ADDIS ABABA UNIVERSITY
COLLEGE OF SOCIAL SCIENCES
DEPARTMENT OF POLITICAL SCIENCE AND INTERNATIONAL RELATIONS

THE EFFECTIVENESS OF ANTICORRUPTION INSTITUTIONS IN IMPLEMENTING INTERNATIONAL ANTICORRUPTION INSTRUMENTS: THE CASE OF THE FEDERAL ETHICS AND ANTICORRUPTION COMMISSION OF ETHIOPIA

BY

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ABBREVIATIONS AND ACRONYMS

APRM	African Peer Review Mechanism
AUCPCC	African Union Convention on Preventing and Combating Corruption
CPIB	Corrupt Practices Investigation Bureau of Singapore
CSRP	Civil Service Reform Program
DCEC	Directorate on Corruption and Economic Crime of Botswana
DfID	Department for International Development of the United Kingdom
EIIPD	Ethiopian International Institute for Peace and Development
EJLSRI	Ethiopian Justice and Legal System Research Institute
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FCPA	Foreign Corrupt Practices Act
FDRE	Federal Democratic Republic of Ethiopia
FEACC	Federal Ethics and Anticorruption Commission of Ethiopia
FIC	Financial Intelligence Center
IACAC	Inter-American Convention against Corruption
ICAC	Hong Kong's Independent Commission Against Corruption
IMF	International Monetary Fund

KNAB	Latvia’s Corruption Prevention and Combating Bureau
KPK	Indonesian Corruption Eradication Commission
KPMG	Klynveld Peat Marwick Goerdeler (international accounting firm)
OECD	Organization for Economic Cooperation and Development
TI	Transparency International
TPLF	Tigrai People's Liberation Front
U4	Anticorruption Resource Center operated by Chr Michelsen Institute
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USAID	United States Agency for International Development

ABSTRACT

The global response to corruption, after passing through several dynamics, culminated in the adoption in 2003 of a broad and binding international anticorruption instrument, the United Nations Convention against Corruption (UNCAC). Prior to this, the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the United Nations Convention against Transnational Organized Crime (UNTOC) were also adopted. The implementation of these international anticorruption instruments by states parties requires the involvement of various actors. Chief among these actors are domestic anticorruption institutions like the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC). The main purpose of this study is to examine, find gaps and look for possible explanations for why the gaps exist in the effectiveness of anticorruption institutions in the implementation of these international anticorruption instruments by taking the activity of the FEACC as a case in point. Since an assessment of the effectiveness of FEACC based on the standards set by the above-mentioned international anticorruption instruments ratified by Ethiopia is almost nonexistent, researching from this angle could be beneficial and may ease the constraints of scanty literature in this regard. Although the instruments encompass several broad aspects, for the sake of relevance and conciseness the study has bounded to base itself on the instruments' corruption prevention, criminalization and law enforcement measures. As the research mainly intends to explore the possible explanations for why gaps exist in the implementation of these measures, it has employed qualitative research methodology and to this effect key informant interviews and document analysis were conducted.

On the area of corruption prevention, gaps such as absence of comprehensive and inclusive national anticorruption policy; lacuna in the implementation of system and working procedure reviews made by the FEACC which aim at promoting transparency, accountability and integrity in various government offices and public enterprises; inadequate efforts by the FEACC in reviewing the justice sector and human resource management area and weak follow-up of the implementation of codes of conduct and failure to verify and disclose the registered assets of public officials have been identified. Limitation in delivering in-depth ethics education and in engaging the private sector particularly civil society organizations in the fight against corruption has also been observed. On the areas of criminalization and law enforcement measures, gaps were identified with respect to criminalizing, investigating and prosecuting foreign bribery and some offences in relation to the private sector. Although the FEACC investigated and prosecuted most other offences specified in the international instruments, a large number of the cases it handled in relation to these offences were petty type involving law-ranking officials. The gaps in corruption prevention, criminalization and law enforcement activities of the FEACC are largely caused by capacity constraints on part of the staffers of the FEACC, inability to employ intelligence and surveillance that match with the intricate and hidden nature of several offences of corruption, lack of cooperation by heads of various institutions and absence of sanctioning mechanism for failure to act together, inadequate support by the government in availing the necessary resource, remuneration and staff for the FEACC as well as in maintaining the autonomy of the Commission, poor protection to whistleblowers and witnesses, limitation with respect to access to information and media freedom in the country and the prevailing poor governance especially lack of transparency and accountability in public functions.

CHAPTER I: INTRODUCTION

1.1 BACKGROUND

Corruption is a phenomenon as old as human history. Although corruption has always been with human society, its nature and forms has been changing through time. The understanding that we have today about the scope and consequences of corruption also differs from the past. In addition, the way we perceive corruption varies from culture to culture. All these have made corruption a complex and difficult concept to define.

However, some successful attempts were made to have working definitions that attain wider recognition. Among the well known working definitions of corruption is the one put forwarded by the World Bank. According to the World Bank, corruption is defined as “the abuse of public office for private gain” (World Bank, 1997:19). The definition mainly focuses on public sector corruption involving the illegal activities of public-service officials, politicians and civil servants. Transparency International (TI), an international anticorruption organization, on its part defined corruption in a way that confirms the inclusion of the private sector in corruption landscape. According to TI, Corruption is “the abuse of entrusted power for private gain.” (Transparency International, 2015). The word “entrusted power” applies to both public and private sector corruption.

As far as tackling corruption is concerned, the issue had long been a domestic matter. Even at the domestic level anticorruption moves had been enjoying little attention and in some instance there were assertions considering corruption as normal and beneficial (Méon, and Weill, 2010). However, the harmful effects of corruption have begun to capture broad considerations both at domestic and international level since the late 1990s. The end of Cold War together with the emergence of globalization is one of the factors that have made possible the issue of corruption to come to the international arena and its detrimental effects be pronounced (Nuland, 2007). As the ideological rivalry of the Cold War subsided, issues such as corruption and good governance began to capture the attention of the international community and having a consensus on these issues became relatively easier. In addition, with globalization, interconnectedness between states in all spheres of life particularly in international trade and financial transactions widened and the competition between multinational companies increased (Rehren, 2003). This provided the opportunity to corruption and reinforced the cross-boundary nature of corruption thereby gave impetus to the issue of corruption to become a noteworthy international agenda. In light of this, various international anticorruption instruments adopted and came in to force with the intention of preventing and combating corruption in a coordinated manner.

Simultaneously, domestic anticorruption institutions with the mandate to prevent and combat corruption have increased rapidly in many countries. Most of the domestic anticorruption institutions were established as part of a broader good governance reform programme in late 1990s. During this time, there was a widespread belief that establishing anticorruption institutions could play a key role in the fight against corruption. This belief was largely popularized by the successful models of the Singapore and the Hong Kong anticorruption institutions which were established in 1952 and 1974 respectively (UNDP, 2011). In addition, most international anticorruption instruments also require states parties to establish anticorruption institutions and to ensure their effectiveness in their operations. This emanates mainly from the notion that anticorruption institutions have a key role in effectively implementing international anticorruption instruments.

However, while a few anticorruption institutions have produced significant and sustained reductions in corruption (Sahr, 2003), most are not able to deliver on the high expectations bestowed upon them (U4, 2006). This is indicative of the existence of gaps with different degrees as far as implementation of international anticorruption instruments is concerned.

Ethiopia is a state party to the United Nations Convention against Corruption (UNCAC), the United Nations Convention against Transnational Organized Crime (UNTOC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). These instruments cover a range of measures from corruption prevention to criminalization of corruption offences, international cooperation and asset recovery to be implemented by contracting parties. The country established the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) in 2001 mainly with a mandate to promote ethics and anticorruption education, prevent corruption, investigate and prosecute corruption offences.

This research paper tries to examine to what extent the major provisions of international anti corruption instruments have so far been implemented by anticorruption institutions by taking the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) as a case in point. The paper mainly explores the factors behind the gaps in the implementation of international anticorruption instruments by examining FEACC's performance in light of the key provisions of the instruments to which Ethiopia is a party.

As part of this research, the activities of FEACC will be assessed in light of the standards set by the above-mentioned international anticorruption instruments. In so doing, the relevant policies, legal and institutional frameworks as well as practices in connection with FEACC will be examined to find gaps and the factors behind those gaps in implementing the instruments.

1.2 PROBLEM STATEMENT

Most contemporary international anticorruption instruments including the ones ratified by Ethiopia namely: the UNCAC, UNTOC and AUCPCC require states parties to establish anticorruption institutions with the mandate to prevent and combat corruption. These instruments also put forward a number of measures to be taken by states parties to ensure the effectiveness of these institutions. In addition, the instruments demand the contracting parties to implement anticorruption measures with various levels of obligations ranging from prevention to punitive aspects. The domestic anticorruption institutions, though they are not the sole executor of these measures, have a crucial role in implementing the provisions of anticorruption instruments.

The degree of effectiveness of anticorruption institutions in implementing international anticorruption instruments varies from country to country. However, except few successes many anticorruption institutions particularly those established in Africa are being criticized for lack of impact in reducing corruption (Heilbrunn, 2004:2). It is in fact desirable to bring to light the challenges faced by such institutions and explore the causes for hurdles to rectify such institutions.

As far as the effectiveness of the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) in implementing the above-mentioned international instruments is concerned, recent literatures on this specific matter are very scanty. However, there are some studies that assessed the performance of FEACC without necessarily basing themselves on international instruments ratified by Ethiopia. Mezmur and Koen (2011) indicated that FEACC's anti-corruption efforts have improved over time; but the Commission has not made noteworthy progress in taming corruption in Ethiopia. In addition Kilimanjaro International (2012), World Bank (2012), and Addis Ababa University (2011) portrayed the level of corruption in Ethiopia as not that much depressing. Rather they indicated that some progress or achievements have been made in preventing and combating corruption in the country. But these studies also showed serious concerns that need to be addressed. Several reports which are released by the Federal Ethics and Anticorruption Commission of Ethiopia also indicated that "encouraging" achievements have been registered by FEACC while admitting much remains to be done (FEACC, 2014). In contrast, alarming reports about the trends of corruption in Ethiopia have been issued by Transparency International Corruption Perceptions Index (Transparency International, 2014) and Ibrahim Index of African Governance (Mo Ibrahim Foundation, 2013).

Although these and other few similar studies and reports assessed Ethiopia's anti corruption activities, their assessment were not necessarily in light of the international anticorruption instruments. An assessment of the effectiveness of the FEACC based on the standards set by international anticorruption instruments is almost nonexistent. Thus researching from this angle could be beneficial and may ease the constraints of scanty literature in this perspective. Besides, since the international instruments which Ethiopia is a party to, contain well-tasted anticorruption standards on which most nation states have a consensus, their effective implementation would be a plus to the country's anticorruption endeavor. Thus, this also may justify the relevance of the study.

This research paper tries to examine to what extent the major provisions of international anti corruption instruments have so far been implemented by FEACC. In this regard, it examines FEACC's performance in light of the key provisions of the instruments such as corruption prevention, criminalization and law enforcement and explores the factors behind the gaps in the effective implementation of these provisions.

1.3 CORE ARGUMENT

Most anticorruption institutions are not in a position to effectively implement anticorruption standards set by international instruments due to a number of factors that are related to, among others, insufficient legal and institutional frameworks, weak political support and capacity and resource constraints. Further exploration of the factors behind the gaps in the implementation of anticorruption instruments and finding the way to address them are crucial for the effectiveness of anticorruption endeavor.

1.4 OBJECTIVES

The general objective of the research is to examine, find gaps and look for possible explanations for why the gaps exist in the FEACC's attempt to implement international anticorruption instruments to which Ethiopia is a party. To attain this objective, the following specific objectives will be achieved through a study.

1. Discuss and analyze the significance and development of anticorruption institutions and international anticorruption instruments.
2. Describe and analyze the major provisions of the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the African Union Convention on Preventing and Combating Corruption.
3. Examine the existences of relevant policies, strategies, legal and institutional frameworks, as per the standards of international anticorruption instruments, for the effective functioning of FEACC.
4. Scrutinize the existing practices and activities of FEACC in light of international anticorruption instruments to which the country is a party.
5. Identify gaps and look for the reasons behind those gaps in the existing legal and institutional frameworks as well as practices with regard to the activities of FEACC in its bid to implement the international anticorruption instruments.

1.5 RESEARCH QUESTIONS

The following questions will be answered by the research.

1. Why there is a need for anticorruption institutions and international anticorruption instruments?
2. What are the major requirements stipulated by the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the African Union Convention on Preventing and Combating Corruption?
3. Are there relevant policies, strategies, legal and institutional frameworks, as per the standards of international anticorruption instruments for the effective functioning of FEACC?
4. What look like the existing practices and performances of FEACC in light of international anticorruption instruments to which the country is a party?
5. Why gaps in the existing legal and institutional frame works as well as practices with regard to the activities of FEACC in its bid to implement the international anticorruption instruments?

1.6 HYPOTHESIS

Most anticorruption institutions are entangled with several problems in effectively implementing major international anticorruption instruments. This is mainly attributed to inadequacy or absence of legal and institutional frameworks, capacity constraints and insufficient support from the government and the defectiveness of other public institutions. This research paper is based on the premise that with adequate legal and institutional frameworks, support from the government at the desired level, enough human and financial resources, and active participation of the public and various institutions, the likelihood of the achievement of anticorruption institutions increases.

1.7 METHODOLOGY AND METHODS

This research is a case study as it attempts to review the effectiveness of anticorruption institutions in implementing international anticorruption instruments by taking the Ethiopian Federal Ethics and Anticorruption Commission as a case in point. This makes possible to collect descriptive data, to show the practical aspect and also to review the effectiveness of the FEACC in an in depth and focused way. The case study consists of qualitative data to meet the research objectives. As the research mainly intends to explore possible explanations for why gaps exist in implementing international anticorruption instruments, it requires non quantifiable data and involves perceptions and interpretations. In addition, the implementation of anticorruption instruments requires a broad range of interconnected process and various actions that are to be better examined with qualitative approach. In this respect, employing qualitative research methodology would be relevant.

As far as data gathering methods are concerned, with regard to international anticorruption instruments as well as world-wide trends in anticorruption institutions, various literatures sourced from books, internet and articles were reviewed and analyzed. As to assessing FEACC's endeavor in implementing international anticorruption instruments, some data were collected based on desk review of available annual reports and previous researches on the activities of FEACC as well as relevant documents including anticorruption legislation, policies, regulatory frameworks, and institutional arrangements. In addition, Key informants from the Ethiopian Federal Ethics and Anticorruption Commission (FEACC) were selected and interviewed to draw more in depth information on the issue. The informants who are believed to be knowledgeable about the workings of the Commission were selected from the FEACC's Directorates pertinent to the corruption prevention and Law enforcement activities which are the focus of the study. Attempt was made to make the interview inclusive of all the Directorates working on these areas and the questions were organized in semi-structured manner so as not to limit views coming from the respondents. Although the study is basically a qualitative one, some statistical data together with documents produced by various bodies outside of the FEACC were used in a bid to triangulate and substantiate the information obtained through interview.

1.8 SCOPE AND LIMITATION OF THE STUDY

The research, for the purpose of analysis, is bound to the international anticorruption instruments which Ethiopia is a party to namely the United Nations Convention against Corruption, the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Transnational Organized Crime. Although these instruments encompass several components such as corruption prevention, criminalization and law enforcement of corruption offences, asset recovery and international cooperation, the study focuses on the instruments' prevention, criminalization and law enforcement provisions. Since each component in the instruments is very broad, it would be appropriate to be confined to the selected and major sections such as prevention, criminalization and law enforcement. This enables the study to be concise without abandoning the major aspects in any anticorruption endeavor.

In describing and analyzing international instruments, much emphasis would be given to UNCAC which is the most comprehensive one of all anticorruption instruments.

The research attempts mainly to evaluate how the standards in the provisions of international anticorruption instruments are being implemented by the country's main anticorruption institution, FEACC and make an interpretation out of it and explore the possible reasons behind gaps in the implementation. Thus, it is bound to the activities of the Federal ethics and Anticorruption Commission of Ethiopia (FEACC) and does not include regional anticorruption commissions due to logistical reasons and also for the sake of succinctness. In addition, assessment of relevant policies, legal and institutional frame works as well as anticorruption practices in Ethiopia is bound at federal level. This has mainly prompted by capacity problems to cover all regional states.

In this connection, the research should not be assumed as a study which comprehensively reviews the effectiveness of anticorruption activity or asses the level of corruption in Ethiopia. Nor is an empirical study and a survey that is inclusive of various sections of the society. Besides, anticorruption institutions are not the sole executors of international anticorruption instruments. There are several other actors that play their share in implementing international anticorruption instruments. However, for similar reason, the research focuses only on one key institution, the FEACC.

The range of time period to be covered while reviewing the activities of FEACC would be from 2007 when the country ratified the UNCAC to 2015.

1.9 SIGNIFICANCE OF THE STUDY

The research findings are expected to reveal the gaps and possible reasons behind those gaps in the implementation of international anticorruption instruments and indicate the way forward thereby contributing its part to the improvement of the overall anticorruption activities of the country.

1.10 ORGANIZATION OF THE THESIS

The thesis comprises of five chapters. The first chapter introduces the study and as part of an introduction it consists of sub sections such as the back ground, problem statement, core argument, objectives, research questions, hypothesis, methodology and methods, scope and limitation of the study, significance of the study and organization of the thesis.

The second chapter is allotted to theoretical framework and literature review. This includes understanding corruption, anticorruption models, the proliferation of specialized domestic institutions against corruption, the establishment of FEACC and the development of international response to tackle corruption.

The third chapter describes and analyzes the preventive and the criminalization and law enforcement provisions of international anticorruption instruments ratified by Ethiopia namely: UNTOC, UNCAC and AUCPCC.

The fourth and the fifth chapters of the thesis review the performance of FEACC and its effectiveness in corruption prevention and criminalization and law enforcement in light of the instruments mentioned above.

The conclusion part concludes the findings of the study and makes some recommendations.

CHAPTER II: CONCEPTUAL FRAMEWORKS AND LITERATURE REVIEW

2.1 CONCEPTUAL FRAMEWORKS

2.1.1 Understanding Corruption: Definition, Types, Causes and Consequences

The word "Corruption" has been depicted as synonymous with break down, decay, perversion from the original, moral degradation and bribery in several English dictionaries. The word is believed to have originated from two Latin words, "*corrumpere" and* "*corruptio.*" In Latin *corrumpere* means to break or to destroy (Danileţ, 2009); while *corruptio* refers to damage or bribery (Tatishvili, 2013). The connection with the Latin word is appropriate because it was in the Roman Empire that corruption came to be identified, perhaps for the first time, as a clearly inappropriate behavior; and it was the same empire that disintegrated due to corruption (Tanzi, 2013:2). Although the origin of the word corruption comes this way, corruption is not a characteristic of one era in history nor of any one country alone (Gould and Kolb, 1964). Corruption has been in existence since time immemorial. It has been a reality in societies from ancient Egypt, Israel, Rome, and Greece down to the present (Lipset and Lenz, 2000). But the essence of corruption has been changing through time.

Even in our modern era the way we perceive corruption varies from culture to culture. A corruption offence in one society may not be considered as wrongdoing in another. For example, gift-giving to officials may be expected in one country and prohibited by law in another. In addition, societies or countries manifest differing corruption tendencies and vulnerabilities based on different patterns of development and political economic dynamics (USAID, 2006a). As a result, conflicting legal and socio-cultural definitions of corruption may arise (ibid). This is why major international anticorruption instruments have been refraining from defining corruption. What the instruments do is listing the common manifestations of corruption so that state parties criminalize them as corruption offences. Accordingly several manifestations of corruption are identified. Nowadays, corruption can no longer be portrayed as only bribery[1], a classical case of

[1] Bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. See UN Anti-Corruption Toolkit, September, 2004 and UN Guide on Anti-Corruption Policies, November, 2003

corruption. Corruption involves embezzlement and fraud[2], patronage, nepotism or clientelism[3], extortion[4], illicit enrichment[5], improper political contribution.[6] And yet, it has been difficult to exhaust the list and have a universally agreed definition of corruption.

Despite such disagreements, international institutions such as the World Bank have employed a working definition since the 1990s. According to the World Bank, corruption is defined as the "the abuse of public office for private gain" (World Bank, 1997:19). This definition mainly focuses on public sector corruption involving the illegal activities of public-service officials, politicians and civil servants who are on the demand side of corruption. The definition ignores those who are purported to be suppliers of corruption such as the general public and non-governmental organizations.

Thus, with the consolidation of the private sector in many countries this definition seems to be tapered. In a bid to rectify this limitation, Transparency International, a global anticorruption watchdog, came up with a new meaning defining corruption as, "the abuse of entrusted power for private gain" (Transparency International: 2015:2). Here, the word "entrusted power" applies to both public and private sector corruption.

Apart from attempts to define corruption, it is also important to distinguish between various categories or types of corruption to have better understanding of the phenomenon. The most commonly used broad categorization of corruption is Petty versus Grand corruption. Petty corruption, also known as "bureaucratic", is a type of corruption encountered by ordinary citizens in their day to day interactions with government bureaucrats when they try to access

[2] Embezzlement and fraud involve the taking or conversion of money, property or valuable items by an individual who is not entitled to them but, by virtue of his or her position or employment, has access to them. See UN Anti-Corruption Toolkit, September, 2004 and UN Guide on Anti-Corruption Policies, November, 2003

[3] Patronage, Nepotism or Clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other group. Patronage, Favouritism, Nepotism or Clientelism mostly refers to hiring personal connections for government jobs regardless of qualifications or due to familial relationship. See INL Guide to Anticorruption Policy and Programming and UN Guide on Anti-Corruption Policies, November, 2003.

[4] Extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation. It may differ from bribery which involves the use of payments or other positive incentives. See UN Guide on Anti-Corruption Policies, November, 2003.

[5] Illicit enrichment is an undue increase in wealth unexplained by legitimate sources; may be linked to false income or asset disclosure statements. See INL Guide to Anticorruption Policy and Programming and

[6] Improper political contribution usually refers to payments made in an attempt to unduly influence present or future activities by a political party or its members once they are in power. See UN Guide on Anti-Corruption Policies, November, 2003

basic services. It usually involves giving small bribes or gifts to the bureaucrats who are low-and mid-level public officials. Most petty corruption takes place at the implementation end of public administration without necessarily being a part of the political system (Andvig and Fjeldstad, 2000). Petty corruption generally occurs when citizens seek to evade restricting regulations or when officials abuse their discretionary power by extorting money from them (Marquette et al, 2011). Such type of corruption is highly prevalent in sectors such as health, education, water and electricity, police, registry and permit services (ibid). Although petty corruption involves small amount of money, in sum it takes away large amount of money and affects considerable number of people given its pervasive nature.

The other category of corruption is Grand or Political corruption which refers to corruption at higher level of government and involves the distortion of policies or the central functioning of the state. It is something more than a deviation from legal norms, codes of ethics and court rulings as it influences the institutions of government and the political system (Amundsen, 1999). Such type of corruption inflicts heavy burden on the general public as it leads to a broad erosion of confidence in good governance, the rule of law and economic stability (Rose-Ackerman, 1996). Grand or Political corruption when manifests itself in terms of embezzlement, it involves large amount of money in relation to huge projects and contract agreements. It may also result in seizure of political power unlawfully through illegal political party funding and buying of votes in an election. Unlike petty corruption, Grand corruption is difficult to trace as it involves the political elites (Jain, 2001:74). Generally the main difference between grand corruption and petty corruption is that the former distorts the central functions of Government, while the latter exists within the context of established system (UN Anticorruption Toolkit, 2004). Besides, political corruption, when it is endemic, cannot be counteracted by auditing, legislation and administrative approach alone; it calls for radical political reforms (Amundsen, 1999).

In addition to the above-mentioned Petty versus Grand classification, there is also another categorization of corruption, active and passive corruption. Active corruption refers to the supply side of corruption, offering or giving of bribe and other undue benefits. The passive corruption indicates the demand side of corruption which involves soliciting or receiving bribes and undue advantages. Such classification emanates from the notion that both the bribe-giver and the bribetaker have to be accountable for corrupt practices and anticorruption measures need to take into account both scenarios.

There is still another classification of corruption such as Systemic versus Episodic corruption based on the depth of the problem. In Systemic corruption the problem is highly pervasive and it channels of malfeasance extend upwards from the bribe collection points, and systems depend on corruption for their survival (Tavanti, 2013). Systematic corruption occurs when corruption is embodied in the socio-economic and political system of the country and accepted as a means of conducting everyday transactions (Heymans and Lipietz, 1999). Such type of corruption cannot be dealt with within the existing political system; it rather requires radical political reform (Tavanti, 2013). On the other hand, Episodic corruption occurs when honest behavior is the norm, corruption the exception, and the dishonest public servant is disciplined when detected (ibid). Like the manifestations of corruption mentioned-above, the categories or types of corruption are not exhaustive.

As far as the consequences of corruption are concerned many literatures indicate the negative impacts of corruption in various spheres of life. Mo (2001) found out that a 1% increase in the corruption level reduces the economic growth rate by about 0.72%. Mauro (1998) provided empirical evidence that corruption may have considerable adverse effect on economic growth, largely by reducing private investment. Lambosdorff (2006) also indicated that corruption could bring inequality of income, lower GDP per capita, lower investment, distortions in budget allocation, a worsened public sector quality, the distortion of markets and tax cheating. Several literatures produced by international organizations such as the International Chamber of Commerce, the United Nations, the World Bank and other financial institutions are trying to expose the hindrance of corruption to economic development. These researches show that the cost of corruption equals more than 5% of global GDP (US $2.6 trillion), with over US $1 trillion paid in bribes each year (International Chamber of Commerce, et al, 2008).

However, this assertion about the negative impact of corruption on economic growth has never been without resistance. There are arguments against the assertion that corruption is always negatively correlated with economic growth. According to this view, corruption is beneficial to speed up the economic transaction under certain circumstances such as rigid bureaucracy and poor governance (Meon and Weill 2010). However, this notion has now become a minority voice in the anticorruption endeavors' as the world has turned to be more and more vocal about the economic consequences of corruption especially in developing countries. Above all, empirical evidences that underline the negative impacts of corruption on economic growth are on the rise.

As several literatures indicated, the effects of corruption are not limited to economic growth. Among others, Marquette et al. (2011) indicated corruption hampers social cohesion, creates social injustice, increases social costs and hurts the poor by depriving citizens of basic services. They also pointed out that corruption undermines rule of law, legitimacy of states, political stability and security. These harms are not limited to national boundaries in a globalized world. International trade and investment opportunities, international development assistance and global peace could be affected by corrupt networks.

