

A Critical Assessment of the Role of Non-State Actors in Combating Corruption in Ethiopia: Opportunities and Challenges

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Abstract

Corruption is a cancer that seriously affects the overall country's development in general and fair enjoyment of citizens' human and democratic rights in particular. It is usually committed clandestinely and as such, combating corruption requires multi-faceted anti-corruption measures. Thus, a synergy among state and non-state actors is compulsory to ensure effectiveness in the country's crusade against corruption. Ethiopia has enacted a number of anti-corruption laws, established different anti-corruption institutions as well as ratified international and regional anti-corruption instruments as part of its move to combat corruption. Moreover, there are a number of tasks done to make use of non-state actors such as CSOs, NGOs, Medias and whistle-blower in the crusade against corruption. Paradoxically, the country is not making any tangible progress in the fight against corruption and as such remains a highly corrupt nation. This study has made a critical assessment on the roles of no-state actors in combating corruption with a particular focus on available opportunities and challenges. In this study, the author has employed a doctrinal legal research method that involves a systematic analysis of statutory provisions, cases, official reports and legal principles in the discipline of law. Through a critical evaluation with regard to legal framework to operate, political commitment to engage non-state actors and internal defects, this study has found that there are a number of legislative bottlenecks that needs amendment or else a complete repeal. Moreover, there is a need to have a persistent political determination and will to advance the non-state actors contribution in combating corruption. Finally, the non-state actors such as NGOs, CSOs and Medias need to have strong ethical standards in order not to immerse them into the cancer they claim to combat.

Key Words: Corruption, anti-corruption measures, Non-state actors, Ethiopia

1. Introduction

1.1. Background and Justification to the Study

Corruption is a global problem posing a serious threat to the development of countries and their citizens' (Babu, 2006). There is a common understanding among International community that corruption is an evil matter that everyone should combat due to its multi-dimensional adverse effect. Since the mid-1990s, the international community has adopted a total of eleven anti-corruption legal instruments, including the recent Malabo Protocol; at the international, regional and sub-regional level (Protocol, 2014). Combating corruption is not an easy task as it is committed clandestinely (Johnston, 2002). Hence, dealing with

corruption requires a multi-faceted approach. The anti-corruption instruments emphasise, among others, prevention, criminalisation and law enforcement, international co-operation, asset recovery and technical assistance and information exchange measures for effective fight against corruption. For example, the United Nations Convention against Corruption (UNCAC) comprehensively recognises all the measures, with the first four as its pillars (UNCAC, 2005). African Union Convention on Preventing and Combating Corruption (AU Convention) provides for three anti-corruption measures, namely, prevention, criminalisation and co-operation (Arnone *et al*, 2014).

The anti-corruption instruments rightly recognise that states parties cannot be successful in the fight against corruption by only using state institutions. They require states parties to ensure the active participation of non-state institutions or actors in combating corruption (Para 5 of the Preamble & Art 13 of UNCA). Transparency International (TI) also advocates a holistic anti-corruption approach through a national integrity system that includes broadest possible range of participants and stakeholders (Pope, 2000). Among others, the national integrity system should include the political will of the three arms of the government, administrative reforms, auditor-general, ombudsman, independent anti-corruption agencies, civil society, the media, the private sector and international institutions. Such an inclusive approach creates a sense of ownership, thereby enabling every member of the public to contribute in implementing a country's anti-corruption strategy (Saryazdi, 2008). Awareness creation, prevention, detection, prosecution and sanctions are accepted as the main elements of a holistic anti-corruption strategy (UNODC, 2007). Thus, fighting corruption effectively requires a multi-dimensional and comprehensive approach in terms of which different stakeholders positively conspire together in the campaign against corruption. The international and regional anti-corruption instruments affirm this by calling for a "participatory form of prevention and fighting corruption", besides the legislative and institutional measures (Art 13 of UNCAC, 2005 & Art 12 of AU Convention, 2006). Thus, the instruments require states parties to respond appropriately to ensure the active involvement of non-state actors such as civil society, NGOs and community organisations in the fight against corruption (Arts 13(1) of UNCAC 2005 & 12(1)-(3) of AU Convention, 2006). Moreover, they provide that states parties shall make sure that the media is given access to information and freedom of expression regarding crimes relating to corruption, unless it interferes with fundamental rights (Articles 13(1) of UNCAC, 2005 & 12(4) of AU Convention, 2006).

