption offences in private sectors.<sup>171</sup> According to the Profile of FEACC, the two most important reasons, among others, for limiting the Commission's jurisdiction to the public sector are the following: for a start, the Commission, as a young anti-corruption institution, will find it difficult to shoulder the huge responsibility of tackling corruption in every sector. It has to focus on the major public offices and enterprises. The second chief reason for limiting the Commission's jurisdiction is the fact that public offices and the civil servants working in them are believed to be the major players in committing corruption.<sup>172</sup> However, this approach of neglecting a fast growing private sector from the ambit of jurisdiction of the commission may well amount to fight corruption only with one hand. This greatly hampers the national anti-corruption effort and also subjects the private sector to endless corrupt practices which have been already on the track. For example, in one reported case in one of the zonal courts, many millions of money has been abused by the top management of the a certain cooperative union, but the commission could not deal with the case, and, hence the case was ordered to be dealt with by the court of law by employing ordinary procedures<sup>173</sup>

After considering the ineffectiveness in the fight against corruption without integrating the giant private sector, the FEACC has recently started to take action. It has been reported that the commission underscored the need for amending the existing anti-corruption law, which didn't govern corruption in the private sector. Because of this legal limitation, the Commission had been dealing with corruption in public offices and public enterprises only, leaving aside the private sector. According to the Commissioner,<sup>174</sup> such a limitation of jurisdiction prevented the Country from fully complying with its international and continental commitments as a signatory to the UN and the African Union Conventions against Corruption. Without tackling corruption in a comprehensive manner, ensuring sustainable development would be difficult to achieve, as the Commissioner underscored. In a country where big private banks and private companies are emerging at an alarming scale, leaving the private sector out of the jurisdiction of the Commission is no more an option. It seems that there has been a consensus that it was high time that the relevant laws be amended to tackle corruption in the private sector.

## D). ISSUES OF PUBLIC TRUST

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<sup>171</sup> . See Yohannes Wanna (2009): *The Law and Practice in the Corruption offence in SNNPR Courts*, pp 99.

<sup>172</sup> . See the Profile of FEACC (2008), at 39.

<sup>173</sup> . See Yohannis Wanna, *ibid* at pp. 101.

<sup>174</sup> . FEACC Commissioner Ali Suleiman cited in Ethics Magazine Vol. 12 No. 4, June 2013.

In the assessment of the effectiveness of the certain anti-corruption authority, the mere establishment of the commission itself is not enough. The commission must win public trust and must be able to mobilize public to rally behind it. However, the issue of public trust comes in to picture when ones delve to look at the accountability of the commission. As argued elsewhere in this thesis, many countries appreciate the need for their ACAs to be answerable for their decisions and have devised oversight regimes to promote and implement accountability. Many argue that accountability is “the most difficult issue related to building successful anticorruption agencies”.<sup>175</sup> In this regard, it is regrettable that Ethiopia has not sought to foreground the accountability of its commission since the FEACC is accountable only to the Prime Minister, to whom the Commissioner is required to submit performance and financial reports. The same line of arrangement has been followed in the regional laws. There were three arguments for designating the Prime Minister as the person to whom the Commission is accountable. First, parliamentary decision-making tends to be tardy, whereas anti-corruption decisions often have to be taken swiftly. Secondly, even if taken by parliament, anti-corruption decisions go to the Prime Minister for implementation; and thirdly, given that corruption is most prevalent in the executive, the FEACC’s direct link to the Prime Minister would allow it to act quickly against offenders.<sup>176</sup>

In truth, the case for making the Prime Minister the adjudicator of FEACC accountability is both weak and indefensible. On the one hand, it is widely acknowledged that it is within the ranks of the executive that corruption in Ethiopia has found its most fertile breeding ground. There is a fundamental contradiction here which could lead easily to the undesirable situation where the Commission becomes imbricated in political gamesmanship to shield allies and to harass adversaries. The spectra of political favoritism lurk behind the accountability arrangement contained in Article 3(2) of the Revised Establishment Proclamation. There is thus a compelling case to shift oversight from the Prime Minister or regional president as the case may be to a committee composed of members of the legislature, executive and judiciary. Such a modification would provide the necessary platform for the work of the Commission to be scrutinized by a body which spans all three branches of government.<sup>177</sup>

Elsewhere, in Bangladesh for example, it is also held that BAC has clearly become a political tool to harass the opposition. There are seldom any instances of corruption charges initiated to the members of the ruling party. It becomes a standard practice for the ruling party to engage Commission for lodging corruption cases against political rivalries. This means the ruling party always immune from prosecution as long as they hold power. In this backdrop, Commission may fail to envisage equal treatment to the

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<sup>175</sup> . See Tewodros Mezmur et al (2011), at pp. 11.