With regard to the causes of corruption, varieties of political, economic and social factors can be attributed to corruption. From the political aspect, weak governance is believed to be one of the fundamental causes of corruption (DFID, 2015). In an environment where inadequate democratic institutions such as an independent judiciary and a free press, do not function effectively, corruption gains ground (Foreign Ministry of Finland, n.d). Lack of transparency and accountability in the workings of governments and institutional failures and deficiencies in administrative culture are ascribed to corruption (ibid). As Tavanti (2013) explained, corruption is most likely to occur when administrators are granted a large degree of discretionary powers in interpreting the rules and when effective mechanism to hold them accountable is absent.

As to the economic causes of corruption, although there is no fixed and firm correlation between any particular level of economic development and incidence of corruption, it can be argued that levels of economic development do appear to impact the form of corruption (Marquette et al., 2011). Therefore, there is a possibility for poor economic development to encourage corruption. Poverty, income disparities, inadequate wages and salaries in the public sector can be mentioned as driving factors for corruption (Foreign Ministry of Finland, n.d). Constrained supply of public goods and essential services as well as natural resource endowments, unless properly managed, such as oil, gold and land may also be more likely to be subject to extreme rent-seeking behavior (Mauro, 1997).

The fact that most of the poorest countries in the world are also among the worst affected by corruption reinforces this assertion.

Regarding the social causes of corruption, research suggests that there have been complex de facto norms that are at odds with formal rules and blur the boundaries between licit and illicit practices (Anders, 2005. Blundo and Sardan, 2006). As the way we perceive corruption varies from culture to culture, the boundaries between corrupt practices and other actions are often difficult to define. Even in some cultures certain aspects of corruption is not a social deviation, but it is a tradition (Treisman, 1998). Besides, there are assertions that establish correlation between deeply divided societies including those of ethnically polarized and high rate of corruption. In a deeply divided and ethnically polarized society, generalized trust is likely to be lower and members of ethnic groups may feel that demanding favors from co-ethnics in office is the only effective way to obtain government services (ibid). Soft social control systems/high tolerance for corrupt activities and deterioration of acceptable moral and ethical values, have also been cited by some scholars as the causes of corruption (APEC, 2006).

In an attempt to further explore the causes of corruption and the way of tackling it, various models or theoretical frameworks have been designed.

2.1.2 Theoretical Frameworks

There are various theoretical frameworks in an attempt to answer why corruption occurs and what measures should be taken to tackle corruption. The Principal-Agent-Client theory which is based on Robert Klitgaard's formula, $C = M + D - A$ (Corruption equals to Monopoly of power plus Discretion minus Accountability) is the most notable one (Klitgaard, 2008:2). According to this formula, the monopoly of power increases corruption, and Corruption will likely appear when administrators are granted a large degree of discretionary powers in an environment where an effective mechanism to hold administrators accountable lacks.

In the Principal-Agent-Client theory, the "Principal" means the political leader who is believed to be honest and delegates his power to the Agent (bureaucrats), a subordinate in the hierarchy. According to this theory, corruption occurs in an instance when an Agent betrays the Principal's noble interest in the pursuit of his or her own interest by accepting or seeking a benefit from the service seeker, the Client (Carr, 2008). According to this theory, the Principal could not always be the political leader. In another instance, the citizens may assume the role of a Principal and the political leaders are considered as Agents. In both instances, corruption occurs when Agents betray the Principal's interest and engage in corrupt practices; the betrayal is due to interest and information asymmetry between the agent and principal while the benefits of the corrupt act outweigh the costs of possible detection and punishment (Persson, et al., 2010). The theory framed corruption as a principal-agent problem that occurs when the agent misuses the trust granted from the principal. The theory suggests that solving the problem requires looking into the relation between agent and principal through transparency, monitoring, and sanctioning mechanisms. According to this theory, the agent's calculations about whether or not to engage in or oppose corruption are dependent on the application of these mechanisms.

The theory asserts that the agents can be prevented from engaging in corrupt behaviour through incentives, controls and sanctions (Johnsøn, 2012). The theory leads, among others, to initiate and apply policies and reforms with regard to payment to civil servants, recruitment and monitoring on agent's performance, greater integrity in the public administration and education of civil servants as part of curbing corruption (Rijckeghem and Weder, 1997). It also advocates strengthening of civil society and sanctioning those corrupt agents in a bid to combat corruption. Most contemporary anticorruption efforts both at the domestic and international level are framed largely by the Principal-Agent-Client model. This model highly influenced the works of anticorruption institutions.

It should also be noted that implementation of anticorruption initiatives as per the principal agent theory is not an easy task. Several researches indicate the difficulty faced by many countries in the implementation of anticorruption reforms. There might be instances when actors (principals) have become unwilling to enforce existing laws (Lawson, 2009). Although the principal-agent model enjoys wide acceptance, there are doubts whether it entirely fits to all circumstances. Critiques argue that although the Principal-agent theory is valuable to understand the causes of corruption and to formulate anticorruption strategies, it fails to do so in an environment where corruption is pervasive and systemic. Their argument is that in contexts of pervasive and systemic corruption we cannot expect to find a "benevolent" or "principled" principal committed to enforcing anti-corruption strategies, as they themselves are often corrupt. As Rothstein (2011) indicated it makes no sense to be the only honest player in a ‘rotten game’. In a context in which corruption is the expected behavior, monitoring devices and punishment regimes should be largely ineffective since there will simply be no actors that have an incentive to hold corrupt officials accountable (Persson et al., 2014). This calls for another theory that suits to this context. Accordingly, the Collective Action Theory comes to the scene.

According to the Collective Action Theory, corruption is a collective action problem that requires collective effort to prevent and combat it. The theory purports that the collective or group action influences an individual’s decision in way that makes him/her choose to act corruptly if they expect other people to be corrupt (Persson and et al, 2010:12). This leads to the question, “If everybody seems corrupt, why shouldn’t I be corrupt” and (ibid). In this case, the cost of acting against corruption outweighs the cost of involving in corrupt practices. The theory highlights the relevance to individuals’ decisions of group dynamics including trust in others and the behaviour of others (Marquette and Peiffer, 2015).

The theory asserts that fighting corruption need not rely on the action of one or a few individual elites or disparate and small citizen groups speaking out against corruption; an effective response to fight corruption requires coordinated actions (ibid). Such collective action is perceived, among the proponents of this theory, as highly desirable to bring about transformational changes with regard to tackling systemic corruption. The theory recommends radical measures that will help to make most actors trust most other actors to play fairly. These include transformation of the political culture and strict impartiality in public policy making and execution. Unlike the principal-agent-client theory which advocates a step by step incremental change to fight corruption, the collective action theory tilts towards big-bang type of change. However, critiques argue that anticorruption efforts do not always require big-bang type of change. They also question whether such type of change is realistic. As Rothstein (2007) explained transforming social, political and state institutions requires time and huge resources that cannot be afforded easily.

Nevertheless, both the principal-agent-client and the collective action theories are not contradictory. They are rather complementary in many respects (Marquette and Peiffer, 2015). Above all, both recognize corruption as a problem with economic, social and political consequences. They also refute the idea that corruption is beneficial in some respect. They do not differ on the potential relevance of effective monitoring and punishment regimes as means to curb corruption. Both assume individual rationality, arguing that people engage in corrupt acts after calculating the cost benefit analysis of engaging in it. In this case the collective action theory may serve as a supplement in assessing the implementation of international anticorruption instruments, although most of these instruments are highly guided by principal-agent-client model.

These two models as well as most recent anticorruption initiatives are in sharp contrast to a theory known as Grease or Efficient Corruption Theory which purports that corruption could have a positive impact under certain circumstances. According to Grease Theory, corruption may be beneficial in saving time and afford efficiencies to businesses by passing rigid laws and poor governance environments. As Leff (1964) and Huntington (1968) argue corruption facilitates trade. According to Meon and Weill, 2010, corruption is the “grease” which may make the economic machinery function more smoothly.

However, the assertion that considers corruption as “grease” has been attacked by many contemporary literatures. Some of the criticisms labeled against this theory are, tolerating bribery under whatever circumstances would create more and more burdensome red tapes and incentives for corruption as well as further distortion of the market and negative impact on the economy (Nuland, 2007:9). This theory has now lost relevance in contemporary anticorruption venture and is not in the perspective of this research paper. This research paper is mainly based on the Principal-Agent-Client model and in some respects on Collective Action theory.

2.2 REVIEW OF LITERATURE

2.2.1 Domestic Anticorruption Institutions

The late 1990s witnessed the launching of a number of anticorruption initiatives both internationally and domestically. As part of these initiatives and donor-supported good governance reform programmes, domestic anticorruption institutions have proliferated in many countries as important actors in the anticorruption crusade. The domestic context of the creation of anticorruption institutions is intertwined with the international level as several international organizations have recommended the creation of such institutions as an important strategy against corruption (Sousa, 2009). The development of international anticorruption instruments has given impetus to the creation of domestic anticorruption institutions as most of these instruments require states parties to establish such institutions. However, it should be noted that the specific drivers for the creation of domestic anticorruption institutions are diverse. They range from real political commitment to fighting corruption to response to external pressure and attempts to window dressing (USAID, 2006b). Whatever the drivers may be, the number of domestic anticorruption institutions in the world is now well over 100.

Although the surge in domestic anticorruption institutions has been witnessed since the late 1990s, the first creation of such institutions dates back to the 1950s. Anticorruption institutions were established in Singapore and Hong Kong in 1952 and 1974 respectively. These two anticorruption institutions are not only the oldest but also the most successful in the world. They registered remarkable achievements in combating and preventing corruption in their respective countries.

The Singapore anticorruption institution, Corrupt Practices Investigation Bureau (CPIB), has been successful in its fight against corruption. Corruption was rampant in Singapore throughout its colonial history. However, after the establishment of CPIB the country significantly reduced corruption and succeeded in attracting huge foreign investments. The success is mainly ascribed to the existence of three factors namely, strong political will from the government, adequate legal framework and operational independence (Quah, 2001). Hong Kong's Independent Commission Against Corruption (ICAC) was also successful due to similar factors in curbing the widespread corruption hitherto in the territory (Maria, 2002). The ICAC has built an impressive record of investigations that have resulted in numerous convictions (Heilbrunn, 2004). According to Transparency International's latest corruption perception index, Hong Kong is ranked among the least corrupt countries in the world. In general Hong Kong and Singapore are the two commonly cited best practices of anticorruption undertakings.

Next to Hong Kong and Singapore, Indonesia is mentioned as a success story in anticorruption moves. The Indonesian Corruption Eradication Commission (KPK) which was established in 2002 is being praised for reaching near 100 % conviction rate against corrupt senior government officials (Transparency International, 2013). Latvia is another success story in Europe. As De Jaegere (2012) indicated Latvia's Corruption Prevention and Combating Bureau (KNAB) which was established in mid 1990s is now considered as Europe's most efficient anticorruption commission. It has been admired for its determination to investigate corruption at high level political leaders. Coming to Africa, Botswana's record of anticorruption undertakings is highly commendable. The country established the Directorate on Corruption and Economic Crime (DCEC) in 1994 in an attempt to curb corruption and other related crimes. The DCEC is widely perceived as successful. Botswana is now seen as the least corrupt country in sub-Saharan Africa (Mail & Guardian Africa, 2014). Although anticorruption institutions in Indonesia, Latvia and Botswana may have their own peculiar features that has led them to success, they somehow have been enjoying common favourable conditions as that of the Hong Kong and Singapore anticorruption bodies.

The Singapore and Hong Kong anticorruption institutions have been modeled by many anticorruption institutions that have come afterwards. Those institutions which are organized based on the Singapore model are mandated with investigation activity while those on Hong Kong's model are entrusted with the tasks of ethics education, corruption prevention and law enforcement. The Ethiopian Federal Ethics and Anticorruption Commission mimicked the Hong Kong model of three pronged approaches of education, prevention and investigation.

Nowadays, there are also anticorruption institutions established to perform only preventive functions. Still others lack prosecutorial role though they incorporate investigation activities with regard to corruption. Besides, some countries opted to establish multi-purpose agencies to perform certain corruption prevention and investigation functions with a mix of human rights, ombudsman and/or auditing mandates (UNDP, 2011). Anticorruption institutions are also known with different names such as agencies, commissions and bureau.

Thus, there is no clear cut formula with respect to organization, scope and designation of anticorruption institutions. There is consensus, however, that countries can organize and make operational such institutions with various approaches based on their own circumstances.

Despite such variations, anticorruption institutions are generally referred as a separate, permanent government agency whose primary function is to provide centralized leadership in core areas of anticorruption activity (USAID, 2006b). There are also some common standards that governments have to maintain for the effective functioning of domestic anticorruption institutions despite differences in approach. These include ensuring political will, adequate legal framework, independence and allocation of enough resource for the effective functioning of such institutions. Both the UN and AU Conventions against Corruption require states parties to establish anticorruption bodies and to ensure the effective operations of those bodies by facilitating necessary conditions including granting their independence and allotting enough resources. Anticorruption institutions are considered as one of the key players in the effective implementation of these instruments.

With regard to the effectiveness of domestic anticorruption institutions, most literatures agree on the crucial role such institutions could play in tackling corruption. They also acknowledge that most anticorruption institutions are entangled with a number of problems that undermine their effectiveness. Although anticorruption institutions are established with great expectation and of great importance in anticorruption endeavor, most of them have often been criticized for being ineffective. As Speville (2008) indicated there are actually very few examples of successful independent anticorruption commissions/agencies.

Some literatures express the flaws in anticorruption institutions in the strongest terms possible while others inclined to emphasize on how to fix the problem. For instance, Maria (2008: 324) described anticorruption institutions as “serious program failure”. Heilbrunn (2014) argued that anti-corruption commissions fail to reduce public sector venality in all but a few special circumstances. Speville (2008) asserted that many anticorruption agencies fail dismally to have any impact. These literatures mentioned, among others, defectiveness in institutional design or planning/management and implementation, weak political will, lack of independence from the executive and insufficient budgetary support from the legislature and unrealistic aim and expectations for the failures.

On the other hand, UNDP recognizes that while many anticorruption institutions still have considerable works to do, they can, and should, play an important role in a country’s national accountability (UNDP, 2011). Thus, anticorruption institutions need to be provided with appropriate assistance and enabling environment in light of international standards to discharge their responsibilities effectively.

All these assessments of anticorruption institutions may in some way indicate whether such institutions are effective in implementing international anticorruption instruments. However, one cannot say for sure the assessments are strictly carried out in light of the international standards. Lack of uniform and appropriate measurements may sometimes result in weak assessment of the effectiveness of anticorruption institutions (Doig et al., 2005). In addition, measuring the effectiveness of anticorruption institutions is a complex task as it requires understanding of the broader context in which they operate (OECD, 2008). As anticorruption institutions do not work in vacuum, they would be affected by the social, economic and political context of the country and addressing such factors would be crucial. Especially defectiveness and weaknesses of other public institutions significantly affect the performances of anticorruption institutions (ibid). As other institutions have a role to play in this respect, anticorruption institutions cannot win the battle alone. In addition, it should be noted that, the creation of such institutions is helpful but not a total remedy to the scourge of corruption (UNDP, 2005).

2.2.2 The Federal Ethics and Anti-Corruption Commission of Ethiopia (FEACC)

Ethiopia had passed through centuries of feudal monarchical and authoritarian rule before the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) seized power in 1991. A constitution that allows a federal democratic political system, comprises of nine regional states was promulgated in 1995. The launching pad for recent anticorruption efforts in Ethiopia appears to be the 1995 constitution which contains provisions related to transparency and accountability in the functioning of government. The constitution of the Federal Democratic Republic of Ethiopia stipulates that the conduct of the affairs of government shall be public and transparent and public officials are accountable for any dereliction of the duties of office (FDRE Constitution Article 12, 1995). The conduct of government in transparent and accountable manner is in fact beneficial in reducing, among others, the vulnerability to corruption in the civil service. This constitutional base paved the way for the launching of Civil Service Reform Program (CSRP) in 1996. One of the rationales for the launching of CSRP was to pull the civil service out of rampant unethical practices and ensure transparency and accountability. The CSRP through its Ethics sub-program culminated in the enactment in May 2001 of the proclamation establishing the Federal Ethics and Anti-Corruption Commission of Ethiopia (FEACC). This legal framework gave birth to FEACC with objectives namely:

- 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 impropriety.

As to the mandate of the FEACC, it has authorized only to operate at the federal level, which includes the chartered cities of Addis Ababa and Dire Dawa, as Regional States have the prerogative to form their own anti-corruption bodies under the federal arrangement. The Commission has also been made accountable to the Prime Minster and its head is to be appointed by the National Parliament up on nomination by the Prime Minister (Revised Establishment Proclamation, 2005). The term of appointment of the Commissioner or the Deputy Commissioner shall be for six years (ibid).

Back to the context that led to the establishment of the Commission, there is another version that explains the circumstance under which the FEACC came in to being and began operation. There has been an argument that correlates the birth of the FEACC with the intention to harass political dissidents (Belia, 2004). According to this argument, the FEACC was established in the same period when one of the coalitions in the ruling Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), the Tigrai People's Liberation Front (TPLF), split in two factions that led to the purge of 13 members of its Central Committee. One of the expelled senior party members, Seeye Abrha who was also Defense Minister and some of his family members were arrested in connection with corruption just one-working day after the enactment of the law that established the FEACC (ibid). Although, the then head of the party and the late Prime Minster Meles Zenawi explained that the division and Seeye’s arrest was related to corruption that had become a treat to the very existence of the system, the expelled members of the TPLF pointed out that the cause of the split was over the disagreement on the issues of the 1999 Ethio-Eritrean boarder conflict and sovereignty (ibid). This led to the perception that the establishment of the FEACC was orchestrated with the intention to harass political opponents. Moreover, an amendment on the anticorruption law that deprived defendants of the right to bail was hastily enacted on 12th of June 2001 after the order to release Seeye Abraha on bail was announced.[7] This again brought question over the credibility and image of the Commission from the outset. Nevertheless, another amendment was made on the bail issue in 2005 that seems to rectify the controversy over the bail issue. According to the amendment, if the corruption offence is believed to have a potential penalty of less than 10 years, defendants have the right to appeal for bail.

When I turn to the objectives of FEACC stated in the anticorruption proclamation, they remain basically unchanged even after the law was amended twice in 2005 and 2015. The 2001 establishment proclamation as well as subsequent revised proclamations gives prominence to corruption prevention and law enforcement functions. Among the above mentioned three objectives of FEACC the first two objectives are directly relevant to corruption prevention measures while the last one focuses on law enforcement activities.

As part of its preventive works, the FEACC is mandated to not only work on the promotion of ethics but also to study the practices and working procedures in various institutions to secure the revisions of methods of work which may be conducive to corruption. This also includes follow up of implementation of system review. The FEACC has also been given the power to conduct the registration of assets and other financial interests of public officials and other selected public employees as part of its corruption prevention activities. The Disclosure and Registration of Assets Proclamation No. 668/2010 is the legal base that can be cited in this respect. The FEACC is also mandated to coordinate ethical infrastructures[8] and to establish various anticorruption groups so as to make them play their part in preventing corruption.

The law enforcement activity of the FEACC mainly includes investigating and prosecuting alleged corruption offences as well as freezing and forfeiting of assets obtained by corruption. In order to enhance these investigation and prosecutorial activities of the FEACC a Proclamation to

[7] Addis Fortune News Paper, 23 November, 2014, Vol. 15, No. 760. Independent News & Media Plc.
[8] Ethics Infrastructures" means mechanisms, bodies, or procedures or the necessary conditions and similar matters that will serve to reduce substantially unethical conducts and to encourage efficiency and integrity in the public service. See FEACC Revised Proclamation No. 433/2005, Article 2,

Amend the Revised Anti-Corruption Special Procedure and Rules of Evidence and a Proclamation for Corruption Crime were adopted in 2015.

These newly adopted proclamations and the 2015 Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015 have enabled the FEACC, among others, to widen its mandate to the private sector. The FEACC's jurisdiction had long been limited to public offices and public enterprises until very recently. The FEACC was mandated to investigate and prosecute alleged corruption offences where they are committed only in public offices or public enterprises, or in regional offices relating to subsidies granted by the Federal Government to the regions (Article 7 of the Revised Establishment Proclamation, 2005).

There are also other legal frameworks currently in place in the country pertinent to preventing and combating corruption. Accordingly, the country adopted the Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No. 699/2010, Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 and a Proclamation to Provide for Freedom of the Mass Media and Access to Information Proclamation No. 590/2008. The adoption of the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 and the Proclamation to Provide for the Financial Administration of the Federal Government of Ethiopia, Proclamation No. 648/2009 is also relevant in one way or another in the fight against corruption and help enhance the works of FEACC.

These legal frameworks are highly significant as they aim to establish accountable and transparent systems in the conduct of public affairs as well as in the private sector. They also gave birth to several accountability institutions that have a role in combating corruption in the country. Despite the fact that preventing and combating corruption are cross-sectoral undertakings, the Federal Ethics and Anticorruption Commission (FEACC) is entrusted with a crucial role to play in these areas. It is mandated to conduct several wide ranging preventive and law enforcement activities. In a bid to discharge these responsibilities the FEACC organized itself in the following core directorates:

- Ethics education and communications affairs directorate
- Corruption prevention directorate
- The directorate for the coordination of Ethics infrastructure
- Asset registration and disclosure directorate
- Investigation and prosecution directorate

The Commission, currently, has 402 employees with professional mix of such as lawyers, engineers, managers, accountants, education experts, public relations officers, economists, psychologists, and other social science experts (FEACC, 2015a). As to the financial resources, the FEACC receives its annual budget from the government and additional financial assistance from the United Nations Development Programme, under the latter's Democratic Institutions Assistance Programme (ibid).

As far as the effectiveness of FEACC is concerned, some studies were conducted several years back. However, the studies did not exclusively gauge the performance of FEACC based on the standards put by international anticorruption instruments.

Overall, these studies did not portray a totally blink picture about the effectiveness of FEACC. Mezmur and Koen (2011) indicated that FEACC's anti-corruption efforts have improved over time; but the Commission has not made noteworthy progress in taming corruption in Ethiopia. This may be attributable to the Commission's structural flaws, its continued vulnerability to political interference and its lingering difficulties with securing public trust (ibid). As Tamyalew (2010:37) shows, although the FEACC has achieved some important results since its inception; it continues to be under-staffed and lacks resources. These are the most serious challenges facing the Commission.

There are also broad studies which are conducted to assess the level of corruption in the country and anticorruption measures. The Ethiopian Second Corruption Perception Survey which was Commissioned by FEACC and carried out by Kilimanjaro International in 2012 can be mentioned in this regard. The Survey mainly focused on comparing the level of corruption five years before 2012 and after it. In this attempt, the survey found out that a majority of the respondents in each sample category felt that corruption in the country had been contained or was better than it had been five years before and much of the corruption that takes place is petty type (Kilimanjaro International, 2012). However, the survey also showed that most public institutions in the country are affected by corruption and lack of transparency especially in the manner in which public institutions interact with business enterprises and some reluctance of public participation in anti corruption for fear of reprisal (ibid). The survey urged the government, among others, to reduce the high inflation which is the major cause of petty corruption in the country, strengthen ethical education, ensure public participation, enhance transparency in the public sector and broaden the media space in the country (ibid).

In addition to the above mentioned researches, a study aimed at gauging the level of corruption in Ethiopia through sector-level diagnostics approaches was conducted by the World Bank in 2012. The diagnostics study suggests that, in Ethiopia, corruption in the delivery of basic services (primary health, basic education, rural water supply, and justice) is comparatively limited and potentially much lower than in other low-income countries (World Bank, 2012). The study found out a relatively higher risk of corruption in the investment sectors (such as construction, land, and mining), telecommunications as well as HIV/AIDS prevention and pharmaceuticals. The study also indicated that there is high perception and lower reality as far as corruption in the above mentioned sectors in Ethiopia is concerned.

Another research, Impact Assessment Study of the Activities of the Federal Ethics and Anti-Corruption Commission, was carried out by Addis Ababa University in 2011. The study assessed the impacts of prevention, investigation and prosecution activities of the Commission over the last nine years. According to the study, only 12% of the respondents said that corruption has increased or it has not changed in the country (Addis Ababa University, 2011). In addition, the study indicated that 53.3 percent of the respondents believed the Commission has been effective in preventing corruption. It also found out that the Commission’s ethical education has been more effective than its system review work in various institutions (ibid). The respondents indicated that there is a gap in following up the extent to which recommendations on system review have been implemented (ibid).

As far as the trend in corruption in Ethiopia is concerned, alarming reports have been issued by Transparency International Corruption Perceptions Index and Ibrahim Index of African

Governance. For instance, in 2014, Ethiopia was ranked 110th out of 175 countries in Transparency International Corruption Perceptions Index, with a score of 33 on a scale where 100 means very clean and 0 means highly corrupt (Transparency International, 2014). In addition, according to the 2013, Ibrahim Index of African Governance, Ethiopia scored 48.5% (Mo Ibrahim Foundation, 2013). This shows that corruption is still serious problem in the country and much remains to be done in reducing corruption and promoting good governance.

2.2.3 The Evolving International Responses to Corruption

The establishment of international anticorruption instruments is a recent phenomenon. It is only since the mid-1990s that anti-corruption efforts have become high on the global agenda (Wolf and Schmidt-Pfister, 2010). Several factors can be attributed to the long lull in the global anticorruption efforts. One of the factors that impeded global efforts from gaining prominence was the Cold War. In a situation where nation states were highly indulged in ideological battle, it was difficult to reach a compromised global deal on anticorruption. Thus, corruption was considered as not more than a domestic issue. The perception that portrayed corruption as normal, natural and even beneficial is the other reason for the prolonged silence.

Despite the fact that the above-mentioned factors had hindered global deal on anticorruption, developments in the United States in the 1970s paved the way for the emergence of several international anticorruption initiatives beginning from mid 1990s. In the 1970s it was disclosed that American multinational corporations were routinely making illicit payments to foreign public officials out of secret slush funds (Davis, 2009). As US investigation on to this accusation revealed, American companies made illegal foreign payments totaling over USD 300 million in the mid 1970s (Vlasic and Atlee, 2012). Following the revelation, the US Congress passed the Foreign Corrupt Practices Act (FCPA) in 1977 to prevent such illicit payments. Although the FCPA was limited to curbing bribe-giving to foreign nationals by US companies in commercial activities, it was the first law in condemning international bribery (Wouterset al., 2012). FCPA was also a pioneer for later broad international anticorruption instruments.

Believing that sanctioning US companies only would not help in preventing corrupt practices in commercial activities and had adverse effect on its business transactions, the US was eager to see the adoption of similar acts by other countries. In light of this, the US had been lobbying for international anticorruption treaty. But given the circumstances of the Cold War era, forging an international treaty was not easy. However, in the years after the end of Cold War the US attempt led to the adoption in 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the OECD Convention).

