Training Modules and Materials on Basic Law and Anti-Corruption in Ghana

Legal Aid Scheme, Ghana

May 2018
Training modules and materials on basic law and anti-corruption in Ghana

LEGAL AID SCHEME, GHANA

Prepared by
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With support from
Anti-corruption, Rule of Law and Accountability Programme (ARAP)

May 2018
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List of abbreviations

ADR  Alternative Dispute Resolution     
A-G  Attorney General                   
ARAP Accountability, Rule of Law and Anti-Corruption Programme  
AUC  African Union Convention on Preventing and Combating Corruption 
CA  Court of Appeal                     
CHRAJ Commission on Human Rights and Administrative Justice 
CI  Constitutional Instruments         
DPD  Directorate of Public Defenders    
EI  Executive Instruments               
GBR  Ghana Bar Report                   
GDP  Gross Domestic Product            
GLR  Ghana Law Report                   
GSGDA Ghana Shared Growth and Development Agenda 
HC  High Court                          
LAS  Legal Aid Scheme                   
NRCD National Redemption Council Decree 
PNDC Law Provisional National Defence Council Law  
SC  Supreme Court                       
SCGLR Supreme Court of Ghana Law Report  
UN  United Nations                      
UNCAC United Nations Convention Against Corruption  
VAT  Value Added Tax
Foreword

A key pillar for any thriving democracy and good governance is access to justice for all. Access to justice is critical to meet the basic needs of ordinary people as it is to prevent and deter corruption, investigate and punish corrupt individuals, be they politicians, bureaucrats or private business people. Revelations in the Report of the Auditor General and deliberations at the Public Accounts Committee of Parliament echo the need for eternally vigilant “citizens” who will be active participants in the fight against corruption in Ghana.

Ghana is a signatory to the United Nations Convention Against Corruption (UNCAC). Ghana ratified the UNCAC on 27 June 2007. The UNCAC imposes on States Parties, a duty to take effective action against corruption. Ghana is also a signatory to the African Union Convention on Preventing and Combating Corruption (AUC). This Convention was ratified on June 13, 2007. The AUC imposes additional legal obligations on Ghana to combat public corruption.

On the 3rd of July 2014, the National Anti-Corruption Action Plan (2015 – 2024) (NACAP) was adopted by Parliament. NACAP is a Plan that transcends political boundaries and tackles corruption holistically through Prevention, Education and awareness creation; and Investigation and enforcement. LAS has obligations under NACAP. This includes providing incentives, including free legal services for public interest litigation involving corruption, to the citizens of Ghana.

The realities of a democracy like Ghana are that everything about the management of public resources is steeped in policy and law. The active citizen and other stakeholders desirous of taking action must understand what to do, when to do it and how to do it in the fight against corruption in Ghana. When the ordinary man does not know what to do, he or she must have an appropriate support in a public office like the Legal Aid Scheme (LAS). In order not to have a disoriented public desirous of taking lawful yet technical steps to fight corruption, the LAS must stand in readiness with adequate capacity to respond to the need for support to the public. This Manual is part of the processes to provide the necessary capacity to the frontline staff of the LAS.

We are encouraged by the support and collaboration of the Accountability, Rule of Law and Anti-Corruption Programme (ARAP) with financial contributions from the European Union.

My hope is that this Manual will contribute to engendering that critical mass of the population needed to succeed in fight against corruption in Ghana. I encourage all members of staff of the LAS to make the best use of the material contained in this Manual as the LAS provides the needed to support to the public to discharge their constitutional obligations to fight corruption and mismanagement of public resources.

Al-Hassan Seini
(Executive Director, Legal Aid Scheme)
Acknowledgement

The development of the Legal Aid Scheme’s (LAS) Training Modules and Materials on Basic Law and Anti-Corruption in Ghana was carried out under the European Union’s Accountability Rule of Law and Anti-Corruption Programme which aims at consolidating the Government of Ghana’s initiatives on anti-corruption supporting actions towards enhancing accountability and rule of law. Our sincere gratitude goes to the European Union Delegation to Ghana, for its support to National processes of institutional reforms, and institutional capacity development, especially within legal aid service delivery.

We are further gratefully for the leadership and the contribution of the FIIAPP, as the implementing partner of the ARAP Programme and to the ARAP Coordination Unit Team for their relentless support to LAS throughout the process.

This Manual would not have taken its form without the dedication of Mr. Tuinese Edward Amuzu, the Legal Consultant, who led the development of the Manual. Mr Amuzu’s resolve and patience, as well as his reception to accommodating stakeholder’s inputs and contributions, resulted in the development of this Manual, which is the first to highlight training modules and materials on basic law and anti-corruption for the Legal Aid Scheme. We commend his work and acknowledge his support from the initial consultations to validation of the Manual with all relevant stakeholders.

The Leadership of the Legal Aid Scheme, has made this process successful with its vision and determination. The entire staff of the Legal Aid Scheme also made significant inputs to finalizing the manual, especially though the comprehensive review and inputs made at a validation workshop supported by ARAP.
Introduction to the manual

I. Background to the Manual

The provision of legal aid as required by the 1992 Constitution ensures justice for all. A legal system cannot provide justice without legal aid to assist economically disadvantaged individuals assert and defend their rights to obtain a remedy. The citizenry may also need legal aid in discharging obligations imposed on them by the 1992 Constitution. A justice system must be impartial and accessible in delivering results to all regardless of their wealth.

The 1992 Constitution protects fundamental civil liberties, political and human rights including the right to legal defence and making access to justice a key element of Ghana’s democracy and justice system. Ghana’s justice system comprises the Ministry of Justice and Attorney Generals Department, the Judiciary and Judicial Service, Ghana Police Service, Ghana Prisons Service, the Legal Aid Scheme, and the CHRAJ.

Ghana’s justice system continues to reform to reduce inefficiencies and has made significant progress including the use of alternative dispute resolution (ADR), setting up of specialized and fast track courts, and court automation. But, inadequate legal aid combined with the prohibitive cost of legal services significantly impair access to justice for the socially and financially disadvantaged. These issues have been identified in Ghana’s medium-term National Development Policy framework, Ghana Shared Growth and Development Agenda (GSGDA II), 2014-2017. The GSGDA prioritizes increasing the capacity of the legal sector to enhance speedy and affordable justice and to support the quick disposal of cases.

The framework identified strategies including a review the Legal Aid Act, 1997 (Act 542); creating under the Legal Aid Scheme a Directorate of Public Defenders (DPD) analogous to the Directorate of Public Prosecutions at the Attorney General’s Department as well as a Citizens’ Advisory Bureau to give free legal advice to citizens; broadening access of the poor to legal aid; and strengthening the legal Aid System to include making some services free through the support of ADR to avoid costly and delayed litigation.

The government recognizes the importance of the Scheme. The government accepted the recommendation of the Constitution Review Commission to set up the Scheme as an Independent Constitutional Body. This process is ongoing with a bill before Cabinet.

II. Objectives of the Manual

This Manual is intended to provide all members of staff of the LAS with knowledge and skills with respect to the fight against corruption in Ghana.

This Manual will help to provide training to all staff in order to equip them.
III. Target Audience

› This manual provides a guide for training staff of the LAS. The main target groups of this manual are officers of the LAS.
› The Manual contains materials useful for a basic course for National Service personnel, and ADR Officer.
› The Manual also has practical content for lawyers of the LAS (in-house and outside lawyers who support the LAS). In view of the target audience who are expected to be mainly adult learners, the Manual relies on an application-oriented method of instruction.

IV. Preparing for the training - Trainers’ checklist

<table>
<thead>
<tr>
<th>List of items to check</th>
<th>Done?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agenda reviewed and agreed upon</td>
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<tr>
<td>2. Other trainers (if applicable) clear on agenda</td>
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<td>3. Materials reviewed and amended if necessary</td>
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<td>4. Agreement with other trainers on PowerPoint presentations</td>
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<td>5. Presentations prepared</td>
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<td>6. All PowerPoint presentations cleared and copied onto laptop for training</td>
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<td>7. Spare copy of PowerPoint slides on a USB stick and emailed to all trainers</td>
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<td>8. Participants’ materials printed</td>
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<tr>
<td>9. Items needed for the training (List of requirements) procured</td>
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<tr>
<td>• Folder with printed materials for attendees</td>
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<td>• Status Survey material for attendees</td>
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<td>• Satisfaction Survey materials for attendees</td>
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<td>• Computer</td>
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<td>• Projector with pointer</td>
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<tr>
<td>• 3-4 white boards and flip-chart papers</td>
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<td>• Post-It Papers and</td>
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<tr>
<td>• 6 different colours of markers</td>
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<tr>
<td>10. Training Packs sent to (and arrived) at venue</td>
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<td>11. Preparation meeting held with other trainers</td>
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<tr>
<td>12. Room layout communicated to venue</td>
<td></td>
<td></td>
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<tr>
<td>13. List of participants confirmed</td>
<td></td>
<td></td>
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<tr>
<td>14. Group exercises prepared</td>
<td></td>
<td></td>
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<tr>
<td>15. Room layout physically checked (and changed if necessary)</td>
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</tr>
<tr>
<td>16. Lunch, coffee and other arrangements clarified and communicated to organizers at venue</td>
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</tbody>
</table>
V. Workshop design and training logistics

In general, the Sessions are designed in a 5-step approach:

- **Step 1** allows the Facilitator to introduce the Session and the topic for discussion. The topic is the relevant law or issue for discussion for the Session.
- **Step 2** gives workshop participants opportunities to share/reflect on their own personal experiences as Officers of the LAS in relation to the subject of discussion for the Session.
- **Step 3** gives the Trainer the opportunity to briefly discuss views expressed by the trainees and share information with participants on the relevant law under consideration. This is the moment to impart content of the law for the Session.
- **Step 4** gives workshop participants opportunities to strategize and plan on how to tackle the problems/issues/topics under discussion. Facilitator provides Questions, Exercises, Scenarios and Handouts to help the group discussions. The groups should report to the plenary on their findings or answers to the questions provided after working on the Case Studies.
- **Step 5** gives the Trainer the opportunity to wrap up the discussions. This opportunity may be used to share the core messages of the Session and elicit from participants commitments towards their professional efficiency.

VI. Arrangement of the Modules

a. Organisation of the Manual

This manual has an Introduction, four Modules, and a Conclusion. The Modules are divided into Sessions. Each Module has:

- **Learning objectives**
  The learning objectives provide information on what the users of the manual should expect to learn at the end of studying the module.
- **Core messages**
  The core messages are provided early in the module to give a snap-shot of the essential contents of the module.
- **Exercises, facilitator’s notes and guide questions**
  These are provided to make the manual an easy learning material for the purposes of facilitating the training.
- **Case studies**
  Case studies have been relied on to demonstrate how the various laws under consideration work in practice. The case studies provide an opportunity for the participants to engage with practical exercises. The case studies also provide an opportunity for the participants to engage in the reality check that one has to undergo when deciding on which of the laws explained in this Manual to deploy. The case studies are found in Annex 5.
b. Overview of the Manual

- The Introduction to the Manual provides a brief background to the Modules. Module 1 discusses the mandate of the LAS in relation to the fight against corruption in Ghana. This Module also discusses some of the main domestic laws in relation to procedure on anti-corruption litigation in Ghana. Module 1 also provides an opportunity for trainees to discuss issues around human rights litigation which may confront the legal practitioner in the courtroom.
- Module 2 discusses the substantive domestic laws on corruption in Ghana. These include provisions of the 1992 Constitution, the Criminal Offences Act, 1960 (Act 29), the Whistleblowers Act, 2006 (Act 720). Other laws discussed in this Module include the Anti-Money Laundering Act, the Audit Service Act (provisions of disallowances and surcharges), the Criminal and other Offences (Procedure) Act, 1960 (Act 30) and Evidence Act, 1975 (NRCD 323). Some policies and plans on corruption such as the National Anti-Corruption Action Plan (NACAP), the Code of Conduct for Public Officers and the Guidelines on Conflict of Interest are also highlighted in Module 2.
- Modules 3 and 4 are designed mainly to provide knowledge to persons who provide para-legal services within the context of their work for the LAS. This Module may also come in handy for lawyers who wish to refresh their memories on some the critical fundamentals of the Ghana Legal System. There is a brief discussion of the historical context of the Ghana Legal System, the sources of law in Ghana, the Courts structure and Alternative Dispute settlement mechanisms. This Module ends with a focus on basic criminal law and Criminal Procedure in Ghana.
- Modules 4 discusses basic Contract law and Drafting Agreements, Labour and Industrial disputes, Landlord/Tenant disputes, basic torts with emphasis on compensation and insurance. The Module also discusses Maintenance, Custody, Paternity and divorce cases, Matrimonial causes (breach of promise to marry), Wills and the drafting of a Power of Attorney.
- Module 5 discusses Ghana’s obligations under the African Union Convention against corruption and the UN Convention against corruption.

VII. Getting started

1. Introduction of Participants

The trainer must lead participants to go through introductions. The trainer may permit the participants to introduce themselves or require them to choose partners, preferably persons not previously known to them to learn about them and introduce them very briefly.

2. Setting Ground Rules

In order for the trainer to commence, proceed and end in an orderly manner with little unwarranted interruptions, the trainer must lead the participants to set the ground rules for the training.
3. Administering Ground rules

The trainer should lead the participants to decide on how the grounds rules may be administered. The participants may elect one of their own to administer the ground rules in manner which is fair and without fear or favor.

4. Mapping expectations

Establishing the expectations of the participants at the outset, prior to introducing them to any technical content in this Manual is important and hence required of the Trainer. This is to help the Trainer to adjust and amend the training content where appropriate. It also provides an opportunity for the Trainer to clarify the objectives of the training where the expectations of the participants and the objectives of the training are not aligned. Establishing the expectations of the participants also helps the Trainer to have more information about the participants.

The expectations of the participants must be established before commencement of the discussions in the introductory part of the Manual.

5. Pre-Training Evaluation

At the end of the training, there must be an evaluation to ascertain whether participants have acquired the requisite knowledge and or skills where applicable. A baseline prior to the commencement of the training has to be identified for the purpose of comparison with the eventual results of the assessment of participants at the end of the training. This can be achieved through a pre-training evaluations.

The Trainer may use the Pre-training questionnaire (Annex 1) for the pre-training assessment. Give Participants 15 minutes for the pre training assessment. At the end of the training, use Annexes 1 and 2 for the evaluations.

The pre-training assessment must be conducted before commencement of the discussions in the introductory part of the Manual.
MODULE 1

The mandate of the LAS and anti-corruption

Session 1.1: Mandate of the LAS and anti-corruption
Session 1.2: Anti-corruption litigation
Session 1.3: Human Rights litigation
Session 1.1: Mandate of the LAS and anti-corruption

› **Target group:** All lawyers and ADR Officers of the LAS.
› **Recommended time allocation:** two hours.

1. Learning Objectives

By the end of this Module, participants should be able to:

› Understand the need for legal aid in Ghana and the mandate of the LAS.
› Understand the role of LAS in the fight against corruption in Ghana.
› Demonstrate understanding of the obligations the law imposes on all citizens to fight corruption.
› Articulate the role of the LAS in the anti-corruption fight in Ghana.

2. Core Messages

› Legal aid is a human right and indispensable.
› The main sources of law on legal aid in Ghana may be found in article 294 of the 1992 Constitution of Ghana and Section 10(1) of the Legal Aid Scheme Act, 1997 (Act 542).
› The Constitution provides that for the purposes of enforcing any provision of the Constitution, a person is entitled to legal aid in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.
› Section 2(3) of Act 542 defines legal aid to consist of representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring an end to any proceedings.
› Legal aid encompasses more than providing the poor and marginalized equal access to the court system, legal counsel, representation and assistance, but also includes access to both a quality lawyer and non-lawyer solutions.
› With respect to the fight against corruption, article 41 (f) of the 1992 Constitution obligates every citizen to protect and preserve public property and expose and combat misuse and waste of public funds and property.
› There are several definitions of corruption. But the focus should be the use of public office for private gain. Understanding corruption should not be limited to “bribery.”
› The LAS has an important role to play in supporting to individuals who wish to enforce article 41(f) of the 1992 Constitution, and to retrieve public property improperly obtained by public officials.
3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**

**Introduction**
Facilitator introduces the topic noting that the legitimacy of the fight against corruption is well supported by the Principal – Agent theory of accountability. This theory posits that the public officials (the agents) who are mandated to exploit and manage resources on behalf of citizens must be accountable to the citizens.

**Step 2**

**Discussions by the table. Directions to the Trainer**
› Let participants form groups of 3 members by their tables without leaving their tables. The participants may turn towards each other.
› Make Post-it cards and writing markers available to the groups of participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups the importance of anti-corruption to national development.
› Participants should write these down on Post-it papers and stick the Post-it papers on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the points listed on their Post-its.

**Step 3**

**Overview of materials needed for this session**
The trainer / Facilitator must lead participants through the contents of the notes below to equip participants with the needed knowledge in order to meet the objectives of this Session.

**a. Brief history of legal aid in Ghana**
› The LAS as an institution in Ghana takes its antecedents from the recognition by Judges who operated the criminal assizes, before independence, that the absence of defence counsel in the matters that came before them adversely affected the administration of justice. Lawyers were assigned cases as a social responsibility to defend accused persons in the criminal sessions, without charging fees.
› This practice of assigning briefs to members of the Bar continued after independence. In this regard, the Courts Act, 1971 (Act 372) made adequate and ample provision for the assignment of briefs. Members of the Bar were paid a stipend for accepting and conducting such briefs but many lawyers did not take the stipend.
The current Courts Act of 1993 provides that the Supreme Court, the Court of Appeal, the High Court or Regional Tribunal may assign a lawyer by way of legal aid to a party to proceedings before the Court or Tribunal where it appears desirable to the Court or Tribunal in the interests of justice that the party should have legal aid, and that the party is financially unable to obtain the services of a lawyer. In the case of the Circuit Court and District Court, the Court can only assign a lawyer by way of legal aid, with prior approval of the Chief Justice.

b. Mandate of LAS

The main sources of law on legal aid in Ghana may be found in article 294 of the 1992 Constitution of Ghana and Section 10(1) of the Legal Aid Scheme Act, 1997 (Act 542). The Constitution provides that for the purposes of enforcing any provision of the Constitution, a person is entitled to legal aid in connection with any proceedings relating to the Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.

The Legal Aid Scheme Act further provides that a person is automatically entitled to legal aid where he or she is charged with an offence punishable by the death penalty or imprisonment for life. For all other criminal offences, a person is entitled to obtain legal aid if he or she is too poor and unable to afford the cost of engaging a lawyer. A person may also be entitled to legal aid in some civil cases.

Section 2(3) of Act 542 defines legal aid to consist of representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring an end to any proceedings. Legal aid encompasses more than providing the poor and marginalized equal access to the court system, legal counsel, representation and assistance, but also includes access to both a quality lawyer and non-lawyer solutions. The Legal Aid Scheme plans to go beyond providing access to legal help and also ensure high quality solutions to provide equitable opportunity for a just resolution.

The other important provision of the 1992 Constitution, as it relates to anti-corruption is article 41 (f), which provides that the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen ... to protect and preserve public property and expose and combat misuse and waste of public funds and property... .