Ethiopia is a party to both UNCAC as an international anti-corruption instrument (Ethiopia ratified UNCAC on 26 November, 2007) and it has also signed and ratified the AU Convention as a continental instrument to fight corruption (Ethiopia ratified the AU Convention 18 Sept, 2007). Moreover, Ethiopia, in its aim to fight corruption, has enacted different laws starting from the 1957s Penal Code of Ethiopia that expressly criminalized corruption for the first time (Arts 410-416 of Ethiopian Penal Code Procmn No. 158, 1957). The Revised Criminal Code of Ethiopia also criminalises corrupt practices in detail (Arts 407-426 of the Ethiopian Criminal Code, Procmn No. 414, 2004). In 2015,

Ethiopia enacted a law that criminalises comprehensively different forms of corruption, including abuse of power, bribery, illicit enrichment, money laundering, undue delay of matters and corruption in the private sector (Arts 9-33 of Corruption Crimes Proclmn No. 881, 2015). The country also enacted several other anti-corruption laws, like the law on Special Procedure and Evidence for Corruption Crimes and the Asset Disclosure and Registration law (Assets Disclosure and Registration Proclamn No. 668, 2010). Moreover, non-state actors such as NGOs, CSO, CBOs, media and whistle-blowers are expected to engage directly or indirectly in the country's crusade against corruption. However, their contribution is by far, below what is practically expected. Although Ethiopia is not among worst sliders down in the ladder of the Corruption Perception Index (CPI), it has failed to show significant improvement in combating corruption. Data compiled by Transparency International show that Ethiopia's citizens and institutions suffer from high levels of bribery (Transparency International data, 2017). Transparency International's CPI indicates that Ethiopia scored 34 percent in 2018 and ranked at 114 out of 180 countries (Transparency Internation Corruption Perception Index Report, 2018).

1.2. Objectives of this Study

This study is aimed to:

- identify various roles of non-state actors in combating corruption;
- indicate the opportunities and challenges to non-state actors in combating corruption in Ethiopia, and
- recommend feasible solutions on how to tackle challenges identified thereby to maximize the role of non-state actors in fighting corruption in Ethiopia.

1.3. Research Questions

To attain the above stated objectives, the following research questions were framed:

- a. What are the major roles played by non-state actors in combating corruption?
- b. What are the existing opportunities and challenges to non-state actors in combating corruption in Ethiopia?
- c. What are the possible measures that should be taken to address the challenges identified?

1.4. Methodology of the Study

In this study, a doctrinal legal research method is used. In discipline of law, a doctrinal legal research method refers to a systematic analysis of statutory provisions, cases, official reports and legal principles (Hatchinson and Duncan, 2012). In order to maximize the contribution of non-state actors such as CSOs, NGOs, Media and whistle-blowers in combating corruption, availability of conducive legal environment to operate, persistent political commitment and internal defects on the side of non-state actors were used as a determining factor for their success or failure.

2. Conceptual Framework: Meaning and Types of Non-State Actors

A. Meaning: There is no universally accepted definition for NSAs. In an attempt to define NSAs, some legal scholars have considered NSAs as any institutions that are not part of the state entities (Omotoye, 2016). Others focus on NSA's power and influence on the policy-making process by involving the public (Omotoye, 2016). According to Chene & Delle, NSAs encompasses a wide variety of formal and informal organisations engaged in anti-corruption work by different roles (Chene & Delle, 2008). UNCAC takes a comprehensive approach to the meaning of NSAs involved in the fight against corruption. With regard to the participation of society in preventing corruption, it calls upon the states parties to "promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community-based organisations (CBOs)" (Art 13(1) of UNCAC, 2007). The phrase "individuals and groups outside the public sector" implies that UNCAC focuses on more of the roles and contributions than institutional structure. Accordingly, the public, either as a private individual or as an institution, can involve in the fight against corruption.

In general, NSAs are any entities outside state institutions, with formal or informal organisational structure that play their respective roles in the crusade against corruption. This definition of NSAs is defective as it excludes the possible role of private individuals in combating corruption. However, UNCAC's position is wider as it recognises the role of private individuals as well. Thus, as a member of public an individual can play its role without being a member of any formal or informal organisation, for example by reporting acts of corruption to the relevant authorities. This reinforces the public's interest to combat corruption, since the public is the ultimate victim of corruption (Saryazdi, 2008). Finally, UNCAC's approach to the public participation has a meaning of non-state actors than non-state institutions and as such the term non-state actors is used in this article.

B. Types of Non-State Actors (NSAs): It is difficult to come up with a closed list of NSAs. They are numerous in number and established from time to time by taking different forms. The most common types of NSAs include non-governmental organisations, civil society organisations, community-based organisations, the mass media and whistle-blowers (Kalikh, 2017).

None-Governmental Organizations (NGOs): Can be defined as legally constituted, non-profit, voluntary groups typically task-oriented in their activities and driven by citizens with a common interest (Fletcher & Herrmann, 2012). NGOs are diverse in their size, function and membership (Sushat, 2010). There are four characteristics for an organisation to be labelled an NGO, namely, voluntariness, independence, not-for-profit and not self-serving in aims (Role of NGOs in a Civil Society, 2017). The World Bank classifies NGOs as either advocacy or operational (Sushat, 2010). Advocacy NGOs make efforts to raise awareness and knowledge through lobbying, presswork and activist events. Operational NGOs are involved in designing and implementing development-related projects. TI, Global Transparency Initiative (GTI), Global Witness (GW), International Centre for Asset Recovery (ICAR), Global Integrity (GI) and Publish What You Pay are some of NGOs involved in combating corruption (Fletcher & Herrmann, 2012).