<sup>176</sup> . See Tewodros, *ibid.*

<sup>177</sup> . *Ibid.*

party in opposition.<sup>178</sup> The SNNPR commission argues that it works neutrally, and reporting to the parliament/state council is found to be cumbersome specially in getting faster responses. Reporting to the president enables to work collaboratively with the commission and get necessary facilities as soon as possible which would not have been the case had it been for the state council. However, this argument seems indefensible and power must be rearranged. Oversight by a tripartite inter-governmental committee would avoid the danger of protracted decision-making that was feared had the Commission been made accountable to Parliament or state council (in the case of regional states) only.

#### E). PROBLEMS RELATED WITH WITNESSES

Getting the right witnesses for the investigation and prosecution of alleged corruption offences was also one of the major problems the FEACC faced. Owing to its clandestine nature, corruption is difficult to detect and successfully prosecute. The problem is exacerbated by the fact that corruption often is a “victimless” crime, in the sense that there is seldom a readily identifiable victim who can trigger an investigation.<sup>179</sup> In these circumstances, the role played by whistle-blowers in the fight against corruption is of substantial moment. Indeed, prosecutions regularly turn on the information that whistle-blowers provide to enforcement agencies. However, whistle-blowers and other witnesses in corruption matters are vulnerable. For many it is risky, often extremely so, to expose corrupt practices and testify against the perpetrators. They need to be defended against retaliation and victimization. The hazards facing whistle-blowers and witnesses are recognized expressly by the statutes of international anti-corruption law, which emphasize the need for their protection.<sup>180</sup> In Ethiopia, fear of reprisal amongst potential informants is acute and debilitating. The FEACC has long been faced with the predicament of witness reluctance and recalcitrance in the investigation and prosecution of corruption allegations. The Commission has been given a general power to provide for the protection of witnesses and whistle-blowers.<sup>181</sup>

#### F). THE RELUCTANCE ON THE PART OF SOME GOVERNMENT DEPARTMENTS FOR COOPERATION

Anti-Corruption Commissions must work with law enforcement and other colleagues both inside and outside of their jurisdictions to leverage valuable experience and best practices while collaborating with peers in foreign countries to ensure that transnational

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<sup>178</sup> . Bashir Ahmed (2006): *Combating Corruption: The Role of the Bureau of Anti-Corruption (BAC) in Bangladesh*, Lund University Centre for East and South-East Asian Studies, at pp. 27.

<sup>179</sup> . Interview with deputy commissioner, Hawassa.

<sup>180</sup> . See, for example, Arts 32 and 33 of UNCAC and Art 5(5) of the AU Convention.

<sup>181</sup> . See Tewodros, *ibid* at pp. 16.

corruption is identified and prosecuted.<sup>182</sup> The reluctance that some government departments and public enterprises were showing to produce supportive information that the Commission sought for investigative purposes was one of the stumbling blocks in the fight against corruption in this Country. There were also times when they were deliberately providing the Commission with misleading information. Worst of all, some of them were showing no willingness to implement the corrective recommendations the Commission put forward to seal off loopholes that were believed to be conducive for corrupt practices.<sup>183</sup>

#### G). SHORTAGE OF BUDGET AND FISCAL AUTONOMY

Section two of chapter two has discussed thoroughly that budgetary matters are one of the key factor influencing the success and failure of the anti-corruption authority in many countries. Adequate funding of a body is of crucial importance. While full financial independence cannot be achieved (at minimum the budget will be approved by the Parliament and in many cases prepared by the Government), sustainable funding needs to be secured and legal regulations should prevent unfettered discretion of the executive over the level of funding . However, setting up and sustaining specialised anti-corruption institutions are costly. However, in the long run it is even more costly to set up a specialised body and then fail to provide it with adequate resources, hence hindering its performance. This consequently results in the failure to obtain and maintain public confidence.<sup>184</sup> The FEACC expressed the problem of the budget softly as “ ...for a start, we don't have enough financial and material resources at our disposal to design and launch such programmes despite the Governments’ sustainable effort to provide the Commission with the required financial and material resources” .<sup>185</sup>