This provision places an explicit duty on each citizen to expose public corruption and to assist in the recovery of public property obtained through corrupt influence. Effectively, this means that all Ghanaians have the right to legal representation in connection with exposing corruption, without regard to the financial status of the applicant.

c. Role of LAS in anti-corruption

There is a strong perception that corruption is endemic in Ghana. Corruption deprives the State of scarce resources for the supply of public goods. This is supported by
various studies including those conducted by Transparency International, the membership of the Ghana Integrity Consortium and Afro-barometer surveys, and the African Peer Review Mechanism.

The efforts to fight corruption are generally classified as anti-corruption measures. These may be prevention of corruption, may be preventive; education on corruption; investigation of suspected corruption cases and enforcement activities against corruption.

There have been several efforts at combating corruption in Ghana, including strengthening the legal framework which supports the fight against corruption in Ghana. For instance, various laws have been passed with respect to financial administration, public procurement, internal audit and whistleblowing. In 2014, Parliament adopted the National Anti-Corruption Action Plan (NACAP) (2015-2024) which represents Ghana’s roadmap to tackling corruption. Implementation of NACAP is ongoing.

Under NACAP, apart from the general obligations on all State institutions to work towards combating corruption, the LAS has three specific obligations. Two of these require LAS to play a leading role whiles the third requires a supporting or auxiliary role. The two primary obligations for LAS are to provide incentives, including free legal services for public interest litigation involving corruption, to the citizens of Ghana, and to protect journalists who are facing criminal prosecution for reporting on public corruption. The secondary obligation of LAS is to create a confidential reporting system for citizens to report corruption, and to provide legal advice to victims of corruption (the primary obligation for this task is assigned to CHRAJ and a number of other agencies).

d. The LAS Strategic Plan (2014 – 2019) and the requirement for continuous training

The discharge of the mandate of the LAS is currently guided by the LAS Strategic Plan (2014-2019). The Strategic Plan was developed to provide the framework for a coherent delivery of the core mandate of the LAS. The LAS Strategic Plan is anchored around 3 main themes: Organisational responsiveness; Access to Legal Aid and Collaborative and Cooperative Partnerships.

The plan focuses on the Legal Aid Scheme’s organisational development and strengthening to enable it deliver timely services to indigents. Another key focus is improving understanding of legal issues by sharing information as well as access to legal assistance and representation.

The Scheme’s strategies include deepening collaboration with partners to deliver legal aid services nationally. One of such partnerships is with the Accountability, Rule of Law and Anti-corruption Programme (ARAP) with funding support from the European Union.

The overall goal of this partnership is to improve the capacity of staff of the LAS to improve its support to the clients of the LAS, more particularly in the fight against corruption. This is in furtherance of the Mission of the LAS and the Strategic Objective to improve the Scheme’s capability to effectively advocate and defend human dignity and freedoms through the provision of timely high quality legal aid services for the socially and financially disadvantaged clients by 2019.
e. Summary of International legal framework involving corruption and legal aid

- The rights and obligations of Ghana regarding corruption may derive from any of the international sources of law, such as treaties, customary international law, subsidiary sources and the teachings and writings of the most highly qualified publicists as stated in article 38 of the Statute of the International Court of Justice. For the purposes of this Manual, the focus is only on a very limited number of treaties which may also be referred to as Conventions, Agreements, Pacts, Protocols, etc.

- The relevant treaties of interest are:
  
  - Additional initiatives to fight corruption include the adoption of the United Nations Convention against Corruption (UNCAC) in 2003. The African Union (AU) convention against corruption and the ECOWAS protocol on the fight against corruption were adopted at the regional and sub-regional level.

- Soft law also provides guidance for anti-corruption and legal aid related work. The most useful soft law on legal aid in Africa is the Dakar declaration on Legal aid in Africa.

- The UN Global Compact is a good source of soft law on anti-corruption measures. The UN Global Compact (Global Compact of the United Nations) is the biggest voluntary corporate initiative in the world. The Argentine Network of the Global Compact of the United Nations is the biggest corporate social responsibility initiative in that country, present in 20 provinces. It was launched in 2004. In 2005, a General Committee with 20 members was created, and it is renewed every two years by means of an assembly.

- The Global Compact is a strategic initiative of companies which are committed to aligning their operations and strategies with ten principles universally accepted in the area of Human Resources, Work, Environment and Anti-corruption. The Global Compact requests companies to adopt, support, and put these principles into practice, within their scope of influence. These ten principles stem from:
  
  - The Universal Declaration of Human Rights.
  - The World Trade Organization’s Declaration on Fundamental Principles and Rights at Work.
  - The Rio’s Declaration on Environment and Development.
  - The United Nations’ Convention against Corruption.

For further information, go to: http://www.unglobalcompact.org/AboutTheGC/

Step 4

Notes to the Trainer

The Trainer should lead a plenary discussion on the mandate of the LAS in relation to corruption under:
Training Modules and Materials on Basic Law and Anti-Corruption in Ghana

› The 1992 Constitution.
› The Legal Aid Scheme Act.
› NACAP.
› Ghana’s obligations under the UN and African Union Conventions on corruption and the Global Compact as a good soft source of law for the fight against corruption.

Step 5

Wrap Up and review of session

Review objectives
› Recap major points made in the presentations by the Participants.
› Ensure all participants understood the various issues discussed.
› Clarify any outstanding concerns.
› Participants share take-aways from the session. Let the participants individually say the key points they are taking away from the Session.
Session 1.2: Anti-corruption litigation

› **Target group:** All staff of the LAS.  
› **Recommended time allocation:** one hour and forty-five minutes.

1. Learning Objectives

By the end of this Module, participants should be able to:

› Define corruption.  
› Identify the appropriate fora for both corruption litigation.  
› Demonstrate an understanding of the importance of anti-corruption work in national development.

2. Core Messages

› Corruption can lead to state capture and the privatization of public goods and public policy.  
› There are different types of corruption depending on the focus of the classification. There can be active or passive forms of corruption.  
› Grey areas of corruption are important to understand as they are challenging to confirm whether they are corrupt actions or not.  
› Corruption creates a disincentive for taxpayers and weakens the revenue base of the State.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**

**Introduction**
Facilitator introduces the topic noting that it is important to understand what corruption is, the various corruption may be classified, the cost of corruption to the Ghanaian society and the appropriate procedure through which Officers of LAS may help the citizenry to combat corruption.
Step 2

Discussions by the table. Directions to the Trainer

› Let participants form groups of 3 members by their tables without leaving their tables. The participants may turn towards each other.
› Make Post-it cards and writing markers available to the groups of participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups what the importance of anti-corruption is to national development.
› Participants should write these down on Post-it papers and stick the Post-it papers on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the points listed on their Post-its.

Step 3

Overview of materials needed for this session

Directions to the Trainer

a. Importance of anti-corruption to national development

› There is an urgent need for serious action against corruption at all levels of government and in the private sector.
› This sense of urgency arises in an environment where growth and employment prospects in many countries remain subdued and a number of high profile corruption cases have fueled moral outrage. It also arises because there is a growing consensus that corruption is macro-critical, as it can seriously undermine inclusive economic growth. The urgency is global in nature since corruption is a problem that affects both developed and developing countries.
› Although corruption is often understood as being transactional in nature (a bribe being the typical example), it can also be manifested by powerful networks between business and government.
› Corruption can undermine the state’s ability to deliver inclusive economic growth in a number of different areas.
› When government functions are impaired, it can adversely affect a number of important determinants of economic performance, including macro financial stability, investment, human capital accumulation, and total factor productivity. Moreover, when systemic corruption affects virtually all state functions, distrust of government can become so pervasive that it can lead to violence, civil strife, and conflict, with devastating social and economic implications.

b. What is corruption?

› Defining corruption in a comprehensive way is difficult both because corrupt behavior varies and because it is generally concealed from public view. Among the most widely
accepted definitions in the literature—and one that will be relied on for the purposes of this Manual—is “the abuse of public office for private gain.”

- It is a definition used by a diverse range of public institutions and civil society organizations, including the World Bank and Transparency International. It is also consistent with the provisions of the United Nations Convention against Corruption.
- Accordingly, the definition does not cover fraudulent acts perpetrated exclusively by private citizens that do not involve public officials. This exclusion, however, does not mean that private sector behavior is not relevant to a diagnosis of the problem or the formulation of an anti-corruption strategy.
- While some forms of corruption involve public officials acting on their own (for example, theft and embezzlement), corruption, including most notably bribes, often involves a private sector actor. Accordingly, any effective anti-corruption strategy must entail measures designed to change the behavior not only of public officials but also of the private citizens with whom they interact.
- Under this definition, an act can be corrupt even if it does not result in financial gain for the public official. For example, an official contributes to corruption if, as result of political interference, he or she abuses public office. The key determinant is whether the decision is made for reasons other than those identified as relevant by the legal or administrative framework that the public official is responsible for administering. Thus, corruption may arise when an official awards a procurement contract to a company because the company is owned by a family member. It is the influence of these extraneous factors—whether financial or of another nature—that gives rise to conflict of interest and the abuse of public office.
- Corruption is often associated with perverse application of the law. But, it may also pervert the lawmaking process itself. There may be circumstances in which legislators are so beholden to private interests that their legislative decisions are motivated solely by these interests—rather than the public interest. This represents a classic form of “state capture.” Indeed, it has been noted that in some countries corruption has become so pervasive that it is no longer characterized by specific transactions but by powerful networks between business and government, resulting in the privatization of public policy.
- The impact of corruption on the ability of the state to carry out its functions increases as it becomes more systemic and acute. No society is immune to isolated acts of corruption, whether they occur at the bureaucratic or political level. However, in some circumstances, corruption is no longer a deviation from the norm, but is manifested in a pattern of behavior so pervasive and ingrained that it becomes the norm. In these situations, the state’s ability to carry out its basic functions—such as raising revenue, supplying public goods and services (including security), regulating markets, and acting as an agent of society’s redistributive goals—can become sufficiently undermined that it is likely to have a significant impact on economic performance.
- The corrosive impact of corruption can take various forms. The various ways in which economic performance can be adversely affected depend on the type of state function undermined. Importantly, experience demonstrates that, in the extreme, economies can be adversely affected by the civil strife and domestic conflict that can arise when a society has lost confidence in the government’s ability to discharge its responsibilities in a competent and impartial manner.
c. Types of corruption

› Active: You are offering the bribe without being asked.
› Passive: You are taking or accepting the bribe although you did not ask for it.
› Grey areas: These payments may look legitimate but are intended to influence official action for private gain. E.g. facilitation payments.

d. Cost of corruption

› The costs of corruption are substantial. Although these costs are hard to measure properly, a sense of the size of this phenomenon can be gauged from bribes paid every year in both developing countries and advanced economies. A recent estimate put the annual cost of bribery alone at about $1.5 to $2 trillion (roughly 2 percent of global GDP). The overall economic and social costs of corruption are likely to be even larger, since bribes constitute only one aspect of the possible forms of corruption.
› Corruption affects inclusive growth, that is, growth whose benefits are widely shared across the population. Empirically it is difficult to establish a direct causal relationship between corruption and growth. However, most studies using perception-based measures of corruption have concluded that it hurts growth through a variety of channels. Difficulties arise from measurement challenges, such as varied understanding of the term “corruption,” differences between perceived and actual levels of corruption, and problems associated with aggregating various indices.
› Corruption has significant negative effects on key channels that affect growth. This is confirmed by ample empirical evidence, as well as IMF staff experience. As noted above, corruption breeds public distrust in government and weakens the state’s capacity to perform its core functions. The more corruption interferes with these functions, the more it distorts policies and their implementation. Depending on its pervasiveness, corruption affects some or all drivers of potential and inclusive growth, such as macro-financial stability, public and private investment, human capital accumulation, and total factor productivity. Low rates of inclusive growth can also lead to increased incidence of corruption, creating a negative feedback loop that can become self-fulfilling and long lasting.
› Corruption can weaken the state’s capacity to tax, leading to lower revenue collection. Widespread corruption harms the culture of compliance, thereby increasing tax evasion. There is a negative association between corruption and the collection of tax revenues.
› Corruption creates disincentives for taxpayers to pay taxes. When tax exemptions are perceived to be the product of a bribe, the public becomes far less willing to comply with the tax laws, which are perceived as unfair. The Panama Papers bring into focus the scope of global financial secrecy and the potential it creates for tax evasion and other criminal activities. Tax evasion, like corruption, contributes to inequality and to perceptions of unfairness—undermining citizens’ trust in their governments. The distrust in the administration also discourages entrepreneurs from starting new businesses in the formal economy, further eroding the revenue base.
› Corruption reduces the impetus for the state to collect taxes. In highly corrupted, aid-dependent countries, the incentive to mobilize domestic revenues can be lower, particularly for those taxes considered more efficient, such as the VAT.
Corruption undermines spending programs. This can take many forms, including cost inflation and distorted budget allocation. Weak expenditure controls, off-budget transactions, and lack of oversight were behind recent financial integrity failures in sub-Saharan Africa. The systems compromised by corruption included payroll controls (Ghost names).

e. Rules on anti-corruption litigation

- The CHRAJ Act, 1993 (Act 456) established CHRAJ to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption, abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to provide remedy in respect of such acts or omissions.
- CHRAJ is empowered by both the Constitution and Act 456 to make, by Constitutional instrument, regulations regarding the manner and procedure for bringing complaints before it and the investigation of the complaints. In exercise of its powers, CHRAJ made the CHRAJ (Complaint Procedure) Regulations, 1994 (C.I. 7) to regulate the procedure for investigating complaints. However, following the decision in the “Anane Case” and other challenges to the Commission’s procedure for investigation of complaints, C.I. 7 was revoked and new regulations, the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I. 67) came into force.
- Section 12 of Act 456 and C.I. 67, which deal with the procedure for lodging a complaint with the Commission, provide that a complaint may be made in writing or orally to the national offices of the CHRAJ or to a representative of CHRAJ in the region or district branches. It is further provided under section 12(3) of Act 456 that where the complaint is made orally, the person to whom it is made shall reduce same into writing and he or she shall append his or her signature and the signature or thumbprint of the complainant thereto.
- If after an investigation, CHRAJ is of the view that the decision, recommendation, act or omission that was the subject of the investigation, amounts to a breach of the provision(s) of Act 456, CHRAJ shall report its decision and the reasons for it to the appropriate person, Minister, Department or Authority concerned and shall make such recommendations as it thinks fit and submit a copy of its report and recommendations to the complainant.
- If within three months after the report is made no action is taken, the Commissioner, may bring an action before a court and seek such remedy as may be appropriate for the enforcement of the recommendations of CHRAJ.
- CHRAJ has no direct powers of enforcement of its decisions following an investigation. It is mandated to bring an action before any court in Ghana and seek any remedy which may be available from that court. As in the case of the procedure for the enforcement of fundamental human rights and freedoms in the 1992 Constitution, until the coming into force of CI 47, the procedure by which CHRAJ was to bring the action for the enforcement of its recommendations generated much legal debate. The debate generally centred around two questions: by what method or procedure is the Commission to bring the action to seek enforcement of its recommendations? Then, when the matter comes before the court, is the court to simply order the enforcement of the recommendations or will it be entitled to review the findings and recommendations?
Neither the Constitution nor Act 456 lays down any specific method by which the Commission may seek enforcement of its recommendations. In Ghana Commercial Bank v CHRAJ, CHRAJ took the action by originating summons or notice of motion supported by an affidavit. One of the issues raised for determination by the court related to the procedure by which the CHRAJ sought to enforce its recommendation. The Supreme Court relied on People’s Popular Party v Attorney-General case to hold that when a statute provides for an application to court without specifying the form in which it is to be made and the normal rules of court do not expressly provide for any special procedure, such an application may be made by an originating motion. Hence the use of originating summons or notice of motion by the CHRAJ could not be faulted.

Step 4

Break out group assignments

- Break participants into 5 groups with the count of 1-5 by the participants. Every participant goes into a group according to the number counted.
- Provide the different groups with the Handouts assigned to each group.
- The group should answer the questions which follow the Case Studies with the support of the Handouts.

Case study 1

Atta is the Coordinating Director of District “C”. Atta chaired the commissioning ceremony of a 12 unit classroom block at Nipahiamo. Atta was presented with 3 “fugus”; 2 goats and 3 sacks of millet right after the ceremony. The following Monday, Atta wore one of the fugus to the office to show to the District Chief Executive. The DCE thanked Atta profusely for a good work done. Kingsley, the Planning Officer at the Assembly says it is improper for Atta alone to keep all the items. He says the item must be equitably shared among the Executive Committee members. Kingsley says he wants to make a complaint to CHRAJ and needs support of the LAS. What will you do as an Officer of the LAS?

Case study 2

Joe was the Accounts Clerk at District Hospital A. Joe was recommended for transfer from the District Hospital to a Regional Hospital. Joe thinks his transfer was motivated by the desire to keep his eagle eyes away from fishy deals at the hospital. Joe wants the support of the LAS in seeking redress. What will you, an Officer of the LAS take into account in your decision to offer Joe help?

Case study 3

Terra Constructions Ltd. was awarded a contract to put up 6 unit classroom block for the Agbledome Community. 3 different companies were invited to submit tenders for the contract. There were 3 proposals from the companies invited to submit the tenders.
Aseye, a member of the Works Committee of the District Assembly has information that the tender is effectively being undertaken by only one person though there are appears to be 3 different competing tenders. Aseye is Director of a Construction Company and philanthropic person but insists he needs legal aid to pursue this case.

Where should Aseye make her complaint?
Should Aseye be supported even though he earns more than the government minimum wage and does not really “need” assistance to pursue any case?

Case study 4

CHRAJ has observed several newspaper allegations of vote-buying against the 2 major political parties in Ghana. In the absence of a “complaint”, CHRAJ has began investigations on its own motion. There is controversy as to whether the mandate of CHRAJ has been properly invoked. As an Officer of the LAS conducting a Public education workshop on the mandate of the LAS, you were asked whether CHRAJ is doing the right thing and if there is any connection between the work of CHRAJ and the mandate of the LAS regarding the fight against corruption in Ghana. What will be your responses?

Case study 5

Salifu is the manager of a small startup company in Ghana. He has been waiting for weeks for the delivery of technical equipment that he urgently needs for completion of an important project.

As the equipment finally arrives by ship, he is told by a customs officer that the necessary papers are “partly incomplete”. This will prevent the release of the equipment until the problem has been solved. The customs official indicates that a solution could take several weeks. However, the official adds that the problem could be managed quickly by paying a cash “express fee” of GHS 10,000. This would ensure that customs clearance is done in one day.

If Salifu does not receive the equipment within the next couple of days, he is liable to contractual penalties due to the delayed completion of the project. Salifu has walked into the Legal Aid Office at Denu and says he needs help. Assuming Salifu qualifies for legal aid, please answer the questions below:

Which type of corruption, if any is implicated in this case?
How should you advise Salifu to respond to such a demand?

Step 5

Wrap Up and review of session
Review objectives
Participants share take-aways from the session.
Session 1.3: Human Rights litigation (Substance and Procedure)

› **Target group:** All staff of the LAS.
› **Recommended time allocation:** two hours.

1. Learning Objectives

By the end of this Module, participants should be able to:

› Identify some basic human rights issues implicated in the fight against corruption in Ghana.
› Identify and explain the appropriate procedure for human rights litigation.
› Identify the appropriate fora for human rights litigation.