The OECD[9] Convention is a step forward in recognition of the need for a global response to corruption. The convention states in its preamble:

> Bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions; … all countries share a responsibility to combat bribery in international business transactions (OECD Convention, 1997).

Although the OECD Convention has appreciated the global threat posed by corruption, its scope is limited in combating the danger. The Convention deals with only corrupt practices in international business transaction. It also focuses mainly on bribery while neglecting other forms of corruption. In addition, the convention centers on the supply side or “active bribery”, meaning the offence committed by the person who promises or gives the bribe, while ignoring the demand side or “passive bribery”, the offence committed by the official who receives the bribe. Thus, one can conclude that the OECD Convention was modeled after its predecessor, FCPA, in many respects and both the FCPA and the OECD Convention have mainly been criticized for not addressing the demand side of bribery transactions.

Attempts to address the demand side of bribery had already been realized a year earlier by the adoption in 1996 of the Inter-American Convention against Corruption (IACAC)[10]. Even though the IACAC addresses both supply-side (active) and demand-side (passive) bribery, it did not gain high esteem as that of the OECD. This is mainly due to the fact that unlike the IACAC, the OECD Convention comprises several major economic and political powers of the world. The OECD Members represent 90 percent of foreign direct investment and are home to more than 75

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[9] The Organization for Economic Cooperation and Development (OECD) is an international organization established in 1961 with the objective to promote policies that will improve the economic and social well-being of people around the world. It has now 34 member countries including most major economic powers of the world. See www.oecd.org

[10] Inter-American Convention against Corruption (IACAC) was adopted by members of the Organization of American States (OAS) including USA; 33 countries are ratified the Convention, up to 2015. www.oas.org

percent of Multi National Corporations worldwide (Nuland, 2007). Nevertheless the IACAC is broader in its scope than the OECD and has become the first international convention addressing the supply and demand side of corruption and giving due emphasis for corruption prevention as well as detecting and punishing certain corruption offences and strengthening cooperation among states.

The late 1990s witnessed a number of other international anticorruption instruments[11] that deal with various forms of corruption. One of these is the Council of Europe Criminal Law Convention against Corruption which was adopted by the Council of Europe in early 1999. The Convention contains provisions criminalizing a list of specific forms of corruption, and extending to both active and passive forms of corruption and to both private and public sector cases. It also contains provisions concerning the setting up of specialized anti-corruption bodies, protection of persons collaborating with investigating or prosecuting authorities and the enhancement of international cooperation in the area (UNODC, 2005). The European Council also adopted the Civil Law Convention on Corruption in 1999 with the intention to provide remedies and compensations for persons who have suffered damage as a result of corruption (ibid). The Council of Europe's anti-corruption efforts have received substantial attention mainly because of the relatively well advanced anti-corruption implementation mechanism through its GRECO,[12] the Group of States against Corruption.

In addition to the above mentioned instruments, several global anticorruption initiatives were launched by various groups of nation states and international organizations in late 1990s. Since then, international financial institutions and Non Governmental Organizations has played significant role in bringing the issue of corruption to an international scene and its negative impact felt worldwide. The World Bank and the IMF attached anti-corruption conditionality to their development assistances by setting aside their previous policy to "abstain from political considerations" in their lending practices (Wouters and et al, 2012). In light of this they devised anticorruption strategies to be implemented by various countries.

[11] It should be noted that the international anticorruption instruments and initiatives which are mentioned in this section are not exhaustive; only the major ones are cited in relation to the evolution of global anticorruption instruments.

[12] GRECO's goal is to monitor compliance with the Council's anti-corruption standards and it serves as a platform for both the exchange of best practices and peer pressure. See Wouters, J. and et al. (2012). the fight against corruption in international law. Working paper, No. 94.

At the United Nations forums, several anticorruption initiatives and instruments have been developed since the mid 1990s. To mention few, International Code of Conduct for Public Officials[13] and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions were adopted by the General Assembly. However, the initiatives and instruments are either not binding or not universal in their application. It is only during 1999-2003 that intensive and fruitful efforts were made to develop a binding and universal international legal instrument by the United Nations. The adoption by the General Assembly on 15 November 2000 of the United Nations Convention against Transnational Organized Crime (UNTOC) was a case in point in establishing both binding and universal instruments. However the need for establishing another comprehensive international instrument, focusing solely on corruption and independent of UNTOC soon arise as UNTOC did not have focus on corruption.

Accordingly, in three years time after the adoption of UNTOC the most comprehensive international anticorruption instrument, the United Nations Convention against Corruption (UNCAC) was adopted on 31 October 2003 following painstaking negotiations by member states of the UN. The UNCAC makes evident the devastating effects of corruption and further lift up the issue to the international scene.

Rectifying the weaknesses and building up on the achievements of earlier anticorruption instruments, the UNCAC has situated itself in a better position as compared to its predecessors. This was considered by many as a remarkable achievement in the global fight against corruption. Although not esteemed as the UNCAC, the African Union Convention on Preventing and Combating Corruption (AUCPCC) was also adopted on 11 July 2003 (in the same year as UNCAC). All these developments have clearly shown us the increasing need to enhance global response to corruption. Ethiopia is party to these latest three international anticorruption instruments namely: UNTOC, UNCAC and AUCPCC. The country ratified UNTOC, UNCAC and AUCPCC on 23 July 2007, on 26 November 2007, and on 18 September 2007 respectively. These instruments will be discussed in the following chapter.

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[13] <<The Code emphasizes the loyalty of officials to the public interest and is concerned with public sector corruption while the Declaration deals with both the private and public sectors and calls for the enactment and enforcement of laws prohibiting bribery in international transactions>> See the 2002 Anti-Corruption Tool Kit Prepared by the United Nations Office of Drug Control and Crime Prevention, pp 237-238.

CHAPTER III: INTERNATIONAL ANTICORRUPTION INSTRUMENTS RATIFIED BY ETHIOPIA

The world has witnessed a number of international anticorruption instruments which vary in their scope, extent of application and geographical coverage. However, this section of the paper confines only to the instruments to which Ethiopia is a contracting party. As mentioned above, Ethiopia signed and ratified the United Nations Convention against Transnational Organized Crime (UNTOC), the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC).

The main purpose of the UNTOC is to promote cooperation to prevent and combat transnational organized crime. Although corruption is not the main focus of the UNTOC, it is treated in the UNTOC as a sub set of transnational organized crimes. On the other hand the UNCAC is acclaimed for focusing entirely on corruption issues in a comprehensive manner. The UNCAC has a wide scope in terms of sectors it covers, lists of corruption offences and range of measures it requires from corruption prevention to criminalization, asset recovery and international cooperation. In general, the UNCAC is aimed at strengthening measures to prevent and combat corruption, promoting integrity and accountability in public affairs and facilitating international cooperation against corruption. The intents of AUCPCC are also not far from fulfilling these goals. One of the main objectives of the AUCPCC is to promote and strengthen mechanisms in Africa required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors. The Convention also aims, inter-alia, at fostering cooperation among the State Parties in the prevention and combating corruption.

The following section deals with the major contents of these instruments with respect to Corruption Prevention, Criminalization and Law enforcement and Implementation issues.

3.1 CORRUPTION PREVENTION MEASURES IN THE UNCAC, AUCPCC AND UNTOC

As the saying goes, "prevention is better than cure." Hence, the preventive aspect of anticorruption undertakings should be emphasized. Prevention is believed to minimize the possibility for the occurrences of corrupt practices and is helpful to be cost effective in most anticorruption endeavors as law enforcement requires more resources in various forms. In addition, as the causes of corruption are not limited to individual greed, penalizing only would not serve the anticorruption purpose. The environment or the system in which individuals act and the attitude they develop can better be dealt with preventive aspects. This is in fact in congruence with the principal-agent theory which, among others, requires placing transparency and monitoring mechanisms to deter corrupt practices. There is now a wide consensus that the fight against corruption necessarily includes the preventive aspect which mainly involves establishing legal and institutional frameworks, disseminating ethics education, system and working procedures review, establishing transparency and accountability through institutional and policy reform, and engaging the society in anticorruption activities.

The United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the United Nations Convention against Transnational Organized Crime (UNTOC) deal with corruption prevention and measures to be taken in this respect with diverse intensity.

The United Nations Convention against Corruption (UNCAC) is the most comprehensive and detailed. The high regard given to the preventive aspect by the UNCAC is evident from the allotment of its one full chapter to corruption prevention measures. The corruption prevention measures of the UNCAC consist of both mandatory and non mandatory provisions. The mandatory provisions use clauses such as “states parties shall take” or “shall adopt” in terms of obligation while the non mandatory provisions employ the phrase “states parties shall endeavor” or “shall consider” or “may adopt”. The requirements for non mandatory provisions are either obligation to consider or optional measures states parties may wish to consider. The corruption prevention measures of the UNCAC also encompass major categories such as:

- Preventive policies and bodies
- Public sector integrity and education
- Transparency and accountability in public procurement and finance
- Integrity in judiciary and prosecution
- Preventing corruption in the Private sector

- Participation of society, access to information and
- Preventing money laundering

The African Union Convention on Preventing and Combating Corruption (AUCPCC) also touches most of the above-mentioned areas. As far as the United Nations Convention against Transnational Organized Crime (UNTOC) is concerned, although the Convention covers some of these areas, it lacks being specific to corruption.

With respect to preventive policies, the UNCAC requires contracting parties to develop and implement preventive anticorruption policies.

> Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (UNCAC, Article 5).

In addition to the demand for the adoption and implementation of anticorruption policies, the Convention attempted to indicate the mechanism by which anticorruption policies are executed and corruption prevention practices will be carried out.

In this juncture, the UNCAC demands for establishment of an anticorruption body that oversees the implementation of such policies. Accordingly, the Convention obliges contracting parties to establish anticorruption body or bodies to coordinate the implementation of those policies and to disseminate knowledge about the prevention of corruption (UNCAC, Article 6). The AUCPCC also requires the establishment of anticorruption bodies that deal with preventing corruption including promotion of ethics education, integrity, transparency and accountability (Article 5). The UNTOC as well, mentions in an implicit manner the relevance of anticorruption authorities that deals with the prevention of corruption (Article 9). The Conventions left the option for states parties whether to establish a single or more than one body depending on their structural preference. Here, the structural issues are relegated behind the effectiveness of anticorruption body. And as a prerequisite to effectiveness, the issue of independence comes to the scene.

All the three Conventions underlie the need for granting independence to body or bodies working on corruption prevention. Especially, the UNCAC emphatically stated that anticorruption bodies will be ineffective unless they enjoy independence (Article 6). In this regard, the UNCAC requires states parties to grant anticorruption bodies with the necessary independence to be free from undue influences and to carry out their function effectively (ibid). Ensuring independence requires both legislative and practical measures. In this respect, legal guarantees of independence, placing rules and procedures governing the appointment, tenure and dismissal of officials of such institutions and providing them with the necessary material resources and specialized staffs are relevant (UNODC Technical Guide to UNCAC, 2009:11).

As part of facilitating the works of anticorruption bodies and effective implementation of preventive anticorruption policies, the UNCAC recognizes the need for revision of existing instruments. According to the UNCAC, each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption (Article 5). However this paragraph is not as strong as the previous ones in terms of obligation as it contains the clause "shall endeavor" rather than "shall take measures."

Under the category of public sector integrity and education, the UNCAC forwards a number of measures to be taken by states parties. In this connection, ethical requirement is designated as one of the key components in preventing corruption in the public sector. Accordingly, states parties are required to promote anticorruption education and endeavor to apply personal ethical standards or codes of conducts among all public officials[14] and make them accountable in case of violations (Article 8). The AUCPCC also call for contracting parties to adopt and strengthen mechanisms for promoting ethics education among populations to respect the public good and public interest (Article 5). In addition, the AUCPCC demands states to create a body mandated to establish a code of conduct and monitor its implementation to prevent corruption in the public service (Article 7). As part of corruption prevention in the public sector, the UNCAC deals with issues in relation to human resource management. The UNCAC calls on contracting states to endeavor to adopt merit based systems for the recruitment, promotion and retirement of public officials (Article 8). However, this provision is not mandatory. It only encourages states parties rather than obliging them to take measures.

[14] In article 2, the UNCAC contains a broad and comprehensive definition of the term "public official", which embraces the staff of all public sector services and all those holding an elected public office.

Again, in its non mandatory provision, the Convention calls on each State Party to consider adopting appropriate legislative and administrative measures concerning candidature for and election to public office. In this respect, contracting states are encouraged to put in place appropriate rules, procedures and codes of conduct to govern the finance of political campaigns and political parties as part of preventing and controlling corruption (UNODC Technical Guide to UNCAC, 2009). Unlike the UNCAC, the AUCPCC contains a provision which is more assertive regarding political party funding. According to AUCPCC, each State Party shall adopt legislative and other measures to ban the use of illegal funds to finance political parties and incorporate the principle of transparency into funding of political parties (article 10). Similarly, with respect to asset disclosure and the prevention of conflict of interest among public officials, the AUCPCC consists of more forceful provision than the UNCAC. The AUCPCC obliges states to require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service (Article 7) while the UNCAC calls on states only to endeavour to do this (Article 8). Thus, the AUCPCC has its own unique feature particularly with regard to mandatory provisions on transparency in political party funding and declaration of assets. However, the AUCPCC is not as comprehensive as the UNCAC in many of its prevention measures.

Coming to the category of public procurement and finance, the UNCAC gives due regard to transparency and accountability in public procurement and management of public finances as a key area in a bid to prevent corruption. According to the Convention:

> Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making….and also take appropriate measures to promote transparency and accountability in the management of public finances (Article 9).

Although it is not as elaborative as the UNCAC, the AUCPCC also deals with transparency and accountability in Public procurement and management of public finances. The AUCPCC requires the strengthening of internal accounting, auditing and follow-up systems in the public income, custom and tax receipts, expenditures and procedures for procurement and management of public goods and services as part of the prevention measures (Article 5).

Another area of prevention which was given prominence by the UNCAC but of little importance by the AUCPCC is measures relating to the judiciary and prosecution service. Here, the UNCAC stresses the independence of the judiciary and its crucial role in preventing and combating corruption. States parties are required to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and prosecution (UNCAC Article 11). The measures include among others transparent appointment of judges, the maintenance of clear procedures and proceedings and regulating conducts of member of the prosecution and the judiciary (ibid).

As to preventing corruption in the private sector, unlike the UNTOC both the UNCAC and AUCPCC do not rule out the private sector in their corruption prevention measures. One of the biggest achievements of the UNCAC and AUCPCC is their due consideration of prevention of private sector corruption side by side with public sector corruption. Accordingly, the UNCAC comes up with mandatory and optional requirements to be met in preventing corruption in the private sector. The mandatory measures include, among others, enhancing accounting and auditing standards in the private sector, preventing off-the-book accounts and transactions, entry of liabilities with incorrect identification, use of false documents, intentional destruction of bookkeeping documents earlier than foreseen and tax deductibility of bribe money (Article 12). Some of the optional requirements embrace developing standards to safeguard integrity and transparency, prevent the misuse of regulatory procedures, prevent conflict of interest and develop internal auditing controls (ibid). The AUCPCC also gives due attention to corruption prevention in the private sector by demanding for the adoption of legislative and other measures to prevent acts of corruption committed in and by agents of the private sector (Article 11).

Another area of corruption prevention that has been given due attention by both the UNCAC and the AUCPCC is the active participation of society in the fight against corruption. The provisions with regard to participation of society stipulate the involvement of civil society, non-governmental organizations, the media and community-based organizations in the prevention of and the fight against corruption (UNCAC, Article13 and AUCPCC, Article 12). According to the UNCAC, some of the measures that are required in a bid to increase the participation of society in corruption prevention include:

> taking measures to promote the active participation of the society in raising public awareness about corruption and reporting corruption, the involvement of the public in decision making, public access to anticorruption bodies and to information on anticorruption measures, public education programs, including school and university curricula (Article 13).

The UNCAC also includes provisions that underlie the need for simplifying administrative procedures, making public organizations more open and responsive to the public through periodic reporting and the establishment of access to information concerning public administration (Article 10). As part of engaging the public in the prevention of corruption, both the UNCAC and AUCPCC require states to adopt legislative and other measures to give effect to the right of access to information. The conventions also require states to establish adequate rules and procedures facilitating the reporting of acts of corruption allegedly committed by public officials. This includes protecting whistleblowers from possible retaliation for such reporting by superiors (UNCAC, Article 8 and AUCPCC, Article 5).

As part of corruption prevention scheme, the UNCAC provides for measures to prevent money laundering[15] by private and public actors. In this regard, each State Party is obliged to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions in order to deter and detect all forms of money-laundering (Article 14). In addition, contracting parties are required to ensure cooperation between agencies involved in combating money laundering including exchange of information (ibid). Besides, these mandatory provisions, the UNCAC put forward optional requirements in this respect. Accordingly, states parties shall consider the establishment of a Financial Intelligence Unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering (ibid). Contracting parties are also encouraged to consider monitoring cash movements across borders, collecting information by financial institutions on electronic fund transfers and controlling suspicious transactions.

In general, the UNCAC encompasses a detailed and broad corruption prevention measures. These measures involve several legislative and institutional frameworks and practices in various

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[15] Money laundering can be defined differently in a various contexts. The anticorruption resource center, U4, defines money laundering as a process to disguise the source of criminally derived proceeds to make them appear legal. See Anti-Corruption Resource Centre www.U4.no, U4 issue, No 2, January 2011

areas which aim at preventing corruption in both the public and private sectors. The AUCPCC also consists of parallel legislative and other measures to UNCAC although not in a detailed manner. On the other hand, the corruption prevention aspect per se in the UNTOC is very limited. As mentioned-above the UNTOC does not solely deal with corruption. The convention contains only one article that directly deals with corruption prevention i.e. calling for states parties to adopt legislative, administrative and other measure to promote integrity and to prevent the corruption of public officials and to grant anticorruption authorities with their independence (Article 9). Although this provision is significant in corruption prevention, it lacks further elaborations. Coming back to the UNCAC, despite its comprehensiveness, there are some criticisms against this Convention as it encompasses several provisions which are not mandatory (Low et al, 2006). In addition, even in the mandatory provisions, the existence of allegedly weak clauses such as "states parties may take measures in accordance with the fundamental principles of its legal system" is at the center of denunciation. Some assert that these clauses allow member states to have a scapegoat not to implement important provisions (Brunelle-Quraishi, 2011).

Nevertheless, the incorporation of optional requirements and measures in the Convention are believed to be results of compromised settlement that enables a wide consensus on the Convention. Had it not been for such optional requirements, it would have been difficult for UNCAC to gain hundreds of ratifying states. In addition, the provisions containing optional requirements and measures allow contracting parties to adopt and implement the provisions in their context without jeopardizing their sovereignty. The convention has already left some rooms for consideration of local context in many of its provisions while requiring and/or encouraging contracting parties to implement internationally accepted standards. This in fact avoids a one-size-fit-all approach in corruption prevention which is very wide and complex in nature (Wouters et al. 2012). A degree of flexibility is desirable, as it would facilitate the contracting parties' desire for flexibility while implementing the obligation envisaged in the Convention (Babu, 2006).

3.2 PUNITIVE MEASURES IN THE UNCAC, AUCPCC AND UNTOC

Although the preventive measures are crucial in the anticorruption struggle, punitive measures such as criminalization of corruption offences and law enforcement undertakings can never be underestimated. As best practices from around the world indicated the punitive measures which are important components of criminal justice and deterrence mechanism go side by side with prevention to significantly reduce corruption. The Principal-Agent-Client model also emphasizes sanctioning along with preventive measures such as reducing discretionary power and enhancing transparent system. In light of this, the United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the United Nations Convention against Transnational Organized Crime (UNTOC) give due considerations to criminalization and law enforcement measures.

With respect to criminalization in the UNCAC, the Convention provides for several corruption offences to be criminalized by states parties. However, the UNCAC purposely evades defining corruption as it is hardly possible to establish universally accepted definition for this complex and fluid concept. The UNCAC opted to focus on manifestations of corrupt practices rather than giving single definition to corruption and thereby came up with lists of offences to be criminalized by contracting parties. The criminalization part of the Convention consists of both mandatory and non mandatory provisions. The mandatory provisions of the UNCAC oblige states parties to adopt legislative and other measures so as to criminalize the following offences when committed intentionally:

> bribery of national public officials, active (supply side) bribery of foreign public officials and officials of public international organizations, embezzlement, misappropriation or other diversion of property by a public official, laundering of proceeds of crime, and obstruction of justice (Articles 15-17, 23 & 25).

Under such mandatory provisions, both the active (supply side) and passive (demand side) of bribery of national public officials are to be criminalized. The promise or giving to a public official of an undue advantage as well as the solicitation or acceptance by a public official of an undue advantage are corruption offences to be criminalized. Such criminalization could be the result of the predominant belief that corruption is mostly committed by public office holders and tackling bribery of public officials would significantly contribute to anticorruption drives. As to bribery of foreign public officials and officials of public international organizations, the mandatory requirement lies only on the active (supply side) of the offence. This means, States are obliged to take measures only with regard to criminalizing the promise or giving to a foreign public official or to an official of a public international organization an undue advantage, whereas criminalizing the passive (demand side) bribery of foreign public officials and officials of public international organizations is an optional requirement. Although the criminalization of bribery of foreign public officials and officials of public international organizations is an essential development, the passive side of the offence is not to be criminalized as strongly as the active side. Thus, it seems that the UNCAC has inherited some of the traditions of not giving due emphasis to passive (demand) side of corruption from its predecessors. This has had more to do with legal issues such as difficulty in enforcement and jurisdiction (Brunelle-Quraishi, 2011). Concerning offences of embezzlement, misappropriation or other diversion of property, it focuses on public officials rather than private entities. With regard to the laundering of money, the Convention obliges States parties to establish four offences in relation to it. These include, conversion or transfer of property, concealment or disguise of the nature and source of property and the acquisition and use of property, as well as participation in conspiracies (UNODC Legislative Guide to UNCAC, 2006:90-91). Concerning obstruction of justice, the Convention requires contracting parties to criminalize the use of inducement, threats or force in order to interfere with witnesses and officials, whose role would be to produce accurate evidence and testimony (ibid:94).

The UNCAC also provides for non mandatory provisions in criminalizing certain corruption offences. According to these provisions, each State Party may wish or shall consider rather than being obliged to adopt legislative and other measures as may be necessary to establish a criminal offence. The reason for the inclusion of several non mandatory provisions is mainly related to attempts to accommodate the divergent approaches in different states due to variations in their domestic criminal legislations (Vlassis, 2012). The non mandatory requirements include criminalizing offences of:

> the passive (demand side) bribery of foreign public officials and officials of public international organizations, the active and passive side of trading in influence[16], the active and passive side bribery in the private sector, abuse of functions[17], illicit

[16] Treading in influence means promise, offering or giving to a public official or solicitation or acceptance by a public official of undue advantage for abuse of real or supposed influence. See UNODC Legislative Guide to UNCAC.

[17] Abuses of functions apply to abuses by public officials**.** See Low, L. (2006). What the UN Convention on Anticorruption Will Mean

enrichment[18], embezzlement of property in the private sector, concealment, attempts and preparation for offences (Article 16, 18-22. 24 &27).

Here, it should be noted that major offences with regard to private sector corruption fall under non mandatory provisions. Although these offences require non mandatory measures, UNCAC's attempt to the criminalize all these diverse corruption offences is in fact a big achievement.

The African Union Convention on Preventing and Combating Corruption (AUCPCC) shares many similar provisions on criminalization of corruption offences with that of the UNCAC. The AUCPCC establishes mandatory offences such as active and passive bribery of national public officials; active bribery of foreign and international public officials; embezzlement, misappropriation or other diversion of property by a public official; and laundering of the proceeds of corruption. In addition, the AUCPCC includes as mandatory several offences which UNCAC does not (Rao, 2011). These include passive bribery of foreign and international public officials; active and passive bribery in the private sector; trading in influence; embezzlement, misappropriation or other diversion of property in the private sector; and illicit enrichment. However, it should be noted that the AUCPCC does not contain detailed provisions relating to criminalization that are covered by the UNCAC.

With regard to the United Nations Convention against Transnational Organized Crime (UNTOC), the Convention basically deals with crime or offence which is transnational in nature and involves an organized criminal group. As part of this, the Convention identified four serious crimes namely, participation in organized criminal groups, money-laundering, corruption and obstruction of justice. The UNCTOC calls on all states parties to the Convention to adopt legislative and other measures to criminalize the above mentioned serious crimes. The convention also includes provisions specific to criminalization of corruption. Accordingly, each state party is required to adopt legislative and other measures to criminalize corruption in the following situations:

> When the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and when the solicitation or acceptance by a public official,

[18] Illicit enrichment generally refers to some unexplained growth in the assets of a public official.

> directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (UNTOC Article 8).

Thus, the UNTOC criminalizes both the active and passive bribery involving public officials. The convention also provides non mandatory provisions with regard to bribery of foreign public officials. Accordingly, each State party is required to consider criminalizing bribery involving a foreign public official or an international civil servant. However, unlike UNCAC, UNTOC disregards corruption in the private sector and has been criticized for focusing only on the criminalization of the corruption of public officials. On the other hand, the UNTOC leads the way for the inclusion of important provisions with regard to money laundering in the UNCAC. The UNCAC inherited the mandatory provisions to criminalize the laundering of proceeds of crime from UNTOC.

All the above-mentioned criminalization provisions need law enforcement measures so as to be effective. In light of this, the UNTOC, UNCAC and AUCPCC incorporate law enforcement measures such as liability of legal persons, statute of limitation, establishment of jurisdiction over offences, institutional set up, confiscation of proceeds of crime, compensation for damages, investigation, prosecution, adjudication and sanctions.

The UNCAC without prejudice to the criminal liability of the natural persons, who have committed the offences, addresses the increasing concerns with regard to the conducts of legal entities, such as companies, corporations or charitable organizations. Taking in to account that serious crime is frequently committed by or under the cover of such entities; the UNCAC requires the establishment of liability for legal entities (UNODC legislative Guide to UNCAC, 2006:108). Accordingly, each State Party is required to adopt measures to establish the liability of legal persons for participation in the offences established in accordance with this Convention (UNCAC Article 26). This article allows the liability to be criminal, civil or administrative in character. The UNCTOC also encompasses important provisions with regard to requirement of liability of legal persons. However, the AUCPCC lacks requirement of liability of companies.

As to the statutes of limitation, the UNCAC requires countries to establish a “long” statute of limitation for any offense established under this Convention where the alleged offender has evaded the administration of justice (Article 29). However, the AUCPCC and UNTOC have no provisions on the length of statutes of limitation.