In the case of SNNPR anti-corruption commission, the law requires the government to provide necessary budget for the efficient accomplishment of its tasks. For instance, for the 2009 and 2010 budget year, the commission’s budget has been 345,284 and 706,334 USD respectively. However, there is a greater probability that the commission may suffer from shortage of resources particularly budgetary considerations. On the other hand, the authorities of the commission hold that the budgetary matter not such much problematic.<sup>186</sup> The commission mainly focuses on its strong sides and skeptical of criticizing itself or out speaking its problems. But, it is not difficult to understand that the problem of budget is widespread in this poverty stricken country.

#### H). GAPS IN THE COLLABORATION WITH CIVIL SOCIETY, MEDIA AND PRIVATE SECTOR

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<sup>182</sup> . See for example the Profile of FEACC (2008) at pp. 36.

<sup>183</sup> . FEACC Profile, *ibid*.

<sup>184</sup> . (OECD) (2008): Specialized Anti-corruption institutions: A Review of Models, at pp 28.

<sup>185</sup> . See the Profile of FEACC at 35.

<sup>186</sup> . Interview with Deputy Commissioner, Hawassa.

As it has been revealed in the theoretical part of this study, cooperation with civil society, media and private sector is the hallmark for the success of anti-corruption authority in any given country. Even comprehensive institutional efforts against corruption are prone to fail without the active involvement of the civil society and the private sector. Accordingly, one of the important features of specialised bodies promoted by different international instruments is co-operation with civil society. Non-state bodies are central to strategies aimed at changing the perception of corruption and combating social tolerance of the phenomenon. Civil society anti-corruption programmes range wide, from promoting awareness of corruption through monitoring government compliance with its anti-corruption commitments to assisting official anti-corruption institutions with the investigation and prosecution of corruption offences. With a view to enhancing their participation, the Commission established the Directorate for the Co-ordination of Ethics Infrastructures which is tasked with the duty of coordinating anti-corruption efforts across the country. This duty includes facilitating collaboration between the Commission and civil society campaigners.

However, there are major considerations which may impede a sustained engagement of non-state entities with the anti-corruption endeavors of the Commission. These relate primarily to freedom of the press and state regulation of civil society. Press freedom is protected as a democratic right under Article 29 of the Ethiopian Constitution. However, it reportedly has been breached routinely since the 2005 elections. Certainly, the international perception of press freedom in Ethiopia is unflattering. As shown in the theoretical chapters of this study, the most recent legislative offensive against the freedom of media<sup>187</sup> and the law governing civil society.<sup>188</sup> These laws are held to have blatantly diminished/if not destroyed at all/ the potential participation of the civil society actors in the fight against the corruption. The law puts restrictions on the funding of civil society organizations working on issues related to human and democratic rights, gender or ethnic equality, conflict resolution, strengthening of judicial practices, or law enforcement.

#### I). DUBIOUS & INCONSISTENT POLITICAL COMMITMENT

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In order for Anti-corruption commission to be fully effective, high-level political backing and commitment is critical. If there is political will, an incumbent government can, through legislation, empower ACAs and implement anti-corruption laws. Furthermore, the government can also provide ACAs with consistent funding, assist them by working closely through various agencies, grant them access to government data, and continuously give political support to achieve concrete results.

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<sup>187</sup>. See Mass Media and Freedom of Information Proclamation No. 590 of 2008 (the Press Law).

<sup>188</sup>. See (Civil society organisations are governed by the Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009 (the Civil Society Law).

In our country, thus far, some sympathizers have reported that high-level government commitment and support for the establishment of an anti-corruption agency has been consistent and strong. In addition to the creation of independent national and regional anti-corruption commissions, the government is also trying to eliminate corruption among civil servants and government officials by posting ethics officers in public sector offices.<sup>189</sup> In consistence with the above argument, the current SNNPR regional president, Mr Dessie Dalke, is reported to have expressed the commitment of the regional state government in the following ways:

*“It is the position and belief of the regional government that the anti-corruption campaign that has been undertaken by the federal government should be carried out in the similar manner and consistently in this region as well. In line with the strong commitment against the corruption at federal level, necessary legal measures should be taken on the suspects and corruption offenders in our region as well.”(Translation Mine).*<sup>190</sup>