2. Core Messages

› It is the obligation of everyone, including public and private institutions to ensue that human rights are respected.
› Some of the key human rights issues implicated in the work of the LAS regarding the combat against corruption include the right to privacy, protection of personal liberty, freedom from discrimination, prohibition of torture, inhumane and degrading treatment.
› Evidence gathered in the course of work to combat corruption will have to pass the “relevance” test in order to be accepted by a court.
› The High Court in the appropriate forum for redress when human rights are violated or when there is a threatened violation of human rights.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**

*Facilitator introduces the topic*

› Introduce the topic for discussion in this session by focusing on Human Rights realization and the fight against corruption.
› In addition, it is important to note that there are specific rules for the enforcement of human rights in Ghana. This session discusses these specific rules for human rights enforcement.
Step 2

Discussions by the table
› Let participants form groups of 4 by their tables without movement.
› Make post-it cards and writing markers available to the participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups provisions of laws in relation to human rights which have guided/affected their work as LAS officers.
› Participants should write these down on Post-it papers and stick them on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the provisions of the points as listed on the Post-its.

Step 3

Overview of materials needed for this session
The Trainer presents in Notes as follows:

› The full gamut of human rights generally accepted includes civil, political, economic, social and cultural rights. These are interdependent and indivisible.
› All institutions of state have a responsibility to ensure that human rights are respected, protected and fulfilled.
› **To respect a right means** States must refrain from interfering with or curtailing the enjoyment of human rights.
› **To protect a right means** the State is required to protect individuals and groups against human rights abuses.
› **To fulfill a right** means that States must take positive action such as building schools and hospitals to facilitate the enjoyment of basic human rights.
› For more information on the obligations to respect, protect and fulfill, http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx
› The Constitution protects the life of everyone and no one may lose his or her life through the intentional act of another unless there are good reasons to justify the force applied leading to the death of the individual. Force may be applied for the defence of persons or property, or to effect the arrest of a person or prevent escape from prison, or to prevent the person from committing an offence.
› The Constitution exhorts everyone to respect the dignity of every human being. The provisions of the 1992 Constitution which are relevant to the work of the LAS are quite considerable. The references below are only examples of some rights guaranteed under the 1992 Constitution:

• **Article 13: Right to life** - The right to life is one of the most fundamental human rights which is inalienable. It requires that a person’s life may not be taken except in accordance with the law. Article 13(1) of the 1992 Constitution provides that every person is entitled to the right to life. However, the article permits a person to be deprived of his or her life, in exercise of the execution of a sentence of a Court in respect of a criminal offence under the laws of Ghana of which that person has been convicted.
• The offences that are punishable by death are murder; attempt to commit murder by a convict, genocide, treason and high treason. Discussions on the right to life most often raise issues surrounding the imposition of the death penalty even by a court of competent jurisdiction. In Ghana, legal authority for capital punishment may be derived from both the Constitution and the Criminal Offences Act, 1960 (Act 29).

• Article 14: Protection of liberty - The right to personal liberty covers civil liberties to enable individuals to be free from restraint. It includes the freedom of the individual not to be unduly restricted, detained or arrested. Hence, for any of these invasions into the freedom of the individual to be appropriate, they must happen within the confines of the law. The limitations which the law provides to guide even lawful invasion into the liberty of the individual are generally referred to as “the due process of law”.

• Article 15: Prohibition of torture of persons arrested, restricted or detained: One of the rights to which all human beings are entitled is freedom from torture. The UN Convention against Torture defines torture as:
  “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Torture could be aimed at intimidating the victim or a third party and may be committed with the consent of a public official, but does not include suffering that comes about as a result of legal penalty.

• Article 16: Protection from slavery and forced labour - Labour is forced when it is against the will of the individual. Even when an individual is under the sentence of a court, unless the punishment prescribed or permitted by law includes some form of work, labour may be considered as “forced labour” for as long as they are against the will of the prisoner involved.

• Article 17: Equality and freedom from discrimination:
  – Article 17 of the 1992 Constitution provide that all persons in Ghana are equal before the law. Equality before the law requires that there shall be no discrimination on the grounds of gender, race, colour, ethnic origin, creed, social or economic status. Discrimination in the words of the Constitution means “to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”
  – The Supreme Court in Nartey v Gati [2010] SCGLR 745 gave an opinion on the meaning of discrimination as proscribed in the Constitution and the context in which article 17 of the 1992 Constitution must be understood.
The Supreme Court noted that article 17 did not mean that every person within the Ghanaian jurisdiction had, or must have, exactly the same rights as all other persons in the jurisdiction. For the Court, the crucial question is whether the differentiation in their rights was justifiable, by reference to an object that was sought to be served by a particular statute, Constitutional provision or some other law. The equality referred to in article 17 is freedom from unlawful discrimination. Therefore, that equality before the law requires equal treatment of those similarly placed, implying different treatment in respect of those with different characteristics. Thus, equals must be treated equally while the treatment of persons not equal must be different.

In Nartey v. Gati, the plaintiff, a lawyer said that he had agreed with his client the defendant that in exchange for his legal services to secure damages in respect of a motor accident that had killed the defendant’s sister, he, the plaintiff would be paid 15% of any damages he obtained in court. The plaintiff’s conduct of the case resulted in the award of damages in favour of the defendant. The defendant then agreed with the judgment debtor to pay the damages by instalment. This appears to mean that the plaintiff would also be getting his fees in bits. The plaintiff brought action to recover his fees for his legal services from the defendant. The trial judge gave plaintiff judgment by default. Counsel for the defendant filed an application on behalf of the defendant to set aside the judgment raising a preliminary legal objection that the case by the plaintiff was one for the recovery of his legal fees and therefore could only have been filed one month after the bill had been served on the defendant in accordance with section 30 of the Legal Profession Act, 1960 (Act 32). In his response to the application, the plaintiff argued that section 30 of Act 32 was inconsistent with article 17(1) and (2) of the 1992 Constitution and therefore not binding. The trial magistrate then referred the matter to the Supreme Court for interpretation. The Supreme Court held that article 17 did not mean that every person had or must have exactly the same rights as all other persons. The crucial issue was whether the differentiation in their rights was justifiable by reference to an object that was sought to be served by a particular statute, constitutional provision or some other rule of law. The equality referred to in article 17 is freedom from unlawful discrimination. Rigid equal treatment would often lead to unfair and unequal results.

In summary, the Constitution abhors unlawful discrimination. Discrimination means treating people similarly situated differently.

**Article 18: Privacy of home**

The right to privacy is the right to be let alone, in the absence of some “reasonable” public interest in a person’s activities. It refers to the concept that one’s personal information is protected from public scrutiny. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures are usually protected under the right to privacy. The understanding that no warrants should be issued against a person unless upon probable cause is also part of the right to privacy.
− Article 18 (1) of the 1992 Constitution guarantees the rights of persons in Ghana to own property individually or as a group. An important incident to the right to own property is freedom from unlawful interference with the enjoyment of property acquired. Article 18 (2) therefore guarantees the freedom from interference with the privacy of home, property, correspondence, or communication except in accordance with law as required in the interest of the public.
− Evidence gathering may raise issues with respect to ill-gotten or improperly obtained evidence. Issues of the violation of the fundamental human rights and freedoms may be raised when any of the following methods are used in procuring the evidence: Surveillance activities, Undercover procedures, Bugging or secret listening of conversations, Tape recording evidence, Entrapment and the use of agent provocateurs.
− Evidence is deemed ill-gotten if is it obtained, acquired or received by means, methods or procedures which offends the law, defies standards of morality or are contrary to the sense of decency.
− The question is whether the results of an illegal search for instance should be admitted in evidence? To answer this question, there are 2 schools of thought. These are:

1st school of thought - The poisonous tree analogy

− This school of thought is referred to as the poisonous tree analogy. It proceeds on the basis that the tainted source must taint the fruit. The question is what do you do with this fruit?
− Court decisions are to be based on legal or admissible evidence and not on illegal evidence. See Amoah v. Arthur [1987-88] 2 GLR 87-104. In this case, copies of a pledge note and receipt tendered in evidence at a trial were held on appeal to be inadmissible because there was no evidence that the originals which were in the possession of the defendant were also lost. The pledge note and receipt would have been deemed as “legal evidence” if the plaintiff had proved that even those in possession of the defendant were lost. Consequently, admission of such evidence under such circumstances by the trial judge was deemed to be contrary to statute.
− Criminal justice system must protect individuals from the abuse of state power. This is the reason why article 14 (2) (3) of the 1992 Constitution protects all persons against illegal investigations. Hence, the argument is that investigators who violate the law to procure their results should not rely on the evidence obtained. Thus, the Investigator cannot take advantage of his own breach of law. From this viewpoint, to admit ill-gotten evidence will encourage police and investigators to trample upon the liberties of the people under investigation. Some of the situations in which evidence may be obtained in breach of the law and therefore be deemed illegal and unacceptable include:

− Since article 14(3) requires a person arrested or restricted to be presented to court within 48 hours, any evidence obtained beyond the 48 hours is illegal as the detention itself and therefore should not be admitted.
- Article 15 (2) protects everyone against torture, inhumane or degrading treatment; evidence so obtained is illegal and unconstitutional.
- Article 18 (2) – no interference with privacy of home or correspondence except in accordance with the law. Hence, unlawful bugging or wire-tapping is unconstitutional, evidence so obtained is unconstitutional unless it is for prevention of crime or other legitimate purposes sanctioned by law.

  - It is helpful to note that the 1992 Constitution is the Supreme Law of the land as provided in article 1(2) of the 1992 and cases such as Tuffour v Attorney General [1980] GLR 63. Any breach of the provisions of the Constitution carries with it ‘not only illegality, but also impropriety, arbitrariness, dictatorship, that is to say, the breaking of the fundamental law of the land. See Okorie v. The Republic [1974] 2 GLR 272.

2nd School of thought – Pre-eminence of relevance

- Evidence obtained by illegal, unauthorized or improper means should be admitted provided it is of proper probative value.
- The method by which the evidence is obtained should not matter.
- If law enforcement officer misconducts him or herself, it is for the authorities to sanction him or her.
- It is said that it matters not how one gets it, even if one steals it, it will be admissible in evidence – Crompton J in R v. Leatham (1861) 8 Cox CC 498.
- It will be a strange reflection on our law if a man who has admitted his participation in the importation of heroin should have his conviction set aside on the grounds that his privacy has been invaded – Lord Nolan in R v. Khan & Khan (1990) 2 SCR 531.
- This is supported by section 51(2) of the Evidence Act, 1975 (NRCD 323) which evidence to be relevant in order to be admitted.

- Article 19: Fair trial requirements

  - The right to a fair trial is one of the cornerstones of a just society. Without fair trials, innocent people are convicted and the rule of law and public faith in the justice system may collapse. Without fair trials, when justice has in fact been done in civil cases, the ordinary man in the street may not see it as having been done.
  - Each person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But the right to a fair trial is not just about protecting suspects and defendants; it also makes societies safer and stronger. Without fair trials, trust in justice and in government collapses.
  - Fair trial and fair hearing rights include: that all persons are equal before courts and tribunals; the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.
Training Modules and Materials on *Basic Law* and *Anti-Corruption* in Ghana

- **Article 21: Right to information**
  - In the fight against corruption, the right to information by the people is very important because appropriate and timely information improve the chances of the government to be transparent. Article 21 (f) of the 1992 Constitution guarantees the right to information for everyone, subject to qualifications and laws in a democratic society.
  - The laws and qualifications to which the right to information is subject takes account of the reality that some information may be legitimately withheld from the public for purposes of ensuring the very survival of the State.

**Procedure for Human Rights applications: Order 67, CI 47**

- Article 33 (1) of the 1992 Constitution provides that when a person alleges that his or her rights under the Constitution have been violated or is about to be violated, that person may apply to the High Court for redress. Order 67 of the High Court Civil (Procedure) Rules (CI 45) provides the procedure for invoking the jurisdiction of the High Court in an application for Human Rights redress.
- The Human Rights Rules of Procedure provide for an expedited mode of invoking the jurisdiction of the High Court.
- The High Court’s jurisdiction is invoked through an application as opposed to the issuance of a writ of summons.
- Order 67 rules 2 and 3 require that the application is served on the Respondent and the Attorney General who shall file their affidavit in opposition if, any, within 21 days.
- There is no provision in the Rules on interlocutory matters or orders. Neither do the rules provide for an expedited appeal from the decision of the High Court.
- It is unclear why the A-G should necessarily be served notice of all human rights applications even if the application does not have anything to do with the State although it may be argued that the Attorney General as the Minister of Justice should always be informed of the pendency of any human rights case. Order 67 creates room for interference and delays in human rights applications, particularly as the Attorney General has been given 21 days within which to respond to an application if the Attorney General so desires.

**Step 4**

**Break out group assignments**

- The Trainer may rely a film which captures areas of interest to human rights. These may include arbitrary arrests, misdiagnosis leading to fatal consequences; the giving or taking of gifts by public officials after the performance of official duties.
- Break participants into 2 groups.
- Provide the different groups with the Handouts assigned to each group.
- The group should answer the questions which follow the Case Studies with the support of the Handouts.
Case study for all groups

In 2012, the Alliance for Accountable Governance called for Chinese telecom infrastructure and device vendor, Huawei Technologies Ghana Limited to be kicked out of Ghana because of their alleged illegal involvement the country’s politics. Documentary evidence from AFAG indicated Huawei provided sponsorship to the ruling National Democratic Congress (NDC) in the form of party paraphernalia, which contravenes the Political Party’s Act, Act 574 of Ghana. AFAG provided invoices to journalists showing Huawei printed NDC paraphernalia such as t-shirts, key holders, and handkerchiefs with two Chinese-based companies to the tune of about US$150,000 between March and July 2012. Betty, an ordinary Ghanaian wants information from Huawei Technologies on the allegation, in particular copies of the invoices for the order of the handkerchiefs. Huawei says it is under no obligation to furnish Betty such information. Betty wants your help at the LAS.

› What is your advice as to whether Betty is entitled to the information or not?
› If you decide to go to court for an order to compel Huawei to furnish the information to Betty, how will you invoke the jurisdiction of the court?
› What are some of the major considerations in the course of the litigation?

Step 5

Wrap Up and review of session

› Review objectives.
› Participants share take-aways from the session.

References for further reading

Module 2

Legal and institutional framework for fighting in Ghana

Session 2.1: Provisions of the 1992 Constitution; Criminal Offences Act, CHRAJ Act, Whistleblower Act

Session 2.2: Anti-Money Laundering Act; Audit Service Act; Criminal and other Offences (Procedure)
Session 2.1: Provisions of the 1992 Constitution; Criminal Offences Act, CHRAJ Act, Whistleblower Act

- **Target group:** All staff of the LAS.
- **Recommended time allocation:** two hours and thirty minutes.

1. Learning Objectives

   By the end of this Module, participants should be able to:

   - Explain various constitutional provisions in relation to the fight against corruption in Ghana
   - Explain the provisions of the Criminal Offenses Act, 1960 (Act 29) in relation to anti-corruption
   - Explain the provisions of the CHRAJ Act, 1993 (Act 45)

2. Core Messages

   - Article 35 (8) obligates the State to take steps to eradicate corrupt practices and the abuse of power.
   - Article 37 (2) establishes a role for citizens in development and the right to form associations without interference from the State. This is important in the context of activism around corruption issues.
   - The Supreme Court has relied on the provisions of the Constitution to require other institutions of State to fight corruption more vigorously. One of such cases is Occupy Ghana v. Attorney General.
   - When two different constitutional rights conflict, the courts may rely on the doctrine of harmonious interpretation. This requires that where two constitutional rights come into conflict, for example the right to privacy and the freedom of the press, the conflict should be resolved in the manner which least restricts both rights.
   - Receiving gifts prior to assuming a public office may amount to corruption.
   - In Ghana, there is no specific legislation relating to or against facilitation payments. However, depending on the reason for the payment, it may amount to bribery or not.

Other relevant Legislation

Ghana has passed a number of laws whose primary aim is to deal with corruption, while others have provisions that relate to corrupt activities. These are:
26. Public Financial Management Act

**Relevant policies**


### 3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**

**Facilitator introduces the topic**

> Introduce the topic for discussion in this session by focusing on the general purpose of the provisions of the constitution, Criminal Offences Act, CHRAJ Act and the Whistleblower Act which seek to combat corruption.
Training Modules and Materials on Basic Law and Anti-Corruption in Ghana

Step 2

Discussions by the table
› Let participants form groups of 4 by their tables without movement.
› Make post-it cards and writing markers available to the participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups provisions of laws in relation to the Security and Intelligence Agencies Act which have guided / affected their work as LAS officers.
› Participants should write these down on Post-it papers and stick on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the provisions listed on the Post-its.

Step 3

Overview of materials needed for this session
The Trainer presents in Notes as follows:

The 1992 Constitution

The 1992 Constitution addresses corruption in a number of respects including:
› Preamble of the constitution: “...PROBITY and ACCOUNTABILITY...”
› Article 35 (8) obligates the State to take steps to eradicate corrupt practices and the abuse of power.
› Article 37(1) - The State shall endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in Chapter 5 of this Constitution; and in particular, the State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law.
› Article 37 (2) establishes a role for citizens in development and the right to form associations without interference from the State. This is important in the context of activism around corruption issues.
› Article 94(d) - has been found by the report of a commission or a committee of inquiry to be incompetent to hold public office or is a person in respect of whom a commission or committee of inquiry has found that while being a public officer he acquired assets unlawfully or defrauded the State or mis-used or abused his office, or willfully acted in a manner prejudicial to the interest of the State, and the findings have not been set aside on appeal or judicial review is disqualified from holding public office.
› Article 218(a) establishes CHRAJ

• to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
• to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations.
Article 284: A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

Article 285: No person shall be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority. But under Section 8 of the Bank of Ghana Act, 2002 (Act 612), only the Governor of the Bank of Ghana shall be the chairperson of the Board of Directors of the Bank of Ghana.

Article 286 (1): A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly.

   a. within three months after the coming into force of this Constitution or before taking office, as the case may be.
   b. at the end of every four years; and
   c. at the end of his term of office.

2. Failure to declare or knowingly making false declaration shall be a contravention of this Constitution and shall be dealt with in accordance with article 287 of this Constitution.

3. The declaration made under clause (1) of this article shall, on demand, be produced in evidence-

   a. before a court of competent jurisdiction; or
   b. before a commission of inquiry appointed under article 278 of this Constitution; or
   c. before an investigator appointed by the Commissioner for Human Rights and Administrative Justice.

4. Any property or assets acquired by a public officer after the initial declaration required by clause (1) of this article and which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be deemed to have been acquired in contravention of this Constitution.

Article 287. (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

2. The Commissioner of Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.

Article 288. In this Chapter, unless the context otherwise requires, “public officer” means a person who holds a public office.

Articles 128(4) - A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years’ standing as a lawyer.

...since the Constitution, 1992 was silent on who “a man of high moral character and proven integrity” was and the factors to be taken into account in finding such a person for appointment as the Chief Justice of Ghana, the court would be entering upon policy determinations for which judicially manageable standards were not available, if it were to assume jurisdiction in the matter.