With regard to jurisdiction, each State party must be able to assert jurisdiction over the offences when these are committed in its territory, vessel or aircraft (Article 42). States Parties are also required to establish jurisdiction in cases where they cannot extradite a person on grounds of nationality. In these cases, the general principle "extradite or prosecute" would apply (Chryssikos, 2012).

Concerning specialized anticorruption enforcement body or bodies, the UNCAC requires contracting parties to establish specialized anticorruption enforcement body or bodies as one of the key components of law enforcement measures (UNCAC Article 36). According to the Convention, establishing such institutions is not an end by itself. The body or bodies should be granted with the necessary independence, sufficient training and resources for staff to carry out their functions effectively. In a similar fashion to the establishment of preventive anticorruption bodies, the UNCAC did not specify any particular institutional shape for anticorruption law enforcement body or bodies. The AUCPCC also requires state parties to establish independent anticorruption law enforcement bodies.

As to issues with regard to investigation, prosecution, adjudication and sanctions, the UNTOC calls for effective measures to detect and punish the corruption of public officials. This later incorporated into the UNCAC. But the UNCAC has widened its law enforcement scope by adding in some offences in the private sector. The UNCAC provides for mandatory and non mandatory measures to investigate, prosecute and adjudicate a number of offences established in accordance with the Convention. The mandatory provisions require contracting states to make the offences in the Convention liable to sanctions. And the sanctions must take into account the gravity of the offences (Article 30). States parties are also required to make appropriate balance between immunities/privileges and effective investigation, prosecution and adjudication (ibid). The immunities/privileges refer to the rights accorded to public officials for the performance of their functions. The AUCPCC consists of unique law enforcement feature in relation to restrictions on immunity for public officials. According to AUCPCC, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials (Article 7). In addition, AUCPCC consists of provision on fair trial which asserts that any person alleged to have committed acts of corruption and related offences shall receive a fair trial in criminal proceedings. The UNCAC, under its non mandatory enforcement provisions, encourages states to facilitate the removal, suspension, re-assignment of an accused public official bearing in mind respect for the principle of the presumption of innocence. The non mandatory requirements also include establishing procedures for disqualification from holding office and promoting the re-integration into society of persons convicted of UNCAC offences. Thus, the UNCAC gives attention to both criminal sanctions and disciplinary measures.

Regarding issues of seizing, freezing and confiscation of proceeds of crime, the UNCAC provides for mandatory provisions that oblige States Parties to have the necessary legal framework to enable the tracing, freezing or confiscation of proceeds of corruption (UNCAC Article 31). The AUCPCC and UNTOC also consist of provisions that require measures to confiscate and seize the proceeds and instrumentalities of corruption (Article 7).

With respect to the issues of compensation and consequences of acts of corruption, the UNCAC emphasizes the need for compensation for damages inflicted by corruption and the annulment or withdrawal of a concession or other similar instrument as remedial action for consequences of corruption (Article 34-35).

As to curbing bank secrecy, the UNCAC law enforcement section requires States parties to ensure that their legal system has appropriate mechanisms to overcome obstacles arising out of bank secrecy laws (UNCAC Article 41). On the one hand, there is a long tradition of bank secrecy which is an important aspect of the contractual relationship between the bank and the client (UNODC Technical Guide to UNCAC, 2009:125). On the other hand, there is a call for an end to bank secrecy as part of fighting money laundering and other corruption offences. The UNCAC provision seeks to correct the balance by ensuring that bank secrecy provisions are amended in order to provide information to different domestic law enforcement agencies to effectively fight corruption crime (ibid). The AUCPCC also demand State Parties shall not to invoke banking secrecy to justify their refusal to cooperate with regard to acts of corruption and related offences (Article 17). The UNTOC also encompasses important provision with regard to restrictions on the use of banking secrecy that that gave its way to UNCAC.

As to protection of witnesses, experts and victims, the UNCAC entails several measures to be taken by states to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning corruption. The measures include, inter alia:

> Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means (UNCAC, Article 32).

States parties are also encouraged to consider taking measures to protect persons who report offences to competent authorities (UNCAC Article 33). The AUCPCC also requires contracting parties to adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities (Article 5). Regarding cooperation with law enforcement authorities, the UNCAC puts forward measures that encourage persons participating in corruption to provide relevant information for collection of evidence. These includes, providing for the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of corruption offence (Article 37). The UNCAC also encourages cooperation between national law enforcement authorities and the private sector especially financial institutions on matters involving the commission of corruption offence (Article 39). Such cooperation is highly relevant as detection and prosecution of corruption offences need concerted efforts.

3.3 IMPLEMENTATION ISSUES

International anticorruption instruments mentioned-above play an important role, because they spread successful experiences and establish a forum of dialogue, while enforcing the adoption of practical measures (Ferreira and Morosini, 2013). However, there are doubts as to the effective implementation and monitoring mechanisms of these instruments. As Mark Pieth (2013) explained talk is everywhere, but credible action against corruption is still rare, despite worldwide efforts. Such instruments need to be coupled with strong implementation mechanisms so as to bring the desired result.

As far as the implementation of UNCAC in general is concerned, the Convention has its own review mechanism to monitor country implementation of its standards. In light of this, a Conference of the States Parties is in place and at its meeting held in Qatar in 2009 agreed on the establishment of an Implementation Review Mechanism based on three processes namely:

> First, a Self-Assessment checklist (questionnaire) is completed by the country under review; second the assessment is considered by experts from two reviewing countries and further clarified during a country visit; and third the reviewers produce a written report, which is finalized in agreement with the country under review (Trivunovic et al., 2013).

Though, these processes are helpful in monitoring the implementation of the Convention, they are not a guarantee for effective implementation. The UNCAC, like many other international anticorruption instruments, faced implementation challenges. The monitoring mechanisms with respect to bringing accountability are not strong enough to ensure effective implementation (Rao, 2001). Non-governmental organizations such as Transparency International are pressing hard for enhanced monitoring mechanisms including the active participation of civil society in the review mechanisms (TI and UNCAC Coalition, 2014). The other perceived limitation of international anticorruption instruments including the UNCAC is the constraint in addressing political dynamics which hinder anti-corruption measures. These instruments seem to dwell more on the Principal-Agent theory that adhere to the establishment of transparency and sanctioning mechanisms based on incremental changes rather than the Collective Action theory which recommends transformation of the political culture through a big bang type of change. The UNCAC is also blamed for the perceived non mandatory provisions and weak clauses that it encompasses. The UNCAC indeed consists of several non mandatory provisions. However, it should be noted that these has their own merits as they allow some degree of flexibility for member states to adjust to their own context. In addition, the UNCAC's attempt to take utmost care in almost all of its provisions meant not to undermine the sovereignty of any state is indeed commendable. The implementation challenges of the UNCAC also come from the complexity of some of its provisions. For instances, inadequate practical capabilities among most state parties have been observed with regard to the enforcement of anti money-laundering provisions due to the complexity of these provisions (Conference of the States Parties to the UNCAC, 2013). Contracting parties also encounter technical and methodological difficulties in implementing the complex offence of trading in influence and illicit enrichment (ibid). These provisions require among others legislation particularly changes in domestic law and institutional arrangements. Some of the provisions demand sophisticated and in some cases state of the art domestic relevant institutions, highly skilled personnel and strong political will (UNODC Technical Guide to UNCAC, 2009). They also call for special investigation techniques in the fight against corruption especially electronic or other forms of surveillance and undercover operations. In addition, although the provisions provide consolidated legal frameworks, the effectiveness of these provisions depends on individual jurisdictions, courts and civil societies (Babu, 2006). Thus, all these issues should be taken in to account in the implementation aspect.

With respect to the AUCPCC's implementation, the convention provides for an Advisory Board to monitor the implementation of the Convention. However, the role of the Advisory Board is more of a think tank and will not involve the imposition of rigorous monitoring (Wouters et al 2012). The Convention does not impose any strict sanction for failure to report to the advisory board. It also lacks a serious and effective mechanism for holding states accountable for the obligations they assume (Olaniyan, 2004). In addition, the AUCPCC has no real peer review process. As far as UNTOC is concerned, no concrete implementation monitoring mechanism has been adopted. The UNTOC has no provisions on a monitoring mechanism other than a Conference of State Parties (Nuland, 2007). In general, the AUCPCC and UNTOC have been facing more problems than the UNCAC with respect to implementation monitoring mechanisms

Several factors may be responsible for the weak monitoring mechanisms in most international anticorruption instruments including AUCPCC, UNTOC and UNCAC. One key factor that is frequently mentioned is that a number of countries perceive the strengthening of monitoring mechanisms as a threat to their sovereignty. In addition, it should be noted that implementation is a long term venture that requires capacity building and institutional reforms. Thus, the Principal-Agent model of anticorruption theory which emphasizes a gradual incremental change sounds more in this respect.

CHAPTER IV: FEACC'S CORRUPTION PREVENTION AND INTERNATIONAL STANDARDS

The international anticorruption instruments to which Ethiopia is a party take in corruption prevention measure as one of the key components in the anticorruption undertakings. The United Nations Convention Against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the United Nations Convention against Transnational Organized Crime (UNTOC) encompass various provisions relevant to corruption prevention with different levels of obligations. Although various actors in a ratifying country have a role to play to meet these obligations, domestic anticorruption institutions such as the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) lie at the center of implementing these international requirements. In this chapter, emphasis is given to discuss and analyze the preventive works of the FEACC and gauge its effectiveness as per the requirements of these international standards. Accordingly, the preventive activities of the FEACC will be assessed in light of the broad issues included in the Conventions such as formulating and implementing preventive anticorruption policies and ensuring the independence of anticorruption bodies, promoting transparency, accountability, integrity and ethics, disseminating knowledge about corruption prevention and engaging the society in corruption prevention.

4.1 FORMULATING ANTICORRUPTION POLICY AND SECURING INDEPENDENCE

One of the requirements set by the UNCAC in its section of prevention measures is the formulation and implementation of preventive national anticorruption policy that serves as a comprehensive guideline for the prevention of the general aspects of corruption (Article 5). Looking into the Ethiopian case vis-à-vis such provision, a comprehensive national preventive anticorruption policy is absent in the country. Although eight years lapsed since Ethiopia has ratified the UNCAC, there is no functioning comprehensive, cohesive and inclusive national anticorruption policy in Ethiopia. This in fact is one of the gaps with respect to the country's compliance with the UNCAC. However, there has been some attempt to formulate such a policy since 2008. The Commission in conjunction with a foreign firm finalized the preparation of a draft national anticorruption policy and submitted it to the government in 2009; and yet the draft has not been adopted.[19] The FEACC did not go further for several years apart from submitting the draft to the government.[20] Follow up and persuasion efforts to realize the adoption of the draft policy should have been employed by the Commission. The government too would have done enough in its capacity to make the policy a reality. As it was inferred from key informant interviews lack of due attention among both the FEACC and the government resulted in the delay in the endorsement of the draft. After several years of lull, the FEACC is now trying to redraft the draft anticorruption policy taking in to account emerging and developing circumstances in the country. The three-pronged strategy namely, education, prevention and law enforcement is at the heart of the 2009 draft anticorruption policy. The draft policy elaborates the role and responsibilities of the executive, the public sector, the private sector, Non Governmental Organizations, community groups, civil society and the media in corruption prevention (FEACC, 2008). It also incorporates oversight and coordination mechanisms as well as education, prevention and law enforcement tool-kits in the fight against corruption.

Although the country still lacks a functioning national anticorruption policy, this does not mean that it has no any documents or strategies that in one way or another influence its overall anticorruption approaches. The current Constitution of the Federal Democratic Republic of Ethiopia, the 1996 Civil Service Reform Program and the Revised Establishment Proclamation of the FEACC and the FEACC's Strategic Plan have some relevance in this regard. The Constitution, for instance, states that the conduct of government is to be carried out in transparent and accountable manner (Article 12). The Civil Service Reform Programme which was launched in 1996 also provided some general clue as to how unethical practices could be minimized and transparency and accountability ensured in the public service. Moreover, the FEACC's strategic plan which is subjected to review every five years attempts to fill the gaps left by the lack of comprehensive national anticorruption policy by indicating the focus areas, targets and outputs of the Commission and role of stakeholders. And yet, a national anticorruption policy has been required in the country as the existing documents and strategic plan lack comprehensiveness and detail in effectively addressing a broad range of preventive issues. Above all, the existing strategic plan is not based on the objective assessment of the

[19] Interview with Aklilu Mulugeta, Director of Corruption Prevention Directorate and Blen Girmay, Head Legal Service of the FEACC, 15 March 2016. Addis Ababa.
[20] Interview with Blen Girmay, Head Legal Service of the FEACC, 15 March 2016. Addis Ababa.

causes and extent of corruption in the country, that would help set realistic long term goal in the fight against corruption. In addition, the role and responsibilities of each sector in the fight against corruption have not been clearly explained in the existing documents and strategic plan. Mechanisms to coordinate the various actors, a set of tools for the fight against corruption, oversight and sanctioning methods for non compliance as well as implementation issues and contextual realities of the country have not yet been distinctively addressed. Some informants are of the view that the objectiveness, credibility and sustainability of the formulation, implementation and evaluation of anticorruption laws as well as other pertinent administrative measures in the country seem to be questionable since they are not emanated from anticorruption policy. They also mentioned that if the policy had been in existence, various institutions in the country would have been able to craft their own anticorruption strategies based on the national framework and they would have been better coordinated with the FEACC to play robust role in corruption prevention. Thus, the existing strategic plan, though its relevance cannot be undermined, it cannot be considered as tantamount to national anticorruption policy. If the functional national preventive anticorruption policy had been real in the country, the anticorruption endeavor would have been guided in a better way.

As to the issue of independence, the UNCAC (Article 6) and AUCPCC (Article 5) require each state party not only to establish anticorruption bodies but also to grant such bodies with independence so as to carry out their function successfully. The Conventions do not explain in detail what independence means. But as the UNODC technical guide to the UNCAC (2009) indicated, first and for most independence should be enshrined in law rather than in executive decrees since the executive decrees can be revoked easily. Looking at the Ethiopian legal framework in this respect, the FEACC is indeed established as an independent government institution through proclamation adopted by the House of Peoples' Representatives. According to the 2005 revised proclamation establishing the Federal Ethics and Anticorruption Commission:

> The Commission is established as an independent Federal Government body. The Commission shall be free from any interference or direction by any person with regard to cases under investigation or prosecution or to be investigated or prosecuted (Article 3 and Article 4).

Hence, Ethiopia granted its chief anticorruption institution, the FEACC, independence by law. However, the above articles seem to confine the independence of the Commission to areas of investigation and prosecution as it makes no mention of the prevention works. Thus, this casts doubt over the independence of the FEACC with regard to corruption prevention functions. Given the fact that the international anticorruption instruments ratified by Ethiopia do not limit the independence of anticorruption institutions to investigative and prosecutorial role, the above-mentioned articles seem to fail short of complying with the international standard. The legal framework that grants independence to the investigative and prosecutorial role of the FEACC would have been extended to the preventive activities of the Commission. However, improving the legal framework only will not be a guarantee to ensure independence of the FEACC; the practical aspect needs due considerations. Despite the assurance by law, there have been instances of interference in investigation and prosecution activities of the FEACC by what one informant [21] called "the invisible hands". In addition, as APRM (2011) indicated there is a perception among the public that the FEACC is not free from undue influences by government officials on its investigation and prosecution activities. There are in fact concerns that the FEACC is not always free from political influence (KPMG Africa Region, 2012/2013). Coming back to the practical aspect of securing independence in preventive activities, though it is not persistent, there have been attempts by some heads of institutions to unlawfully influence and intervene in the preventive works of the FEACC particularly with respect to system-review studies.[22] Some officials try to undermine the studies on systems and working procedures which aim at identifying loopholes that may lead to corrupt practices in various government offices and public enterprises.[23] There are also instances of harassment and intimidation by some officials against FEACC's experts who are assigned to conduct the studies. Thus, the independence of FEACC with respect to corruption prevention has not been assured fully; it needs to be guaranteed both in law as well as in practice.

The UNODC technical guide to UNCAC (2009) elaborates further the provision in relation to independence by recommending several measures to be taken by contracting parties in order to

[21] Interview with Damaw Asfaw, Principal Prosecutor at the Investigation and Prosecution Directorate, 30 March 2016, Addis Ababa.
[22] Interview with Assefa Mekonnen and Wondirad Seifu, Principal Consultants at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa.
[23] Ibid

protect anticorruption bodies from undue influences and possible manipulation. These include establishing rules and procedures governing the appointment, tenure and dismissal of the officials of such institutions, suitable financial resources and budget, remuneration for staff and granting the institutions with the power to follow up their recommendations (ibid). As far as the appointment, tenure and dismissal of the Commissioner or the Deputy Commissioner of the FEACC are concerned, there are provisions that are relevant to such matters in the 2005 revised proclamation establishing the Federal Ethics and Anticorruption Commission.

> The term of appointment of the Commissioner or the Deputy Commissioner shall be for six years; he may, however, be reappointed where necessary. Once appointed, the Commissioner or the Deputy Commissioner may not be removed, except on his own will, from his office unless; a) he has violated the provisions of the relevant code of conduct; b) he has shown manifest incompetence and inefficiency; c) he can no longer carry out his responsibilities on account of mental or physical illness. The Commissioner is to be appointed by the Parliament up on nomination by the Prime Minister while the Deputy Commissioner is appointed by the Prime Minister. The Commission is accountable to the Prime Minister (Article 3, 10 and 14).

The establishment of such tenure for the Commissioners of the FEACC is in conformity with the UNODC technical guide to the UNCAC. This can be considered as a positive move towards creating a situation whereby the heads of the Commission have security of tenure and can only be dismissed through a procedure established by law (Wickberg 2013). In addition, a procedure with respect to the appointment of the Commissioner of the FEACC involving the parliament was established and this may be regarded as a good progress to guarantee the independence of the FEACC. However, in the current Ethiopian context, there is a suspicion that the appointment process may be subject to political interference (U4, 2015). Global Integrity (2010) also reports that appointments to the FEAC are not based solely on professional criteria, and the institution is not considered completely independent from the executive. In general, there is doubt as to whether the appointment process is free from political intrusion. This suspicion emanates from the view that the Prime Minster and his ruling party have decisive role in the appointment process that enables them to win the loyalty of the appointees given the fact that the Ethiopian parliament is highly dominated by the ruling party and the Prime Minister is a member of the same party. Although the international instruments do not recommend specific set of procedures for appointment for all countries, there seems a need for the involvement of various bodies outside the parliament in the nomination and appointment process of the heads of the FEACC so as to lessen the suspicion on the impartiality of the Commissioners. As Schütte (2015:9) pointed out:

> Both appointments and removals benefit from an open process that includes several stakeholders. Broad consultation and/or ratification by more than one branch of government, as well as consultation with civil society, offers more safeguards than direct appointment or removal by a single power holder, typically the head of the executive. …The benefits are obvious: a sound appointment process can broaden support for an anticorruption institution's work and lead to selection of a more effective head. Some countries have therefore made such appointments the shared responsibility of several institutions to avoid potential misuse of the anticorruption agencies by the government or a particular political group.

The other ingredient, mentioned in the UNODC Technical Guide to UNCAC, for ensuring the independence and effectiveness of anticorruption institutions is adequate and predictable financial resource and budget allocations. Thus, there is need for plugging-in loop holes that might allow the government to hinder the activities of anticorruption institutions by maneuvering the budget allocation. Some of the ways of deterring undue influence in budget allocation are allowing anticorruption institutions to submit direct budgetary request to parliament and guarantee to be funded on multi-year basis or receive an overall grant (UNODC Technical Guide to UNCAC, 2009). According to the revised establishment proclamation No. 433/2005 of the FEACC, the Commissioner will prepare the annual budget of the Commission and submit it to the Prime Minister and implement same upon approval by Parliament (Article 12). This shows that there is no way that the FEACC directly submits its annual budgetary request to the parliament. The executive has great influence in determining the budget of the FEACC. Here, it should be noted that, in the Ethiopian context, there will not be significant change whether the budget is submitted to the parliament or to the executive since the separation of power between the executive and the legislature is weak in the country. In addition, there is no mechanism by which the FEACC is funded on a multi-year basis. With regard to the amounts of budget allocation to the FEACC by the government, there is an increasing pattern from year to year as shown from the table below. The budget utilization rate is also found to be very high.

Table 1: Annual budget of the FEACC

		Years					
		2009/10	**2010/11**	**2011/12**	**2012/13**	**2013/14**	**2014/15**
Regular Annual Budget in Millions of Birr	**Allocated budget**	16.4	25.9	33.94	37.89	42.3	51.27
	Utilized budget	93.7%	95%	97.6%	99%	100%	99%

Source: FEACC annual reports

However, there is no guarantee that the increment in the allocation of annual budget has been proportional to the increasing volume of works of the FEACC. As it was learnt from the interview [24] with key informants, budget constraint is still a hindrance to expand the activities of the FEACC. Especially, the Commission's Directorate working on the promotion of ethics education is curtailed no to go beyond the current performance due to budgetary problem. The face to face trainings and the media campaign of the FEACC regarding ethics and anticorruption education are the most affected one in this respect. They even mentioned that had it not been for the grants from the United Nations Development Program (UNDP) to compliment government's allocation, the coverage of the ethics education program of the FEACC would have been lower than currently achieved.[25] Here, it should be noted that the FEACC has been a beneficiary of grants from the UNDP Democratic Institutions Program for some time. Therefore, although the government budget allocation to the FEACC is consistently increasing, the amount is not found to be satisfactory to enhance the activities of the Commission.

Beside financial resources, the human resource issue is the other key component that has a considerable impact on the independence and performance of anticorruption institutions. As the UNODC Technical Guide to UNCAC (2009) indicated anticorruption institutions are to be allowed to plan their own human resource policies, determine specialized staff and incentives for effective functioning. The FEACC has no human resource policy. However, it maintains a regulation that determines the terms and conditions of employment, administration and dismissal of its employees based on the establishment proclamations and the general principles of the Federal Civil Service Law. The salary scale to its employees is approved by the government

[24] Interview with Addis Lema and Achamyelesh Shalemo, Principal Consultants at the Ethics Education and Communication Affairs Directorate, 16 March 2016, Addis Ababa,.
[25] Ibid

(Article 17 of Revised Establishment Proclamation, 2005). The pay scale to FEACC staffers had been the most attractive among other civil servants in the country up on the establishment of the Commission in 2001. But, through time, the pay scale of the FEACC has become more or less equivalent to and even less as compared to some government organizations as it has not shown significant improvement. Currently, the pay scale of the FEACC is lower than most private sector institutions. The FEACC is complaining that the salary scale is unable to lure and maintain best qualified personnel. The Commissioner of the FEACC, Ali Sulieman claims that the Commission's turnover is too high; qualified and experienced staffs often leave looking for better payment[26]. The FEACC which has now 402 employees has stumbled upon high turnover of staff. In the past two years alone, 77 employees gave up their jobs (FEACC, 2015b). The staff turnover is mainly attributed to the unappealing salary scale and benefits in the FEACC (ibid). Most of the employees of the FEACC are not satisfied with the salary scale in the FEACC and they do not believe that the pay scale goes with their efforts.[27] This has been one of the major impediments for FEACC, preventing the commission from operating at its best. It was also learnt that the discrepancy in remuneration between employees working in the law enforcement section and those who are assigned in the prevention area has also created resentment among staffers. Unlike investigators and prosecutors of the FEACC, those working on the prevention areas are not entitled to housing allowances. Such a disparity of benefits within the same organization has escalated the dissatisfaction among staffers working on corruption prevention area. Even some argue that this is one of the manifestations of giving low regard to the prevention undertakings despite the usual rhetoric that prevention is no less than law enforcement measures. Such alienation and lack of motivation among staffers is negatively impacting the preventive activities of the Commission thereby affecting its overall effectiveness. In an attempt to improve the salaries and remuneration of staff, the FEACC developed a new draft pay scale and presented it to the office of the Prime Minster in 2014. But, the draft pay scale has not yet been endorsed. This casts doubt over the commitment of the government in providing specialized and well motivated staff that is required for the effective functioning of the FEACC.

[26] Capital News Paper, 3 January, 2016, Vol. 18, No. 891. Crown Publishing Plc.

[27] Interview with Wondirad Seifu and Assefa Mekonnen, Principal Consultants at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa. And also interview with Achamyelesh Shalemo, Principal Consultant at the Ethics Education and Communication Affairs Directorate, 16 March 2016. Addis Ababa.

Another important element that is mentioned in the international anticorruption instruments to ensure the independence of anticorruption institutions is granting the institutions with sufficient powers to promote effective preventive policies and to follow up their recommendations. In this respect, the FEACC is given the mandate to follow up and ensure the enforcement of anticorruption laws as well as prevent corruption and oversight implementation of its recommendation. However, there are instances when the recommendations of the FEACC are not followed particularly with regard to systems-review works.[28] There is also reluctance among various institutions to give relevant information to the FEACC; and yet there is no strong sanctioning mechanism for non compliance. This has brought the power and potency of the FEACC in to question.

4.2 PROMOTING TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY

As mentioned above, the international anticorruption instruments require anticorruption institutions to implement preventive anticorruption policies through, among others, promoting transparency, accountability and integrity. The mission bestowed up on the FEACC is not far from accomplishing these tasks. The FEACC has entrusted, among others, with the task of ensuring transparency, integrity and accountability through prevention of corruption and impropriety in various institutions in cooperation with relevant bodies. One of the specific duties of the FEACC in relation to this task is conducting studies to review systems and working procedures which may be conducive to corruption in public offices and public enterprises. The other duties with respect to ensuring transparency, accountability and integrity are provision of advice to various bodies on matters of corruption prevention and formulation and implementation of codes of conduct and the establishment of mechanisms to resolve conflict of interest through declaration of assets.

4.2.1 Promoting Transparency and Accountability through Systems-Review

The FEACC, through its Corruption Prevention Directorate, has been engaged in systems-review activities since its inception in 2001. Following the ratification of the UNCAC, AUCPCC and UNTOC by Ethiopia, the Directorate examined more than 350 systems and working procedures

[28] Interview with Wondirad Seifu and Assefa Mekonnen, 13 March 2016, Addis Ababa.

in various government offices and public enterprises to identify loopholes that may lead to corrupt practices and come up with recommendation (FEACC, 2015c). The systems-review activities have been carried out on regular as well as on urgent basis. The regular systems-review is a study to be conducted based on prior plan while the urgent one is unintended which necessitates immediate intervention by the FEACC following tip-offs from various sources on alleged improprieties. The Commission has been engaged in urgent reviews since 2012. As shown from the table below, both the number of regular and urgent systems-review activities are increasing.