Civil Society Organisations (CSOs): CSOs refer to a wide array of organisations such as community groups, academia, NGOs, labour unions, indigenous groups, charitable organisations, faith-based organisations, professional associations and foundations (Defining Civil Society by World Bank, 2017). Civil society is the arena outside of the family, government and market where people voluntarily associate to advance common interests based on civility (What is Civil Society, 2017). CSOs are much wider than NGOs. CSOs' ability to be vocal and expose corruption cases is dependent on the level of autonomy they enjoy from a government (OECD, 2013).

Community-Based Organisations (CBOs): CBOs are non-profit groups that work at local level to solve the problems that residents face (Community-based Organisations, 2017). They stress the participation of a community at grassroots level. Local community members mostly staff CBOs. They can be also termed as a bottom-top approach to address a local problem.

The Mass Media: Media refer to the methods by which an intended message is conveyed (What is Mass Media, 2017). It includes radios, television, newspaper, Blogs, Twitter, and Face book. Based on ownership, media can also be classified as government-owned or privately owned.

Whistle-blower: A whistle-blower is an employee or former employee who reports illegal practices or misconduct to the appropriate authorities' (Kaur, 2012). Whistle blowing can be internal or external (Kaur, 2012). It is internal when a person reports the illegal practices to superior or fellow employee within the institution and external when reporting is made to outside entities such as the media, law enforcement or watchdog agencies.

3. The Role of NSAs in the Fight against Corruption

The fight against corruption requires concerted measures. States parties need assistance of NSAs. The public, as the ultimate bearers of the cost of corruption, has a direct interest to combat corruption. The anti-corruption instruments also recognise the need to involve NSAs to fight corruption (Art 13 of UNCAC 2005 & Art 12 of AU Convention, 2006). Basic roles of NSAs in the area of: corruption prevention, initiating and developing the anti-corruption instruments and Strategies, advocacy and awareness Creation, conducting research, monitoring and evaluation, the enforcement of the anti-corruption laws, asset recovery are briefly discussed below.

A. The Role of NSAs in Preventing Corruption: Preventing corruption involves the adoption of various anti-corruption measures that reduce the opportunities for corruption. Prevention of corruption *ex-ante* has not been a focus area for the majority of UNCAC predecessor anti-corruption instruments. Though SADC Protocol contains prevention provisions, they lack emphasis as the obligations imposed on the states parties are hortatory (Art 4 of SADC Protocol, 2001). ECOWAS Protocol clearly requires states parties to take preventive measures (Art 5 of ECOWAS Protocol, 2001). Unfortunately, ECOWAS Protocol has not yet entered into force and not comprehensive as such.

UNCAC's focus on prevention starts from the purpose clause where it gives a similar emphasis to preventing corruption like the other three pillars (Art 3 of UNCAC, 2005). UNCAC's emphasis on prevention is further complemented by devoting one full chapter to the prevention measures (Chapter II of UNCAC, 2005). The details of the provisions in the same chapter that imposes the mandatory obligations on the states parties, at least in the critical areas, are also the reflections of the progressive emphasis on the prevention (Arts 5-14 of UNCAC).

Different anti-corruption instruments such as UNCAC (Art 13 of UNCAC), AU Convention (Art 12 of the AU Convention), SADC (Art 4(i) of SADC Protocol) and ECOWAS Protocols recognise the role of NSAs in preventing corruption (Art 5(e) of ECOWAS Protocol). However, they do not provide details of their roles in preventing corruption, except the role of raising public awareness (Carr & Outhwaite, 2011).

The role of NSAs in preventing corruption is multi-dimensional. Their contribution in preventing corruption begins from the very initiation of the international anti-corruption instruments. For example, UNCAC itself is the result of the initiation by the NGOs coalition led by Transparency International (TI) to fight corruption (Carver, 2003). TI, together with the Wolfsburg Group, has developed the Wolfsburg Principles to combat money laundering that involves corruption in private banks (Hopton, 2009). TI has also developed a National Integrity System, which advocates a holistic approach in the fight against corruption (Transparency International, 2000).

NSAs also play Advocacy and Awareness Creation role thereby to prevent corruption. Creating an informed and enlightened community is a base for preventing corruption (Nsereko & Kebonang, 2005). It has a long-term significance aiming at creating a society that does not accept corruption as a norm (Diog, 2012). UNCAC expressly underscores the important role of NSAs such as NGOs, CSOs and CBOs in raising public awareness (Art 13 of UNCAC). Awareness rising involves, *inter alia*, disseminating information regarding the: causes and ill effects of corruption; anti-corruption laws and code of conduct; protection to those who report incidents of corruption; agencies where reports and complaints can be made; investigations and prosecutions; the importance of vigilance and public accountability (UNODC, 2004).