Article 139(4) - A person shall not be qualified for appointment as a Justice of the High Court unless he is a person of high moral character and proven integrity and is of at least ten years’ standing as a lawyer.

“Finally the attempt to abort the proceedings also brings it in conflict with the provisions of Articles 128(4), 136(3) and 139(4) of the Constitution which require that only persons of higher moral character and proven integrity shall be appointed to the various branches of the superior court bench, read side by side with Article 146(1) which requires, inter alia, that when a judge is alleged to have fallen short of the qualities for which he was appointed he should be investigated. It is also a matter of public policy that allegations of misconduct or misbehaviour against a public official, including a judge, should not be swept under the carpet. Indeed the very integrity of the Judiciary is at stake if such allegations are unexamined and found to be false (Link to code of conduct – article 284, 1992 Constitution).

In the words of Berger CJ in the Landmark case ... “The operations of the courts and the judicial conduct of judges are matters of utmost public concern.” Thus we are faced with these competing rights under the Constitution, that is, the requirement to investigate the alleged misconduct against the Plaintiff and the protection of his personal reputation as well as the integrity of the judiciary itself. It would be appropriate to apply what the Irish Supreme Court called the doctrine of harmonious interpretation. This doctrine requires that where two constitutional rights come into conflict, for example the right to privacy and the freedom of the press, the conflict should be resolved in the manner which least restricts both rights. That was in the case of Attorney-General v. X and others (1992) ILRM 401.”

The plaintiff has other remedies available to him as mentioned earlier when we identified the five possible consequences for such violations some of which are available under our laws. But the State and for that matter the people from whom justice emanates as per Article 125(1) of the Constitution, 1992, will lose it all if the proceedings are truncated without investigations. The State and the people of Ghana have cause to demand that, like Caesar’s wife, judges should live above suspicion. More importantly, the Plaintiff’s right to a fair hearing cannot be said to have been violated. The Chief Justice has given him the chance to be heard before a decision is made whether or not a prima facie case exists. The committee is yet to be set up to go into the petition. There is thus no cause to complain at this stage about any unfairness in procedure or prejudice to his cause.”

In short, the court was saying that effect should be given to both rights. The plaintiff is entitled to private and confidential process which has been breached by the public disclosure of the petition and its contents. At the same time, the State has a constitutional right to investigate the allegations contained in the petition as a matter of express constitutional provisions, and also on account of public policy which requires that such allegations should be investigated.

The Supreme Court has relied on the provisions of the Constitution to require other institutions of State to fight corruption more vigorously. One of such cases is Occupy Ghana v. Attorney General where Dotse JSC made the observations below:

At this moment, we think judicial notice can be taken of the fact that corruption, abuse of position and embezzlement of public funds among others has become the bane of our governance structures. Reference is made to the various Auditor-General’s Reports attached to these proceedings. It is our opinion that, notice must be taken of the rampant carelessness that is often times employed by those in charge of public funds in most entities. We believe that the time has come when it is necessary to strengthen the relevant constitutional bodies set up under the Constitution such as the Auditor-General to protect the public purse from persons who intend to embark upon personal economic recovery programmes with the public funds. We are also of the view that, the Auditor-General is expected to name the persons who commit irregularities etc, under Article 187 (7) (b) and Section 17 of Act 584 respectively, recover the amounts from them and thereafter those persons be made to face appropriate punishment. That should be the way forward.”

DOTSE JSC @pg. 27 IN THE CASE OF OCCUPY GHANA v. ATTORNEY GENERAL

The effect of these constitutional provisions and case law is to create the foundation from which the anti-corruption fight can be waged.

To fulfil these constitutional provisions, the State, through the legislature, has enacted various pieces of legislation to combat bribery and corruption.

Criminal Offences Act, 1960 (Act 29)

Bribery and corruption as defined under Ghanaian law are purely criminal offences committed by or with a public official. Commercial bribery between private individuals is not recognised under Ghana law. It is, however, possible for a civil action to be instituted for restitution, against an official who has been convicted for bribery.

Historically, the first pieces of legislation in the fight against corruption were enacted in 1960 at the time of the formation of the first Republic. The Criminal Offences Act, 1960 (Act 29) criminalises active and passive bribery, extortion, exploitation of a public office and the use of public office for private gain, irrespective of the nationality of the bribe payer/taker. Direct and indirect acts of corruption are illegal, as well as attempting, preparing or conspiring to bribe both agents and principals.
Bribing governments or State-related officials

› Chapter 5 of Act 29 creates offences relating to public officers and to public elections. Sections 239(a) and (b) of that Act make the paying and receiving of a bribe, oppression and extortion misdemeanours.
› Sections 240 and 241 of Act 29 define what amounts to corruption: (1) by a public officer as well as what would amount to corruption; and (2) of a public officer. An interesting provision is section 242, which guards against a person receiving gifts prior to or in anticipation of assuming a public office, provided there is a reasonable expectation of the person assuming that office at the time of receiving the “gift”.

Wilfully or fraudulently causing financial loss

› Section 179(A)(3) of the Criminal Code Act 1960, (Act 29) as amended by the Criminal Code (Amendment) Act, 1993 (Act 458) provides, as far as relevant, as follows: “Any person through whose wilful, malicious or fraudulent action or omission...(a) The State incurs a financial loss ....commits an offence”.

Case on willfully causing financial loss to the State: Tsatsu Tsikata v. The Republic

› The first three charges against the appellant allege “Wilfully causing financial loss to the State contrary to section 179A (3)(a) of the Criminal Code 1960 Act 29”.
› The particulars of those charges commonly allege as follows: “TSATSU TSIKATA as the Chief Executive of Ghana National Petroleum Corporation (GNPC) in.............1996 in Accra in the Greater Accra Region wilfully caused financial loss to the State by illegally authorizing and causing to be paid the sum of Two Million Three Hundred and Six Thousand Three Hundred and Seventy-Four French Francs Forty-One Centimes (FRF 2,306,374.41) equivalent of Seven Hundred Seventy-Five Million One Hundred and Twenty-Six Thousand Three Hundred and Ten Cedis (¢775,126,310) from the accounts of GNPC to Caisse Francaise de Development on behalf of Valley Farms Company Ltd., a private limited liability company which had defaulted on a loan it had contracted from the said Caisse Francaise de Development.”

Case on fraudulently causing financial loss to the State: Mallam Ali Yusuf Issah v. The Republic

› The Appellant was the former Minister of Youth and Sports. On 20th July 2001, the High Court convicted him on two counts of stealing and fraudulently causing the financial loss of $46,000.00 to the State contrary to sections 124(1) and 179A(3)(a), respectively, of the Criminal Code, 1960 (Act 29). The High Court sentenced him to serve 4 years in jail on each count plus a fine of ¢10,000,000.00 or, in default, 12 months in jail on count two.
In addition, the Appellant was ordered to refund the amount of $46,000.00 or, in default, serve an additional jail term of 2 years. All the sentences were to run concurrently.

The Appellant appealed to the Court of Appeal against both the conviction and the sentences. On October 23rd 2001, the Court of Appeal gave judgment upholding the conviction and, therefore, dismissed the appeal. However, the court varied the sentences by quashing the 2 years’ jail sentence imposed in default of making the refund ordered by the High Court. The Appellant by his appeal herein challenges the Court of Appeal’s confirmation of the conviction and the remaining sentences.

Facilitation payments

In Ghana, there is no specific legislation relating to facilitation payments.
Any payment, promise to pay or non-pecuniary assistance, which will benefit a public official personally regardless of amount, may be defined as a corrupt act.

CHRAJ Act

CHRAJ instituted Guidelines on Conflict of Interest to assist public officials to identify and manage conflict of interest situations.
Mr. Appiah Ampofo took CHRAJ to court in 2003 after he had lost case brought before the Commission by the Editor-In-Chief of The Crusading GUIDE, Kweku Baako, Jnr. Appiah Ampofo. Mr. Amopofo challenged whether or not the CHRAJ was properly constituted when it purported to adjudicate the matters concerning the Plaintiff and whether or not by reason of the above, the Defendant lacked the jurisdiction to adjudicate the matters affecting the Plaintiff. The investigations took place in the absence of substantive Chairperson of CHRAJ, Mr. Emile Short who was on secondment on an international assignment.

The Supreme Court decided that CHRAJ Complaint Procedure Regulations, 1994 CI 7 is not unconstitutional; that Panel System of investigation prescribed by CI 7 enabling investigations to be conducted by a Commission Member of Legal Officer status as Chairman of the Panel and two others is lawful. This provision allows other professionals besides lawyers who may be helpful to a specific investigation such as auditors, financial analysts, etc, to serve on the Commission’s Panels.

The Commission need not always sit as a trinity of the Commissioner and the Deputy Commissioners. To do so would be an absurdity and would defeat the letter and spirit of the Constitution. Indeed, the Constitution expressly provides that the Commission should have Regional and District offices to conduct such on-the-spot investigations as may be warranted.

THE REPUBLIC v THE FAST TRACK HIGH COURT – ACCRA, EX-PARTE
COMMISSION ON HUMAN RIGHT & ADMINISTRATIVE JUSTICE
HONOURABLE DR. RICHARD ANANE CIVIL MOTION NO. J5/10/2007
15 December 2007

The Supreme Court on 30th October, 2007 after quashing the decision of the High Court, Accra, which purported to interprete the word “Complaint” in Article 218 (a) of the 1992 Constitution, formulated the following issue for determination under Article 130(2) of the Constitution, i.e.:-For a Complaint within the meaning of Article 218(a) of the 1992 Constitution to form the basis for investigation by the Commission on Human Right and Administrative Justice – must it be made by an identifiable individual or corporate body and lodged with the Commission or are complaints (in other words, expressions of dissatisfaction) made through the media and other public fora regarding “Violations of Fundamental Human Rights and Freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties” an adequate basis for the institution of investigation by CHRAJ.

Article 218(e) of the 1992 Constitution - By a writ filed on May 26th 2010, by the Commission for Human Rights and Administrative Justice against the Attorney General and Mr. Baba Kamara the Plaintiff prayed the Court for the following reliefs: A declaration that upon a true and proper construction and/or interpretation of Article 218(e) of the Constitution … the Commission on Human Rights and Administrative Justice has the mandate to investigate a private individual, entity and/or person who is alleged to be involved or implicated in an act of bribery or corruption allegedly committed (by) a public official or officials and who is/are being investigated by the Commission.

A declaration that on a true and proper interpretation of article 218(e) of the 1992 Constitution, the mandate of the Commission on Human Rights and Administrative Justice ‘to investigate all instances of alleged or suspected corruption and misappropriation of public moneys by officials’ covers situations in which an individual, entity and/or person though not a ‘public official’ is alleged to be involved or implicated in an act of alleged bribery or corruption involving public officials and which is under investigation by the Commission.’

The 2nd Defendant, who at all times material to the matter under investigation had been a private businessman, challenged the jurisdiction of CHRAJ to investigate him on the grounds that, by the provisions of Article 218(e) CHRAJ had the mandate to investigate only public officials and not private citizens such as himself. On the basis of this challenge, the 2nd Defendant refused to submit himself to CHRAJ. CHRAJ consequently brought the suit Commission on Human Rights and Administrative Justice vrs. The Attorney General, Baba Kamara, Writ No. J1/3/2010, 6TH APRIL, 2011.

Whistleblowers Act

The Whistleblowers Act was passed to provide an enabling environment for people to come forward and report corrupt practices without fear of repercussions. It grants them the protection from possible attack by the persons they are reporting.
Most importantly, it regulates conduct in both private and public sectors by encouraging employees to come forward with information on improprieties conducted by their employers, other employees or institutions. This law makes provision for the protection of the whistleblower, as well as rewarding them in the appropriate cases.

Under Part 2 of the Whistleblower Act, sections 4 to 11 provide the procedure for reporting unlawful or illegal conduct or corrupt practices. The whistleblower is required to make a report to a person in authority when he or she witnesses any wrongdoing or have information that such an infraction has occurred. The person receiving the report, where it is not the Attorney-General (A-G), is required to submit a written report to the A-G within seven (7) working days. The law requires certain investigative procedures be followed before a determination is made. Where these procedures have led to an acceptance of the findings, the whistleblower will be protected under the Act (s. 12).


**Step 4**

**Break out group assignments**

- Break participants into 3 groups.
- Provide the different groups with the Handouts assigned to each group.
- The group should answer the questions which follow the Case Studies with the support of the Handouts

**Case Study for group 1**

Kojo K is a private businessman. After the award of a contract for the construction of the official residence of the Municipal Chief Executive for AA Municipality, he presented an undisclosed amount and 3 smocks to the Municipality Chief Executive. There are suspicions in town that these items were presented in furtherance of an “Agreement” prior to the award of the Contract to Kojo K. Can Kojo K be investigated knowing that he is not a public officer? Kojo K’s personal Secretary who wants to make a report to CHRAJ has realized that his Contract of Employment signed 10 years before the Whistleblowers Act was passed, prohibits him from making such reports. What advice do you have for Kojo K’s Secretary?

The group may rely on Handout 2.1.1 and 2.1.7 to answer this Case Study.

**Case Study for group 2**

Adams is an aspirant for the Chairmanship of a major political party in Ghana. He has received “donations” from various people to support him in his campaign with the understanding that he will make it easier for his supporters to win major contracts if he is elected? CHRAJ has invited Adams as part of their investigations but Adams says he
will attend the CHRAJ hearing as he is not a public officer and has not engaged in any potentially corrupt act. What response will give Adams on his views? What can CHRAJ do to make Adams appear before them?

Handouts 2.1.2 to 2.1.8 will help with answering the Case Studies provided above.

Case Study for group 3

Kojo K is a private businessman. After the award of a contract for the construction of the official residence of the Municipal Chief Executive (MCE) for AA Municipality, he presented an undisclosed amount of cash and 3 smocks to the Finance Officer who demanded these on the instructions of the Municipality Chief Executive. There are suspicions in town that these items were presented in furtherance of an “Agreement” prior to the award of the Contract to Kojo K. When the MCE appeared before CHRAJ, he refused to answer critical questions with the explanation that his oath of office required him to keep the required information secret. Does the law support the MCE?

The group may rely on Handout 2.1.3 and 2.1.9 to answer this Case Study.

Step 5

Wrap Up and review of session
› Review objectives
› Participants share take-aways from the session

References for further reading

Handout 2.1.1 – Criminal Offences Act

Section 120—Explanation as to Dishonest Appropriation

(1) An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.

(2) It is not necessary, in order to constitute a dishonest appropriation of a thing, that the accused person should know who is the owner of the thing, but it suffices if he has reason to know or believe that some other person, whether certain or uncertain, is interested therein or entitled thereto, whether as owner in his own right, or by operation of law, or in any other manner; and any person so interested in or entitled to a thing is an owner thereof for all the purposes of the provisions of this Code relating to criminal misappropriations and frauds.

(3) The general provisions of Part I with respect to consent, and with respect to the avoidance thereof by force, duress, incapacity, and otherwise, apply for the purposes of this section, except as is hereafter in this chapter expressly mentioned with respect to deceit.

Section 129—Fraudulent Breach of Trust

A person is guilty of fraudulent breach of trust if he dishonestly appropriates a thing the ownership of which invested in him as a trustee for or on behalf of any other person.

Section 145—Fraud by Agents.

(1) If—

(a) any agent dishonestly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to this principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to this principal’s affairs or business; or

(b) any person dishonestly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or
(c) any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of a misdemeanour.

**Section 179C—Using Public Office for Profit**

Any person who—

(a) while holding a public office corruptly or dishonestly abuses the office for private profit or benefit; or

(b) not being a holder or a public office acts or is found to have acted in collaboration with a person holding public office for the latter to corruptly or dishonestly abuse the office for private profit or benefit, commits an offence.

**Section 179D—Penalty**

A person convicted of an offence under any of the offences specified in this Chapter is liable on conviction to a fine of not less than ₴5 million or imprisonment not exceeding ten years or both.”
Section 193(3) — Piracy

(3) A master or seaman commits an act of piracy if he betrays his trust, runs away with his ship or goods belonging to her or yields them up voluntarily to any person contrary to his duty, or conspires or combines with or attempts to corrupt any master, officer or seaman to yield up or run away with any ship or goods or makes or endeavours to make a revolt in the ship.

Section 239—Corruption, etc. of and by Public officer, or Juror.

(1) Every public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of his office, shall be guilty of a misdemeanour.

(2) Whoever corrupts any person in respect of any duties as a public officer or juror shall be guilty of a misdemeanour.

Section 240—Explanation as to Corruption by Public Officer, etc.

A public officer, juror, or voter is guilty of corruption in respect of the duties of his office or vote, if he directly or indirectly agrees or offers to permit his conduct as such officer, juror, or voter to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever.

Section 241—Explanation as to Corruption of Public Officer, etc.

A person is guilty of corrupting a public officer, juror, or voter in respect of the duties of his office or in respect of his vote, if he endeavours directly or indirectly to influence the conduct of such public officer, juror, or voter in respect of the duties of his office or in respect of his vote, by the gift, promise, or prospect of any valuable consideration to be received by such public officer, juror, or voter, or by other person, from any person whomsoever.

Section 242—Special Explanation as to Corruption of and by Public Officer, etc.

It is immaterial, for the purposes of section 240 or 241, that the person respecting whose conduct the endeavour, agreement, or offer therein mentioned is made is not yet at the time of the making of such endeavour, agreement, or offer, such a public officer, juror, or voter, if the endeavour, agreement, or offer is made in the expectation that he will or may become or act as such officer, juror, or voter.
Section 243—Corrupt Agreement for Lawful Consideration, etc.

It is immaterial, for the purposes of section 240, 241 or 242, whether the act to be done by a person in consideration or in pursuance of any such gift, promise, prospect, agreement or offer as therein mentioned be in any manner criminal or wrongful otherwise than by reason of the provisions of the said sections.

Section 244—Acceptance of bribe by Public Officer, etc., After Doing Act.

If, after a person has done any act as a public officer, juror, or voter, he secretly accepts, or agrees or offers secretly to accept for himself or for any other person, any valuable consideration on account of such act, he shall be presumed, until the contrary is shown, to have been guilty corruption, within the meaning of this Chapter, in respect of that act before the doing thereof.

Section 245—Promise of bribe to Public Officer, etc. after act done.

If, after a public officer, juror, or voter has done any act as such officer, juror, or voter, any other person secretly agrees or offers to give to or procure for him or any other person any valuable consideration on account of such act, the person so agreeing or offering shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted such public officer, juror, or voter, in respect of such act.

Section 246—Explanation as to Oppression

A public officer or juror is guilty of wilful oppression in respect of the duties of his office if he wilfully commits any excess or abuse of his authority, to the injury of the public or of any person.
Section 247—Explanation as to Extortion

A public officer is guilty of extortion who, under colour of his office, demands or obtains from any person, whether for purposes or for himself or any other person any money or valuable consideration which he knows that he is not lawfully authorised to demand or obtain, or at a time at which he knows that he is not lawfully authorised to demand or obtain the same.