However, when we see the records of the commission so far, reluctance on the part of the government has been witnessed, particularly when the case has lesser implication on the interests of the ruling regime.<sup>191</sup> There have been numerous instances where the commission has been utilized as an instrument to repress and harass political dissents. A lack of genuine political commitment (rather than supporting the anticorruption agenda to appease the donor community, international monitoring bodies, foreign investors or domestic public) will hamper either the establishment or the proper functioning of any anti-corruption institution, or hamper the public trust and confidence in the commission as dealt with here above. In some circumstances, a commission linked to the executive branch is used to settle old scores with political rivals.<sup>192</sup>

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<sup>189</sup>. Arsema Tamyalew (2010): A Review of the Effectiveness of the Federal Ethics and Anti-corruption Commission of Ethiopia, European Union and World Bank, at pp. 26.

<sup>190</sup>. See The Commission’s bi-annual, Fanna Ethics Megazine, vol. 3 no. 5, Feb, 2006.

<sup>191</sup>. Interview, name confidential.

<sup>192</sup>. John R Heilbrunn (2004): Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption? , 15.



## 5. CONCLUSION AND RECOMMENDATIONS

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### 5.1. CONCLUSION

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The main theme of this study has been to make an attempt to assess, in a holistic manner the achievements and challenges of the Ethiopia's SNNPR Ethics and Anti-corruption Commission. In due course of making an analysis, the thesis has employed a broader approach taking into account the national efforts to fight against corruption in the context of globalized struggle against the corruption. In doing so, the study began with the definitional controversies of the corruption across the globe. Accordingly, defining corruption is important in the context of global efforts to reduce its influence in public life. But that is not an easy task. Corruption is a social, legal, economic and political concept enmeshed in ambiguity and encouraging controversy. Although there is no universally accepted definition of this phenomenon yet, this study has employed the common factor among most of the existing definitions as it is the abuse of public office or power for private gain. Over the past decade, corruption has been identified as a costly diversion of scarce resources and an impediment to development effectiveness.

As discussed in this study, any scholars have identified several effects of corruption. Corruption is a global phenomenon and has serious implications and consequences for the growth of democracy, promotion and protection of fundamental rights. There is a wide spread perception that the level and pervasiveness of corruption gains significance- Corruption in any form treated as an incurable disease is caused by many social and

economic evils in the society. It damages the moral and ethical fibers of the civilization.<sup>193</sup> Kibwana (2001) observed that corruption tends to concentrate wealth, not only increasing the gap between rich and poor but providing the wealthy with illicit means to protect their positions and interests. Kibwana held that, in turn, can contribute to social conditions that foster other forms of crime, social and political instability and even terrorism. Corruption can be found in all walks of life. It hinders economic development, diverts investments in infrastructure, institutions and social services and also undermines efforts to achieve other country specific targets. According to Kaufmann and Siegelbaum (1996), where corruption is perverse, injustice is perpetrated because those with an unethical orientation get privileged access to resources and services to which others are excluded. It is in this regard that Kaufmann and Siegelbaum held that this aggravates social injustice and increases poverty while this social and economic exclusion translates into class disharmony.

Muthomi (2006) argued that corruption manifests itself in one or more of various forms, viz. bribery, extortion, fraud, embezzlement and other forms of malfeasance by public or corporate officials. As used in the context of this study, typologies of corruption include Grand Corruption, Political Corruption, Corporate Corruption, Administrative Corruption and Petty Corruption. Petty corruption is the common man's version of corruption. It is said that petty corruption involves small sums paid to low-level officials to "grease the wheels" or cut through bureaucratic red tape (Muthomi, 2006: 4).

According to the United Nations (2001), corruption can be found in all walks of life. It hinders economic development, diverts investments in infrastructure, institutions and social services and also undermines efforts to achieve other country specific targets. As a result, the UN notes that the international community has become increasingly concerned with the problem of corruption and its negative impact on economic growth and poverty alleviation.<sup>194</sup> As World Bank (1997) points out development partners, international organizations, non-governmental organizations and academic experts on corruption have advocated for an integrated and comprehensive approach to fighting corruption around the globe. This includes: introducing new or amended legislation aimed at reducing public officials' opportunities for rent-seeking; building alliances with other governments in the struggle against corruption by signing international anti-corruption agreements; and the implementation of anti-corruption programmes. Action against corruption is high on the global agenda and anti-corruption efforts by the international community have led to the establishment of global and regional initiatives to fight corruption.