NGOs and CSOs advocate for the adoption of anti-corruption reforms, development of the culture of accountability and transparency in the functioning of public and private sectors (Chene & Delle, 2008). For instance, TI has been at the forefront of advocating in favour of OECD instrument to criminalise foreign bribes (Fletcher & Herrmann, 2012). Depending on nature and audiences, different types of media can be used in awareness creation and advocacy activities (UN Guide on Anti-Corruption Policies, 2003). The advocacy and awareness creation activities can be done either independently or in collaboration with government agencies such as anti-corruption commissions and other stakeholders. For example, in the Hong Kong, the extensive use of the media by the

Community Relations Department of Anti-Corruption Commission has brought a revolution in public attitudes towards corruption (UNODC, 2004).

B. Conducting Research: Research is a complementary and core contributor in the fight against corruption. It gives insights about the impact and proper implementation of various anti-corruption measures such as awareness creation, advocacy activities and code of conduct (Carr & Outhwaite, 2011). NSAs such NGOs, CSOs and academia that enjoy better autonomy can conduct full research in areas of corruption and produce valuable outcomes. They expose corruption and promote transparency. For example, the Global Witness, in its field research conducted in the Eastern Democratic Republic of Congo, has revealed the corruption scandals of plundering minerals by armed groups and foreign companies' (Global Witness Report, 2009). The research outcomes can serve as a compass to make an informed future anti-corruption measures.

C. Monitoring and Evaluation: The proper implementation of various anti-corruption instruments has to be periodically evaluated and monitored. Such evaluation should be conducted by an independent institution (The Role of COS in the Fight against Corruption, 2017). Majority of the anti-corruption instruments, including UNCAC do not have an independent institution that monitors and evaluate their effective implementation by their respective states parties. AU Convention establishes an Advisory Board on Corruption to follow-up its implementation (Art 22 of AU Convention). However, the Board lacks the power to investigate and sanction countries that fail to report (Babu, 2006). The Council of Europe Group of States against Corruption (GRECO) is only the vigilant organ with the sufficient power to monitor the implementation of the Council of Europe anti-corruption conventions (Babu, 2006). The absence of an independent organ that follows-up the proper implementation of many anti-corruption instruments leaves their effectiveness under question. In this lacuna, CSOs and NGOs, as independent observers, can play a key role in monitoring and evaluating the implementation of anti-corruption measures (OECD, 2013). AU Convention, by recognising such role, requires states parties to ensure the participation of civil society and media in monitoring the implementation of the convention (Art 12(3) of the AU Convention). For example, TI play indirect role in performance review evaluation through its publication of Corruption Perception Index and BPI reports (Bukovansky, 2006).

D. The Role of NSAs in the Enforcement of the Anti-Corruption Laws

Criminalisation and law enforcement is another pillar of the anti-corruption instruments. UNCAC goes beyond basic forms of corruption such as bribery and embezzlement of public funds in criminalising corrupt conducts (UNODC, 2012). Thus, it addresses acts done in support of corruption such like obstruction of justice, trading in influence and laundering the proceeds of corruption. SADC Protocol is even more comprehensive as it provides 'catch-all clause' beside the ostensive list of acts (Arts 1 & 3 of SADC Protocol). Criminalising list of corrupt conducts through different anti-corruption instruments or proscribing them in a different administrative code of conduct is not an

ultimate goal *per se*. Those letters of law should come to the ground through an effective enforcement by way of punishing the perpetrators and recovering the stolen assets, *inter alia*. Corruption crimes are usually committed secretly (Johnston, 2002). It is unthinkable to have an effective investigation and enforcement by only relying on formal state institutions, as it requires evidence and information to substantiate. Anti-corruption instruments are also not far behind in recognising the role of a wider public in the enforcement of anti-corruption laws. For instance, UNCAC impliedly provides different roles such as reporting or whistle-blowing corruption incidents, giving testimony in corruption cases either as a victim, as expert or ordinary witnesses (Arts 32 & 33 of UNCAC). It also calls for the co-operation of private sector entities with investigation and prosecution authorities' (Art 39 of UNCAC). The private enterprises and individuals are in better position to identify and report acts of corruption (UNODC, 2012). For example, a whistle-blower who exposes his or her fellow employee or supervisor, usually works in the same institution.

NSAs such as NGOs, CSOs and media assist law enforcement organs to fight corruption. For example, the Global Witness has exposed one of the biggest corruption scandals involving \$1.1 billion deal for one of Nigeria's oil blocks-OPL 245 (Global Witness Report, 2016). The Global witness very often works in partnership with local CSOs to have local knowledge and network (Global Witness Report, 2016). It mostly uses the undercover investigation to unravel money laundering and corruption (Global Witness Report, 2016). Such investigation reveals acts committed secretly, which could not have been exposed through formal investigation process. Journalists and whistle-blowers are also crucial in exposing information and evidence that complement the formal investigation and prosecution of corruption. For instance, the Panama Papers are one of the largest collaborative investigation journalism known for exposing corruption scandals and systems that enables the commission of corruption (The Panama Papers, 2017). In the case of *Cumpana and Mazare v Romania* and *Kudeshkina vs Russia*, European Court of Human Rights has repeatedly recognised the exposure of corruption incidents by the journalists or whistleblowers as an element of the basic human rights of freedom of expression (Boersma, 2012). Such wider recognition and protection to whistleblowers and journalists promotes the culture of transparency and accountability in the public and private sector.