Section 248—Making False Declaration, etc., for Officer or Voting

Whoever, in order that he may obtain or be qualified to act in any public office or to vote at any public election makes, signs, publishes, or uses any declaration, statement or oath, required by law in such case, or any certificate or testimonial as to his conduct or services, or as to any other matter which is material for the obtaining by him of such office, or for his qualification to act in such office or to vote at such election, shall, if he does so, knowing that the declaration, statement, oath, certificate, or testimonial is false in any material particular, be guilty of a misdemeanour.

Section 252—Accepting or Giving bribe to Influence Public Officer or Juror.

(1) Whoever accepts, or agrees or offers to accept any valuable consideration, under pretence or colour of having unduly influenced, or of agreeing or being able so to influence, any person in respect of his functions as a public officer or juror, is guilty of a misdemeanour.

(2) Whoever gives, or agrees or offers to give to any public officer any valuable consideration for the grant to himself or to any other person of any benefit or advantage or for the exercise of influence in favour of himself or any other person is guilty of a misdemeanour.

Section 253—Corrupt Promise by Judicial Officer or Juror.

Whoever, otherwise than in the due execution of his duties as a judicial officer or juror, makes or offers to make any agreement with any person as to the judgment or verdict which he will or will not give as a judicial officer or juror in any pending or future proceeding, is guilty of a misdemeanour.

Section 254—Corrupt Selection of Juror.

Whoever, with a purpose of procuring any undue advantage or disadvantage to any party to any judicial proceeding, procures himself, or any other person to be summoned, empanelled, or sworn as a juror in such proceeding, or endeavours to prevent any other person from being summoned, impanelled; or sworn as a juror in such proceeding, is guilty of a misdemeanour.

Section 256—Corruption Intimidation, and Personation in Respect of Election

Whoever is guilty of corruption, intimidation, or personation in respect of a public election, shall be guilty of misdemeanour, and shall, during seven years from the date of his conviction, be incapable of voting at any public election and of holding the public office in respect of which the election was held, or any public office of the same nature.
Handout 2.1.4 – Whistle Blower Act

Disclosure of impropriety

1. (1) A person may make a disclosure of information where that person has reasonable cause to believe that the information tends to show

   (a) an economic crime has been committed, is about to be committed or is likely to be committed;
   (b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;
   (c) a miscarriage of justice has occurred, is occurring or is likely to occur;
   (d) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;
   (e) the environment has been degraded, is being degraded or is likely to be degraded; or
   (f) the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.

   (2) A conduct which falls within any of the matters specified in subsection (1), is in this Act referred to as an “impropriety”.

   (3) A person who makes a disclosure of impropriety is in this Act referred to as a “whistleblower”.

   (4) Despite any other law to the contrary, a disclosure of an impropriety is protected if

      (a) the disclosure is made in good faith,
      (b) the whistleblower has reasonable cause to believe that the information disclosed and an allegation of impropriety contained in it are substantially true, and
      (c) the disclosure is made to one or more of the persons or institutions specified in section 3.

Person who qualifies to make disclosure of impropriety

2. Disclosure of impropriety may be made

   (a) by an employee in respect of an employer,
   (b) by an employee in respect of another employee, or
   (c) by a person in respect of another person, or an institution.

Person to whom or institution to which disclosure of impropriety may be made

3. (1) Disclosure of impropriety may be made to anyone or more of the following:

   (a) an employer of the whistleblower; (b) a police officer; (c) the Attorney-General; (d) the Auditor-General; (e) a staff of the Intelligence Agencies; (f) a member of Parliament; (g) the Serious Fraud Office; (h) the Commission on Human Rights and Administrative Justice; (i) the National Media Commission; (J) the Narcotic Control Board; (k) a chief; (l) the head or an elder of the family of the whistleblower; (m) a head of a recognised religious body; (n) a member of a District Assembly; (o) a Minister of State; (p) the Office of the President; (q) the Revenue Agencies Governing Board; or (r) a District Chief Executive.
Report to Commission on Human Rights and Administrative Justice

13. (1) A whistleblower who honestly and reasonably believes that that whistleblower has been subjected to victimisation or learns of a likely subjection to victimisation because a disclosure has been made, may in the first instance make a complaint to the Commission.

(2) A complaint made under subsection (1) shall contain the following particulars:

(a) the name, description and address of the whistleblower,
(b) the name, description and address of the whistleblower’s employer or of any other person who the whistleblower claims has subjected the whistleblower to victimisation or might subject the whistleblower to victimisation, and
(c) the specific acts complained of as constituting victimisation.

Action by the Commission and enforcement of its orders

14. (1) The Commission shall, on receipt of a complaint, conduct an enquiry into the complaint at which the whistleblower and the person against whom the complaint is made shall be heard.

(2) The Commission in the course of conducting an enquiry under subsection (1) may make an interim order that it considers fit.

(3) After hearing the parties and other persons considered necessary by the Commission, the Commission shall make an order considered just in the circumstances including an order for

(a) reinstatement,
(b) reversal of a transfer, or
(c) transfer of the whistleblower to another establishment where applicable.

(4) The Commission may, where it considers it just in the circumstances of the case, make an order for payment of reward from the Fund established under section 20.

(5) An order of the Commission under this section shall be of the same effect as a judgment or an order of the High Court and is enforceable in the same manner as a judgment or an order of the High Court.

(6) The powers conferred on the Commission under this Act are in addition to the powers exercisable by the Commission under the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).
Right of action for victimisation

15. A whistleblower who has been subjected to victimisation may bring an action in the High Court to claim damages for breach of contract or for another relief or remedy to which the whistleblower may be entitled, except that an action shall not be commenced in a court unless the complaint has first been submitted to the Commission under section 13.

Legal assistance

16. Where the Commission in the course of an inquiry or hearing before it under section 14, is of the opinion that the whistleblower is in need of legal assistance, the Commission shall issue a certificate to the whistleblower to obtain legal aid from the Legal Aid Board or another institution that the Commission may specify in the certificate.

Police protection

17. (1) A whistleblower who makes a disclosure and who has reasonable cause to believe that

(a) the whistleblower’s life or property, or
(b) the life or property of a member of the whistleblower’s family is endangered or likely to be endangered as a result of the disclosure, may request police protection and the police shall provide the protection considered adequate.

(2) Despite subsection (1), the Commission or the Attorney-General as appropriate may in relation to a disclosure of impropriety made or about to be made direct that the person who has made or is about to make the disclosure and the person’s family be given police protection.

(3) “Family” for the purposes of this section means spouse, father, mother, child, grandchild, brother and sister.
Handout 2.1.6 – Whistle Blower Act

Procedures for disclosure of impropriety and related action

4 (1) A disclosure may be made in writing or orally.

(2) The disclosure shall contain as far as practicable

(a) the full name, address and occupation of the whistleblower;
(b) the nature of the impropriety in respect of which the disclosure is made;
(c) the person alleged to have committed, who is committing or is about to commit the impropriety;
(d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
(e) the full name, address and description of a person who witnessed the commission of the impropriety if there is such a person;
(f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and
(g) if the person is an employee making a disclosure about that person’s employer or a fellow employee, whether the whistleblower remains in the same employment.

Reduction of disclosure into writing

5. (1) Where a whistle blower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced into writing containing the same particulars as are specified in subsection (2) of section 4.

(2) Where the whistleblower is illiterate, the writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands and the whistleblower shall approve of it before making a mark to it and a certificate to this effect shall be attached to the writing.

(3) In the case of a person who is blind or with some other physical disability, but literate, a certificate as required in subsection (2) shall be made with the necessary modification.
Protection of Whistle blowers

12. (1) A whistleblower shall not be subjected to victimisation by the employer of the whistleblower or by a fellow employee or by another person because a disclosure has been made.

(2) A whistleblower shall be considered as having been subjected to victimisation if because of making the disclosure,

   (a) the whistleblower, being an employee, is

      (i) dismissed,
      (ii) suspended,
      (iii) declared redundant,
      (iv) denied promotion,
      (v) transferred against the whistleblower’s will,
      (vi) harassed,
      (vii) intimidated,
      (viii) threatened with any of the matters set out in subparagraph (i) to (vii), or
      (ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee, or

   (b) not being an employee, the whistleblower is subjected to discrimination, intimidation or harassment by a person or an institution.

(3) A whistleblower shall not be considered as having been subjected to victimisation if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.
**Handout 2.1.7 – Whistle Blower Act**

**Protection against civil and criminal action**

18. A whistleblower is not liable to civil or criminal proceedings in respect of the disclosure unless it is proved that that whistleblower knew that the information contained in the disclosure is false and the disclosure was made with malicious intent.

**Void employment contracts**

19. (1) A provision in a contract of employment or other agreement between an employer and an employee is void if it

   (a) seeks to prevent the employee from making a disclosure,
   (b) has the effect of discouraging an employee from making a disclosure, (c) precludes the employee from making a complaint in respect of victimisation, or
   (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation.

   (2) Subsection (1) also applies to a contract of employment or agreement in existence on the commencement of this Act.

**Establishment of Whistle blower Reward Fund**

20. There is established by this Act a Whistleblower Reward Fund.

**Object of the Fund**

22. The object of the Fund is to provide funds for payment of monetary rewards to whistleblowers.

**Reward on conviction**

23. A whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund.

**Reward on recovery of money**

24. A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with

   (a) ten percent of the amount of money recovered, or
   (b) the amount of money that the Attorney-General shall, in consultation with the Inspector-General of Police, determine.
Section 7—Functions of the Commission.

The functions of the Commission are-

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or fair administration in relation to those services;

(c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;

(d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through such means as are fair, proper and effective, including

(i) negotiation and compromise between the parties concerned;
(ii) causing the complaint and its finding on it to be reported to the superior of an offending person;
(iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
(iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;

(e) to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution;

(f) to investigate all instances of alleged or suspected corruption and the misappropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation;

(g) to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and

(h) to report annually to Parliament on the performance of its functions.
Section 8—Special Powers of Investigation.

(1) The Commission shall for the purposes of performing its functions under this Act, have power-

(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;
(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court;
(c) to question any person in respect of any subject matter under investigation before the Commission;
(d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.

(2) The Commissioner shall not investigate-

(a) a matter which is pending before a court or judicial tribunal; or
(b) a matter involving the relations or dealings between the Government and any other Government or an international organisation; or
(c) a matter relating to the exercise of the prerogative of mercy.
Section 9—Initiation of Legal Proceedings.

For the purposes of performing his functions under the Constitution, this Act and any other law, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.

Section 12—Provisions Relating to Complaints.

(1) A complaint to the Commission shall be made in writing or orally to the national offices of the Commission or to a representative of the Commission in the Regional or District branch.

(2) Where a complaint is made in writing it shall be signed by the complainant or his agent.

(3) Where a complaint is made orally, the person to whom the complaint is made shall reduce the complaint into writing and shall append his signature and the signature or thumbprint of the complainant.

(4) Notwithstanding any law to the contrary, where a letter written by

(a) a person in custody; or
(b) a patient in a hospital, is addressed to the Commission, it shall be immediately forwarded, unopened and unaltered to the Commission by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

(5) A complaint under this Act may be made by any individual or a body of persons whether corporate or unincorporated.

(6) Where a person by whom a complaint might have been made under this Act has died or is for any sufficient reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him.

Section 14—Procedure in Respect of Investigations.

(1) Where the Commission decides to conduct an investigation under this Act, it shall give the authority or person concerned and to any other person who is alleged in the complaint to have taken or authorised the act or omission complained of, an opportunity to comment on any allegations contained in the complaint and the representative of the authority or person concerned shall submit his comments within such time as the Commission may specify.

(2) The public may be excluded from investigations conducted by the Commission.
(3) Without prejudice to the generality of the provisions of this section, the Commission may obtain information from such persons and in such manner, and make such inquiries as it considers necessary.

(4) The Commission may pay to a person by whom a complaint is made and to any other person who attends and furnishes information for the purposes of an investigation under this Act—

(a) sums in respect of expenses properly incurred by them; and
(b) allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the Commission having regard to the rates for the time being applicable to the courts.

Section 15—Evidence at Investigations.

(1) Subject to this section the Commission may require any person who, in its opinion, is able to give any information relating to a matter being investigated by the Commission—

(a) to furnish the information to it;
(b) to produce any document, paper or thing that in its opinion relates to the matter being investigated and which may be in the possession or control of that person.

(2) The Commission may summon before it and examine on oath or affirmation.

(a) a person required to give information or produce anything under subsection (1) of this section;
(b) a complainant;
(c) any other person who the Commission considers will be able to give information required under subsection (1) of this section.

(3) Subject to subsection (4) of this section, a person who is bound by law to maintain secrecy in relation to, or not to disclose, any matter may not.

(a) supply information to or answer a question put by the Commission in relation to that matter; or
(b) produce to the Commission a document, paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.
Session 2.2: Anti-Money Laundering Act; Audit Service Acr; Criminal and other Offences (Procedure)

- **Target group:** All staff of the LAS.
- **Recommended time allocation:** 4 hours.

1. Learning Objectives

By the end of this Module, participants should be able to:

- Explain various constitutional provisions in relation to the fight against corruption in Ghana.
- Explain the provisions of the Criminal Offenses Act, 1960 (Act 29) in relation to anti-corruption.
- Explain the provisions of the CHRAJ Act, 1993 (Act 45).

2. Core Messages

- Article 35 (8) obligates the State to take steps to eradicate corrupt practices and the abuse of power.
- Article 37 (2) establishes a role for citizens in development and the right to form associations without interference from the State. This is important in the context of activism around corruption issues.
- The Supreme Court has relied on the provisions of the Constitution to require other institutions of State to fight corruption more vigorously. One of such cases is Occupy Ghana v. Attorney General.
- When two different constitutional rights conflict, the courts may rely on the doctrine of harmonious interpretation. This requires that where two constitutional rights come into conflict, for example the right to privacy and the freedom of the press, the conflict should be resolved in the manner which least restricts both rights.
- Receiving gifts prior to assuming a public office may amount to corruption.
- In Ghana, there is no specific legislation relating to or against facilitation payments. However, depending on the reason for the payment, it may amount to bribery or not.
**Step 1**

**Facilitator introduces the topic**
- Introduce the topic for discussion in this session by focusing on the general purpose of the Anti-Money Laundering Act, the Audit Service Act, Criminal and other Offences Act and the Evidence Act.

**Step 2**

**Discussions by the table**
- Let participants form groups of 4 by their tables without movement.
- Make post-it cards and writing markers available to the participants.
- Prepare a space for the sticking of Post-It cards.
- Participants should discuss in these groups provisions of laws in relation to the Security and Intelligence Agencies Act which have guided / affected their work as LAS officers.
- Participants should write these down on Post-it papers and stick on the space provided (Post-its are per group and not per individual participants).
- Group leaders should pass brief comments on the provisions listed on the Post-its.

**Step 3**

**Summary of Handouts**
Trainer presents in summary the contents of Handouts as follows:

**Anti-Money Laundering Act, 2008 (Act 749)**

Ghana has also passed into law an Anti-Money Laundering Act, 2008 (Act 749) as amended by the Anti-Money Laundering (Amendment) Act 2014 (Act 874). This act seeks to prevent persons from hiding or diluting proceeds from illegal activities through their use in a legitimate enterprise. Sections 1 and 2 thereof create the offences of money laundering and abetment, while section 3 places a punishment of either a fine of 5,000 penalty points or a custodial sentence of between 12 months and 10 years for the offence.

Specific provisions of the Anti-Money Laundering Act are:

**Money laundering**
1. 1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds or unlawful activity and the person.
   a. converts, conceals, disguises or transfers the property.
   b. conceals or disguises the unlawful origin of the properly. Or
   c. acquires, uses or takes possession of the property.

2) For the purpose of this Act, unlawful activity means conduct which constitutes a serious offence, financing of a terrorist act or contravening on of a law which occurs after the commencement of this Act whether the conduct occurs in this country or elsewhere.
Aiding: and abetting money laundering activities
2. A person commits an offence if the person knows or ought to have known that another person has obtained proceeds from an unlawful activity and enters into an agreement with that other person or engages in a transaction where.

   a. the retention or the control by or on behalf of that other person of the proceeds from unlawful activity is facilitated, or
   b. the proceeds from that unlawful activity are used to make funds available to acquire property on behalf of that other person.

Penalty for money laundering
3. A person who contravenes section 1 or 2 commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or to a term of imprisonment of not less than twelve months and not more than ten years or to both.

Financial Intelligence Centre

Establishment of Financial Intelligence Centre
4. 1) There is established by this Act a body to be known as the Financial Intelligence Centre.
   2) The Centre is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
   3) The Centre may for the performance of its functions acquire and hold movable and immovable property and may enter into a contract or any other transaction.

Objects of the Centre
5. The objects of the Centre are to

   a. assist in the identification of proceeds of unlawful activity and the combat of money laundering activities;
   b. make information available to investigating authorities, the intelligence agencies and the revenue agencies to facilitate the administration and enforcement of the laws of the Republic; and
   c. exchange information with similar bodies in other countries as regards money laundering activities and similar offences.

Functions of the Centre
6. To achieve the objects, the Centre shall

   a. process, analyse, disseminate and interpret information disclosed to or obtain by the centre in terms of this Act
   b. retain the information in the manner and for the period required under this Act:
   c. inform, advise and co-operate with investigating authorities, supervisory bodies, the revenue agencies, the intelligence agencies and foreign counterparts; and
   d. monitor and give guidance to accountable institutions, supervisory bodies and other persons on the discharge of their duties and in compliance with this Act.
The Audit Service Act, 2000 (Act 584)

Section 11(6) Any head of a public institution or other body subject to auditing by the Auditor-General who fails to comply with subsection (5) is liable to be surcharged with the cost of any loss occasioned by defective or deficient internal controls of auditing.

Section 17—Disallowance and Surcharge by Auditor-General
1. The Auditor-General shall specify to the appropriate head of department or institution the amount due from any person upon whom he has made a surcharge or disallowance and the reasons for the surcharge or disallowance.
2. A sum specified by the Auditor-General to be due from any person shall be paid by that person to the department or institution as the case may be, within 60 days after it has been so specified.
3. A person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal to the High Court not later than the expiration of 60 days prescribed in subsection (2).
4. In accordance with article 187(10) the Rules of Court Committee may, by constitutional instrument, make Rules of Court for the purposes of subsection (3) of this section.
5. Any sum which is lawfully due under this section shall, on civil proceedings taken by the Head of Department in a court be recoverable as a civil debt and where the person surcharged is in receipt of remuneration from government or any institution, the remuneration shall be attached to the extent of the sum lawfully due.
6. In any proceedings for the recovery of that sum a certificate signed by the Auditor-General shall be prima facie evidence of the facts certified.
7. The Auditor-General may with the prior approval of Parliament revoke any surcharge made under this section.

Section 18—Independence and Powers of the Auditor-General
1. In the performance of his functions under this Act or any other law the Auditor-General—
   a. shall not be subject to the direction or control of any other person or authority;
   b. may disallow any item of expenditure which is contrary to law and surcharge—
   i. the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure;
   ii. any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; or
   iii. the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred.
2. Paragraph (a) of subsection (1) shall not preclude the President, acting in accordance with the advice of the Council of State, from requesting the Auditor-General in the public interest, to audit, at any particular time, the accounts of any such body or organisation as is referred to in section 11(1).