When we see the level of Corruption in Ethiopia, different reports undertaken by different institutions, both national and global, produce different figures about the level of corruption

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<sup>193</sup>. Srinivasa Rao Gochipata & Y. R. Haragoopal Reddy (2013): Institutional Arrangements to Combating Corruption: A Comparative Study of India's and Hong Kong's Independent Commission Against Corruption, NALSAR Law Review [Vol.7 : No. 1, at pp. 1.

<sup>194</sup> . (UN, 2001:112).

in Ethiopia. For example, according to the Global Integrity Report of 2006, corruption is considered a norm of social, economic and political intercourse in Ethiopia. A corruption survey of public perceptions of corruption conducted by Addis Ababa University in 2001 revealed that "... fraud, cheating, trickery, embezzlement, extraction, nepotism, theft and prejudice" were believed to be the major features by which corruption manifested itself in the country. According to various sources, low level of democratic culture and tradition, lack of adequate citizen participation, lack of clear regulations and authorization, low level of institutional control, problems related to transparency and accountability in some areas, extreme poverty, and harmful cultural practices are the major causes of corruption in Ethiopia. Unfortunately, it has continued to pose threats to the Country's development and democratization processes. Currently, corruption is believed to be one of the major factors that significantly contribute to the reduction of government revenue.

Globally, although its effects on democratic institutions and economic and social development have long been apparent, the fight against corruption has only recently been placed high on the international policy agenda. Today, many international organizations are addressing the global and multi-faceted challenge of fighting corruption. Among them, the United Nations Convention against Corruption, finalized on 30 September 2003 and adopted by the General Assembly in its resolution 58/4 of 31 October 2003, represents a major step forward in the global fight against corruption, and in particular in the efforts of UN Member States to develop a common approach to both domestic efforts and international cooperation. It covers a very broad range of issues including prevention of corruption, criminalization of corruption, international co-operation, and recovery of assets generated by corruption. It also requires its parties to implement specialised bodies responsible for preventing corruption and for combating corruption through law enforcement. Accordingly, recent international treaties against corruption require their member states to establish specialised bodies dedicated to fighting and preventing corruption.<sup>195</sup> The United Nations Convention against Corruption requires the existence of two types of anticorruption institutions:

- a body or bodies that prevent corruption;
- a body, bodies or persons specialised in combating corruption through law enforcement.

As amply discussed under chapter two of this study, there is consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialized bodies and/or personnel with adequate powers, resources and training. Mechanisms need to be in place to secure a high level of structural, operational and financial autonomy of institutions and persons in charge of the fight against corruption to guard them from improper political influence.

Finally, international standards neither offer a blueprint for setting up and administering a specialised anti-corruption institution, nor advocate a single best model or a universal type of an anti-corruption agency. However, the aforementioned conventions define features and set important benchmarks according to which anti-corruption institutions should be established. The question of which model of anti-corruption institution a particular country should endorse is very difficult to answer. Any country that considers establishing a specialized anti-corruption institution and discusses the selection of the model must acknowledge a proven fact: institutional transplants from foreign systems are likely to fail if they are not adequately adapted to the local political, cultural, social, historical, economic, constitutional and legal background. Accordingly, the first rule is to adapt the model and form of specialised anticorruption preventive and repressive functions to the local context. Considering the multitude of anti-corruption institutions worldwide, their various functions and in particular the arguments about their actual performance, it is difficult to identify all main patterns and models. However, some trends can be established based on different purposes of anti-corruption institutions (viewed through their functions).

- ✓ Multi-purpose agencies with law enforcement powers and preventive functions;
- ✓ Law enforcement agencies, departments and/or units;
- ✓ Preventive, policy development and co-ordination institutions

Both the United Nations and the Council of Europe anti-corruption conventions , which we have dealt with in previous sections, establish criteria for effective specialised anti-corruption bodies, including *independence from undue political interference, transparent procedures for appointment and removal of the director or agencies' executives, specialization concerning availability of specialised staff with special skills and a specific mandate for fighting corruption, adequate training and resources. Genuine political will to fight corruption is also a key factor. In practice, many countries face serious challenges in making these broad criteria operational. Available experience provides further guidance.*

By 2001, the problem of corruption had become conspicuous enough to prompt the Ethiopian government to commission a Corruption Survey with a view to understanding the severity of the problem and its impact upon the country. This study conducted by AAU brought the sufferings of the Ethiopian public to light". Such exposés sparked donor pressure to combat corruption. In response to this litany of unflattering developments the Ethiopian parliament on 24 May 2001 established the FEACC, as an autonomous federal government entity charged with the unenviable task of being the nation's anti-corruption watchdog and ethics custodian in the context of the globalization of anti-corruption discourse and its existence expressed the spirit and purport of international anticorruption law. It resembles a model of multi-purpose institution which combines the investigative, preventive, educational and prosecutorial functions. . Its creation has an important symbolic function, proclaiming anti-corruption to be an attribute of government. This trend was actively pursued by the other member states of the Ethiopian federation.