Table 2: Systems-review conducted by the FEACC

	Years								
	2001-2007	**2008-2015**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Regular Systems-review	130	312	31	21	47	49	47	60	57
Urgent Reviews	-	81	-	-	-	15	22	18	26

Source: FEACC Annual Reports

The reviews conducted on various institutions as a whole and on their specific areas or sectors were not more than 130 in the years between 2001 and 2007 and this figure is almost tripled between the period 2008 and 2015.

4.2.1.1 Systems-Review in Procurement and Financial Management

The UNCAC gives due regard to ensuring transparency and accountability in public procurement and management of public finances as part of its corruption prevention measures (Article 9). The AUCPCC also indicates the need for strengthening internal control mechanisms in procurement area (Article 5). The systems-review undertakings carried out by the FEACC focused mainly on procurement and finance. In 2015 alone, 57% of the Commission’s activities on systems-review were on procurement and financial administration (FEACC, 2015a). Given the high vulnerability of the sector to corruption and the fact that out of the total public expenditure of the country more than 60 percent is used for procurement of goods and services, the emphasis on procurement and finance is indeed justifiable (Tesfahun, 2011). Since 2011, the FEACC has made the procurement sector as its priority area in preventing and combating corruption.

Particularly, the recent urgent systems-review undertakings conducted by the FEACC were almost entirely focused on procurement area.

The Commission through its urgent review-scheme saved hundreds of millions of Ethiopian Birr from being gone astray in various institutions due to illegitimate procurement practices. These unlawful practices that might have paved the way for corruption include applying tender processes that contravene government procurement directives, establishing unclear tender selection criteria and award procedure, setting discretionary tender rules, restricting eligible suppliers from participation in the bid, submitting forged documents and problems in the preparation of technical specifications and evaluations. In 2015 alone, the urgent review enabled the FEACC to rescue 645 million Ethiopian Birr that was to be lost due to improper procurement procedures carried out by various public institutions and government offices (FEACC, 2015a). This shows that the FEACC has indeed given high prominence to ensure transparency in procurement areas and has registered good achievements through its urgent systems-review mechanism.

But it is quite vivid that promoting transparency and accountability in the procurement and management of finance can never be fully realized through the systems-review activities of the FEACC. As mentioned in the previous sections, an anticorruption activity especially that of prevention is a multi-sectoral undertaking that require the engagement of several institutions. As far as public procurement and management of public finances is concerned, in Ethiopia there are government agencies that are entrusted with the task of spearheading the efforts to promote transparency and accountability in the sector. The Public Procurement and Property Administration Agency, reestablished by the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/209, is the main supervisory body with respect to ensuring transparency in the area of procurement. The oversight activity of this body has been helpful to the prevention endeavor of the FEACC. Similarly, the follow up roles of the Ministry of Finance, Office of the Federal Auditor General and Revenue and Customs Authority regarding the implementation of relevant rules, directives and procedures on the area of finance, revenue, procurement and accounting systems have been supportive to the preventive works of the FEACC. As it was learnt from the interview with Mr. Aklilu Mulugeta, Director of Corruption Prevention Directorate, there are a number of instances when the FEACC take the reports produced by these supervisory bodies as an input to conduct both preventive and law enforcement measures. However, he also mentioned that the capacity constraints faced by these supervisory bodies to produce in-depth and quality reports as well as limitations in discharging their oversight role need to be addressed so as to enhance the overall anticorruption endeavor of the FEACC. Nevertheless, the reports that are released by such bodies indicate as to how alarming is the level of impropriety in the sectors. For instance, the report presented by the Office of Auditor General (2014) revealed that procurement worth 957,510,040.14 Ethiopian Birr was carried out by various offices in contravention with government procurement proclamation, rules and directives in 2014. Similarly, in the same period, expenditure worth 53,360,272.59 Ethiopian Birr was made by various offices in the country without following proper rules and directives (ibid). This shows that the procurement and financial management area is still entangled with several problems that require enhanced efforts of by the FEACC and other relevant institutions. Transparency and accountability in government procurement and financial management in the country need further improvement (JGAM Donors and FEACC, 2014 & Abebe, n.d). Unless sound transparent and accountable procurement and public financial management is ensured in the country, it will be challenging to prevent large scale theft and illicit financial flows (U4, 2015). According to the 2015 Global Financial Integrity report, illicit financial flows from Ethiopia in 2013 estimated to be US$3.4 billion was mainly caused by trade miss invoicing[29], a form of trade based money laundering. Money laundering which is usually referred to as disguising the source of criminally derived proceeds to make them appear legal and other forms of corruption are believed to be the major causes for the illicit financial flow from the country. The international anticorruption instruments ratified by Ethiopia require the establishment of domestic regulatory regime and mechanisms for the prevention of money laundering (UNTOC Article 7 and UNCAC Article 14). In Ethiopia, the Financial Intelligence Centre (FIC) was established in 2010 as the principal body to coordinate efforts to prevent and combat money laundering in the country. As the preventive activities with respect to money laundering are spearheaded by the FIC, the role of the FEACC is more of a collaborative one. Both institutions signed a Memorandum of Understanding that enabled them to share information in identifying high risk areas for money laundering and suspicious financial

[29] Trade miss invoicing is mainly used for money laundering reason to move money illicitly across borders which involves deliberately miss reporting the value of a commercial transaction on an invoice submitted to customs authority. See the 2015 report by Global Financial Integrity: illicit financial flows from developing countries.

transactions as well as preventing and combating corruption offences that originate money laundering.[30] The Memorandum of Understanding also allowed the FEACC to participate in some of the studies and trainings conducted by the FIC. Despite attempts to cooperate, the institutions have been facing capacity constraints to play their part in dealing with money laundering.[31] Given the complexity of money laundering, preventing the crime requires adequate human, financial and technical resources as well as investments in capacity building (U4, 2015). There are also implementation challenges, including weak coordination among relevant stakeholders such as financial institutions and various law enforcement bodies and limited effort in international cooperation (EIIPD Research Team, 2012). Lack of commitment among some government officials is also believed to be exacerbating the crime. Recently, officials from the Ethiopian Revenue and Customs Authority told the Budget and Financial Affairs Standing Committee of the House of Peoples' Representatives that some government officials made undue influences in the monitoring activities against illicit financial flow across the country's border.[32] Thus, the problem with money laundering in the country is grave. But, it seems too early to be able to draw any firm conclusion on the effectiveness of the implementation of anti money laundering preventive mechanism as it was started few years back (ESAAMLG, 2015). Nevertheless, attempts by various bodies including the FIC and the FEACC to ensure transparency and accountability in various sectors particularly in financial transaction and management will have a cumulative effect in the long run on curbing this sophisticated crime.

4.2.1.2 Systems-Review in Human Resource Management

The promotion of transparent and accountable system for the recruitment, hiring, retention and promotion of civil servants is one of the ingredients of corruption prevention measures in the UNCAC (Article 7). In the Ethiopian case, the Ministry of Public Service and Human Resource Development through relevant rules and directives is responsible for the oversight of such human resource management issues. But the FEACC also has a role to play in the promotion of transparency and accountability in human resource management area in various government offices as part of its corruption prevention endeavor. The FEACC has been conducting systems-

[30] Interview with Blen Girmay, Head Legal Service, March, 2016, Addis Ababa.
[31] Ibid
[32] The Reporter News Paper, 16 December, 2015, Vol.21, No.1631, Amharic Version, Media and Communication Center.

review on human resource management in various government offices and enterprises. However, its performance is very limited as preventing corruption in human resource management is given little priority by the FEACC. In the eyes of the FEACC there are other areas such as procurement, land administration, justice and revenue sectors which are pressing and demanding more attention than human resource management issues. However, the sector should not be relegated as ensuring transparency and accountability in the human resource management through merit based principles is still relevant to prevent public sector corruption. There are views indicating that one of the main obstacles to curb corruption in Ethiopia's public service is the fusion of government function with the activities of political party and lack of merit based recruitment and promotion practices.[33] Merit based recruitment and promotions are weakly practiced in the country and party loyalty, nepotism and ethnicity may serve as a criterion to hire and promote civil servants (Gebrhiwot, 2014 & Kilimanjaro International, 2012). This state of affairs in public service leads to weak organizational performance and poor service delivery thereby paving the way to corrupt practices. Although the recruitment and promotion of civil servants in the country are governed by public service proclamation, there are accusations that procedures for recruitment and promotion are not always adhered. Thus, the area needs enhanced attention by the government and relevant institutions including the FEACC.

As part of preventing corruption in human resource management, the payment scale for employees of public service has been given due attention by the UNCAC. States parties are encouraged to establish adequate remuneration and equitable pay scales depending on their level of economic development so as to prevent corruption in human resource sector (UNCAC Article 7). In Ethiopia, it is widely believed that the payment scale would not enable civil servants to cope with the increasing inflation. The inflation in the country creates fertile ground for widespread low level or petty corruption as lowly paid civil servants struggle to counter the escalating cost of living (Kilimanjaro International, 2012). This has its own ramification on the corruption preventive activities of the FEACC and needs to be addressed by relevant bodies. Some key informants are of the view that the payment scale for civil servants needs to be improved to curb public sector corruption. The Principal-agent-client theory attests that one of the mechanism by which corruption can be prevented is to apply policies and reforms with

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[33] The Reporter News Paper, 13 December, 2015, Vol. 21, No. 1629. Amharic Version, Media and Communication Center.

regard to payment to civil servants and remuneration. According to this theory, incentives are helpful for the agents/employees to prevent them from indulging with corrupt practices. Although there are instances when highly paid individuals would be tempted to engage in corrupt practices involving money, low salary is believed to increase the temptation to receive bribe.

4.2.1.3 Systems-Review in the Justice Sector

Another focus area for the corruption prevention measures in the UNCAC is the justice sector. Since corruption in the justice sector can, more than any other sector, derail the corruption prevention venture, it has been given due consideration by the UNCAC. States Parties are required to assess the nature and extent of corruption in their judicial system as part of preventive measures (UNODC Technical Guide to UNCAC, 2009). Although, the FEACC has made preventing and combating corruption in the justice sector as one of its key focus areas since 2011, it has not done much to reduce opportunities to corruption through systems-review in the justice sector. As compared to other sectors, the FEACC conducted few studies in the justice sector (FEACC, 2015a). As the interview with Mr. Aklilu Mulugeta, Director of Corruption Prevention, indicated, one of the reasons for doing few reviews in this sector is lack of expertise in the area among the staffers of the Corruption Prevention Directorate. Another reason for the insignificant performance by the FEACC in studying the justice sector emanates from lack of boldness to examine the sector due to its sensitive nature coupled with the existing uncooperative mood among the justice bodies.[34] The judiciary considers any review by the Commission as interference to undermine its independence and therefore is not willing enough to cooperate with the FEACC. [35]

Nevertheless, the FEACC conducted two major studies in the sector in partnership with other bodies in the past five years. Among these studies, the most recent one was conducted in collaboration with the Ethiopian Justice and Legal System Research Institute (EJLSRI) in 2015. The study focused on justice sector service provisions and implementation indicators that help prevent corruption. As the study indicated, beside integrity problems, the Ethiopian justice system encounters circumstances conducive to corruption such as wide discretionary power

[34] Interview with Wondirad Seifu and Assefa Mekonnen, Principal Consultants at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa,.
[35] Ibid

among the judges and prosecutors, lack of strong transparency and accountability mechanisms, inadequate payment and incentives. In addition, the study indicated that the appointment and promotion of judges have not given proper attention to ethical and educational background and competence. It also revealed that inadequate follow up and accountability measures by the Judges' Administration Council and Ministry of Justice with regard to the conduct of judges and prosecutors respectively and possible interference by some government bodies in the functioning of the judges.

Another major study on the justice sector with the support of the FEACC was conducted by the World Bank in 2012. This diagnostic study attempts to understand the nature and extent of corruption and political interference in the sector. It indicated that although the justice sector corruption appears less extensive in Ethiopia than in many developing countries, the corruption risk centers primarily on political interference in high-profile cases or payment or solicitation of bribes to alter a decision or action (World Bank, 2012).

Here, it should be noted that assessment of the nature and extent of corruption in the judicial system in the country should be followed by appropriate measures by the judiciary and other relevant institutions including the FEACC to curb corruption in the sector. But, such measures by the FEACC and other justice bodies are not as strong as it should be.[36] The justice sector in the country is continuing to be one of the areas where public complaints against corruption are frequent.

In general, although the FEACC employed inadequate efforts in conducting systems-review in the justice sector and human resource management, its overall systems-review activities in various other sectors including public procurement and financial management have been enhanced. However, to what extent have the reviews been implemented is the key question to be answered. Most regular systems-review undertakings conducted by the FEACC are facing implementation problems.[37] According to Mr. Aklilu Mulugeta, Director of the Corruption Prevention Directorate of the FEACC, some institutions are reluctant to implement the

[36] Interview with Damaw Asfaw, Principal Prosecutor at the Investigation and Prosecution Directorate, 30 March 2016, Addis Ababa.
[37] Interview with Wondirad Seifu and Assefa Mekonnen, Principal Consultants at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa.

recommendations put forward by the Commission following the systems-review. Various annual reports of the FEACC also indicated the gloomy picture with respect to the level of the implementation. In 2015, out of 66 reviewed systems only 16 are largely implemented while in 2014, among the 46 reviewed-systems only 13 were largely implemented (FEACC, 2014 and FEACC, 2015a). This is an indicative of the fact that the systems-review activities of the FEACC are running into serious problem.

There is no effective sanctioning mechanism for non compliance with the recommendations of the FEACC.[38] The implementation of the recommendations is highly dependent on the will of the institutions under review. Even some institutions are deliberately trying to obstruct the systems-review works and are unwilling to provide relevant information to the team conducting the review. As it was revealed by key informants, some of the problems with systems- review emanate from the weaknesses of the FEACC.[39] The staffers of the FEACC working on systems-review lack capacity to provide the required assistance for the public offices and enterprises in connection with the implementation of the recommendations. In addition, as the systems-review takes place in diversified sectors, it requires specialized knowledge relevant to specific sectors and the FEACC's staffers lack such expertise and the systems-review may not be up to the standard. The absence of training institution in the country on the areas of corruption prevention in general and systems-review in particular, has also created a challenge in conducting quality studies by the FEACC's staffers. As Mr. Aklilu Mulugeta, Director of the Corruption Prevention Directorate, explained, although there has been improvements in recent years as the Directorate acquires some experiences by its own, the limitations in producing quality studies still persists.

Unless such flaws in the implementation process are resolved, the systems-review works of the FEACC will not have significant impact on corruption prevention and in ensuring transparency and accountability in various public institutions. According to FEACC (2015b) measuring public satisfaction on its major activities, only 32.9% of the respondents strongly believe that the Commission's systems-review undertakings have brought significant changes in their respective institution. This deficiency has had its own repercussion on the effectiveness of the FEACC with

[38] Ibid
[39] Ibid

respect to implementing the prevention measures as stipulated in the international anticorruption instruments ratified by Ethiopia.

As remedial to the above-mentioned constraints, the capacity constraints of FEACC's staffers need to be resolved and robust action by the government that forces various institutions to comply with the recommendations of the FEACC is essential. Besides, various institutions need to be playing greater role in preventing corruption in their respective organizations as the prevention undertaking is not supposed to be done only by the FEACC. Currently, the FEACC is pressing government institutions to develop and implement their own corruption prevention strategies that enable them to conduct systems-review with close supervision by the Commission. This is believed by the FEACC to lessen some of the Commission's burden and limitations in systems-review activities.

4.2.2 Promoting Integrity through Codes of Conduct

Codes of conduct are essential for the honourable and proper performance of public functions and could serve as a mechanism to promote integrity and responsibility among public officials (UNCAC Article 7 and AUCPCC Article 7). The UNCAC gives high regard especially to codes of conduct pertinent to judges and prosecutors in a bid to maintain integrity in the justice sector as the sector is crucial in preventing corruption in other sectors (Article 7). Codes of conduct for parties running for election are also given due emphasis under AUCPCC as the mechanism to promote transparency into funding of political parties (article 10).

In Ethiopia, although there exists codes of conduct for judges and an accountability system for prosecutors, their effectiveness seem questionable as the follow up and the sanctioning measures for violations are most of the time inadequate (EJLSRI, 2015). The FEACC has never been active in the formulation and follow up of implementation of codes of conduct for judges due to jurisdictional limitation. The FEACC is mandated to ensure the preparation, or to prepare and monitor the implementation of codes of ethics for various bodies excluding the legislative and the judiciary (Article 7 of Revised Establishment Proclamation, 2005).

The FEACC has faced similar challenges with respect to electoral codes of conduct. A proclamation on the electoral codes of conduct for political parties was adopted in 2009. The

FEACC had no involvement in the preparation of the electoral code. In addition, the mandate with respect to over sighting the implementation of electoral codes of conduct lies mainly on the National Electoral Board (NEBE). The National Electoral Board has been given wide ranging mandates with respect to taking measure including suspending a political party from running for election depending on the gravity of the offence (Article 34). The Code makes unlawful to use government resources for campaign purposes and to buy the support of anybody or to coerce to promote or hinder the election of a candidate (Article 14 and 15). However, some opposition political parties refused to endorse the code, claiming that it would complicate the adjudication of electoral violations rather than enhance the independence of the NEBE (Freedom House, 2011). They also doubt the applicability of the Code in a manner that prevents the ruling EPRDF party from taking electoral advantage by unlawfully commanding state resources to its own favour (ibid). As to the FEACC's role in preventing election related political corruption, it has made no noticeable achievement despite the occurrences of such type of corruption in the country. The most contested 2005 national election was a case in point. According to an investigative committee set up in 2005 to deal with the controversy over the electoral result, various forms of fraudulent activities were made among both the governing and the opposition parties.[40] Although some of these fraudulent activities could be equated with political corruption, the FEACC's deterrent role had not been seen.

As I turn to codes of conduct, apart from codes of conduct relating to political parties and the judiciary, there is no code of conduct for public officials and civil servants in Ethiopia at the national level. The reason for the absence of codes of conduct at the national level could not be far from the little importance attached to such a code by various pertinent institutions including the FEACC. As it was learnt from the interview with Mr. Aklilu Mulugeta, Director of the Corruption Prevention Directorate, if such legal framework had existed at the national level, it would have served as a general guideline to prepare institution-specific codes of conduct. It would have also made easier and effective the advisory role of the FEACC with respect to the preparation and implementation of codes of conduct. Currently, a national committee drawn from various government offices including the FEACC is working on the preparation of a draft public service codes of conduct at the national level.

[40] The Reporter News Paper, 10 April, 2016, Vol. 21, No. 1664, Amharic Version, Media and Communication Center.

Nevertheless, there are several public offices and enterprises that are able to develop their own codes of conduct. According to Mr. Aklilu Mulugeta, the Commission has offered advices to various institutions in their formulation of draft codes of conduct. The FEACC offered such advices and support to 226 bodies in the past two years. The bodies that have been offered the advice and support include government offices, Ethics Liaison Units[41], Regional Anticorruption Commissions and other stakeholders. However, the provision of advice and follow up of implementation of codes of conduct has been encountering capacity limitation similar to that of the systems-review activities of the Directorate.[42] Such limitation has posed challenges with regard to reducing the opportunities for corruption at various institutions and thereby negatively affecting the corruption prevention endeavor of the FEACC.

4.2.3 Promoting Transparency and Accountability through Declaration of Assets

One of the mechanisms by which conflict of interest could be resolved and transparency and accountability in the public functions be ensured is through declaration of assets. This mechanism is advocated by the international anticorruption instruments such as the UNCAC and the AUCPCC as part of preventive measures. Ethiopia adopted a Proclamation to Provide for the Disclosure and Registration of Assets in 2010. According to the Proclamation, any appointee, elected person or public servant, has the obligation to disclose and register assets (Article 4). The assets to be registered include the assets under the ownership or possession of himself and his family and sources of his income and those of his family (ibid). The FEACC has been given the mandate to oversight and conduct the asset registration and disclosure activities at the federal level. The FEACC has so far registered the assets of nearly 100,000 public servants, appointees, and elected persons (FEACC, 2015a). Some informants indicated that the compliance among appointee, elected person or public servant to register their assets has so far been quite positive. However, registering the assets of those individuals who have the obligation to register their assets is not the end of the story. The proclamation requires the Commission to undertake verification on the information submitted by the registrants (Article 11). However, the FEACC

[41] Ethics Liaison Units are units established in public offices and public enterprises with the duty to coordinate ethical issues and advise the heads of the public offices and public enterprises. See Council of Ministers Regulation No. 144/2008 to Provide for the Functioning of Ethics Liaison Units

[42] Interview with Assefa Mekonnen, Principal Consultant at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa.

has so far failed to do the verification undertakings. The FEACC lacks capacity to conduct verification on submitted information with respect to asset registration.[43] In addition, the FEACC resorted to conduct large number of registrations without taking in to account its capacity and this in turn made the verification process difficult.[44] An assessment report by Kotetishvili (2016) also indicated that man power shortage in the Directorate of Asset Registry of the FEACC, lack of practical knowledge on asset verification and absence of an electronic system of asset registration that takes forward activities related to verification are attributed to the failure.

The asset registration and disclosure scheme of the FEACC has also faced difficulties with respect to the accessibility of registered information. Article 12 of the Proclamation states that all information regarding the registered assets shall be open to the public and any person who wishes to access information regarding the registration of assets may apply in writing. However, there are doubts among the society over the readiness of the Commission to make the registered information public. The FEACC has been the center of criticism for not making the registered information accessible to the public.[45] Most local media and members of the public are of the view that the disclosure of the registered information is unreasonably delayed for long. They reiterate that the proclamation is no avail unless the registered information is made public. As the Commission indicated, it would not make a print out of all the registered information and distribute it to the public as doing so could be unethical and unlawful.[46] The FEACC maintained that there has to be a compromise between public interest and privacy; the public will have an on-line access to specific information up on specific written request and for this purpose the asset registration and disclosure system is being automated. As annual reports produced by the FEACC indicated some of the registered information has already been used by the Commission and other justice bodies for investigation purposes. Nevertheless, the public has no easy access yet to the registered information five years after the commencement of asset registration scheme in the country.[47] Lack of commitment on part of the FEACC and the government is believed to

[43] Interview with Nuru Addis who worked as a Principal Consultant at the Asset Registration and Disclosure Directorate, 17 March 2016, Addis Ababa.
[44] Ibid
[45] The Ethiopian Herald News Paper, 15 November, 2015, Vol. LXXII, No.056, Ethiopian Press Agency.
[46] The Reporter News Paper, 4 October, 2015, Vol. 21, No. 1609, Amharic Version, Media and Communication Center.
[47] Interview with Nuru Addis, who worked as a Principal Consultant at the Asset Registration and Disclosure Directorate, 17 March 2016, Addis Ababa

be one of the main reasons for curtailing an easy access to the registered information.[48] The absence of relevant rules and directives are also blamed regarding the accessibility of registered information and for the overall weak performance in the asset registration and disclosure undertaking.[49] Formulating such rules and directives is also believed to clarify issues such as how privacy is ensured or compromised vis-à-vis public interest as well as determining the expiry period for the registered information.

In general, the asset registration and disclosure endeavor of the FEACC is marred by ineffectiveness particularly when it comes to the accessibility of the registered information and verification of assets. The success story with respect to this venture has so far been limited to "registration" only. The intention to resolve conflict of interest and ensure transparency and accountability in the public functions through this scheme has not been fruitful. This further undermines the credibility and image of the FEACC, lessens its public support and thereby impedes its effectiveness.

4.2.4 Promoting Transparency and Accountability in the Private Sector

Both the UNCAC (Article 12) and AUCPCC (Article 11) require states parties to ensure transparency and accountability in the private sector by preventing acts of corruption in the sector. As far as preventing corruption in the private sector by the FEACC is concerned, there had been a legal framework inadequacy. The mandate of the FEACC had been confined to public sector corruption until 2015 and this was indeed a failure in meeting the standards of UNCAC and AUCPCC that require states parties to prevent and combat corruption in both the public and private sector. Based on the revised establishment proclamation, the corruption prevention functions of FEACC such as systems and working procedures review had long been limited to government offices and public enterprises. Thus, the FEACC has done very little with respect to promoting transparency and accountability through systems-review in the private sector despite the fact that the private sector has never been immune from corruption. The mandate-constraint was mainly attributed to lack of capacity and resource limitations on part of the Commission (FEACC Profile, 2012). The notion that corruption is mostly committed by public officials in the

[48] Ibid
[49] Interview with Mesfin Belayneh, Senior Expert at the Asset Registration and Disclosure Directorate, 17 March 2016, Addis Ababa.

Ethiopian context also attributed to the little importance attached to the private sector corruption for long. As Gebru Gebeyehu, Director of Corruption Investigation and Prosecution Directorate of the FEACC, said the private sector in the country has never been protected well from corruption due to lack of strong anticorruption legal provisions coupled with capacity constraints on part of the Commission and this was highly regrettable given the rise in the corruption level in the sector. Thus, we can safely conclude that the FEACC was unable to play its part in ensuring transparency and accountability especially enhancing accounting and auditing standards in the private sector and providing effective sanctions for failure to comply with such measures as per the international standards.

Nevertheless, eight years after the ratification of the UNCAC and AUCPCC by the country, the FEACC's mandate has been expanded to the private sector especially to that of Share Companies (Amendment to Establishment Proclamation No. 883, 2015). This in fact is attributed to the increase in the involvement of the private sector in the country's economy and in an attempt to comply with the UNCAC and the AUCPCC provisions that underlie the need for tackling corruption in both the private and public sectors. As this mandate expansion is a recent phenomenon, it would be too early to evaluate the FEACC's role in the private sector based on the newly amended provisions.

4.3 PROMOTION OF ETHICS AND KNOWLEDGE ABOUT CORRUPTION PREVENTION

All the three international anticorruption instruments ratified by Ethiopia require contracting parties to work on the promotion of ethics and dissemination of knowledge about the risks of corruption as part of corruption prevention measures (UNTOC Article 31, UNCAC Article 6 and AUCPCC Article 5). One of the objectives of the FEACC is centered on this issue (FEACC Revised Establishment Proclamation, 2005). The Commission has been striving to create an aware society where corruption will not be tolerated by promoting ethics and anticorruption education through its Ethics Education and Communication Affairs Directorate. The Directorate has been employing various mechanisms such as conducting trainings, producing and distributing publications and disseminating messages via radio, television and website for various sections of the society pertinent to preventing and combating corruption.

The trainings that the FEACC has been providing to different segments of the society have two packages namely, Awareness Creation Education and Training of Trainers (TOT). Under the Awareness Creation Education, the training has been provided for one day while the TOT is given to a relatively longer period, up to five days, and the trainees are supposed to train other fellows in their respective organizations. The TOT emanates from the notion that the FEACC cannot reach all sections of the society in the provision of ethics education by its own and the trainees are expected in turn to give trainings to others.