E. The Role of NSAs in Asset Recovery

Asset recovery is the process by which the proceeds of corruption crimes are identified, traced, seized, confiscated and returned to their rightful owners (What is Asset Recovery?, 2017). It is one of the innovative and fundamental pillars of UNCAC. UNCAC is innovative in a sense that it deals with both domestic and transnational asset recovery (Claman, 2008). It is also the first instrument to recognise the importance of non-conviction based asset recovery (Claman, 2008). UNCAC is determined to prevent, detect and deter cross-border transfer of illegally acquired assets via assets recovery (Para 8 of the preamble of UNCAC).

Asset recovery is immensely complicated, time-consuming and resource intensive (Guide to the Role of CSOs in Asset Recovery, 2013). This is partly because criminals hide the stolen money across multiple-jurisdictions to launder, which causes legislative and procedural barriers, *inter alia*. Thus, a specialised technical expertise in the victim country and a strong political will on the side of the country where the assets have been diverted remain crucial for effective asset recovery (Babu, 2006). Such effective asset recovery requires the active involvement of both state and non-state actors. UNCAC impliedly recognises the important role of NSAs for the asset recovery under its preamble and parts dealing with prevention (Para 8 & 10 of the preamble and Art 13 of UNCAC). The role of NSAs in the asset recovery process can be better explained by taking the International Centre for Asset Recovery (ICAR)-an independent non-profit institution that works in asset recovery from corruption and money laundering (Fletcher & Herrmann, 2012). ICAR operates through training, casework control, legal and policy analysis, and global policy dialogue and research. ICAR provides training on intelligence gathering and analysis, asset tracing techniques and case and investigation strategy. Through its casework, ICAR assists national enforcement authorities in partner countries with handling concrete and complex international corruption cases with an asset recovery angle. ICAR also regularly reviews domestic laws, policy and institutional arrangements relevant to asset recovery and facilitates related local reform. Finally, ICAR shares experience with the broader international asset recovery anti-corruption community through its global policy dialogue and research.

In general, NSAs play a significant role in the asset recovery process through: raising awareness, advocacy, casework and legal analysis, and returning confiscated assets (Guide to the Role of CSOs in Asset Recovery, 2013). For example, Yemeni National Authority for Recovering Stolen Assets (AWAM) - a coalition of NGOs, professionals and activists work to raise awareness on the importance of recovering stolen assets and the negative effects of smuggling assets outside Yemen (TI, 2014). The Tunisian Association for Financial Transparency (ATTF) -an NGO created with the aim of accelerating the judicial and administrative efforts to recover the assets stolen by the former Tunisian President, Beni Ali and his accomplices (Tunisia Struggles to trace up to 11 Euro billion hidden abroad by Beni Ali, 2017). ATTF is assisting Tunisian government in asset recovery by mobilizing other NGOs. Casework and legal analysis is another crucial role of NSAs in asset recovery, whereby CSOs and NGOs identify and expose criminal assets acquired by a suspect. They may even go to the extent of initiating legal proceedings by proxy.

In general, NSAs can play multi-dimensional roles in the crusade against corruption at the international, regional and national level as discussed above. However, their success is dependent on in the presence of suitable environment to operate. In Ethiopia, the NSAs such as NGOs, CSO, CBOs, media and whistle-blowers are expected to engage directly or indirectly in the country's crusade against corruption. Although there are positive movement by the country through ratifying UNCAC, the AU Convention and many other domestic legislations as well as establishing different anti-corruption institutions such as FEACC, FAG, Anti-corruption Liaison units, the practice and incidents of corruption is at worst level. The NSAs contribution is also by far below to what they could have contributed.

4. Opportunities and Challenges to NSAs to Fight against Corruption in Ethiopia

The roles of NSAs are multi-dimensional in the fight against corruption. From a private individual to the structured informal and formal organisations, they are involved in the combat against corruption. Although there are some scattered contributions by NSAs in the fight against corruption, their effectiveness is inhibited due to various factors. In the following section the enabling legal environment to operate, suitable political environment or political will and commitment and internal defects on the side of NSAs to vigilantly fight corruption in Ethiopia were discussed.

4.1 Enabling Legal Environment to Operate

The legal environment is a legislative framework or an enabling environment where NSAs operate (OECD, 2013 and Omotoye T. 2016). Among others, it consists of the legal provisions that provide the necessary protection, resources and support to NSAs; clearly defining the roles and responsibilities of NSAs and ensuring a constructive co-operation and co-ordination from the state-actors in course of combating corruption.