Accordingly, the SNNPR Ethics and Anti-corruption Commission (the subject of this study) was established in 2002 with the establishing law, proc. No. 48/2002 with the objective of creating a society which can no longer shoulder corruption and unethical practices; prevent corruption; and investigate and prosecute corruptors. This establishing law was later amended by the new law- proc. No. 142/2012.

The main objectives of the commission included: In cooperation with relevant bodies, to strive to create an aware society where corruption will not be condoned or tolerated by promoting ethics and anti-corruption education; In cooperation with relevant bodies, to prevent corruption offences and other improprieties; To expose, investigate and prosecute corruption offences and improprieties; To the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state; To accelerate the ongoing development, foster democracy and good governance; To create a society founded on ethical principles who cannot tolerate corruption.

The Commission adopted an all-embracing and comprehensive strategy of executing this mission. The Commission used a three-pronged approach in the fight against corruption. These were: investigation, prevention, and mobilization of public support (Public Education). This approach was reflected in the mandate given to the Commission by law to investigate corrupt conduct; trace and recover corruptly acquired public property, advice on corruption prevention mechanisms, register the assets of the government officials/appointees, and educate the public on the dangers of corruption. This mandate was carried out through different directorates the major/core departments of the commission being Corruption and impropriety prevention core work process, Ethics infrastructure coordination core work process, Corruption offence investigation and prosecution core work process. These core work processes of the commission are supported by the facilitative and supportive work process which are currently six in Number, such as Human resource management supportive work process; Development, planning, coordination and evaluation supportive work process; Finance, procurement and resource management supportive work process; Information communication Technology supportive work process; Public relations supportive work process; Human resource statistics data supply supportive work process.

The regional anti-corruption commission has two established executive posts, namely, Commissioner and Deputy Commissioners supported also by necessary staff. The Commissioner is nominated by the president of the state and appointed by the SNNPR state council which poses some difficulty in the independence and paves the way for political interference; the Commissioner-Art 11 shall be the chief executive of the Commission and, as such, shall organize, direct and administer the activities of the Commission; to exercise the powers and duties of the Commission specified under article 7 of this Proclamation.

### *Summary of the Findings of the Study*

As noted earlier in theoretical parts, the number of Anti-corruption agencies (ACAs) around the world has increased dramatically over the past decades. Since its establishment, the FEACC has been combating corruption through a three-pronged and multi-stakeholder approach. When we see the achievements of the commission since its establishment twelve years back, it has shown mixed results. When we critically evaluate the achievements of the commission, this researcher in this study found that the following are the major positive accomplishments of the regional anti-corruption commission: 1). Expanding Ethics and anti-corruption Education and making corruption a public agenda through training, research works and publication, panel discussions, celebrating International anti-corruption days and utilizing media outlets; 2). Revising and Strengthening the Legal Framework to avoid legal gaps regarding corruption; 3). Prevention of corruption; 4). Investigation and Prosecution of corruption offence; 5). Working in partnership with the stakeholders; 6). Asset registration and recovery; 7). Participation in the national anti-corruption coalition.

On the other hand, the commission has not been free from defects, both internal and external, in its crusade against corruption in the regional state. Critics have already been out speaking about its low results compared to the high public expectations. This study has closely assessed the commission's performance and identified the following factors as challenges to the commission. Accordingly, capacity constraints such as skills, capabilities and resources (both material and human) of the commission; the complex and sophisticated nature of the corruption offence exacerbated by the low level of commission's capabilities; the limited spatial institutionalization of the commission only at the regional level lacking branch offices at local levels; narrow mandate of the commission lacking legal basis and jurisdiction to prevent and prosecute corruption in the giant private sector; (inability) to win public trust and confidence as an anti-corruption championing institution-colored and disillusioned public trust due to commission's inefficiency to protect itself from frequent political manipulation and interference where it has been held that it had been created to serve as a pawn in the political machinations of the ruling party; problems related with witnesses such as lack of genuine complaints, fear of retaliation, victimization and also rivalry, etc; the reluctance on the part of the other government departments to cooperate with the commission and to implement the recommendations of the commission; shortage of budget and problems in fiscal autonomy; prevalent gaps to work in collaboration with civil society, media and the private sector; dubious and half-hearted political commitment to fight corruption and to support the commission.