Under the Awareness Creation Education package, the FEACC trained 204,488 individuals drawn from various government agencies, higher learning institutions and associations in the last eight years (FEACC, 2015c and FEACC, 2012). The FEACC has also provided TOT to 10,547 individuals drawn from Ethics Liaison Units, professional associations, media organizations, religious institutions, associations of youth and women and other institutions since 2008 (ibid). As shown from the table below, an increasing trend can be observed regarding the number of individuals trained by the FEACC.

Table 3: Individuals provided with awareness creation training and TOT by the FEACC

Years	**Number of trainees**
Between 2001 and 2007	115, 637 individuals
Between 2008 and 2015	215,035 individuals
2009/10	-
2011	32,223 individuals
2012	40,594 individuals
2013	42,586 individuals
2014	45,842 individuals
2015	53,153 individuals

Source: various Annual Reports of the FEACC

Under the above-mentioned two packages, the Commission has tried to give emphasis to train public servants and officials working on sectors such as procurement, finance, justice, revenue and customs that are more prone to corruption. Among the training forums held by the FEACC in 2014/15 alone, 40% of them were attended by public officials and civil servants working on procurement, finance and justice sectors (FEACC, 2015a). The emphasis is in fact in conformity with the provisions of the UNCAC and AUCPCC which require due consideration in the implementation of integrity measures including dissemination of ethics education especially in procurement, finance and justice sectors. The FEACC has been trying to deliver the training based on modules prepared for these specific sectors.

However, the Commission's ethics education training has been facing capacity problems ranging from manpower shortage to financial resource.[50] It was mentioned that it is not uncommon for the FEACC to cancel ethics education training schedules due to shortage of manpower that provide the trainings. Besides, regular trainers from the FEACC lack specialized knowledge on diversified areas where the trainees come from and this impedes framing the contents of the ethics education to fit specific sectors.[51] Trainers also repeatedly encounter challenges from some trainees who doubt the validity and importance of the ethics education because they are of the view that there is too much talk but no enough action particularly when it comes to penalizing offenders of corruption. This means the perceived low performance in the law enforcement area of the FEACC has casted its shadow on the provision of ethics education. In addition, the recruitment and selection process of trainees for the trainings has never been without problem. Various institutions usually send similar faces that took similar trainings previously.[52] The TOT package has also faced difficulties with regard to follow up. There is no credible follow up mechanisms by the FEACC to ascertain whether the individuals who took training could in turn train others.[53] These challenges coupled with financial constraint that hamper the organization of more and more training forums and giving out allowances to large number of trainees for several days, have prevented the FEACC from providing in-depth trainings and enhancing its overall face to face education activity.

Nevertheless, the FEACC has not bounded to face to face trainings in expanding ethics education. It also attempts to utilize the media in disseminating ethics and anticorruption messages. The Commission made possible the production and dissemination of 178 radio and television short messages, 14 dramas and 20 television talk-shows and radio teleconferences carrying anticorruption messages to the public in the past seven years (FEACC, 2015c and

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[50] Interview with Abebe Zewdie, Principal Consultant at the Directorate for the Coordination of Ethics Infrastructures, 16 March 2016, Addis Ababa. And also interview with Achamyelesh Shalemo, Principal Consultant at the Ethics Education and Communications Affairs Directorate, 17 March 2016, Addis Ababa.
[51] Interview with Abebe Zewdie, 16 March 2016, Addis Ababa.
[52] Interview with Abebe Zewdie and Achamyelesh Shalemo, 16 March 2016 and 17 March 2016 respectively, Addis Ababa.
[53] Interview with Abebe Zewdie, 16 March 2016, Addis Ababa

FEACC, 2012). Various publications such as magazine, booklets, brochure, flyers, posters, modules, stickers, posters and newsletters aiming at sensitizing the public about corruption prevention were prepared and distributed with 2, 207,500 copies to the society (ibid). In the stated period, the FEACC web portal entertained 1,400 textual and audio-video materials on ethics, anticorruption and issues relevant to the activities of the Commission (ibid).

The number of materials produced by the FEACC and disseminated through various media in relation to promotion of ethics has been increasing. For instance, in the period between 2008 and 2015, the total number of copies of various publications produced and distributed to the public by the FEACC almost tripled as compared to the period between 2001 and 2008 (ibid). Despite such increment, it is believed that the media education of the FEACC needs to be enhanced further to reach more and more people. The distribution of most of the publications produced by the FEACC is limited to public organizations and this has its own impact in narrowing the coverage.[54] The electronic media campaign of the FEACC to promote ethics education has run in to difficulties due to lack of resource to cover the increasing cost of production and air time and shortage of qualified personnel in the area.[55] According to the sample study conducted by the FEACC, the coverage of the ethics and anticorruption education (via media and through face to face trainings) of the FEACC has reached 65 % of the country's population in 2015 (FEACC, 2015c). Such coverage needs to be widened so as to reach as much people as possible.

However, dissemination of effective ethics education is not only a matter of coverage but also of quality. Enhancing quality of ethics education is important to ensure the effectiveness of the prevention measures. The UNCAC encourages contracting parties to make sure that such practices of prevention measures to be effective (Article 5). In light of this, the FEACC's trainings and ethics education campaign need to be improved both in terms of substance and way of conveying the messages. Interviews with staffers of the FEACC indicated that there are limitations in delivering up to the standard trainings and in producing quality messages to be transmitted through the media due to human and resource capacity problem.

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[54] Interview with Addis Lemma, Principal Consultant at the Ethics Education and Communications Affairs Directorate, 18 March 2016, Addis Ababa.
[55] Ibid

As to gauging the effectiveness of FEACC's endeavor to expand ethics and anticorruption knowledge, impact assessment is a key. There is no recent impact assessment study on the Commission's ethics promotion venture by institutions other than the FEACC. The impact assessment sample study conducted by the FEACC (2015d) indicated that the number of individuals who are able to raise their level of awareness after attending ethics trainings and educations reached 62 %. Another, a bit older, impact assessment study which was conducted by Addis Ababa University (2010) revealed that the majority of the respondents (62.5 percent) believe that the Commission is effective in inculcating ethics (Addis Ababa University, 2010). Although the FEACC has limitations in delivering in depth ethics education, the impact that the education has brought about can never be underestimated.[56] All these assessments are indicative of the fact that the FEACC has shown some progress in ethics promotion, although there is a need for improvement with respect to rectifying the above-mentioned problems. Thus, despite some challenges, the FEACC has been contributing its part to comply with the international requirement with respect to increasing and disseminating knowledge about the prevention of corruption.

4.4 ENGAGING THE SOCIETY IN CORRUPTION PREVENTION

The participation of the society is crucial in any corruption prevention measures since the sole exercise of domestic anticorruption bodies cannot go anywhere. The corruption prevention measures stipulated by the UNCAC and AUCPCC require ensuring the participation of society especially that of the civil society organizations (UNCAC Article 5 and AUCPCC Article 9 and 12). In Ethiopia, the FEACC is mandated to work with various stakeholders and coordinate Ethics Infrastructures[57] in a bid to enhance the participation of the society in corruption prevention (Article 7 of Proclamation No. 433/2005). Accordingly, the FEACC organized the Directorate for the Coordination of Ethics Infrastructures which aims at harmonizing and supporting the activities of various bodies and the public to play their part in preventing and combating corruption.

[56] Interview with Achamyelesh Shalemo, Principal Consultant at the Ethics Education and Communications Affairs Directorate, 17 March 2016, Addis Ababa.

[57] Ethics Infrastructures means bodies, mechanisms, or procedures or the necessary conditions that will serve to reduce substantially unethical conducts and to encourage efficiency and integrity in the public service. See Revised Establishment Proclamation 2005 of the FEACC

Among the various bodies which the FEACC has been working with are the ethics liaison units. The FEACC facilitated the establishment of more than 312 ethics liaison units at various government offices and public enterprises. One of the main objectives of the ethics liaison units is to try to create employees that do not tolerate corruption in their respective institutions by promoting ethics (Council of Ministers Regulation No. 144, 2008). The units are also mandated to play their part in preventing corruption and exposing corrupt practices and causing law enforcement measures (ibid). However, key informants [58] revealed that most of the ethics liaison units have failed to fulfill these objectives. Mr. Aklilu Mulugeta, Director of the Corruption Prevention Directorate, also indicated that the contribution of the ethics liaison units to the prevention of corruption especially in examining systems and working procedures in their respective institutions has been insignificant. One of the reasons for the failure is that most of the ethics liaison units are not given due attention and support by the officials of their respective institutions; even officials at some institutions considered the ethics liaison units as fault finders and pressed them in subtle way to quit their job.[59] Although the FEACC through its Directorate for the Coordination of Ethics Infrastructures organizes forums on yearly basis and makes frequent consultations with heads of various institutions in an attempt to resolve the problem faced by ethics liaisons unit, no substantial progress has been made.[60] It was also learnt that the accountability issue is the main obstacle in this regard. According to the Council of Ministers' regulation with regard to ethics liaison units, the units are accountable to the heads of their respective institutions (Article, 6). Given such accountability, the FEACC cannot practically solve all the problems faced by ethics liaison units, apart from urging the officials of the various institutions to facilitate the works of the units. Besides, there has been no reported punitive measure against those officials who are found to be obstructing the activities of the ethics liaison units. Therefore, the FEACC’s effort to widen its corruption prevention endeavor through ethics liaison units has not been effective.

[58] Interview with Abebe Zewdie, Principal Consultant at the Directorate for the Coordination of Ethics Infrastructures, 16 March 2016, Addis Ababa. And also interview with Assefa Mekonnen, Principal Consultant at the Corruption Prevention Directorate, 13 March 2016, Addis Ababa.

[59] Interview with Abebe Zewdie, Principal Consultant at the Directorate for the Coordination of Ethics Infrastructures, 16 March 2016, Addis Ababa.

[60] Ibid

In addition to working with ethics liaison units, the FEACC collaborates with various government institutions to promote ethics and enhance the participation of the public in corruption prevention. The FEACC worked closely with the Ministry of Education in the development of Ethics and civic education curricula and currently is playing its part in the revision and improvement of the curricula as part of the effort to nurture ethical citizens. In addition, the FEACC made possible the formation of more than 107 ethics and civics education clubs in various learning institutions for the enhancement of ethical behaviors. Although some of the ethics clubs are doing well, most of them especially those established in higher education institutions are not working at the desired level. The reasons for the weak performance among most ethics clubs are lack of devotion among members' of ethics clubs as well as limitation in extending enough support by their institutions, teachers and the FEACC.[61] This has brought repercussion on the FEACC's endeavor to create a society that would not tolerate corruption especially among the youth.

As part of synchronizing the various ethics infrastructure, the FEACC also supported the formation of hundreds of anticorruption movements and coalitions by ethics clubs of various learning institutions, religious organizations, professional associations, media organizations, youth and women forums, civil society organizations and justice sector bodies in order to enhance public awareness about the evils of corruption and promote other preventive measures. It has also provided financial assistances and technical advice to the coalitions and movements. In addition, the Commission attempts to create a situation whereby the coalitions and movements offer trainings to their members. Accordingly, anti-corruption coalitions mostly that of religious institutions provided trainings on ethics to significant number of their members in the past few years (FEACC, 2015e).

However, there are gaps in effectively engaging all the various coalitions, movements and the general public in anticorruption undertakings. For one thing, such anticorruption coalitions and movements were established on voluntarily basis and therefore the FEACC cannot force them while undertaking its coordination role. As key informants [62] explained, the coordination role

[61] Interview with Demise Sinishaw, Principal Consultant at the Directorate for the Coordination of Ethics Infrastructures, 14 March 2016, Addis Ababa.
[62] Interview with Demise Sinishaw and Abebe Zewdie, Principal Consultants at the Directorate for the Coordination of Ethics Infrastructures, 16 March 2016,Addis Ababa.

requires strong lobbying endeavor to convince them to actively participate in preventing corruption and the ability to resolve disagreements whenever they arise among the ethics infrastructures. This has been very challenging for most staffers working in the Directorate. The staffers also found it very difficult to follow up including through site visit to hundreds of ethics infrastructures, to evaluate their plans and reports and to give feed backs amid logistical problem and man power shortages. Thus, one cannot say that the coordination role of the FEACC is going well.

In an attempt to enhance the coordination and follow up of ethics infrastructures to a higher level, the National Anticorruption Coalition which comprises of government agencies, private sector, civil society and political parties was formed in 2009. The Coalition is mandated to provide direction in the fight against corruption and to evaluate implementation of anticorruption measures at the national level. With respect to the number of seats in the National Coalition, out of the total seats, the largest percentage (48.34%) is allotted to civil society followed by 31.79% to government representation, 17.88% to private sector and 1.99 % to opposition political parties which have seats in parliament (FEACC, 2009). Apportioning largest seat to Civil Society Organizations (CSOs) in the National Coalition is an important development to comply with the UNCAC and AUCPCC provisions that give emphasis to the participation of groups outside the public sector especially the civil society. However, how many of the CSOs in the country are really able to take their seat and work closely with the FEACC is the question to be answered. Despite the share-out of large number of seats to the Civil Society Organizations in the National Coalition, there are CSOs that are not willing to work with the FEACC as they doubt the independence of the Commission from political influences.[63] On the other hand, as Tamyalew (2010) indicated the FEACC was selective regarding which organizations are invited to participate in the coalition because of concerns regarding those organizations' political agendas. This shows that there has been no enough of trust between the FEACC and some CSOs. In addition, there is concern as to how the civil society organizations themselves are vibrant enough to play their part in the overall activities of the country in general and in corruption prevention in particular. The role of the civil society organizations in the country has become weakened following the adoption of the Proclamation that Provides for the Registration and Regulation of

[63] Ibid

Charities and Societies in February 2009 (US Department of State, 2014). There is a decreasing trend in the number of CSOs/NGOs in the country and this is mainly attributed to the fact that the proclamation makes the establishment and registration of CSOs/NGOs much harder (Chelkeba, 2011). The Proclamation restricts CSOs/NGOs that receive more than 10% of their financing from foreign sources from engaging in human rights and advocacy activities. Although the Ethiopian government reiterates that the proclamation is important to enhance transparency and accountability in the functioning of civil societies, there is resentment among members of the civil society and Ethiopia's development partners which are of the view that the proclamation would curtail the activities of civil societies. Given these circumstances, the National Coalition has not been in a position to effectively engage all the civil society organizations in the country in preventing corruption.

Besides, there are also concerns with respect to political party representation in the National Coalition. According to the guideline for the National Coalition, the representation of opposition political parties in the Coalition will only become effective when they have seats in parliament. Given the fact that no opposition party has a seat in the present parliament and only one opposition party had a single seat in the preceding parliament, the National Coalition seems to lack inclusiveness of political spectrum and dissenting voices. Similar concern is raised with regard to the representation of members of the private media which are critical of the government. Although the FEACC has been working with some private media in anticorruption areas under the umbrella of the Coalition, it can hardly be said that it is as inclusive as it should be. Therefore, there is limitation with respect to being inclusive and this may undermine the credibility and trust of the Coalition as well as the FEACC to enhance their public mobilization role.

The FEACC's public mobilization and coordination role need to be also assessed under the context of media freedom and access to information since ensuring media freedom and access to information are crucial in promoting the participation of the society in preventing corruption. Both the UNCAC and the AUCPCC point out that access to information and media freedom is quite essential to expose corrupt practices and enhance the level of participation of the public in corruption prevention (UNCAC Article 10 and AUCPCC Article 9-12). The current Constitution of Ethiopia guarantees freedom of expression and of the mass media (Article 29). In addition, the country enacted a Proclamation to Provide for Freedom of the Mass Media and Access to Information in 2008 by amending the previous Press Law. Although the 2008 proclamation has been criticized for increasing fines and widening the scope of prosecutable offences including defamation of government officials committed by journalists, it provides for access to government information. The practical aspect of access to information, however, has encountered many challenges. There are complaints that most of the time government offices withhold information supposed to be public. As researches on the area indicated that access to information in the country faces challenges due to a number of factors such as lack of capable public relation officers, weak organization of information on the part of government institutions and inclination to give out information when it only shows a good side of the institution.[64] Information supposed to be public can also be withheld under the pretext of its sensitivity. In addition, members of the private media and various stakeholders accused the government of restricting freedom of speech and the press (APRM, 2011). In the view of human rights groups, the Anti-Terrorism Proclamation adopted in July 2009 has been used as a pretext to weaken the private media in the country. The government, however, repeatedly denies the allegations saying some private media abuse freedom of the media for unlawful purposes. Nevertheless, the number of private media in the country is significantly declining. Six privately owned media outlets shut down in 2014 and 30 journalists fled Ethiopia (Human Rights Watch, 2015). The media space in the country seems to be largely left to that of the media which are under the control of the state. The state owned media are perceived as timid and hardly discharge their watchdog role in exposing officials' misdeeds without a green light from the same (Aliyi, 2013). Therefore, limitation with respect to access to information and media freedom in the country has affected the full engagement of the public in corruption prevention activities. If freedom of the media, the media space and access to information in the country had been widened, the participation of the public in the fight against corruption in particular and FEACC's endeavor to prevent corruption in general would have been consolidated.

As part of ensuring public participation, the UNCAC and AUCPCC require state parties to make their anticorruption bodies accessible to the public and facilitate ways for the public to report about incidences of corruption (UNCAC Article 13 and AUCPCC Article 5). In this respect, the

[64] Ethiopian Herald News Paper, 28 November, 2015, Vol. LXXII, No.067, Ethiopian Press Agency.

FEACC organizes consultation forums in which the stakeholders are able to evaluate its annual performance report and forward inputs to its annual plans.[65] It has also been using the available media outlets to provide information to the public about its activities and regarding where and how to report corruption. The communication activities that have been carried out by the FEACC include publishing and disseminating its annual reports and other publications to the public, sending news releases to various media pertinent to the activities of the Commission, organizing press conferences and various events and disseminating relevant information on its website. As to facilitating ways for the public to report about corruption, the Commission developed a free hot line and web based whistle blowing system beside the usual way of receiving tip-offs via fax, post office box and in person. As reports coming out of the FEACC suggested the number of tip-offs on alleged corruption offences reaching the FEACC is increasing. This may be considered as a sign for the increase in public participation in the fight against corruption. However, there needs to be caution. As Mr. Gebru Gebeyehu, Director of Corruption Investigation and Prosecution Directorate pointed out most of the tip-offs do not fall within the jurisdiction of the Commission and are unrelated to corruption offences. Besides, fear of reprisal is discouraging a significant number of individuals from giving tip-offs to the FEACC (Kilimanjaro International, 2012). The mechanism to provide protection to whistleblowers is also very poor owing to capacity limitation on the part of the FEACC and the Ministry of Justice and in some cases because of defiance among various institutions. These show that much remains to be done to enhance the protection of whistleblowers and to create awareness among whistleblowers on the issue of reporting corruption particularly on the jurisdiction of the FEACC. Such awareness and protection of whistleblowers are essential to involve the public in the overall anticorruption activities of the country.

[65] Interview with Demise Sinishaw and Abebe Zewdie, Principal Consultants at the Directorate for the Coordination of Ethics Infrastructures, Addis Ababa, 16 March 2016

CHAPTER V: FEACC'S LAW ENFORCEMENT AND INTERNATIONAL STANDARDS

Alongside its preventive role, the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) is entrusted with taking punitive measures in relation to corruption. The punitive measures that have been pursued by the FEACC include investigation of alleged corruption offences, pressing charges against suspected corruption offences, freezing and causing the confiscation of assets obtained through corruption and providing protection to whistleblowers and witnesses.

The FEACC's investigative and prosecutorial role had been limited to offences committed in government offices and public enterprises for the past 14 years as its jurisdiction did not allow looking into cases in the private sector. Although amendment was made a year ago in the country's anticorruption laws that enabled the Commission's mandate to expand to the private sector, it is too early to examine its impact. Therefore, it would be proper to focus on examining the investigation and prosecution activities of the FEACC carried out before the amendment was made. In the next sub sections, the FEACC's punitive measures which were taken prior to the recent adjustment in the anticorruption legal framework will be examined in light of the established criminalized corruption offences and law enforcement standards set by the UNCAC, AUCPCC and UNTOC in relation to investigation, prosecution and adjudication.

5.1 CRIMINALIZATION OF CORRUPTION OFFENCES

As it was stated in Chapter three of this paper, the UNCAC, AUCPCC and UNTOC specified a number of corruption offences to be criminalized by states parties with various degrees of obligation. Among these corruption offences, Ethiopia criminalized the following ones fully:

- active (supply side) and passive (demand side) bribery of national public officials
- active and passive trading in influence
- embezzlement, misappropriation or other diversion by a public official;
- embezzlement of property in the private sector
- obstruction of justice

- abuse of functions
- illicit enrichment
- participation and attempt to commit offence
- laundering proceeds of corruption and
- concealment

These offences are criminalized by the Criminal Code of the Federal Democratic Republic of Ethiopia (2004) under Title III, chapter I, chapter II and chapter III of the Code which deal with crimes against public offices including corruption, crimes committed by public servants and crimes against public offices by third parties. Some of these offences are also described as punishable offences in the country's anticorruption laws such as the Revised Establishment Proclamation of the FEACC (2005) and the Revised Anticorruption Special Procedure and Rules of Evidence Proclamation (2005).

However, the passive (demand side) bribery of foreign public officials and officials of public international organizations has not been criminalized by both the country's criminal code and anticorruption laws even though it is labeled by the international anticorruption instruments as an offence. This means, the country has not made illegal the solicitation or acceptance of bribes by foreign public officials and officials of public international organizations. The implementation challenge is perceived as the major cause for the failure in criminalizing such an offence. Making foreign public officials and officials of public international organizations accountable for corruption offences would not be easy especially for countries in the third world.[66] Enforcing criminal proceedings against such an offence raise jurisdictional issues as foreign public officials and international organizations enjoy immunity. Criminal proceedings against the offence also require enhanced human, technological and institutional capacity which Ethiopia cannot afford easily. It was also believed that developing countries such as Ethiopia would not opt to antagonize their relation with foreign public officials and international organizations over the issue of corruption as they are highly dependent on their assistances. Therefore, as it has been seen in several other developing countries, passive bribery of foreign public officials and officials of public international organizations has not been criminalized in Ethiopia. Neither the

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[66] Interview with Damaw Asfaw, Principal Prosecutor at the Investigation and Prosecution Directorate, 30 March 2016, Addis Ababa.

FEACC nor other law enforcement bodies in the country can be able to launch investigation and prosecution against this offence.

There are also offences which have been partially criminalized by the country. These are the supply (active) side of bribery of foreign public officials and officials of public international organizations, supply (active) side of bribery in the private sector and demand (passive) side of bribery in the private sector. Although such offences are indicated in some ways in the Criminal Code, the crime of foreign bribery and bribery in the private sector are not specified at the level stated in the international instruments. Capacity limitation to investigate and prosecute the offences is mentioned as a cause for the partial criminalization. Apart from these, no major deviation has been observed regarding the country's compliance with the criminalization of offences stipulated in the international anticorruption instruments.

However, some of the corruption offences particularly those related to the private sector and active foreign bribery, though included in some way in the Criminal Code, were not under the jurisdiction of the FEACC until very recently. As mentioned above, the private sector had been unreachable by the investigation and prosecution activities of FEACC until the Country's anticorruption law was amended in late 2015. The FEACC was mandated to investigate and prosecute alleged corruption offences specified in the Criminal Code or in anticorruption laws, where they are committed only in public offices or public enterprises, or in regional offices relating to subsidies granted by the Federal Government to the regions (Article 7 of the Revised Establishment Proclamation, 2005). Despite the emphasis that has been given to combating corruption in the private sector by the UNCAC and AUCPCC, the FEACC's role in this regard has been very minimal due to jurisdictional limitation.

The jurisdictional limitation has compelled the FEACC to disregard significant number of tip-offs or reports about incidence of alleged corruption in the private sector.[67] Most of the tip-offs reaching the FEACC are not within the Commission's jurisdiction.[68] In the past five years, the FEACC received 16,781 tip-offs from the public and various bodies and among these 55% of

[67] Interview with Wolde Mikael Fitora, Deputy Director of Corruption Investigation and Prosecution Directorate, Addis Ababa, 19 March 2016; and interview with Agumas Mulualem, Prosecutor of Corruption Investigation and Prosecution Directorate, Addis Ababa, 14 March 2016
[68] Ibid

them did not fall under the jurisdiction of the Commission (FEACC, 2015c). This means, the FEACC could not go ahead with investigating and prosecuting the majority of tip-offs coming to its attention owing to jurisdictional limitation and a significant number of the tip-offs is said to be pertinent to the private sector.

Some of the frequently mentioned reasons on part of the law makers in Ethiopia for restricting the Commission's jurisdiction to the public sector for several years are capacity constraints in terms of human, financial resource and technology, the need to be more focused on one sector given the limited resource in the country and the belief that corruption is more prevalent in the public sector. But, this justification has never been without challenge. The rationalization to exclude all the private sector from the Commission's jurisdiction was weak; especially capacity constraints should have not been an excuse to fully restrict the FEACC's mandate to the public sector.[69] The mandate of the FEACC should have been stretched to some of the most vulnerable areas in the private sector given the increasing importance and role of the sector. Besides, anticorruption laws in general and the FEACC's mandate in particular should have been framed by anticipating and taking into account long term and incoming realities such as the growing vulnerability of the private sector to corruption.[70] Although investments by the private sector lag far behind those of government, there has been tremendous growth in the number, diversity and market share of private businesses in the Ethiopian economy (USAID, 2016). Opportunities for corruption may loom amid the expansion of the sector. All this suggest that the private sector should have not been out of the FEACC radar.

5.2 INVESTIGATION AND PROSECUTION OF CORRUPTION OFFENCES

The international anticorruption instruments ratified by Ethiopia necessitate appropriate law enforcement measures so as to effectively implement the criminalization provisions specified in the Conventions. Accordingly, the UNCAC, AUCPCC and UNTOC require state parties to carry out effective investigation and prosecution activities on the criminalized offences as part of law enforcement measures. Hence, it should be desirable to examine to what extent the investigation and prosecution activities of the FEACC are focused on the offences specified in the

[69] Interview with Damaw Asfaw, Principal Prosecutor at the Investigation and Prosecution Directorate, 30 March 2016, Addis Ababa.
[70] Ibid

international anticorruption instruments ratified by the country and how the international standards are met in doing these activities.