The International and regional anti-corruption instruments to which Ethiopia is a state party do not provide full legal guarantees to NSAs involved in a risky act of exposing corruption. For example, UNCAC itself does not require states parties to provide legal protection to community members involved in preventing corruption. It is silent about the necessary legal protection though it recognises and encourages the participation of the wider public in preventing corruption (Art 13 of UNCAC). UNCAC only requires states parties to provide necessary protection to the public participating in the law enforcement functions. Even such protection provided by UNCAC is dependent on the domestic legal system and country's capacity (UNCAC, Art 32(1)). The level of protection provided to NSAs involved in the fight against corruption is even much worst at the domestic level. In certain countries, public rules intentionally limit basic civil rights and do not facilitate the flourishing of CSOs, NGOs and media thereby to boldly combat and confront corrupt practices (OECD, 2013). For example, in Ethiopia, the laws supposed to facilitate work of NSAs to combat corruption, have rather paralysed the media, CSOs and NGOs.

The recently repealed Charities and Societies Proclamation had used to be a bottleneck for a decade to CSOs to freely engage in the area of human right protection and combating corruption and mal-administration. This is particularly true for CSOs whose operation fund is from foreigners. (Art 14(2) of Charities and Societies Proclmn, 2009). The new CSOs law came into force as part of the recent time deep reformation tasks that the Ethiopian government is undertaking. It is enacted with the objectives of creating an enabling environment for CSOs that is essential to enhance their role in ensuring the conduct of government is conducted transparently, accountably and in a participatory manner (Paras 2 & 3 to the Preamble of New Charities and Societies Proclmn, 2019). It has also an objective to ensure internal accountability within the task of CSOs thereby to maximize the benefit public from the sector (Para 5 to the Preamble of New Charities and Societies Proclmn, 2019). This new law has made tangible improvements regarding areas to operate for CSOs, sources of fund, budget allocation and membership composition. CSOs are

allowed to work in the areas of comprehensive development and democratization of a country. They are also permitted to engage in advocacy works. Institutionally, the government has established CSOs at agency level with separate legal personality (Art 4(1) of the New Charities and Societies Proclmn, 2019). However, this institutional set up has got a probable challenge over the operation of the CSOs in Ethiopia with regard to its accountability. There is high probability that this agency could be influenced politically. This is because the agency is accountable to the Attorney general (Art 4(2) of the New Charities and Societies Proclamation, 2019) while the Federal Attorney General is accountable to the Prime Minister and the Council of Ministers (Art 6(14) of the FAG Establishment Proclmn 943, 2016). Moreover, the appointment and removal of senior executives of the FAG is under the direct influence of prime minister. Accordingly, the House of Peoples Representatives appoints Attorney General upon the recommendation by the Prime Minister (Art 7(1) of the FAG establishment Proclmn 943, 2016). The Prime Minister and the ruling party (EPRDF) have almost full control over the appointment process. This becomes a threat to the overall independence of CSOs board members and Agency in general, since the ruling party to which the Prime Minister is a member dominates the Ethiopian parliament. The possible political influence is visible also when one sees the composition of eleven board members of the agency, where 3 government representatives designated by Attorney General and also Chair Person of the board is a person who is elected by Attorney General (Art 8 of the FAG establishment Proclmn 943, 2016).

In principle, the FDRE Constitution guarantees freedom of expression, of the press and of other mass media (Art 29 of the FDRE Constitution, 1995). However, the current World Press Freedom Index has revealed that Ethiopia is ranked at 150 of 180 countries (Worldwide Press Freedom Index Report, 2017). Thus, the absence of press freedom is a great hindrance to journalists to freely investigate and expose corrupt practices. Moreover, the studies have disclosed that the enjoyment of the right to freedom of expression remains at an infant stage. This is due to lack of capable public relation officers, weak organisation of information by government institutions, and a tendency to give information only when it shows the government in a good light (Negash, 2016). Under the new reformation agenda of the government, many promises have been made and positive actions have been taken to ensure freedom of expression and access to information in the media sector. The government is currently working to enact new legislative and policy frameworks for media sector in Ethiopia. Since the reformation processes in the country, a number of print and transmission Medias were mushroomed. However, there is high level of discrimination in providing information to government owned Medias and private owned Medias as it is disclosed in the discussion forum held from various media sectors (Report made on Walta TV News 31 August, 2020). Moreover, the existing legal framework has legal lacunae to ensure access to information. For example, the media law allow government officials to provide information requested by the media with in thirty working days (Freedom of Mass Media & Access to Information, Art 14(3), Proclmn 590, 2008). The law also allow government officer or employee to extend thirty working days to another thirty working days in case there are many similar requests or there is a need to retrieve large

number of documents (Freedom of Mass Media & Access to Informn, Art 14(8), 590, 2008). Providing a long period, which is longer than a month is paradoxical when one see it with timely dispatch of necessary information to the concerned organ or public. This is almost equal to openly denying access to information. In addition to this lengthy period, the law is silent for any possible legal sanction for failure to provide information requested by the government officials. The law only provides punishment for disseminating incorrect information. Moreover, there is awareness gap, since majority of Medias may not have awareness regarding where to report their resentments or denial to access to information from government offices. On the top of the above challenges, even though the constitution and media laws state that it is a duty of government officials to provide information, they lack cooperation and awareness to provide information requested genuinely.