In sum, notwithstanding the positives surveyed above, there remains much to be concerned about in the Commission's performance to date as shown above. The task of building an independent anti-corruption institution that enjoys popular legitimacy that is well resourced and successful in the execution of its mandate is a daunting and protracted one. It has been only ten years since Ethiopia chose to establish the FEACC as the institution to spearhead the anti-corruption movement in the country.

Given the circumstances and constraints under which it operates it could not be expected of the Commission to be fully functional and properly effective as yet. The Commission has been given enough powers, more or less, to combat corruption by pursuing a comprehensive range of educational, preventive, investigative and prosecutorial activities. Although its anti-corruption efforts have improved over time, the Commission – regrettably but unsurprisingly – has not made noteworthy progress in actually taming corruption in Ethiopia. This may be attributable to the Commission’s structural flaws, its continued vulnerability to political interference, its lingering difficulties with securing public trust, its deficiencies in respect of human and financial resources, and its resultant inability to produce more potent investigative and prosecutorial strategies.

Perhaps the most telling measure of the Commission’s difficulties is the persistent perception that its anti-corruption work is deeply politicized, in the sense that corruption charges and trials are used routinely to silence or disarm opponents of the ruling party. It would seem that the FEACC is facing a classic double bind. On the one hand it needs to demonstrate its resolve to combat corruption by deploying its investigative and prosecutorial powers wherever and whenever the need arises; on the other hand it needs to allay tenacious suspicions that its prosecutorial decisions are informed by political favoritism. Its success in negotiating these contraries will enhance its functionality and render its anti-corruption efforts more efficacious.

## 5.2. RECOMMENDATIONS

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This study has sought to assess and examine about the achievements and challenges of the Ethiopia’s SNNPR Ethics and anti-corruption commission by employing some a broader approach by making reference to the national and globalized movement to curb corruption. Regarding the effectiveness and achievements of the regional commission, this thesis has found that the commission has brought about a mixed result in the endeavor to eradicate corruption in the regional governmental offices and other public enterprises. Accordingly, this thesis appraised the accomplishments of the commission, and, at the same time aimed to find out some of the challenges hindering the successes of the commission. Hence, in order to effectively alleviate and address those challenges, this study provides, among others, the following recommendations.

- ❖ Enhancing the capacity of the commission by promoting and advancing the specialization and skills of the commission’s personnel and resources;
- ❖ Re-institutionalizing the commission’s offices and operations beyond the regional level and restructuring it to operate in all zones and localities of the regional state;

- ❖ Broadening the scope and jurisdiction of the commission to include the corruption offenses committed in private sectors so that the commission could deter, investigate and prosecute the corruptors in this sector;
- ❖ Fostering and building a public confidence and trust by living conforming to the requirements of the laws and the expectations by the public so that the public could rally behind and support the commission;
- ❖ Enhancing the full-hearted political commitment to fight and eradicate corruption;
- ❖ Maintaining and ensuring a maximum autonomy, refraining from party favoritism and ensuring an integrity of the commission as an independent entity;
- ❖ Diminishing and struggling against a non-genuine and unreasonable political interference in the autonomous works of the commission;
- ❖ Ensuring a reliable and dependable budgetary autonomy and necessary requirements;
- ❖ Fostering the greater collaboration with and cooperation of civil societies, media and other important institutions;
- ❖ Re-arranging the institutional mode of accountability by making the accountability of the commission to the groups composed of the legislature, the executive and the judiciary, rather than only for top executive organ-which tends to promote undue political interference as shown in this study;
- ❖ Re-thinking the mechanisms of promoting the awareness creation and ethics and anti-corruption education so that the commission could enlarge its outreach and accessibility;
- ❖ Better ensuring the safety of the witnesses and whistle blowers, examining the genuinity of the corruption complaints, and transforming the mode of receiving the complaints with the advancing technology.





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