The FEACC investigated and prosecuted 1,817 corruption files in the past five years (FEACC, 2015c). In addition, the number of cases to be handled by the FEACC is increasing from year to year (ibid). The investigated and prosecuted files include bribery of national public officials, embezzlement by public officials, abuse of functions, illicit enrichment, trading in influence, obstruction of justice and laundering proceeds of crime and liability of legal persons. However, as shown from the table below, no investigation and prosecution activities were carried out by the FEACC with regard to the foreign bribery as well as bribery in the private sector and embezzlement of property in the private sector. The nil with regard to these offences emanates partly from the country's failure to criminalize the offences. There is also jurisdictional limitation causing the FEACC not to investigate and prosecute these offences.

Table 4: Number of corruption files that the FEACC investigated and prosecuted vis-à-vis types of offences specified by the UNCAC, AUCPCC and UNTOC.

Types of offences specified in the UNCAC, AUCPCC and UNTOC	**Number of files investigated and prosecuted by the FEACC per year**					**Total**
	2011	**2012**	**2013**	**2014**	**2015**	
Active and passive Bribery of national public officials and Trading in influence	57	41	42	66	104	310
Active and passive Bribery of foreign public officials and officials of public international organizations	0	0	0	0	0	0
Embezzlement, misappropriation or other diversion of property by a public official	109	79	129	96	114	527
Abuse of functions	215	63	295	173	150	896
Illicit enrichment	6	2	3	0	9	20

Bribery in the private sector	0	0	0	0	0	0
Embezzlement of property in the private sector	0	0	0	0	0	0
Laundering proceeds of crime and concealment	1	0	7	0	0	8
Obstruction of justice	6	0	4	0	0	10

Source: various performance reports of the FEACC

As shown from the table above, out of the total investigated and prosecuted files in the past five years, the majority of them consist of offences that lie under the provisions of "abuse of functions" specified in the UNCAC and AUCPCC. Abuse of functions refer to the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity (UNCAC Article 19 and AUCPCC Article 4). As indicated on the table, the number of files on abuse of functions that the FEACC pressed charges up on completion of investigation in the past five years was 896, the largest among the total files. This was followed by 527 files consisting mainly offences of aggravated breach of trust in relation to embezzlement, misappropriation or other diversion of property by a public official. The FEACC also took 310 files, following the completion of its investigation, to courts concerning the active and passive bribery of national public officials that is the promise, offering or giving, to a public official and solicitation or acceptance by a public official of an undue advantage and trading in influences in the same period. This shows that the majority of FEACC's investigation and prosecution activities were centered on these offences while the number of investigated and prosecuted cases with respect to illicit enrichment, obstruction of justice and laundering proceeds of corruption and concealment are relatively smaller. As it was learnt from the FEACC's annual reports, the majority of the tip-offs reaching the Commission focused on abuse of power, embezzlement, bribery, maladministration and breach of trust. Thus, the focus of tip-offs has been dictating the investigation and prosecution undertakings of the FEACC. Unfortunately, most of the tip-offs are not found to be focused on the grand types of these offences. Although the FEACC investigated and prosecuted significant number of cases with respect to abuse of functions, embezzlement by public officials and bribery of national public officials and trading in influences, most of the cases it handled were not grand offences since the majority of the tip-offs it received focus on petty corruption. No doubt, this has had repercussion on the effectiveness of the FEACC that are supposed to deal mostly with grand corruption. The revised establishment proclamation (2005) of the FEACC indicated in its preamble that it has become necessary to make the attention of the Commission focused on grand corruption. In addition, in order for the FEACC to focus more on grand corruption, the Commission has been granted the power to delegate crime investigation bodies such as the police to conduct investigation on corruption cases which are of petty type. However, no significant progress has been made in this respect. In an attempt to focus on grand corruption, the FEACC identified areas like grand procurement, revenue and tax collection, justice and land administration as its priority areas. Since 2011, the FEACC has been trying to focus on these sectors and there have been some attempts to conduct investigation and prosecution on such areas. However, as several reports coming out of the FEACC indicated, the majority of the finalized investigations in the past five years were not in these priority areas. Especially on grand procurement area, which is believed to be extremely vulnerable to corruption, the FEACC is far behind. The Commissioner of FEACC also admitted that the risk of corruption in the procurement area is still high and requires more efforts (Ethics Magazine, 2015a). This shows that much remains to be done to investigate and prosecute offences on those priority areas.

The limitations to do more on grand corruption are also affecting the investigation and prosecution activities of the FEACC with respect to offences such as illicit enrichment, obstruction of justice and laundering proceeds of corruption and concealment. The small number of cases that was investigated and prosecuted in this regard is perceived to be, among others, the result of tendencies to shy away from grand corruption. As to illicit enrichment, the FEACC investigated and prosecuted 20 files in the past five years. However, the investigation and prosecution activities of the FEACC in this respect seem far behind as compared to the mounting public outcry indicating the exacerbation of possession of unexplained property and sudden unlawful enrichment among individuals in the country. Legal, Justice and Administrative affairs Committee with the House of Peoples' Representatives of the FDRE indicated that there are many who make themselves unlawfully millionaire overnight in the country.[71] The Committee also criticized the FEACC for not doing enough to prosecute those who are enriching themselves suddenly in unlawful manner. As to laundering of proceeds of crime, the FEACC investigated and prosecuted few offences in relation to this crime in the past five years. Although the major responsibilities dealing with money laundering has been granted to the FIC since 2013, it referred cases to the FEACC when the proceeds of money laundering triggered corruption. The few cases which the FEACC prosecuted were referred by the FIC. The performance is apparently weak as compared to the increasing magnitude of the problem in the country. Money laundering is believed to be one of the causes for the illicit financial flow that resulted in the illegal flight of billions of dollars out of the country (Global Financial Integrity, 2015). With regard to investigation and prosecution of obstruction of justice, the FEACC dealt with 10 cases in the past five years. The cases include threats on its own investigators to impede investigation duties and fabricated crime to arrest witnesses. However, the FEACC should have done more against these type of offences as there are more complaints among its own staffers and witnesses about threats posed by some individuals under investigation and their accomplices. These complaints are even admitted by the FEACC officials. Threats against whistleblowers and investigators were increasing (FEACC, 2013). Given these circumstances, the FEACC needs to do more in deterring such obstruction of justice. There has been disagreement between the FEACC and courts with respect to whether the FEACC has the authority to investigate and prosecute obstruction of justice. Some judges were of the view that the FEACC has no mandate to investigate and prosecute offences of obstruction of justice. The problem arose due to lack of clarity in the anticorruption laws. However, the recent amendment on anticorruption laws made it clear that the FEACC had indeed the power to investigate and prosecute such an offence.

In general, with the exception of few offences related to the private sector corruption and foreign bribery, the FEACC investigated and prosecuted most of the offences specified in the international anticorruption instruments. In total, it investigated and prosecuted 1,817 corruption files in the past five years and the trend in the number of cases to be handled by the FEACC has been increasing from year to year. However, this scenario does not necessarily entail success. There have been vivid limitations such as focusing on petty rather than grand offences as well as

[71] The Reporter News Paper, 7 February, 2016, Vol. 21. No.1646. Pp.1, Amharic Version, Media and Communication Center.

performance that does not equate with the gravity of the problem in the country. According to the Transparency International Corruption Perception Index that measures the level of corruption in various countries, Ethiopia's score has not been improved since 2012; it remains at 33 where 100 means very clean and 0 means highly corrupt. This shows that corruption in the country remains a serious problem despite some efforts by the FEACC. The following paragraphs will explore the factors behind the limitations in relation to the activities of the FEACC.

One of factors that are considerably hampering the investigation and prosecution activities of the FEACC is lack of intelligence and surveillance unit within the Commission.[72] As stated above, the FEACC has been almost entirely dependent on the tip-offs it received from the public to launch investigations. This is mainly caused by the inability of the FEACC to employ its own intelligence and surveillance mechanisms that may serve as the basis for enhanced investigation and prosecution. The FEACC needs to employ its own independent intelligence and surveillance mechanisms as it is too difficult to detect, investigate and prosecute grand offences through tip-offs coming from the public.[73] Corruption with grand nature cannot easily come to the attention of ordinary citizens and detecting, investigating and prosecuting such offences are believed to require enhanced surveillance and intelligence. Special investigation techniques particularly electronic or other forms of surveillance and undercover operations in the fight against complex corruption offences such as illicit enrichment, laundering proceeds of crime and obstruction of justice are indeed important (Conference of the States Parties to the UNCAC, 2013). Investigating and prosecuting such offences require intelligence gathering of evidences along with coordinated efforts among various bodies in the country.[74] Mr. Gebru Gebeyehu, Director of Investigation and Prosecution Directorate of the FEACC also share this view. According to the Director, it is too difficult to gather evidences with tip-offs coming from the public against individuals who at once became millionaire; obtaining evidences against such individuals requires intelligence works that help break the hidden and intricate network they established. The Director strongly believes that the FEACC needs to establish its own independent intelligence and surveillance unit so as to investigate and prosecute such individuals; but unfortunately the

[72] Interview with Wolde Mikael Fitora, Deputy Director of Corruption Investigation and Prosecution Directorate, Addis Ababa, 19 March 2016; and Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, 30 March 2016, Addis Ababa.
[73] Ibid
[74] Ibid

government has not yet given the green light for the FEACC to have its own intelligence and surveillance unit. The impact of the involvement of intelligence is of paramount importance in the investigation and prosecution of grand corruption offences. According to the Director, had it not been to the involvement of the National Intelligence Service, the arrest, investigation and prosecution of former senior officials of the Revenue and Customs Authority and several business persons in 2013 would have not been realized. Such a mechanism would have enabled the Commission to play a proactive role in the investigation of corruption offences especially grand corruption which is complex and clandestine in nature and most of the time involves higher government officials and huge money. In connection with the inability to focus more on grand corruption, there is the perception among the public that the Commission has never been bold enough to prosecute so called big fishes at the top echelon of the government. Except few cases such as the detection and prosecution of former top officials of the Ethiopian Revenue and Customs Authority and former head of the Benishangul Gumuz Regional State, no high profile arrests were made in connection with corrupt practices in the past five years. It would in fact be very naïve to think that these were the only high profile cases that needed to be taken to court in a country where corruption and rent seeking are said to be the number one problem. Even after the acknowledgement of the ruling EPRDF party at its Organizational Congress held in September 20015 that the leadership is responsible for the worsening good governance and corruption in the country, no high profile arrest was made. Given this circumstance, it is not surprising that there is a high perception among the public that the FEACC has not been bold enough to prosecute higher government officials. But the FEACC could not be the only actor to be blamed for such deficiency. The government and various institutions should also take their responsibilities in this regard since fighting corruption requires the active involvement of various bodies. Especially, the government would have created enabling environment and alleviate the Commission's capacity problem to deal with high profile cases in a sustained manner so that no one could really be above the law. Enhanced support from the government particularly commitment among government officials is essential to detect, investigate and prosecute grand corruption offences at the desirable level. As the recent televised higher government officials' meeting chaired by Prime Minster Haile Mariam Desalegne on issues of good governance and rent seeking disclosed, those unlawfully enriching themselves had a network with some senior government officials that help them evade accountability. The existence of such alleged network involving higher government officials shows that there is lack of viable commitment among government officials towards the anticorruption struggle thereby making the functioning of law enforcement bodies such as the FEACC harder and those engaged in an unjustifiable profit making leave with impunity. Such challenge especially when it is caused by political and ethnic networks requires political solution. As the Collective Action Theory purports, in order to tackle corruption, transforming the political culture and ensuring trust between the public and administrators at all level is essential. Anticorruption commitment not only in words but in action is desirable among the senior government officials to make the FEACC robust in its measures. No doubt, the political commitment towards the fight against corruption in the country has not reached the desirable level.

Capacity problem is another major factor that has been affecting the effectiveness of the FEACC's investigation and prosecution endeavor. The Investigation and Prosecution Directorate of the FEACC has faced man power constraints both in terms of quantity and quality.[75] The number of the staffers of the FEACC assigned to investigate and prosecute corruption offences is much lower than the number of cases to be investigated and prosecuted. Although the Commission's Investigation and Prosecution Directorate is staffed with 112 personnel and the majority of them have first degree and above level education with some experiences in various disciplines, its investigation and prosecution venture requires more than that. There is scarcity in having competent, diligent, experienced and skillful investigators and prosecutors. This has led to the application of poor investigation technique and tactic and ineffectual information analysis that would not aid to trace the offenses committed.[76] The gap in investigation and prosecution ratio could be one indication for employing poor investigation technique. The FEACC investigated 3,338 files of corruption cases while it took 1,817 files of corruption cases to courts in the past five years (FEACC, 2015c). This wide gap in investigation and prosecution ratio stems from the fact that significant number of cases were closed due to lack of evidence and referred to various bodies to be settled through administrative measures (ibid). Given this scenario it is possible to infer that lack of evidence, though not always, could be the result of

75 Interview with Gebru Gebeyehu, Director of Corruption Investigation and Prosecution Directorate, 18 March, 2016, Addis Ababa; interview with Wolde Mikael Fitora, Deputy Director of Corruption Investigation and Prosecution Directorate, 19 March, 2016, Addis Ababa and Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, 30 March. 2016, Addis Ababa.
76 Ibid

employing poor investigation technique by the FEACC's staffers. Capacity constraint in investigation and prosecution is hampering the FEACC's attempt to detect and expose offences such as laundering of proceeds of crime, illicit enrichment and obstruction of justice which are usually intricate by nature. Presently corruption in Ethiopia is getting sophisticated and morphing into an organized enterprise that enjoys financial clout and alliance along ethnic, religious and political affiliations.[77] Therefore, there is a need to outsmart it. Unfortunately, the peculiar skill, knowledge and diligence that the investigation and prosecution of corruption offences require could not be available easily from the labour market. Thus, the FEACC has been suffering from shortages of investigators and prosecutors that match with the complex and challenging nature of the crime. Besides, there is no specialized institution that works on this area to alleviate the capacity constraints. Although the UNCAC (Article 6) requires state parties to avail the necessary resource, the specialized staffs as well as training that the staff of anticorruption institutions may need to carry out their functions, no adequate effort was made in this regard in Ethiopia. This has casted its shadow on the effectiveness of the FEACC.

A weakness in the implementation of whistleblowers and witnesses protection law is another factor that has been affecting the effectiveness of the Commission's investigation and prosecution undertakings. The UNCAC requires states parties to provide effective protection from potential retaliation or intimidation for witnesses and experts giving testimony including long term physical protection such as relocating the witnesses and hiding their identity (Article 32). Accordingly, the country adopted a proclamation No. 699/2010 that provides for the Protection of Witnesses and Whistleblowers of Criminal Offences. The 2005 Revised Proclamation of Anticorruption Special Procedure and Rules of Evidence also underlie the need for granting such a protection. Despite the existence of such legal frameworks, the implementation aspect is gloomy. The implementation of the legal frameworks requires huge resource in terms of finance, material and human capacity which Ethiopia cannot easily afford.[78] Besides, it demands the involvement and cooperation of various institutions, which has so far not

[77] The Reporter News Paper, 13 February, 2016. Vol. XX, No. 1014, Pp. 2, English Version, Media and Communication Center.
[78] Interview with Gebru Gebeyehu, Director of Corruption Investigation and Prosecution Directorate, 18 March, 2016, Addis Ababa; interview with Wolde Mikael Fitora, Deputy Director of Corruption Investigation and Prosecution Directorate, 19 March, 2016, Addis Ababa and Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, 30 March, 2016, Addis Ababa.

been adequate. The FEACC granted protection to 176 witnesses and whistleblowers since its establishment in 2001 (FEACC, 2015a). However, the protection granted by the FEACC is largely limited to job security even though there are a number of issues to be addressed as part of protection. Even the protection in relation to job security has not been effective at the desirable level due to capacity problem of the FEACC and lack of cooperation among various institutions. Various institutions are not adequately implementing the decision or the order to provide protection to whistleblowers in their respective institutions.[79] Moreover, officials in some institutions are systematically orchestrating harassment and fabricated corruption offence against whistleblowers and witnesses.[80] Verifying whether the request for protection is genuine is also a painstaking task for the FEACC. Although other advanced types of protection are supposed to be given by the Ministry of Justice, the Ministry is not in a position to do it mainly due to resource constraints. In addition, the 2005 Anticorruption Special Procedure and Rules of Evidence Revised Proclamation by itself was ambiguous as to who was whistleblower (Ethics Magazine, 2015b). The proclamation did not extend protection to experts who could give technical support and testimony in relation to corruption investigations and persons who report corruption in the private sector (ibid). All these gaps and constraints have been affecting the efforts to provide protection to whistleblowers and witnesses. This, in turn, has been impeding the participation of the public in the fight against corruption and the FEACC's attempts to gather evidences for investigation and prosecution purposes.

Another factor that has been hampering the investigation and prosecution endeavor of the FEACC is unwillingness among heads of various government institutions to cooperate and provide relevant information requested for investigative and prosecutorial purposes. There are even some heads of government institutions that are deliberately hiding the requested information and documents as well as complicating in covert way the efforts to gather evidences.[81] The UNCAC requires states parties to take measure with respect to enhancing cooperation between national authorities in providing the necessary information for investigative and prosecutorial purposes (Article 38). The revised establishment proclamation of FEACC (2005) also obligates public offices to cooperate whenever cooperation and assistance is required

[79] Ibid
[80] Ibid
[81] Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, 30 March, 2016, Addis Ababa.

by the FEACC. Despite these affirmations, the practical aspect has not yet fully materialized. Since no effective sanctioning measures were taken for failure to cooperate, the tendency to cooperate among various bodies was also weak. The cooperation with respect to combating obstruction of justice, illicit enrichment and money laundering is especially weak despite the fact that investigating and prosecuting these offences require strong coordinated efforts among various bodies in the country.[82] In general, it seems that the notion that fighting corruption should not be left to a single institution has not been well taken by various bodies in the country.

Securing independence has also been a challenge. As it was explained in the previous chapter the international anticorruption instruments require states parties to grant independence to anticorruption bodies. And accordingly, the FEACC secured its independence by law to be free from any interference with regard to investigation or prosecution. However, the FEACC has faced practical challenges in asserting its autonomy. Global Integrity (2010) indicated that criminal investigation and prosecution of powerful politicians and civil servants is not common and this is partly because the FEACC and other justice bodies are not fully independent. According to assessment study conducted by FEACC (2015d), some respondents do not believe that the FEACC is free from political influences. In addition, some stakeholders are of the view that the FEACC is not truly independent (APRM, 2011). Despite considerable amount of pending corruption cases, there is also a perception among some observers that the FEACC is being used as an instrument to harass political opponents (ibid). This perception that is still lingering largely stemmed from the circumstances when the FEACC began its operation in 2001 by pressing corruption charges against former senior members of the ruling party including former Defense Minister, Seye Abrha who was purged following division within the party. Seeye Abrha was arrested in connection with corruption just one-working day after the enactment of the law that established the FEACC (Belia, 2014). The prosecution of Seeye Abrha et al who fell out with the regime, while other EPRDF members who have been implicated in acts of corruption may be temporarily removed from party posts but not prosecuted, conforms to the perception of politicized prosecutions by the FEACC (Freedom House, 2011). The amendment hastily made on anticorruption provisions in 2001 that deprived defendants of the right to bail was also perceived among the public as an attempt by the government to continue putting Seeye

[82] Ibid

under detention.[83] It was the Seeye Abrha's case which has damaged the Commission's credibility in the eyes of the public.[84] As to the bail issue, another amendment was made in 2005, that if the corruption offence is believed to have a potential penalty of less than 10 years, defendants will have the right to appeal for bail. Such an amendment was in fact important as part of protecting the defendants' human rights including receiving fair trial and early release pending trial while taking anticorruption measures. Coming back to the issue of independence, the FEACC argues that it has never been a political tool. But, it admitted that there have been threats and intimidation by some government executive bodies against the Commission's employees while conducting investigation and prosecution activities (FEACC, 2013). Some key informants[85] also confirmed that here has been interference in investigation and prosecution in some cases in various forms ranging from weakening the investigation through the prohibition of relevant information to exerting subtle and invisible influence. Thus, we can conclude that the FEACC has not been protected adequately from undue influence and interference and this has had consequence on its choice of decision, its public image and its effectiveness.

The proliferation of forgery in the country is also among the major factors that has been affecting the investigation and prosecution activities of the FEACC. Falsifying government documents such as check, identification cards and contracts in the country has made the investigation activities of the FEACC difficult. In the past three years alone the FEACC investigated about 150 cases in relation to forgery. This signifies to what extent forgery is spreading in the country. In addition, as various reports from the FEACC revealed, forgery has increasingly become a source to commit other corruption offences. Corruption offences ranging from petty to grand mostly employ forgery in the process. This shows that there is high probability for the various documents availed to the FEACC in the process of investigation could be illegitimate. According to Mr. Gebru Gebeyehu, Director of Investigation and Prosecution, there is no viable system in the country to prevent falsification of government documents and this complicates the investigation works of the FEACC.

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[83] Addis Fortune News Paper, 23 November, 2014, Vol. 15, No. 760. Independent News & Media Plc.
[84] Ibid
[85] Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, Addis Ababa, 30 March, 2016; and interview with Legesse Derra, Principal Investigator of the FEACC Addis Ababa, 19 March, 2016.

Another worth-mentioning issue while discussing the factors behind the gaps in relation to the effectiveness of FEACC is whether the Commission itself is free from corruption. There are in fact complaints signaling that some tip-offs are deliberately ignored even if they are valuable and within the jurisdiction of the Commission (FEACC, 2015d). There is also suspicion that the tip-offs might be passed over to third parties. A report by a special parliamentary group setup by the House of Peoples Representatives has recently brought this matter to the spotlight. According to the special parliamentary group, secret tips are being leaked to suspects and there is a rising trend in corrupt tendencies in the Commission itself.[86] According to informants, there are in fact some gaps regarding follow up and managing of tip-offs particularly in relation to information handling as to the number of cases presented, decisions made on cases to be investigated and why some cases are not investigated and so on.[87] This limitation in follow up and lack of transparency with respect to criteria for accepting and deciding on cases may lead to some unethical practices. The informants believe that there have in fact been some complicity in corrupt practices among employees of the FEACC but they do not think that the problem is pervasive.[88] They said that the FEACC took legal and administrative measures against those staffers when the allegations came to its attention. In addition, they mentioned that the FEACC usually take at most care when recruiting its employees by examining their ethical backgrounds besides considering their educational level and work experiences required by the job. This, according to them, helps in some way in the prevention of unethical practices among the employees of the FEACC.

Whether the alleged unethical practice among the staffers of the FEACC is pervasive or not, it requires further study and investigation. Nevertheless, as it can be inferred from the interviews with key informants and reports by the parliamentary group, corrupt practice by some employees of the FEACC is real despite arguments on its extent. Such practices, whatever its extent may be, cannot be allowed especially in an institution set up to spearhead the fight against corruption. In addition, it was learnt that the FEACC has no enhanced follow up mechanism as to handling of

[86] The Reporter News Paper, 10 February, 2016, Vol. 21. No. 1647. Pp.1, Amharic Version, Media and Communication Center.

[87] Interview with Wolde Mikael Fitora, Deputy Director of Corruption Investigation and Prosecution Directorate, Addis Ababa, 19 March 2016 and Interview with Damaw Asfaw, Principal Prosecutor of the FEACC, Addis Ababa, 30 March 2016.

[88] Ibid

alleged corruption cases. Thus, the FEACC needs to improve its internal control and accountability mechanism so as to ensure its integrity and make its investigative and prosecutorial functions effective. This is also believed to be important to win the hearts and minds of the public and rally them in the anticorruption struggle.

5.3 ADJUDICATION, CONFISCATION OF ASSETS AND OTHER LAW ENFORCEMENT MEASURES

With respect to adjudication, it is desirable to examine on how many of the corruption cases taken to court, the guilty verdict were passed. In the period between 2011 and 2015, the FEACC took 1,817 corruption files to courts and the court passed guilty verdicts on 86.9% of these files (FEACC, 2015c). This shows that the FEACC has been registering high conviction rates as the majority of corruption cases taken to court are ruled in favour of the FEACC as far as guilty verdict is concerned.

As to the sentences passed by courts, 1,197 defendants received various prison terms in connection with corruption offences in the past four years. As shown in the table below, 1,000 convicts received prison terms up to five years while only eight offenders were sentenced to above 15 years of imprisonment. This indicates that the majority of the offenders received light sentences. As it was apparent from the interviews, lack of evidence in substantiating cases on the part of the prosecutor of the FEACC and the petty nature of most of the cases are largely causing the prison sentences to be light. However, there are concerns with regard to the proportionality of the penalty handed down by courts on some serious offences.

Table 5: Sentences given by courts on corruption convicts between the years 2012-2015

YEARS	**SENTENCES RECEIVED BY CONVICTS**			
	Up to five years of imprisonment	**6-10 years of imprisonment**	**11-15 years of imprisonment**	**Above 15 years of imprisonment**
2012	440 convicts	116 convicts	27 convicts	5 convicts
2013	206 convicts	52 convicts	2 convicts	1 convict
2014	120 convicts	34 convicts	5 convicts	-
2015	234 convicts	46 convicts	7 convicts	2 convicts

Total Number of Convicts	**1000**	**148**	**41**	**8**

Source: FEACC Annual Reports

Although the UNCAC requires contracting parties to make sure that the sanction against defendants should take into account the gravity of the offence (Article 30), there is a concern in the country regarding the compatibility of the prison sentences passed on those found guilty of corruption offences with the gravity of the crime they committed. As Mr. Gebru Gebeyehu, Director of Investigation and Prosecution Directorate, said during the interview that in some cases the penalty handed down to corruption convicts is incompatible with the gravity of the offences they committed; the penalty may not be as stiffer as the crime committed. In addition, assessment study conducted by the FEACC (2015d) indicated that some respondents are of the view that the penalties against some offenders are not adequate enough to give lesson to others. The wide discretionary power that the judges enjoy in their decisions is responsible for passing light sentences that do not much to the gravity of the offence.[89] It was learnt that, although a new guideline that aims at enhancing transparency and accountability towards sentencing developed by the Federal Supreme Court in 2013, the problem has not been reduced fully. As can be inferred from Robert Klitgaard's (1988) formula $C = M + D - A$ (Corruption equals to Monopoly plus Discretion minus Accountability), discretionary power needs to be reduced to prevent corruption in adjudication. Some key informants even doubt the integrity of some judges while giving ruling. The Commissioner of the FEACC also said at the stakeholders meeting in 2015 that there are corrupt judges who exchange justice for ethnic relationship and sexual desire.[90] In fact, the justice sector in the country including the judiciary itself has never been immune from corrupt practices. The study by Global Corruption Barometer (2013) revealed that, 35 % of the respondents in Ethiopia felt that the judiciary was corrupt or extremely corrupt. Thus, improving the integrity of the justice sector is crucial together with enhancing the capacity of the FEACC for the effectiveness of anticorruption undertakings in the country.