The FAG establishment Proclamation gives to any person a right to inform or present suggestions to the Federal Attorney General if he believes that acts involving ethical and legal violations have been committed (FAG Establishment Proclmn Art 19(1) 943, 2016). These persons collaborate with law enforcement agencies by testifying or exposing corruption offences and they are provided with legal protection against retaliation. This is provided in the 2010's witnesses and whistle-blowers protection proclamation enacted by the parliament (Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclamation 699 of 2010). The legal guarantee is aimed at creating an environment to protect the public against direct or indirect danger and attack, while bringing criminal offenders to justice (Preamble to Providing Protection for Witnesses and Whistle-blowers of the Criminal Offences Proclmn 699 of 2010). However, the 2010 Proclamation applies to those who testify or disclose grave corruption offences only. The threshold for gravity is that the offence must be punishable with rigorous imprisonment of 10 years or more or with death (Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclmn Art 3(1), 699, 2010). Moreover, the Proclamation sets two cumulative pre-requisites for protection. Namely, the information or testimony must be the only evidence which proves the commission of the crime, and there must be a threat of serious danger to the life, physical security, freedom, and property of the witness or whistle-blowers or their families (Protection of Witnesses and Whistle-Blowers of Criminal Offences Proclmn Art 3(1) (a) & (b) 699 2010). One person to enjoy legal protection for exposing corruption offences, he or she should make sure that all the above stated cumbersome pre-requisites are satisfied, otherwise he is going to leave his life and his relatives at risk. Accordingly, it is hard to expect that a reasonable man to report corruption crimes while the law only provide limited protection in those exceptional cases. In addition to the limited protection available to whistle-blower, there is a possibility that a may not be allowed to participate in combat against corruption. For instance, the FAG Establishment Proclamation recognises the role of the public in the fight against corruption and imposes a duty on the FAG to ensure public participation such as community, businesses, charitable organisations, law schools of higher education institutions and stakeholders in reviewing the performance, ethical defects, and annual plans of the FAG, the course of discharging its mandates. However, this Proclamation limits citizen participation by giving a discretionary power to the FAG select participant organisations or individuals (FAG

Establishment Proclmn Art 13). This takes away citizens right to participate freely in matters that directly or indirectly affects their interest or public interest in general.

Anti-corruption instruments do not clearly specify the roles and responsibilities of NSAs. For example, UNCAC to which Ethiopia is a state party is silent about the duties and roles of NSAs, although it imposes a mandatory obligation on the states parties to take appropriate measures thereby to ensure their active participation in the fight against corruption (UNCAC Arts 13, 32 & 33). NSAs are playing their role in the fight against corruption on a voluntary basis. In the absence of legally prescribed duties and roles, NSAs may opt to avoid a risky confrontation by not exposing corruption in one hand. On the other hand, such lack of legally specified responsibility to the NSAs causes them to be seen as an outsider by the state-actors involved in the fight against corruption. In the international arena, CSOs have been barred from taking part as independent evaluator of the implementation of UNCAC by the states parties' (Fighting Corruption: Why Civil Society Needs a Place at the Table, 2017). There is a positive movement on the new CSOs proclamation as it tries to state their roles and responsibilities. It expressly states their responsibility to participate actively in developing government policies and laws. It also provides their role in conducting research and advising the government in protection of human rights, democratization and development activities of the country (New Charities and Societies Proclmn Art 6, 1113, 2019).

4.2 Suitable and committed Political Environment or Will

Fighting corruption and promoting good governance are implicitly political in nature (Chene & Delle, 2008). The political will determines the effectiveness of NSAs in the fight against corruption. Lack of political will may be expressed by way of imposing severe restrictions on the right of freedom of expression and association, freedom of the press or access to information; deliberately denying the necessary resources and protection to weaken NSAs; or through a systematic political interference and manipulation that slowly decreases the NSAs courage to fight corruption (Chene & Delle, 2008). In the case of *Ilesanmi v Nigeria*, African Court of Human and Peoples Right (ACHPR) considered the exposure of corruption scandal by Ilesanmi as an insult to the state. It dismissed the case brought against the Nigerian government for killing Ilesanmi's wife and abducting, imprisoning and poisoning him (Ilesanmi vs Nigeria, ACHPR; for contrary, see *Guja v Moldova*, ECHR). Ilesanmi had exposed smuggling of various goods where public officials, including the then president Obasanjo, were allegedly involved.