Each of these laws specifically criminalises the act of using one’s public office for any form of private gain, actually given or promised.
Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

General Notes

› The Criminal and other offences (Procedure) Act, 1960 (Act 30) governs the procedure that persons who perform law enforcement functions in relation to arrests, detention, searches, taking of evidence or testimony of complainants, accused persons and witnesses, classification of offences into misdemeanours and felonies, mode of trial for different categories of offences etc. must follow in the discharge of these functions.
› The Offences for which Act 30 is applicable may be created under the Criminal and other Offences Act, 1960 (Act 29) or other laws.
› By section 1(2), Act 30 provides for offences under any other enactment to be enquired into, tried and dealt with in accordance with the provisions of Act 30.
› In other words, when an Officer arrests, detains, conducts searches, grants bail, he or she must do so in accordance with the provisions of the Criminal and other Offences (Procedure) Act, 1960 (Act 30).

Arrests and search of premises, and liberation of oneself (Sections 3, 4 and 5)

Mode of arrests

› When persons commit offences or are about to commit offences, they may be arrested to protect life and property of the members of the society.
› The Officer is required to actually touch or confine the body of the person to be arrested, unless the person to be arrested has through words or conduct which the Officer can observe, has submitted to the arrest.
› Section 3(4) of Act 30 requires that when a person who is authorised to effect an arrest reasonably believes that the person to be put under arrest has entered into some premises or is in some premises, anyone residing there or in charge of the place must allow the officer to enter such premises and provide reasonable support to search the premises for the arrest of the person being pursued.
› In the event that the Officer cannot enter the premises with the assistance of the person(s) residing there or the person in charge, and going for a warrant to enter and search the person for the arrest of the suspect will create an opportunity for the suspect to escape, then the Officer may enter the place through force through any outer door, an inner door or a window.
› If the officer who has entered the place is detained, the Officer is permitted break out of the place for the purposes of liberating him or herself.

Prohibition of unnecessary restraint (Section 6)

› In the process of effecting an arrest, the level of deprivation of liberty of the suspect must be commensurate with what is required to prevent his escape and nothing more.
Notification of substance of warrant

When an Officer effects an arrest, the Officer is required to communicate to the suspect the reason for the arrest and if the arrest was pursuant to an arrest warrant which was issued, and show the warrant. This is not required when the suspect was arrest in the process of committing the offence or after he has escaped from lawful custody.

Search of the person arrested

The Officer who has arrested or the Officer who has custody of the person arrested may search the person arrested and keep property belonging to the person arrested in safe custody. The person arrested must keep on necessary wearing apparel. What is necessary has to be decided on a case by case basis and may in appropriate circumstances include such as shirts and trousers.

When there are no good reasons, such as possession of stolen items or instruments of violence on him or her or anything which may incriminate the person arrested, then, when the person arrested is put on bail, there is no need to search such a person.

In appropriate circumstances when searches are required, the search of a person arrested must be carried out with decency. This means that when a woman is to be searched, a woman must conduct the search. Searches of the person do not include searches of the private parts of the person arrested.

Taking persons arrested to the Police station

A person arrested must be taken to the Police Station or any other place designated for the reception of persons arrested. The person arrested must be informed of the details of the nature of the charges which led to the arrest. The person under arrest must be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for a defence or release.

Arrest without warrant (Section 10)

5. 1) A police officer may arrest without warrant a person who

   a. commits an offence in the presence of the police officer;
   b. obstructs a police officer in the execution of that police officer’s duty;
   c. has escaped or attempts to escape from lawful custody;
   d. possesses an implement adapted or intended for use to unlawfully enter a building, and does not give a reasonable excuse for the possession of the implement; or
   e. possesses a thing which may reasonably be suspected to be stolen property.

2) A police officer may arrest without warrant a person whom the police officer suspects on reasonable grounds

   a. of having committed an offence;
b. of being about to commit an offence, in order to prevent the commission of the offence;
c. of being about to commit an offence, where the police officer finds that person in any highway, yard, building or other place during the night;
d. of being a person for whom a warrant of arrested has been issued by a Court;
e. of being a deserter from the Armed Forces; or
f) of having been concerned in an act committed outside the Republic which, if committed in the Republic would have been punishable as an offence, and for which that person is, under an enactment, liable to be arrested and detained in the Republic.

93. Search without a warrant in certain cases

1. Where a police officer has reasonable cause to believe that an article
   a. which has been stolen or unlawfully obtained,
   b. in respect of which a criminal offence has been, is being or is about to be committed,

   is being conveyed, is concealed, or being carried on a person in a public place, or is concealed or contained in a package in a public place for the purpose of being conveyed, the police officer may, where the exigencies of the case so require, without a warrant or written authority arrest, seize and search that person, package or article.

2. A police officer who arrests a person, conducts a search or seizure, may take possession of and detain an article together with the package containing it, any may also arrest a person conveying, concealing or carrying the article.

94. Search of premises without warrant

1. A police officer not below the rank of Assistant Superintendent of Police, or who being below the rank is authorised in writing so to do by a police officer not below the rank, may enter a house, shop, warehouse, yard, ship, boat, vessel, beach or any other premises which the police officer has reasonable cause to believe contains property which has been stolen or dishonestly received.

2. The police officer may search for, seize, and secure, the property which the police officer has reasonable cause to believe has been stolen, or dishonestly received as if the police officer had a search warrant and the property seized corresponded to the property described in the search warrant.

3. Authorisations, searches, and seizures, given or made under this section shall not be confined to a particular property, but may be general.

Section 147A—Payments of Money made by Accused Persons

1. Where a person convicted of an offence involving dishonesty has, since the commission of the offence, made payments of money or transferred any property to any person, such payments or transfers shall be deemed to have been made out of the proceeds of the offence, and accordingly any court may, on the application of the prosecutor or the victim of the offence, order the person to
whom the payments or transfers have been made to return the money or property to such person as may be specified by the court unless it is shown to the satisfaction of the court by the person in respect of whom the order has been made—

a. that he gave valuable consideration commensurate to the payments, of money or transfers of property made to him, or
b. that he is a dependant of the person convicted and that the payments of money were his reasonable living expenses made to him as such dependant.

2. An order under this section shall be deemed to be an exercise of the civil jurisdiction of the court in an action between the person in whose favour the order has been made as plaintiff and the person against whom the order has been made as defendant and shall be enforceable in the same manner and be subject to like appeal as are orders for the return of money.

3. The court shall have jurisdiction under this section notwithstanding that the value of the money or property exceeds the limits of the civil jurisdiction of the court.

Section 147B.—Order for Recovery of Property or its Value.

1. Where sentence is imposed for an offence involving dishonesty and any property including money is not recovered, the court on sentencing the offender, on its own motion or on the application of the prosecutor or the victim of the offence may make an order for the return by the offender to the victim of the offence of the property not recovered and for payment, in default, of the value of any property not returned.

2. An order under this section shall be deemed to be an exercise of the civil jurisdiction of the court in an action between the victim of the offence as plaintiff and the offender as defendant and shall be enforceable in the same manner and be subject to the like appeal as are orders for the return of chattels or of money.

3. In case of dispute as to the value of the property the issue shall be tried by the court in the same manner as in a civil action.

4. The court shall have jurisdiction under this section notwithstanding that the value of the property involved exceeds the limits of the civil jurisdiction of the court.

5. An order under this section may be enforced either during the term of the sentence imposed, or at any time within ten years after the expiry thereof.

Section 147C—Definition of an Offence Involving Dishonesty.

For the purposes of sections 147, 147A and 147B of this Act, an offence involving dishonesty means any of the following offences under Chapter I of Part III of the Criminal Code, 1960 (Act 29), namely, stealing, fraudulent breach of trust, robbery, extortion, defrauding by false pretences and dishonest receiving.

Section 155—Conviction of Extortion on Charge of Corruption and Vice Versa.

1. When a person is charged with extortion as a public officer or juror and it is proved that he was guilty of corruption he may be convicted of corruption although he was not charged with that offence.
2. When a person is charged with corruption as a public officer or juror and it is proved that he was guilty of extortion he may be convicted of extortion although he was not charged with that offence.

Cases

There have been a series of matters prosecuted related to corruption. Some of these are:

i. THE REPUBLIC v SELORMEY [2001–2002] 2 GLR 424
   - Even though this is a 2002 matter, it is referred to because it resulted in the incarceration of a Minister of State. It involved certain transactions that the then Deputy Minister for Finance entered into on behalf of the State and for which he approved payments of about $1,297,500 to an entity he should not have made those payments to. He was found guilty and sentenced to eight years’ imprisonment (consisting of two four-year terms to run consecutively).
   - This was in addition to several fines as well as an order for the reparation of the monies embezzled.

ii. OKUDZETO ABLAKWA (NO 2) & ANOTHER v ATTORNEY-GENERAL & OBETSEBI-LAMPTYEY (NO. 2) [2012] 2 SCGLR
   - This case involved the grant of a lease of a government-owned house to a sitting government official. An action was commenced in the Supreme Court of Ghana by some Ghanaian citizens for a declaration that the disposal, lease or outright transfer of the disputed property to the second defendant, a Minister of State, smacked of cronyism and the same was arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the Constitution.
   - While the Supreme Court held that the action could be brought by citizens, it was dismissed on the grounds that no evidence had been adduced to prove the allegations of corruption.”

iii. IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE AND IN THE MATTER OF INVESTIGATIONS INTO ALLEGATIONS OF CORRUPTION, CONFLICT OF INTEREST AND ABUSE OF POWER AGAINST HON. DR. RICHARD ANANE (MP) AND THE MINISTER FOR ROADS TRANSPORT
   - In 2009, CHRAJ instituted corruption and abuse of power investigations against Dr. Anane, a Member of Parliament and Minister for Health, based solely on media allegations.
   - One of the allegations levelled against Dr. Anane was that under the colour and by virtue of his public office, he improperly and corruptly paid or remitted directly as well as through several persons and some institutions and officers of State, monies in an amount totalling at least US$126,560.00 to one private person by the name
of Miss Alexandra O’Brien, a woman with whom he was reputed to have had an amorous relationship.

- CHRAJ found that the evidence available showed the payments made came from his personal sources, through friends and family. On the construction of the provisions of the Criminal Code, the evidence did not support the offence of corruption. The Commission accordingly found that the allegations were not proven.
- The second allegation related to abuse of power. Dr. Anane, without due diligence and proper authority, purported to commit the nation to a project sponsored by the World Health Monitor Programme (WHMP) in which Miss O’Brien was involved. The Commission found that the Minister was in a conflict of interest situation as he had begun an intimate relationship after he opened negotiations/discussions with Miss O’Brien, who was representing the said WHMP project.
- The Commission, inter alia, recommended that the President of the Republic severely sanction the respondent by relieving him of his post as Minister of State for abusing his power and bringing his office and government to disrepute.
- The respondent, after the CHRAJ decision, sought the intervention of the Supreme Court, challenging the “jurisdiction” of the CHRAJ to proceed with an investigation in a matter without the lodging of a formal complaint by an identifiable claimant. The Supreme Court upheld his objection and ruled that under 218 (e) of the Constitution, for CHRAJ to investigate complaints of violation of corruption and abuse of power, there must be a complaint from an identifiable complainant. The CHRAJ decision was consequently quashed, with significant implications for the ability of the Commission to initiate actions in matters of alleged corruption by public officials.

iv. WOYOME v ATTORNEY GENERAL OF THE REPUBLIC OF GHANA

- In 2012, Alfred Agbesi Woyome, a Ghanaian businessman, was charged with corruption as a beneficiary of a GH¢51 million judgment debt in a suit against the State, which sum was paid to him by the NDC administration as compensation for an alleged illegal termination of a financial engineering contract by the previous NPP-led government.
- A former Attorney-General, Martin Amidu, instituted an action in the Supreme Court against the Attorney-General, Woyome and Waterville Holdings (BVG) Ltd. Mr. Amidu asked the Supreme Court to declare the contract between the Government of Ghana and Waterville, which formed the basis for the claim by Mr. Woyome, void. According to his claim, Waterville had their contract properly abrogated and the subsequent decision awarding them compensation for breach of contract null and void.
- The Supreme Court in the first instance declared the Waterville contract to have been properly abrogated. There was, however, no order of refund made against Mr. Woyome. Mr. Amidu then brought an application for review against Mr. Woyome and the Attorney-General for an order for the refund of the monies paid to Mr. Woyome. The Supreme Court, after hearing the review application, on 29 July 2014, ordered Woyome to refund the sum of GH¢51.2 million paid to him by the State. A High Court, however, acquitted him of any criminal liability in 2015 in the matter.
v. ALLEGATIONS OF BRIBERY IN THE JUDICIAL SERVICE

• In August 2015, a private investigative team, Tiger Eye Private Investigations, published video evidence of 12 High Court judges, 22 lower court judges, hundreds of court clerks, seven attorneys and five police officers receiving bribes for the disposition of judicial outcomes. The video evidence was, in at least some cases, secured by agents of the private investigator posing as interested parties, offering the officials involved, bribes to secure bail and other rulings for their protégés. The video evidence was aired publicly in Accra. A subsequent proposed airing in Ghana’s second city, Kumasi, was blocked by court order.
• Investigations were carried out by the respective employers, the Attorney-General’s Department, the Judicial Service and the Ghana Police Service. Seven High Court Judges were initially suspended, of which three have since been terminated. Twenty-two judges and magistrates from lower courts have also since been removed from office. Of this number, about three of them received their full benefits while the remainder were terminated without any benefits at all.
• There has, however, been no announcement of possible prosecutions of any of them. They have, however, been dismissed by the Judicial Service.
• The current findings have placed the investigative journalist under the protection of the Whistle Blowers Act and it has been said they have been granted “immunity”. Section 18 of the Act states that: “A whistle blower is not liable to civil or criminal proceedings in respect of the disclosure unless it is proved that that whistle blower knew that the information contained in the disclosure is false and the disclosure was made with malicious intent.”
• The case has raised a huge amount of public interest and has started, at all levels, a public debate as to whether there was entrapment, whether the administrative procedures or prosecutorial processes should have precedence and has also raised concerns about the impact of the ongoing trial by the media and the public after a public airing of the videos.
• There are questions regarding what “immunity” is about in this context and who has the power to grant it. The Whistleblowers Act does not empower the AG to grant immunity. It simply enables the whistleblower to apply to CHRAJ for protection against victimisation, request for police protection and offers protection from civil and criminal proceedings in respect of the disclosure. The Whistleblowers Act protects people who come across evidence of corrupt acts. Does it protect those who suborn corruption?
• Was Tiger Eye acting as an agent of the State? The Attorney General can ask a Whistleblower to conduct further investigations after an initial report is made. Does this somehow circumvent the normal rules on entrapment?

vi. ALLEGATIONS OF CONFLICT OF INTEREST AGAINST THE PRESIDENT OF THE REPUBLIC OF GHANA

• In a story reported by a Ghanaian online newspaper, Myjoyonline.com on 15 June 2016, it was alleged that the President of the Republic of Ghana, His Excellency John Dramani Mahama, had engaged in some corrupt practices in the grant of two contracts to a Burkinabe contractor by the name of Djibril Kanazoe. It reported
that he had been granted those contracts in the year a gift was given to the President, who was then the Vice President of Ghana. The contracts involved the construction of a wall around the Ghanaian embassy in Burkina Faso and the construction of an eastern corridor road at Dodo-Pepeso-Nkwanta. The story alleged that the President had received a Ford Expedition vehicle sometime in 2012 and this “gift” was in conflict with his duty to award such contracts using the appropriate procurement methods.

• A petition was made to CHRAJ by three complainants: the National Youth League of the Convention People’s Party (CPP); the Progressive People’s Party; and Nana Adofo Ofori, a private citizen in June 2016, and this was responded to by the President in a letter dated 18 July 2016. CHRAJ consolidated these complaints as they all relied on similar facts which alleged the contravention of the provisions on conflicts of interest under Chapter 24 (in particular Article 284) of the 1992 Constitution. All three complainants alleged that the President, in accepting this vehicle valued at US$100,000.00 as a gift from the contractor who conducts business with the Government of Ghana, had placed himself in a conflict of interest situation.

• CHRAJ then commenced an official investigation of the matter and came out with its decision dated 28 September 2016.

• CHRAJ held that the President breached the “gift policy” in the Code of Conduct and Conflict of Interest Guidelines issued by CHRAJ, when he accepted the gift from the contractor. However, they concluded that the President was not culpable of bribery or conflict of interest.

• The Concluding part of the decision stated: “At the end of the preliminary investigation the Commission has come to the conclusion, based on the extensive evidence assembled, that the allegations that the Respondent has contravened Article 284 of the 1992 Constitution by putting himself in situations of conflict of interest has not been substantiated. Consequently, the Commission holds that full or further investigations into the allegations are not warranted. The allegations therefore, are hereby dismissed.”

Step 4

Break out group assignments

› Break participants into 5 groups.
› Provide the different groups with the Handouts assigned to each group and let the groups discuss the Case studies assigned to them and provide answers to be shared in the plenary.

Questions for group 1: (Handout 2.2.1)

› Can a search be lawfully conducted without a warrant? Under what circumstances?
› When may notification of reason of arrest be dispensed with?

Tips to the Trainer: You may engage the entire class in brainstorming with the above questions.
Questions for group 2: (Handout 2.2.2)

› When may a person on bail be lawfully searched?
› Can an Officer who is a woman lawfully search a suspect who is man? How about the vice versa?

Questions for group 3: (Handout 2.2.3)

› Can refusal to give name and residence per se be a good ground to effect an arrest?
› When may a police officer effect an arrest without a warrant?

• Tips to the Trainer: You may consult section 11 of Act 30 for guidance.

Questions for group 4: (Handout 2.2.4)

› Can a police Officer lawfully take custody of persons arrested by private person?
› What can a police Officer do if a person in his lawful custody escapes?

Questions for group 5: (Handout 2.2.5)

› When may a search warrant be and not be effected?
› Can an security officer conduct a search without a warrant?
› Can a private person conduct a search without a warrant?

Step 5

Wrap Up and review of session

› Review objectives of the Session.
› Participants share take-aways from the session.
3. Mode of arrest
   In making an arrest a police officer or any other person making the arrest, shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody verbally or by conduct.

4. Search of place entered by person sought to be arrested
   (1) Where a person acting under a warrant of arrest, or a police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within a place, the person residing in or in charge of the place shall, on demand, allow the person so acting or the police officer free entry to the place and afford reasonable facilities to search the place for the person sought to be arrested.
   (2) Where entry to the place cannot be effected in accordance with subsection (1),
       (a) the person acting under the warrant, or
       (b) the police officer, in a case in which a warrant may issue, but cannot be obtained without affording an opportunity for the escape of the person to be arrested, may enter the place and search the place for the person to be arrested.
   (3) A person acting under a warrant or a police officer who has authority to arrest may, if after notification of authority and purpose and demand of admittance, is unable to obtain admittance, may forcibly enter through an outer or inner door or window of any house or place.

5. Power to break out of any house for purpose of liberation
   A police officer or a person authorised to make an arrest may break out of any house, or for the purpose of the liberation of the police officer or any other person who, having lawfully entered for the purpose of making an arrest, is detained within the house.

6. Unnecessary restraint
   A person arrested shall not be subjected to more restraint than is necessary to prevent the escape of the person arrested.