[89] Interview with Gebru Gebeyehu, Director of Investigation and Prosecution Directorate of the FEACC, Addis Ababa, 18 March, 2016.

[90] The Reporter News Paper, 21 October, 2015, Vol. 21. No. 1615, Amharic Version, Media and Communication Center

Another law enforcement measure set by the international anticorruption instruments is confiscation of assets. In cases of corruption offences, law enforcement undertakings do not usually end with prosecution and imprisoning the offenders, the money and property embezzled through the crime need to be frozen, seized and finally confiscated. The UNCAC requires, in its mandatory provisions, contracting parties to take legislative and other measures to enable the freezing and confiscation of proceeds of crime, property, equipment or other instrumentalities of corruption (Article 31).

One of the duties of the FEACC given by Proclamation No.433/2005 in relation to law enforcement was to freeze the asset of a person under investigation and confiscate it when court ruled that the asset was obtained by corrupt practices (Article 7). Based on this legal ground, the FEACC has been pursuing to restrain and confiscate assets believed to be acquired through corruption. The FEACC established an asset recovery team under its Investigation and Prosecution Directorate in 2009. Since then various restraining and confiscation measures were taken by the FEACC. Among the restrained alleged proceeds of corruption by the FEACC include cash worth hundreds of millions of Birr, more than a million square meter of urban land, several vehicles, factories, commercial enterprises, share values and gold (FEACC, 2015c). The restraining process is usually followed by confiscation undertakings if the court rules that the proceeds of the offences obtained by corrupt practices. With respect to confiscation of proceeds of corruption, the FEACC made possible the confiscation of the following assets in the past six years:

- 134.1 million Birr
- 563,283 square meter of land
- 21 vehicles
- 17 houses and buildings
- 9 Commercial enterprises

Although the FEACC made possible the confiscation of the above-mentioned assets, such an undertaking does not much with the perceived embezzled assets in the country. The Commission has found the asset restraining and confiscating undertaking very challenging. The challenge mainly emanates from the current trend in which most suspects do not place the alleged embezzled assets and properties in their own names or under the possession of their family members.[91] Even quite a number of suspects do not deposit their assets in the banks to avoid possible detection. Thus, scrutinizing on the suspects only will take the restraining and confiscating efforts to nowhere. This has compelled the FEACC to widen the scope of its inquisition in an attempt to trace the proceeds of corruption and embezzled assets; and unfortunately, this requires more resources and manpower that cannot be availed easily. Moreover, the asset recovery team of the FEACC is not staffed with enough man power; it is operating with four employees only and unequipped with the necessary investigative skills and logistics. Besides, the effort to seize and confiscate proceeds of corruption has been affected by slow response coming from various institutions for request of relevant documents. Lack of speedy decision and lengthy litigation at the court is also another challenge as there is no bench that exclusively deals with the restraining and confiscation of asset. The FEACC has also encountered problem in administering the restrained assets.[92] In this connection, there has been a difficulty with regard to keeping the restrained assets especially vehicles in suitable and safe places and assigning “court receiver” that manages the restrained assets. Most individuals are not willing to be appointed as court receiver due to the heavy responsibility bestow up on them. All these have been negatively affecting the effort to freeze and confiscate of proceeds of crime, property, equipment or other instrumentalities of corruption. Given the number of problems mentioned above, it is hardly possible to say that such an undertaking has been given proper attention in the country. Thus, the FEACC’s undertaking to confiscate asset obtained through corruption is not robust enough.

Apart from confiscation of assets, the international anticorruption instruments particularly the UNCAC require states parties to annul or rescind a contract, withdraw a concession or other similar instrument for a consequence of corrupt practices (UNCAC Article 34). The FEACC’s investigation and prosecution activities resulted in the annulment of few procurement contracts stained with corruption in the past five years. However, the FEACC is mostly trying to handle the matter through its urgent systems-review undertakings rather than by its law enforcement measures. As mentioned in the previous chapter, the FEACC blocked, through its urgent

[91] Interview with Legesse Derra, Principal Investigator at the Asset Recovery Team of the FEACC, Addis Ababa, 19 March, 2016.
[92] Ibid.

systems-review, a number of procurements that may lead to corrupt practices. Besides, the Federal Procurement and Property Administration Agency has been dealing with such matter as it has the authority to annual procurement contracts on the ground of unethical practices (Proclamation No. 649/2009).

As to compensation for damage, there is a legal ground in the country so that entities or persons who have suffered damage as a result of an act of corruption can ask the courts for compensation (Criminal Code Article 101, Civil Code and Article 2027). Therefore the country is in compliance with Article 35 of the UNCAC that require contracting parties to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. However, the initiation of legal proceedings by entities or persons with respect to compensation for damage in the country is not frequent as corruption by its nature usually affects the wider public than single individual or entity.

With regard to the liability of legal persons for participation in the offences specified in the UNCAC and UNTOC, such law enforcement measure is stipulated in the Proclamation No. 434/2005 of the Revised Anticorruption Special Procedures and Rules of Evidence as well as in the Criminal Code (2004) of the country. Accordingly, the FEACC investigated and prosecuted a total of five cases involving legal persons such as companies in the past five years. The most notable of these cases were the prosecution of Sheba Metal Casting Share Company in connection with theft of power worth 65,336,214.33 Birr from the Ethiopian Electric Power Corporation. The prosecution resulted in the penalization of the company in addition to the individuals involved in the offence. The FEACC also filed charges in against an Israeli company, Tidhar Excavation and Earth Moving, in connection with tax evasion worth 144 Million Birr (FEACC, 2015a). In overall the numbers of legal personalities prosecuted for alleged involvement in corruption does not seem that much impressing. The low performance regarding liability of legal persons such as companies was mainly emanated from the Commission’s mandate which was limited to the public sector.[93] The only room that allows the FEACC to sue private companies for corruption is the alleged involvement of public offices in corrupt practices

[93] Interview with Damaw Asfaw, Principal Prosecutor at the Investigation and Prosecution Directorate, 30 March, 2016, Addis Ababa.

committed by such companies. In a situation where there is no involvement of public offices, the FEACC cannot investigate or prosecute private companies. Despite the increasing concerns that serious crime is committed by or under the cover of legal persons such as companies, corporations or charitable organizations, the FEACC' role has been inadequate in this respect due to limitation in its jurisdiction.

Concerning the statute of limitation, the UNCAC and UNTOC demanded for a longer statute of limitation period so as to make the alleged offender not to evade justice. No significant predicament in the country was mentioned by the key informants in this regard. The Criminal Code (Article 216-222) also indicated that the country's legal system provides a relatively longer period of limitation for serious crimes such as corruption.

With regard to the issue of immunity, the UNCAC requires states parties to ensure that the investigation and prosecution activities are not to be impeded by immunity granted to public officials. In Ethiopia, there is a legal framework that grants immunity to public officials and also procedures by which immunity is revoked. Usually, the prosecutor of the Ministry of Justice has the authority to submit the request for immunity to be revoked. The FEACC has also been claiming this power. According to the FEACC's Revised Establishment Proclamation (2005), the FEACC has the power that is given to the prosecutor of the Ministry of Justice in matters of corruption offences. Taking in to account this legal ground, the FEACC, whenever it finds appropriate, submit its request to parliament so that the immunity of the accused official could be lifted. However, this request has not been without challenges. The request to lift the immunity of Kasim Fite, former Member of Parliament and deputy head of the Addis Abeba Land Development & Administration Office who was accused of corruption in 2013 was a case in point. Although the Commission requested the House of Peoples' Representatives for Kasim's immunity to be lifted, responding positively was not an easy task for some MPs as they thought that there was a fault within the procedures that brought the case to their attention.[94] Some MPs, believed that the case should have been presented to them through the Ministry of Justice rather than via the FEACC. And as a result, the issue dragged on for longer period before the House finally came to the consensus to lift Kasim's immunity. Recently, a new amendment that clarifies

[94] Addis Fortune News Paper, 8 September, 2013, Vol. 14, No. 698, Independent News & Media Plc.

and confirms the power of the FEACC to request the parliament to lift the immunity of public officials who are accused of corruption has been made on the anticorruption laws.

Besides criminal sanctions, the UNCAC indicates the desirability of administrative measures against corruption offences. Accordingly, the FEACC has made possible some minor cases to be resolved by administrative mechanisms. In 2015 alone, the FEACC referred 28 cases of minor offences to various government institutions so that administrative measures could be taken (FEACC, 2015a). The cases referred to various institutions are resulted in disciplinary measures such as dismissal, demotion and fine of salary. The UNCAC also encourages states parties to consider establishing procedures for removal, suspension or reassignment of public officials accused of corruption as well as for prohibition of convicts from holding public offices depending on the gravity of the offence (Article 30). In Ethiopia these measures are supposed to be handled by the Federal Civil Servants Proclamation No. 515, 2005. According to the proclamation, civil servants are liable to rigorous disciplinary measures including dismissal when they committee corruption offences such as abuse of functions, bribery and breach of trust (Civil Servants Proclamation No. 515, 2005). In addition, any person who has been convicted by a court of competent jurisdiction of breach of trust, theft, or fraud shall not be eligible to be civil servants (ibid). However, the Proclamation does not extend such ban to convicted public officials such as ministers, judges and elected persons from holding public offices. In Ethiopia, there has been public complaint that some officials who are fired from their post in connection with corruption will be reinstated in other posts without being accountable for their wrong doings although lack of evidence is usually mentioned by the government as justification for not making such officials accountable. This complaint rose at the FEACC's stakeholders meeting held in 2015 during which some of the participants doubted the commitment of the government in the anticorruption struggle.[95] Thus, measures with regard to removal, suspension or reassignment of public officials accused of corruption need to be taken without prejudice to legal accountability. In addition, establishing a clear procedure for the prohibition of public officials convicted of corruption from holding public offices is essential in the country.

[95] The Reporter News Paper, 4 October, 2015, Vol. 21 No. 1610. Amharic Version, Media and Communication Center.

As to bank secrecy, the international anticorruption instruments require state parties to ensure that bank secrecy should not be an impediment to investigate and prosecute corruption offences. Fortunately, unlike in the developed world, bank secrecy is not a serious problem in Africa as most countries in the region have not tighter bank secrecy law. Ethiopia is not an exception in this regard. The FEACC has the power to investigate and obtain information about, with the order of the commissioner, any bank account of suspected persons where there is reasonable suspicion in connection with corruption offences (FEACC Revised Establishment Proclamation Article 7, 2005). Similarly, the Financial Intelligence center (FIC) has the power to access bank documents under Anti-Money Laundering Proclamation No. 657/2009. There is no noticeable problem in enforcing the legal frameworks in this respect.[96] However, there is still difficulty in tracing unlawful financial transactions in the country as most transactions do not pass through the banking system.

With regard to suspect's cooperation with law enforcement authorities, the UNCAC requires contracting parties to take measures to encourage suspects or accomplices to supply evidence (Article 37). One mechanism that is believed to realize this objective is that exempting the accomplices from prosecution (UNODC Technical Guide to the UNCAC, 2009). Ethiopia has legal provisions that allow the FEACC to exercise some discretionary legal powers with respect to exempting suspects from prosecution. The Commissioner of the FEACC may grant immunity from prosecution to person involved in corruption provided that the he or she is willing to give substantial evidence as to the offence and the role of his partners before the case taken to the court (Proclamation No. 434/2005, Article 43). Based on this provision, the FEACC granted immunity to some suspects and shifted them to witnesses. Even the 2015 amendment on anticorruption laws granted the Commissioner a new power to end corruption cases by alternative means other than prosecution such as bargaining in an attempt to save time, energy and resources to be wasted due to investigating and prosecuting some cases as well as facilitate to recover assets that could otherwise not be returned through legal action. However, the UNCAC require states parties to try to ensure that any discretionary legal powers would not undermine the effectiveness of law enforcement measures (Article 30). Whether such

[96] Interview with Blen Girmay, Head Legal Service of the FEACC, Addis Ababa, 15 March 2016.

discretionary legal power could bring detrimental effect on effective law enforcement in the country it is yet to be seen.

With regard to jurisdiction, the UNCAC calls on state parties to take measures to establish their jurisdiction over the offences established in accordance with the Convention. Ethiopia establishes its jurisdiction to any person whether a national or a foreigner who has committed one of the crimes specified in the Criminal Code of the FDRE on the territory of Ethiopia (Article 11). Accordingly, any person irrespective of his nationality can be sued by Ethiopia for the crime which is punishable in Ethiopia and committed on any part of the country's territory such as land, water, vessel or aircraft. This jurisdiction also applies when the offence is committed against its national or when the offence is committed by its national. In addition, the country is adhered to the principle of prosecute or extradite as long as the crime is punishable according to the Ethiopian law. Accordingly, Ethiopia establishes jurisdiction over the offences when the alleged offender is present in its territory or it can extradite him or her. If the offender is an Ethiopian national residing in the Ethiopian territory, he or she may not be handed over to a foreign court; rather he or she shall be tried by Ethiopian courts under Ethiopian law (Criminal Code, Article 21). Moreover, the country asserts jurisdiction to deal with crimes committed in a foreign territory which have their effects in Ethiopia. However, such jurisdiction does not cover all the offences; it rather applies only to crimes against the State of Ethiopia, its safety or integrity, its institutions, essential interests or currency (Article 13 of the Criminal Code). In addition, the country has not established jurisdiction in accordance with the UNCAC when the offence is participatory act in money laundering and is committed outside its territory. It is the existing legal framework that has prevented the country from ensuring jurisdiction over participatory acts to money laundering committed outside Ethiopia.[97] In general, although Ethiopia has complied with most of the provision of the UNCAC with regard to establishing jurisdiction, the gap in relation to dealing with participatory acts to money laundering committed outside Ethiopia need to be addressed given the cross boundary nature of the crime.

[97] Interview with Blen Girmay, Head Legal Service of the FEACC, Addis Ababa, 15 March 2016.

CONCLUSION

This paper has identified several gaps regarding the attempt by the Federal Ethics and Anticorruption Commission of Ethiopia (FEACC) to implement the prevention, criminalization and law enforcement provisions of the international anticorruption instruments ratified by Ethiopia. One of these gaps is the lack of a functioning comprehensive, cohesive and inclusive national anticorruption policy that would help guide the overall anticorruption activities and set realistic long term goal in the fight against corruption in the country. Despite the importance attached by the UNCAC to formulating comprehensive national anticorruption policy, the issue seems to have been given low regard by the government and the FEACC. There is also gap in the implementation of anticorruption strategies through promoting transparency, accountability and integrity in the public sector. Although the FEACC in its attempt to promote transparency, accountability and integrity in the public sector has been conducting a significant number of review of systems and working procedures which may be conducive to corruption in public offices and public enterprises, this endeavor has faced serious implementation challenges. Most recommendations made by the FEACC in relation to systems-review undertakings were ignored by the reviewed institutions and there is no sanctioning mechanism for such non-compliance. In addition, there is also a capacity constraint that hampers the quality of systems-review on part of the staffers of the FEACC.

As to ensuring transparency and accountability in public procurement and management of public finances, the Commission's urgent systems-review scheme saved hundreds of millions of Ethiopian Birr from being lost in various institutions due to illegitimate procurement practices and this can be taken as a good achievement in promoting transparency and accountability in the procurement sector. However, the procurement and financial management area is still entangled with several problems that require enhanced efforts by the FEACC and other relevant institutions.

On areas of justice sector and human resource management, the FEACC conducted limited systems-review. Despite the high regard given by the UNCAC to reduce the opportunities for corruption among the judiciary and prosecution and the high vulnerability of the sector to corruption, activities by the FEACC in this respect seem to be not encouraging. One of the reasons for low performance in this respect is lack of expertise in the area among the staffers of the FEACC. There is also doubt that the FEACC is not bold enough to examine this sensitive area at the desirable level. Besides, the FEACC has never been active in the formulation and follow up of implementation of codes of conduct for judges due to jurisdictional limitation.

The performance of the FEACC with respect to promotion of integrity and transparency in human resource management through systems-review is also found to be low. Despite the fact that non adherence to merit based principle in recruitment and promotion of civil servants and the fusion of government and party function are the main obstacles to curb corruption in Ethiopia's public service, the sector has been out of the Commission's priority area. In addition, there is no functioning code of conduct for public officials and civil servants in Ethiopia at the national level. The reason for the absence of codes of conduct at the national level could not be far from the little importance given to such a code by various pertinent institutions including the FEACC. Even if some institutions in the country formulated their own codes of conducts with the help of the FEACC, the implementation mechanism is not well developed and this has had repercussion on the overall prevention activities of the FEACC.

As part of promoting integrity, transparency and accountability in the public functions and resolving conflict of interest, the international anticorruption instruments require the disclosure of the assets of public officials. However, the asset registration and disclosure endeavor of the FEACC is marred by ineffectiveness particularly when it comes to the accessibility of the registered information and verification of assets due to capacity constraints and lack of enhanced commitment. The intention to resolve conflict of interest and ensure transparency and accountability in the public functions through this scheme has not been fruitful.

Concerning preventing corruption in the private sector by the FEACC, there had been a legal framework inadequacy. The mandate of the FEACC had been confined to public sector corruption for the past 14 years and this was indeed a failure in meeting the standards of UNCAC and AUCPCC that require states parties to prevent and combat corruption in both the public and private sector. It is only very recently that the FEACC's mandate was expanded to the private sector.

As to expanding ethics among the society, the FEACC has been contributing its part to comply with the international requirement by increasing and disseminating knowledge about the prevention of corruption. However the FEACC has limitation in delivering in-depth ethics education due to capacity constraints.

With respect to coordinating and engaging the public in the fight against corruption, the FEACC made possible the establishment of various anticorruption forums and coalitions which aim at enabling the different sections of the society to play their part in the anticorruption struggle. However, most of them are not delivering at the desired level. Especially the activities of ethics liaison units which are supposed to spearhead anticorruption moves in their respective institutions are almost crippled due to lack of support by their own institutions, absence of enthusiasm among themselves and follow-up problems by the FEACC. In addition, despite the demand by the international anticorruption instruments to engage the private sector especially the Civil Society Organizations (CSOs) in anticorruption undertakings, the FEACC is not in position to work closely with all the CSOs. There has been lack of trust between the FEACC and some SCOs on grounds of political affiliation. Moreover, the role of the civil society organizations in the country has become weakened following the adoption of the Proclamation that Provides for to the Registration and Regulation of Charities and Societies in February 2009. All these are believed to be hampering such organizations not to play robust role in the fight against corruption. Limitation with respect to access to information and media freedom in the country has also affected the full engagement of the public in corruption prevention activities.

As to criminalization and law enforcement measures, Ethiopia criminalized the offences specified in the UNCAC, AUCPCC and UNTOC with little exception. The exclusion in this respect is related to the solicitation or acceptance of bribes by foreign public officials and officials of public international organizations. In addition, the supply sides of foreign bribery and bribery in the private sector and the demand side of bribery in the private sector have been criminalized partially. Capacity limitation and other implementation challenges are mentioned as causes for not criminalizing such offences fully.

This aside, the FEACC has been investigating and prosecuting the offences specified in the international anticorruption instruments with the exception of offences related to the private sector corruption and foreign bribery which do not fall within its jurisdiction. The majority of FEACC's investigation and prosecution activities were centered on offences such as abuse of functions, embezzlement by a public official and bribery by public officials. Although the FEACC investigated and prosecuted nearly 1,780 corruption files in relation to these offences in the past five years, most of the cases were of petty type. The number of investigated and prosecuted cases with respect to grand corruption in general and other offences specified in the UNCAC, AUCPCC and UNTOC such as illicit enrichment, obstruction of justice and laundering proceeds of corruption in particular are relatively smaller. A number of factors are responsible for the failure in this regard. One of them is related to the FEACC's dependency on tip-offs coming from the public. Most of the tip-offs coming to the FEACC from the public are not focusing on grand and intricate corruption offences as it is mostly difficult to uncover such offences without enhanced intelligence and surveillance mechanism. The Commission's inability to employ intelligence and surveillance mechanism has been hampering its endeavor to uncover such offences. Although grand corruption involving government officials are perceived to be on the rise and corruption and rent seeking is said to be a number one problem in the country, very few high profile arrests were made in connection with the matter in the past five years. This also casts doubt over the independence of the FEACC. This study contends that although the FEACC is legally independent, it has not been protected adequately from undue influence and interference particularly when carrying out its investigation and prosecution activities and this has had negative consequence on its effectiveness. In this connection, it is possible to infer that the political commitment towards the fight against corruption in the country has not reached at the desirable level. The prevailing poor accountability and lack of transparency in governance in the country are also found to be hindrance to the effective operation of the FEACC.

Capacity problem is another major factor that has been affecting the effectiveness of the FEACC's investigation and prosecution endeavor. The FEACC has been suffering from shortages of investigators and prosecutors that match with the complex and challenging nature of the crime. This has led to employing poor investigation and prosecution technique and tactic. Besides, although the international instruments require state parties to avail the necessary resource, remuneration, specialized staffs as well as training that the staff of anticorruption institutions may need to carry out their functions, no adequate effort was made in this regard in

Ethiopia. Financial and human capacity limitation together with lack of proper attention and weak cooperation among various government offices has also been impeding the implementation of whistleblowers and witnesses protection law in the country and this in turn has become a hindrance to the FEACC's attempts to gather evidences for investigation and prosecution purposes and to enhance the participation of the public in the fight against corruption. Significant numbers of people who want to whistle blow and give testimony are still afraid of reprisal by offenders as the FEACC and other relevant institutions are not in a position to provide the necessary protection. Moreover, despite the fact that combating corruption offences require strong coordinated efforts among various bodies in the country, the willingness among heads of various government institutions to cooperate and provide relevant information requested for investigative and prosecutorial purposes is not as it should be.

In general, the FEACC has serious limitations in effectively implementing significant provisions of international anticorruption instruments ratified by the country. Issues ranging from rectifying the capacity constraints of the FEACC to enhancing its autonomy and improving the governance and accountability milieu in the country in which the Commission is operating need to be addressed. Recently, during the finalization of this study, in what purports to be to alleviate the FEACC's difficulty particularly with respect to law enforcement measures, a new legislation that gives power to the newly established Federal Prosecutor General to prosecute corruption and other offences is approved by the House of Peoples' Representatives. Similarly, the corruption investigation activities hitherto carried out by the FEACC have now been shifted to the Federal Police. This, surely, limits the FEACC's role in corruption prevention. However, it is too early to say this move helps resolve the prevailing predicament and enhance the overall anticorruption endeavor of the country in general and the implementation of the international anticorruption instruments in particular.

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APPENDICES

Appendix 1

Interview Questions

Are there any legal frameworks that have not yet enacted but important to the corruption prevention and law enforcement activities of the FEACC?

Are there any legal provisions which hinder your work? In what ways could the legal framework be improved to facilitate the prevention and law enforcement measures of the FEACC?

Could you explain the factors behind the gaps for some of the limitations in the legal frameworks?

Does the lack of national anticorruption policy and national codes of conducts create problems in the performance of the FEACC?

How would you assess the performances of FEACC in disseminating ethics education, examining working procedures at various institutions, mobilizing and coordinating the public against corruption, in asset registration and disclosure, investigation and prosecution corruption offences, in recovering assets? What are the challenges and possible causes of drawbacks in carrying out these activities?

What major achievements are registered with respect to preventing and combating corruption in procurement, justice sector, human resource management, money laundering? Could you explain the major challenges and possible cause of drawbacks in this regard?

What are the major challenges to might hinder the effectiveness of the FEACC? What are the internal and external factors that inhibit the effectiveness of FEACC in prevention, investigation and prosecution areas?

How the FEACC is implementing the law with regard to protection of whistleblowers and witnesses? What are the possible reasons for not doing enough in this respect?

How would you assess political will to fight corruption in Ethiopia?

Is the Commission free from undue influences in its operation?

Are the requests and recommendations presented by the FEACC being complied? Is there any sanction for not complying or responding? How do you assess the cooperation of other organization in anticorruption undertakings?

Are there any overlaps in terms of mandate with other institutions?

What are the main skills, knowledge and experience missing at the FEACC in the prevention, investigation and prosecution areas?

Tell us about the staff recruitment, promotion and incentive criteria in the FEACC as well as staff turnover? How do you evaluate capacity of your staff?

Are you satisfied with the promotion criteria, salary scale, allowances and team work in the FEACC?

Is the FEACC staffed and funded adequately? If not, what are the major causes?

Did the FEACC do anything in preventing, investigate and prosecuting illegal political party funding? Does the law on political financing give certain mandate to the FEACC in this area?

How good is the FEACC in intelligence works pertinent to combating corruption?

What is missing with respect to Ethiopia's compliance with the UNCAC, UNTOC and AUCPCC with respect to corruption prevention, criminalization, investigation, prosecution, adjudication, confiscation of assets? What are the reasons for non compliance with some of the provisions of these instruments?

Are there relevant policies, strategies, legal and institutional frameworks and practices, as per the standards of international anticorruption instruments for the effective functioning of FEACC?

Appendix 2

List of Key Informants

INFORMANTS	TITLE	DIRECTORATE	Date of Interviews
Aklilu Mulugeta	Director	Corruption Prevention	March 15, 2016
Wondirad Seifu	Principal Consultant	Corruption Prevention	March 13, 2016
Assefa Mekonnen	Principal Consultant	Corruption Prevention	March 13, 2016
Abebe Zewdie	Principal Consultant	Coordination of Ethics Infrastructure	March 16, 2016
Demise Sinishaw	Principal Consultant	Coordination of Ethics Infrastructure	March 16, 2016
Nuru Addis	Principal Consultant	Asset Registration and Disclosure	March 17, 2016
Mesin Belayneh	Senior consultant	Asset Registration and Disclosure	March 17, 2016
Achamyelesh Shalemo	Principal Consultant	Ethics Education and Communication Affairs	March 16, 2016
Addis Lemma	Principal Consultant	Ethics Education and Communication Affairs	March 16, 2016
Gebru Gebeyehu	Director	Investigation and Prosecution	March 18, 2016
W/Mikael Fitora	D/Director for Investigation	Investigation and Prosecution	March 19, 2016
Legesse Derra	Principal Investigator	Investigation and	March 19,

		Prosecution	2016
Damaw Asfaw	Principal prosecutor	Investigation and Prosecution	March 30, 2016
Agumas Mulualem	Prosecutor	Investigation and Prosecution	March 14, 2016
Blen Girmay	Head	Legal Service	March 15, 2016

Declaration

I declare that this thesis is my original work and has not been presented for a degree in any other university, and that all sources of materials used for the thesis have been duly acknowledged.

Biruk Negash ____________________ ________________

Signature Date

Advisor's Approval

This thesis has been submitted for examination with my approval as a university advisor.

Fekade Terefe (Dr.) ____________________ ________________

Advisor Signature Date