In Ethiopia, recently, at the initial phase of reformation, there were a few indications about government's move to combat corruption and create smooth environment for NSAs such as media to engage in investigating and reporting corruption scandals. For example, report via Independent Wazema Radio-an Amharic podcast established by exiled Ethiopian journalists regarding state owned Metals & Engineering Corporation (MetEC), which was first set up in 2010 and took huge stakes in the construction of Ethiopia's multi-billion dollar state owned mega projects including the Grand Ethiopian Renaissance Dama, made mismanagement of funds and corruption within MeTEC (Mahlet & Yared , 2018). However, the prevailing political environment, which involves ethnic based division, has

become a serious challenge for the success investigation and prosecution of corruption cases. For example, the CEO of the corporation, Major General Kinfe Dagnew and others took a refugee to their region where they ethnically belong. Then, the prosecution process and latter asset recovery steps get stacked due lack cooperation to surrender the suspectees to federal government. In the contrary, in the recent corruption scandal investigation regarding condominium house distribution in Addis Abeba, capital city of Ethiopia, the ESAT TV has reported a complete denial of information requested from government offices as how the distribution scheme and lot is done. Some offices initially rejected the request letter for information while others received request letter but denied the information (ESAT TV Report regarding corruption on Land Grabbing and condominium house distribution in Addis Abeba, July, 2020). Hence, ESAT TV has got information from whistle-blowers reporting and other information sources such as EZeMa, one of the opposition party, which disclosed the presence of many corrupt practices and abuse of power regarding condominium house distributions and land grabbing. This kind of anti-activists attitude and lack of consistency to fight corruption by the government keeps away the NSAs from actively involving in exposing the corruption scandals. Finally, this leads to acceptance of corruption as a norm by silence.

4.3 Internal Defects

NSAs need to be an exemplary in their behaviour on a daily basis. They must have an active role in fighting corruption inside their own organisation and be beyond reproach. However, there are instances where NSAs themselves become corrupt or fail to be neutral contrary to their ethical codes of conduct. For example, in the Indonesia, “NGOs are categorised as those that combat and practise corruption (Holloway Corruption and CSOs in Indonesia, 2017).” Some NGOs and CSOs conspire with corrupt officials. The media also may become biased and start to hunt its private gain. Reports from different countries show that either the media managers and editors are highly bribed by corrupt politicians or corporate managers not to report or censor (Corruption in the Media is Killing Ethical Journalism, 2015). Such NSA’s failure to be role models of probity discredits their action towards the public and jeopardise the sustainability of their activities by drying up funds (OECD ‘Civil Society Empowerment, 2013).

In Ethiopia, there are a number of Print Medias, Televisions and Radios involved in transmitting information. Their problem is that they either all have political affiliation as supporter of the incumbent government or hold the opposition political parties view. Acting professionally and transmitting genuine information and thereby getting public trust and confidence remain a benchmark for them to be active participant in combating corruption.

5 Conclusion and Recommendations

The fight against corruption requires multi-faceted anti-corruption measures. The anti-corruption instruments have adopted the multi-layered approaches involving the prevention, criminalisation and law enforcement, international co-operation and asset recovery as their pillars. They have rightly recognised that states parties cannot be effective in the fight against corruption by only relying on state made laws and formal state actors. Concurrently, TI advocates also a holistic approach where both the state and non-state actors actively

participate in the fight against corruption. UNODC Anti-Corruption Toolkit and Transparency International Corruption Fighters' Toolkit have tried to indicate multi-dimensional roles of NSAs in the fight against corruption. Common types of NSAs such as NGOs, CSOs, CBOs, the Media and Whistleblowers play a significant role in the areas of prevention, criminalisation and law enforcement and asset recovery.

Ethiopia is a state party to both UNCAC and the AU Convention meant to combat corruption that boldly recognise the role of NSAs in the fight against corruption. The country has also enacted various domestic anti-corruption laws and established formal anti-corruption institutions. On top of that, there are a number of tasks done to have NSAs contributions in the crusade against corruption. Paradoxically, the country is not making any tangible progress in the fight against corruption and as such remains a highly corrupt nation. The contributions of NSAs also remain minimal on the ground. This article has tried to identify the available opportunities and challenges for NSAs in combating corruption in Ethiopia. It discussed critically regarding legal framework to operate, political environment and will and internal defects on the side of NSAs themselves as a basic factors for their success or failure. Finally, it has drawn the following recommendations to maximize their positive contribution in the country's fight against corruption.

- The provisions dealing with accountability scheme and composition of the CSOs board members and General Director in the new CSOs proclamation has to be amended thereby to ensure its independency and minimize its politicization. This could increase the level of acceptance and trust on the side of public. And ultimately, it could make the public to freely cooperate with CSOs in combating corruption;
- The *de jure* and *de facto* conditions paralysing the media should be settled. Accordingly, the parliament should create conducive legal environment for the media to contribute in the fight against corruption, as absence of press freedom is a great hindrance for journalists to freely investigate and expose corrupt practices;
- Legal provisions under the Federal Attorney General Establishment Proclamation that limits citizen's right to participate by giving a discretionary power to the FAG to select participant organisations or individuals has to be amended;
- The NSAs such as NGOs, CSOs and Medias need to have strong ethical standards in order not to immerse them into the cancer they claim to combat; and
- The government should show a genuine, consistent and persistent political determination and will to advance the contribution of NSAs in combating corruption.

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