7. Notification of substance of warrant
   Except when the person arrested is in the actual course of the commission of a criminal offence or is pursued immediately after escape from lawful custody, a police officer or a person making the arrest shall inform the person arrested of the cause of the arrest, and, if the police officer or other person is acting under the authority of a warrant shall notify the person to be arrested of the content of the warrant and, if so required, shall show the warrant to the person to be arrested.

8. Search of arrested person
   (1) When a person is arrested by a police officer or any other person, the police officer making the arrest or to whom the other person, makes over the person arrested, may search the person arrested, and place in safe custody the articles, other than necessary wearing apparel, found on the arrested person.
Handout 2.2.2: Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

8 (2) Where the person arrested can be legally admitted to bail and bail is furnished, the person arrested shall not be searched unless there are reasonable grounds to believe that the person arrested has in possession
   (a) a stolen article, or
   (b) an instrument of violence, or
   (c) tools connected with the kind of offence the person arrested is alleged to have committed, or
   (d) articles which may incriminate the person arrested in respect of the offence alleged to have been committed.

(3) The search shall be made with strict decency and where a woman is to be searched, the search shall be made by another woman.

(4) The right to search a person arrested does not include the right to examine the private part of that person.

(5) A police officer or a person making an arrest may take from the person arrested an offensive weapon which is found on the person arrested.

9. Arrested person to be taken to police station

(1) A person who is arrested, whether with or without a warrant, shall be taken with reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed in a language which the person arrested understands and in detail of the nature of the charge that initiated the arrest.

(2) A person arrested shall, while in custody, be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for a defence or release.

(3) A person having the custody of a person arrested shall comply with article 15 of the Constitution.

Arrest without Warrant

10. Arrest by police officer without warrant

(1) A police officer may arrest without warrant a person who
   (a) commits an offence in the presence of the police officer;
   (b) obstructs a police officer in the execution of that police officer’s duty;
   (c) has escaped or attempts to escape from lawful custody;
   (d) possesses an implement adapted or intended for use to unlawfully enter a building, and does not give a reasonable excuse for the possession of the implement; or
   (e) possesses a thing which may reasonably be suspected to be stolen property.
T raining Modules and Materials on Basic Law and Anti-Corruption in Ghana

Handout 2.2.3: Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>10.1</td>
<td>A police officer may arrest without warrant a person whom the police officer suspects on reasonable grounds</td>
</tr>
<tr>
<td></td>
<td>(a) of having committed an offence;</td>
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<tr>
<td></td>
<td>(b) of being about to commit an offence, in order to prevent the commission of the offence;</td>
</tr>
<tr>
<td></td>
<td>(c) of being about to commit an offence, where the police officer finds that person in any highway, yard, building or other place during the night;</td>
</tr>
<tr>
<td></td>
<td>(d) of being a person for whom a warrant of arrested has been issued by a Court;</td>
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<td></td>
<td>(e) of being a deserter from the Armed Forces; or</td>
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<tr>
<td></td>
<td>(f) of having been concerned in an act committed outside the Republic which, if committed in the Republic would have been punishable as an offence, and for which that person is, under an enactment, liable to be arrested and detained in the Republic.</td>
</tr>
<tr>
<td>11.</td>
<td>Refusal to give name and residence</td>
</tr>
<tr>
<td>(1)</td>
<td>Where a person, other than a person liable to be arrested without an order or a warrant under section 10, who has been accused of committing an offence refuses on demand of a police officer to give personal details of the name and residence, or gives a name or residence which the officer has reason to believe is false, that person may be arrested by the officer in order to ascertain the name or residence.</td>
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<tr>
<td>(2)</td>
<td>When the true name and residence of that person have been ascertained that person shall be released on executing a bond, with or without sureties, to appear before a Court as required.</td>
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<tr>
<td>(3)</td>
<td>Where that person is not resident in the Republic the bond shall be secured by a surety or sureties resident in the Republic.</td>
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<tr>
<td>(4)</td>
<td>Where the true name and residence of that person is not ascertained within twenty-four hours from the time of arrest, or that person fails to execute the bond, or fails as required to furnish sufficient sureties, that person shall forthwith be brought before the nearest Court having jurisdiction.</td>
</tr>
<tr>
<td>12.</td>
<td>Arrest by private person without warrant</td>
</tr>
<tr>
<td>(1)</td>
<td>A private person may arrest without warrant a person who in the presence of that private person commits</td>
</tr>
<tr>
<td></td>
<td>(a) an offence involving the use of force or violence;</td>
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<td></td>
<td>(b) an offence by which bodily harm is caused to another person;</td>
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<td></td>
<td>(c) an offence in the nature of stealing or fraud;</td>
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<td></td>
<td>(d) an offence involving injury to public property; or</td>
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<td></td>
<td>(e) an offence involving injury to property owned by, or in the lawful care or custody, of that private person.</td>
</tr>
<tr>
<td>(2)</td>
<td>A private person may arrest without warrant a person whom that private person reasonably suspects of having committed an offence mentioned in subsection (1) where an offence of that nature has been committed.</td>
</tr>
</tbody>
</table>
14. Custody of person arrested by private person

(1) A private person who, without a warrant, arrests another person shall without unnecessary delay hand over the person so arrested to a police officer or, in the absence of a police officer, shall take the arrested person to the nearest police station.

(2) Where there is reason to believe that the actions of that person falls within the ambit of section 10, a police officer shall re-arrest that person.

(3) Where there is reason to believe that the person arrested has committed a felony or misdemeanor and refuses to disclose personal details of name and residence, or gives a name or residence which the officer has reason to believe is false, the arrested person shall be dealt with in accordance with section 11 or otherwise released.

15. Custody of persons arrested without warrant

(1) A person taken into custody without a warrant in connection with an offence shall be released from custody not later than forty-eight hours after arrest unless that person is earlier brought before a court of competent jurisdiction.

(2) A person referred to in subsection (1), may, at any time whether before or after the expiration of the period of thirty days be required to enter into a bond with or without sureties for a reasonable amount to appear before the Court or at the police station or place and at the time as stated in the bond.

(3) The bond may be enforced as if it were a bond executed by order of a Court and conditioned for the appearance of that person before a Court.

Escape and Retaking

19. Recapture of person escaping

Where a person in lawful custody escapes or is rescued, the person from whose custody that person escapes or is rescued may immediately pursue and arrest that person in any place in the Republic.

20. Sections 4 and 5 to apply to arrest under section 19

Sections 4 and 5 shall apply to an arrest under section 19, although the person who makes the arrest is not acting under a warrant and is not a police officer with authority to arrest.

Search Warrants

88. Issue search warrant and procedure

(2) Where the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the powers and protection as are given by law to a person lawfully authorised to search for that thing, and the thing itself shall be disposed of in the manner as directed by law or, in default of the direction, as directed by the Superintendent of Police.
Handout 2.2.5: Criminal and Other Offences (Procedure) Act, 1960 (Act 30)

89. Execution of search warrant
A search warrant may be issued and executed on a Sunday and shall be executed between the hours of 6.30 a.m. and 6.30 p.m., but the Court may, by the warrant, authorise the police officer or other person to whom it is addressed to execute it at any hour.

90. Persons in charge of closed place to allow ingress
(1) Where a building or any other place liable to search is closed, a person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant, allow the police officer or that other person free entry and afford reasonable facilities for a search within the building or place.

(2) Where entry into the building or other place cannot be obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by sections 4 and 5.

(3) Where a person in or about the building or place is reasonably suspected of concealing about that person’s body an article for which search should be made, that person may be searched.

(4) Where the person to be searched is a woman, the provisions of section 8 (3) shall be observed.

91. Detention of articles seized

92. Provisions applicable to search warrants
Sections 73 (1) and (3), 75, 76, 78, 79, 80 and 83 shall apply to search warrants issued under section 88.

93. Search without a warrant in certain cases
(1) Where a police officer has reasonable cause to believe that an article

   (a) which has been stolen or unlawfully obtained,
   (b) in respect of which a criminal offence has been, is being or is about to be committed, is being conveyed, is concealed, or being carried on a person in a public place, or is concealed or contained in a package in a public place for the purpose of being conveyed, the police officer may, where the exigencies of the case so require, without a warrant or written authority arrest, seize and search that person, package or article.

(2) A police officer who arrests a person, conducts a search or seizure, may take possession of and detain an article together with the package containing it, any may also arrest a person conveying, concealing or carrying the article.

94. Search of premises without warrant
(1) A police officer not below the rank of Assistant Superintendent of Police, or who being below the rank is authorised in writing so to do by a police officer not below the rank, may enter a house, shop, warehouse, yard, ship, boat, vessel, beach or any other premises which the police officer has reasonable cause to believe contains property which has been stolen or dishonestly received.

(2) The police officer may search for, seize, and secure, the property which the police officer has reasonable cause to believe has been stolen, or dishonestly received as if the police officer had a search warrant and the property seized corresponded to the property described in the search warrant.

(3) Authorisations, searches, and seizures, given or made under this section shall not be confined to a particular property, but may be general.
Handout 2.2.6: The Holders of Public Officers (Declaration and Disqualification) Act 1998 (Act 550)

- The Holders of Public Officers (Declaration and Disqualification) Act 1998 (Act 550) provides for the declaration of assets and liabilities by public office holders in conformity with Chapter Twenty-Four of the Constitution, to provide for disqualification from holding specified public offices as a result of an adverse finding made or a criminal conviction against an individual and to provide for related matters.

**Public Procurement Act, 2003 (Act 663)**

- Public Procurement Act, 2003 (Act 663), which seeks to bring transparency to the issue of government procurement by making it compulsory to institute a tender process in the award of government contracts.

- In an attempt to challenge questionable priorities in the allocation of public funds, and a private sector cautious to involve itself with the government, the Public Private Partnership Bill, 2016, aims to compliment elements of the Public Procurement Act, 2003, as amended (Public Procurement (Amendment) Act, 2016, (Act 914)). A 'Fairness and Transparency' clause lays out criteria under which corrupt practices should be kept more in check, including the provision that all aspects of a partnership process should be publicly accessible.

**Financial Administration Act, 2003 (Act 654),**

**Section 62—Offences**

(1) Each officer or person acting in an office or employment connected with the collection, management or disbursement of public or trust moneys or with the control of government stores who

(a) accepts or receives money or valuable consideration for the performance of official duties;

(b) conspires with another person to defraud the Government, or makes opportunity for another person to defraud the Government;

(c) deliberately permits the contravention of the law by another person;

(d) wilfully makes or signs a false entry in a book or wilfully makes or signs a false certificate or return in any case in which it is a duty of the person to make an entry, certificate or return;

(e) having knowledge or information of the contravention of financial legislation by any person, or fraud committed by any person against the Government under legislation relating to public finance fails to report the knowledge or information to the person’s senior officer or any state security agency; or

(f) demands or accepts or attempts to collect, directly or indirectly, as payments of gifts or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of a charge or complaint for a contravention or alleged contravention of legislation relating to public finance, commits an offence, and is liable on summary conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 10 years or to both.
(2) Any person who

(a) promises, offers or gives any money or other valuable consideration to any officer or person acting in an office or employment connected with the collection, management or disbursement of public or trust moneys or the control of government stores with intent

(i) to influence a decision or action on any question or matter that is then pending, or may, by law, be brought before the person in an official capacity; or

(ii) to influence the officer or person to commit, or aid and abet in committing any fraud on the government or to connive at, take part in, or allow any opportunity for the commission of the fraud; or

(b) accepts or receives money or valuable consideration, commits an offence, and is liable on summary conviction to a fine not exceeding three times the amount so offered or accepted, or to imprisonment for a term not exceeding 5 years or to both.

(3) Where any person is required to perform any function or duty under this Act and that person fails to perform that duty within the time required, the person shall be liable to such punishment as may be prescribed in Regulations made under this Act.
Handout 2.2.7: EOCO Act

Objects of the Office

2. The objects of the Office are to

(a) prevent and detect organised crime, and
(b) generally to facilitate the confiscation of the proceeds of crime

Functions of the Office

3. The functions of the Office are to

(a) investigate and on the authority of the Attorney-General prosecute serious offences that involve

(i) financial or economic loss to the Republic or any State entity or institution in which the State has financial interest,
(ii) money laundering,
(iii) human trafficking,
(iv) prohibited cyber activity,
(v) tax fraud, and
(vi) other serious offences;

(b) recover the proceeds of crime;
(c) monitor activities connected with the offences specified in paragraph (a) to detect correlative crimes;
(d) take reasonable measures necessary to prevent the commission of crimes specified in paragraph (a) and their correlative offences;
(e) disseminate information gathered in the course of investigation to law enforcement agencies, other appropriate public agencies and other persons the Office considers appropriate in connection with the offences specified in paragraph (a);
(f) co-operate with relevant foreign or international agencies in furtherance of this Act; and
(g) perform any other functions connected with the objects of the Office.

Powers of the Office

Authorised officers to exercise powers of police

18 The Executive Director, Deputy Executive Directors and officers authorised by the Executive Director shall exercise powers and have the immunities conferred on a police officer in Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the Police Service Act, 1970 (Act 350) and any other law related to a police officer.
Request for information

19. (1) The Executive Director or an authorised officer of the Office may by notice in writing require

(a) a person or a representative of an entity whose affairs are to be investigated, or
(b) a person who in the opinion of the Executive Director is a proper person to assist with an investigation being conducted by the Office to appear before the Executive Director at a specified date and place to answer questions or furnish the Office with information related to a matter relevant to the investigation.

(2) Where a person required to furnish the Office with a document is unable to produce the document, the Executive Director shall request the person to state where the documents is or the reason for the inability to produce the document.

(3) Where a document is produced before the Office, the Executive Director or an authorised officer of the Office shall make copies or extracts from the document and request the person producing the document to provide explanation on the contents of the document where necessary.

(4) A person or a representative of an entity who appears before the Executive Director or an authorised officer of the Office has right to be represented by counsel of that person’s or representatives choice at any stage of the process.

(5) Where a person or an entity willfully refuses, conceals or otherwise fails to produce a document required by the Executive Director or an authorised officer, that person or representative commits an offence and is liable on summary conviction to a fine of not more than two hundred and fifty penalty units or to a term of imprisonment of not more than three months or to both in the case of an individual and in the case of an entity, to a fine of not more than one thousand penalty units.
Handout 2.2.8: EOCO Act

**Power to search and remove documents**

20 (1) The Executive Director shall apply to the Court, without notice to the person or entity specified in the application, to issue a warrant authorising a police officer to enter premises in the possession of or under the control of the specified person or entity to search and remove a document specified in the application if:

(a) the person or entity required to produce a document to the Office fails or refuses to produce
(b) the Executive Director is of the opinion that the service of the notice to produce a document shall prejudice the investigation, or
(c) it is not practicable to give a disclosure notice requiring the production of the document.

(2) An authorised officer of the Office shall accompany the police officer authorised to execute the warrant.

(3) The authorised officer of the Office shall prepare an inventory of the documents retrieved in duplicate and hand over a copy of the inventory to the person or entity from whom the document was retrieved.

(4) The Office may take possession of the document for a period necessary for the investigation or trial and any proceedings subsequent to trial.

(5) A person or entity from whom a document has been retrieved is entitled to apply to the court within twenty-one days after the date of retrieval, for an order

(a) to set aside the search, removal or retrieval, and
(b) for the restoration of the document.

**Obstruction of officer of the Office**

21. A person who wilfully obstructs an authorised officer from performing a function under this Act commits an offence and is liable on summary conviction,

(a) in the case of an individual, to a fine of not more than two hundred and fifty penalty units or to a term of imprisonment of not less than three months; or
(b) in the case of an entity, to a fine of not more than one thousand penalty units.
Handout 2.2.9: EOCO Act

PART, TWO-PROCEEDS OF CRIME

Application and pre-emptive measures
Application of this Part to PNDCL 236

22. This part applies to the Narcotic Drugs (Control Enforcement and Sanctions) Act, 1990 (PNDCL 236) in relation to the proceeds from the sale, profit or income earned and property acquired or likely to have been earned or acquired through trading in narcotic drug.

Seizure and detention of currency suspected to be proceeds of crime

23. (1) An authorised officer of the Office or any other public officer authorised by the Executive Director, shall seize currency the amount prescribed by the Bank of Ghana being imported into or exported from the country,

(a) that exceeds
(b) if the officer has reasonable grounds to suspect that

(i) the currency is the proceeds of crime, or the person for use in the commission of a serious offence, or
(ii) the currency is intended by

(c) if the holder of the currency is unable to provide satisfactory explanation for the source of the currency.

(2) The officer who seizes currency shall record

(a) the name of the person from whom the currency was seized,
(b) the particulars of the currency, and
(c) any other relevant information as regards the currency, and send the record and the seized currency to the Executive Director.

(3) Where currency is in the possession of the Executive Director and a period of one month has lapsed from the date of seizure, the currency shall by order of the Court be forfeited to the Republic unless within that period the owner has claimed the currency by giving notice of the claim in writing to the Executive Director.

(4) A Court shall, on an application by or on behalf of a person by whom the currency was imported or exported, order the release of the currency seized in whole or in part after hearing the Executive Director or an authorised officer if the seizure of the currency is no longer justified.
(5) An authorised officer of the Office shall not release currency seized where application for the confiscation of the whole or a part of the currency is pending, or proceedings have commenced in this country or in any other jurisdiction against the person for the offence that involves the currency.

(a) an b)

**Seizure of tainted property**

24. (1) An authorised officer of the Office or any other public officer authorised by the Executive Director, shall seize property if the officer has reasonable grounds to suspect that the property is the proceeds of a serious offence.

(2) The Executive Director shall direct the authorised officer to release the seized property to the person from whom it was seized if no charges are preferred against the person within fourteen working days after the seizure.

(3) The Court shall make an order for the continued seizure of the property for a period of not more than three months at a time from the date of seizure and for a total period of not more than two years.
Handout 2.2.10: EOCO Act

25. (1) An authorised officer shall

(a) search a person in respect of tainted property, or
(b) enter any land or premises and conduct a search in respect of tainted property and seize in the course of the search, the property which the authorised officer believes on reasonable grounds to be tainted property.

(2) A search in respect of tainted property includes search of the

(a) body and clothing worn by the person being searched, 
(b) property in or apparently under the control of the person being searched, and
(c) property of the owner or occupier of the land or premises.

(3) An authorised officer may gather forensic evidence in the course of a search.

(4) An authorised officer shall make a search or seizure

(a) under a search warrant, or
(b) as an emergency search.

(5) The Court shall consider an application without notice which claims that communication in any medium including an article sent by post or through a courier service is likely to contain information or a substance that may be relevant to an investigation into an offence under a law in this Country or a corresponding foreign law, and the Court shall, where appropriate, order an authorised officer of the Office to

(a) intercept, detain and open the article in the course of transmission by postal or courier service,
(b) intercept a message transmitted or received by any means of communication,
(c) intercept or listen to any conversation by any means of communication, or
(d) enter premises and install on the premises a device for the interception and retention of communications of specified description and remove and retain the device.

26. (1) The provisions on search by a police officer under Part Two of the Criminal and Other Offences (procedure) Act, 1960 (Act 30) apply for the purpose of this Act where an authorised officer has reasonable grounds to suspect that there is, may be tainted property on land or any premises.

(2) If during the course of the search the authorised officer finds

(a) property that the authorised officer believes on reasonable grounds to be tainted property of a type not specified in the warrant, or tainted property related to another serious offence, or
(b) any article the authorised officer believes on reasonable grounds will afford evidence as to
the commission of the offence or commission of a serious offence, the authorised officer
shall seize the property and the warrant shall be deemed to authorise that seizure.

27. (1) Where an authorised officer suspects on reasonable grounds that,

(a) a particular property

(i) is tainted property,
(ii) will provide evidence as to the commission of a serious offence,

(b) it is necessary to exercise the power of search and seizure in order to prevent the
concealment, loss or destruction of property,
(c) the circumstances are so urgent that immediate exercise of the power without the
authority of a warrant or the order of a Court is required, the authorised officer shall
search a person, enter premises and search for the property and if the property is found, seize the property.

(2) If during the course of the search, the authorised officer finds,

(a) property that the authorised officer believes on reasonable grounds to be tainted
property, or
(b) any thing the authorised officer believes on reasonable grounds will afford evidence as to
the commission of a serious offence the authorised officer shall seize that property.

28. A person who

(a) refuses an authorised officer access to premises or refuses to submit to a search,
(b) assaults, obstructs, hinders or delays an authorised officer in the performance of a function
under this Act,
(c) fails to comply with a lawful demand of an authorised officer in the performance of functions
under this Act,
(d) fails to produce property declared to be seized under this Act, (e) conceals or attempts to
conceal property liable to seizure under this Act, or
(f) furnishes information to an authorised officer which the person knows to be false commits
an offence and is liable on summary conviction to a fine of not less than five hundred penalty
units or to a term of imprisonment of not more than three years or to both.

Property tracking

29. Where an authorised officer has reasonable grounds to suspect that a document which is
required to

(a) identify, locate or quantify property, or (b) identify or locate a record is in the possession or
under the control of a person or an entity and is necessary for the transfer of the property,
the authorised officer shall apply to the Court for an order for
(c) the document to be delivered by the person or entity to the authorised officer, or
(d) the production to the authorised officer by the person or entity of information obtained from
the document.
Handout 2.2.11: EOCO Act

31. (1) A person who claims an interest in property seized under this Act shall apply to the Court within thirty days after the date of seizure for an order that the property be returned to that person.

(2) If the Court is satisfied that,

(a) the person is entitled to possession of the property,
(b) the property is not tainted property, and
(c) the person in respect of whose charge, proposed charge or conviction the seizure of the property was made has no interest in the property, the court shall order the return of the property to the applicant.

Mutual legal assistance

32. Where

(a) the Executive Director suspects that property obtained from the commission of a serious offence is situated in a foreign country, or
(b) a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of a serious offence within the jurisdiction of the foreign country, the provisions of the Mutual Legal Assistance Act, 2010 (Act......) shall apply.

Freezing of property

33. (1) Where the Executive Director considers that freezing of property is necessary to facilitate an investigation or trial, the Executive Director may in writing direct the freezing of

(a) the property of a person or entity being investigated, or
(b) specified property held by a person or entity other than the person or entity being investigated or tried.

(2) The Executive Director shall within fourteen days after the freezing of the property apply to the Court for a confirmation of the freezing.
Application for freezing order

34. (1) An application for confirmation of a freezing order may be made without notice to the respondent and shall be accompanied with an affidavit.

(2) The affidavit shall

(a) give a description of the property in respect of which the freezing order is sought,
(b) state the name and address of the person who is believed to be in possession of the property,
(c) state the grounds for the belief that the property is tainted property,
(d) state that the respondent derived benefit directly or indirectly from the serious offence, or that the property is property derived directly or indirectly from a serious offence,
(e) state the grounds for the belief that the property is tainted property and is subject to the effective control of the respondent where the application seeks a freezing order against the property of a person other than the respondent,
(f) state the grounds for the belief that a confiscation order is likely to be made under this Act in respect of the property, or
(g) state that the property is at risk of being dissipated or removed from the country.

Issue of freezing order.
Handout 2.2.12: EOCO Act

Section

31. (1) A person who claims an interest in property seized under this Act shall apply to the Court within thirty days after the date of seizure for an order that the property be returned to that person.

(2) If the Court is satisfied that,
   (a) the person is entitled to possession of the property,
   (b) the property is not tainted property, and
   (c) the person in respect of whose charge, proposed charge or conviction the seizure of the property was made has no interest in the property, the court shall order the return of the property to the applicant.

Mutual legal assistance

32. Where

(a) the Executive Director suspects that property obtained from the commission of a serious offence is situated in a foreign country, or
(b) a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of a serious offence within the jurisdiction of the foreign country, the provisions of the Mutual Legal Assistance Act, 2010 (Act... ) shall apply.

Freezing of property

33. (1) Where the Executive Director considers that freezing of property is necessary to facilitate an investigation or trial, the Executive Director may in writing direct the freezing of
   (a) the property of a person or entity being investigated, or
   (b) specified property held by a person or entity other than the person or entity being investigated or tried.

(2) The Executive Director shall within fourteen days after the freezing of the property apply to the Court for a confirmation of the freezing.
Application for freezing order

34. (1) An application for confirmation of a freezing order may be made without notice to the respondent and shall be accompanied with an affidavit.

(2) The affidavit shall

(a) give a description of the property in respect of which the freezing order is sought,
(b) state the name and address of the person who is believed to be in possession of the property,
(c) state the grounds for the belief that the property is tainted property,
(d) state that the respondent derived benefit directly or indirectly from the serious offence, or that the property is property derived directly or indirectly from a serious offence,
(e) state the grounds for the belief that the property is tainted property and is subject to the effective control of the respondent where the application seeks a freezing order against the property of a person other than the respondent.
(f) state the grounds for the belief that a confiscation order is likely to be made under this Act in respect of the property, or
(g) state that the property is at risk of being dissipated or removed from the country.

Issue of freezing order.
Section

35.(1) Where an application is made for a freezing order, the Court shall issue the order if it is satisfied that

(a) the respondent is being investigated for a serious offence,
(b) the respondent is charged with a serious offence,
(c) there are reasonable grounds to believe that the property is tainted property related to a serious offence,
(d) the respondent derived benefit directly or indirectly from the serious offence,
(e) the application seeks a freezing order against the property of a person other than the respondent because there are reasonable grounds to believe that the property is tainted property related to a serious offence and that the property is subject to the effective control of the respondent, or
(f) there are reasonable grounds to believe that a confiscation order shall be made under this Act in respect of the property.

(2) The Executive Director shall inform a person against whom a freezing order has been made within seven days after the order has been made.

(3) The Court shall in the case of an entity, lift the veil of incorporation to determine if property is subject to the effective control of the respondent.

(4) A freezing order shall

(a) prohibit the respondent or another person from disposing of or dealing with the property or a part of the property or interest in the property that is specified in the order, except in a manner specified in the order,
(b) direct the Attorney-General to take custody and control of the property or a part of the property specified in the order and manage or deal with the property as directed by the Court, or
(c) require a person who has possession of the property to give possession to the Attorney-General to take custody and control of the property.

(5) An order under this section may be made, subject to the conditions that the Court considers appropriate and, without limiting the scope of the order, provide for

(a) the reasonable living expenses of a person affected by the order, including the reasonable living expenses of the person’s dependants, and reasonable business expenses of the person, and
(b) a specified public debt incurred in good faith by the person affected by the order.
When the application is made for the protection of third parties on the basis that a person is about to be charged, an order made by the Court shall lapse if the person is not charged within twelve months after the issue of the order.

**Effect of freezing order**

36. A contract or other arrangement made by a person in respect of the tainted property after the issue of the freezing order is of no effect.

**Breach of freezing order**

37. A person who contravenes a freezing order commits an offence and is liable on summary conviction

(a) in the case of an individual, to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than four years or to both, or
(b) in the case of an entity, to a fine equivalent to the value of the tainted property or of not less than two thousand penalty units whichever is greater.

**Duration of freezing order**

38. (1) A freezing order remains in force until

(a) the order is

(i) discharged,
(ii) revoked, or
(iii) varied,

(b) twelve months after the date the order is made or a later date determined by the Court, or
(c) a confiscation order or a pecuniary penalty order is made in respect of the property which is the subject of the order.

(2) Where an investigation has commenced against a person for a serious offence and the property related to that offence is frozen or restrained, the Court shall order the release of the frozen or restrained property if

(a) the person is not charged with a serious offence within twelve months after the date of commencement of the investigation, or
(b) the person is acquitted of the serious offence.
Handout 2.2.14: EOCO Act

Review of freezing order

39. (1) A person who claims an interest in property which is the subject of a freezing order shall apply to the Court for a review of the order on notice to the Executive Director, within fourteen days after the issue of the freezing order.

(2) The Court shall revoke or vary the order or subject the order to conditions directed by the Court on hearing the interested party.

Extension of freezing order

40. (1) The Executive Director shall apply to the Court which made a freezing order for an extension of the period of the operation of the order where necessary.

(2) The Court shall extend the operation of the order for a specified period if it is satisfied that a confiscation order ought to be made in respect of the property or a part of it or that a pecuniary penalty order ought to be made against the person on application by the Executive Director.

Declaration of property and income

41. (1) Where a person has been charged with an offence under this Act, the Executive Director may serve on that person a notice to make a declaration of that person's property and income.

(2) The person who is served with the notice shall lodge two signed copies of the declaration with the Auditor-General within twenty-eight days after receipt of the notice.

(3) The Auditor-General shall not reveal the content of the declaration except in accordance with this Act or on the order of a Court.

(4) The declaration of property and income shall contain the following information:

(a) property received or expected to be received by the accused person;
(b) property held or disposed of by the accused person including property held by any other person or in the name of any other person on behalf of the accused person; and
(c) the income and the source of the income whether the person charged has actually received it or not.
(5) Where a person charged and given notice to make a declaration fails to make a declaration of property and income within the period specified

(a) that person commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to imprisonment for a term of not more than two years or to both, and

(b) the property or income which has not been declared is liable to confiscation to the Republic.

(6) A person who intentionally or negligently fails to disclose any information required to be disclosed in a declaration of property and income, commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or to imprisonment for a term of not more than two years or both.

Duty of Auditor-General to produce copies of declaration

42. (1) Where the person charged is convicted of the offence under this Act, the Executive Director may require the Auditor-General to give the Executive Director and the Court a copy each of the declaration of property and income.

(2) The Auditor-General shall comply with a request made under subsection (1) within seven days after receipt of the request.
**Guidelines on conflict of interest**

CASE LAW: Okudzeto Ablakwa (No.2) v Attorney-General & Obetsebi-Lamptey (No.2) (2012) 2 SCGLR 846 focuses primarily on article 284 of the 1992 Constitution.

Per Brobbey JSC: CONFLICT OF INTEREST

One of the issues in the case which does not present much difficulty relates to conflict of interest. That issue will therefore be considered first. The plaintiffs have impugned the grant of the disputed property to the 2nd defendant on the ground that the actions of the public officers who made the grant conflicted with article 284 of the 1992 Constitution. Relying on article 284 of the 1992 Constitution, they complained that the actions of the public officials in the grant of the property to the 2nd defendant were tainted by conflict of interest.

Article 284 which is described in its marginal notes as “conflict of interest” provides that:

“A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

Article 284 is part of Chapter 24 which is headed “Code of Conduct for Public Officers.” The complaints of the plaintiffs were made against officials of the Lands Commission and those of the Ministry of Water Resources, Works and Housing. They are public officers.

The issue of conflict of interest raised here can easily be resolved by recourse to Article 287 of the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice.
4.0 Dealing with conflict of interest situations

As soon as a conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate him/her from the situation. Such steps may include:

i. Reporting the conflict of interest situation and its circumstances to his/her superior officer, or
ii. Removing him/her from the conflict of interest situation.

4.2 Disclosure of Conflicting Interests

Whenever a conflict of interest situation occurs or is likely to occur, the public official must make a disclosure of the situation as provided by law or as follows:

What to disclose:

- Assets and liabilities, gifts, conflicting interests, outside employment, and NGO activities.
- How to disclose: In writing, verbal and surrender the item.
- When to disclose: As soon as a conflict of interest situation occurs or is likely to occur and when doubt.
- To Whom: CHRAJ, superior officer/head of institution, and ethics committee or compliance officer or a similar set up within the institution.

To improve the regime for dealing with prohibited gifts, the Commission has further elaborated that all prohibited gifts offered or accepted in violation of the Gift Policy should be properly declared and surrendered to appropriate authorities [Ethics Officers and Heads of Entities] and documented, and directions given on how they should be disposed of.

These have been duly incorporated in the Conduct of Public Officers Bill, 2013 currently pending before Parliament.
Power of prosecution

With the exception of CHRAJ, these institutions generally prosecute, if at all, on the authority of the Attorney General, who is the chief legal officer of the State. Some of the investigative bodies have powers of prosecution, like the Police, BNI and EOCO. However, the offences that they can prosecute are generally restricted and larger cases, especially involving corruption issues, are referred to the Attorney General’s department for review and prosecution where necessary.

Possible Sanctions

Sanctions for corrupt acts vary. The Criminal Code categorises a corrupt act as a misdemeanour; a category of offence that attracts a sentence of not more than a three-year imprisonment. Section 296 (5) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), however, imposes a term of imprisonment of not more than 25 years for specific sections in Act 30, including:

• Section 239 – Corruption of and by a public officer or juror;
• Section 252 – Accepting or giving bribe to influence a public officer or juror;
• Section 253 – Corrupt promise by a judicial officer or juror; and Section 260 – Withholding of public money by a public officer.

These offences, even though categorised as misdemeanours, may attract much higher sentences under the Act. Under Section 179C of the same Act, a person commits a crime if, while holding public office, he or she uses his or her office for profit. In this instance, the penalty is a fine of not less than 250 penalty units or a term of imprisonment not exceeding 10 years or both.

Other specific offences such as money laundering, bribery by a person or employee connected with the collection or disbursement of public money, a member of the Audit Service who commits a corrupt act, attract sanctions which range from fines to imprisonment between 12 months to 10 years.
PASSAGE FROM THE CHRAJ REPORT ON THE FORD GIFT SAGA @ pg. 28

“6.3 Code of Conduct for Public Officers of Ghana and Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest (Guidelines).

The Code of Conduct and Conflict of Interest Guidelines issued by CHRAJ provide the administrative and operational framework/guidelines for implementing the Constitutional intendment underpinning articles 284

The Preamble to the Conflict of Interest Guidelines states the rationale for the Guidelines at page 9 as follows:

“… the Constitution does not define in detail the situations which constitute conflict of interest neither is there a document providing for the codes of conduct for the several public officers there are in Ghana which the Commission could fall on in determining complaints of conflict of interest made against public officials.

The absence of such a definition of conflict of interest and a unified code of conduct for public officers make the processing of allegations ”... that a public officer has contravened or has not complied with a provision of this Chapter... (Chapter 24 of the Constitution)...” before the Commission an uneasy task for both the Commission and the public officer against whom the allegation has been made.”

Section 2.0 of the Guidelines defines conflict of interest as: “a situation where a public official’s personal interest conflicts with or is likely to conflict with the performance of the functions of his/her office”.

The Guidelines explains conflict of interest to include:

i. Any interest or benefit, financial or otherwise, direct or indirect;
ii. Participation in any business transaction, or professional activity;
iii. An incurring of any obligation of any nature; or
iv. an act or omission which is or appears or has the potential to be in conflict with the proper discharge of a public official’s duties in the public interest.
Bodies involved in investigating and punishing corrupt acts

For the purposes of enforcement, the most relevant bodies responsible for the fight against corruption are the Ghana Police, the Commission on Human Rights and Administrative Justice (CHRAJ), the Economic and Organised Crime Office (EOCO), the Attorney General’s Office, the Financial Intelligence Centre (FIC), the Auditor General’s Office, the Internal Audit Agency, the Public Procurement Authority, the Controller and Accountant-General’s Department, the Bureau of National Investigations and the Public Accounts Committee of Parliament. Special Financial and Economic Crime Courts have also been established within the Judicial Service.

**Commission for Human Rights and Administrative Justice (CHRAJ)**

The functions of the Commission established by the Commission for Human Rights and Administrative Justice, 1993 (Act 456), include the duty to investigate corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties and taking all necessary steps including reports to the Attorney General (AG) and the Auditor General resulting from such investigations. It has special investigative powers, which allow it to issue subpoenas, but does not have the power to prosecute cases.

**Internal Audit Agency**

The Internal Audit Agency was established by the Internal Audit Act, 2003 (Act 658). The object of the Agency is to co-ordinate, facilitate and provide quality assurance for internal audit activities within the Ministries, Departments and Agencies (MDA) and the Metropolitan, Municipal and District Assemblies (MMDA) (Section 2 of Act 658). The functions of the Agency include ensuring that the financial activities of MDAs and MMDAs are in compliance with laws, policies, standards and procedures.

**Economic and Organised Crime Office (EOCO)**

The EOCO, formerly known as the Serious Fraud Office, was created by the EOCO Act, 2010 (Act 804). The EOCO was given enhanced powers in order to prevent and detect organised crime and generally facilitate the confiscation of the proceeds of crime. EOCO has the power to seize currency and property if there are reasonable grounds to suspect that the currency is the proceeds of crime, or the currency is intended by the person for use in the commission of a serious offence, or if the holder of the currency is unable to account satisfactorily for the source of the currency (Section 23 Act 804). EOCO also has a duty to provide assistance to foreign agencies to locate or seize property in the country suspected to be properly obtained from the commission of a serious offence (Section 32 of Act 804) and may conduct its investigations in conjunction with the security agencies.
Bureau of National Investigation

The Bureau of National Investigation (BNI) is an integral part of the National Security Council and is the internal intelligence agency of Ghana. This force is more restricted in their investigative powers than the EOCO and was created under the Security and Intelligence Agencies Act, 1996 (Act 526). It investigates acts, which have inflicted, or have the potential to inflict, sabotage on the economy of Ghana.

The Financial Intelligence Centre

The Financial Intelligence Centre was established by the Anti-Money Laundering Act, 2008 (Section 4 of Act 749). The Centre has as its object the duty to assist in the identification of proceeds of an unlawful activity and the combat of money laundering activities. Money Laundering is an extraditable offence under the Extradition Act 1960 (Section 45 of Act 749).
Module 3

Basic law for para-legals: understanding criminal justice procedures

Session 3.1: History and context of the Ghana Legal System
Session 3.2: Sources of law in Ghana
Session 3.3: The Courts structure
Session 3.4: Dispute settlement mechanisms
Session 3.5: Basic criminal law
Session 3.6: Criminal Procedure in Ghana (Arrests, Searches, Bail (police enquiry and court), Court procedures and processes, The Prisons and the prisoners and Police Procedures).
Rationale behind this Module

The various workers (other than the key recognized professionals in the justice field such as Judges, lawyers and prosecutors) who support work in the justice administration system may be generally regarded as paralegal workers. Paralegals also play a vital role in the management of law offices, departments and in the general administration of justice. Their work may include playing substantive roles such as Alternative Dispute Resolution Experts such as Mediators.

The work of a paralegal puts him or her in contact with the players in the criminal justice administrative system, particularly when the areas of interest for the paralegal include providing support to the citizenry in the fight against corruption. It is therefore useful for the paralegal to have a good understanding of criminal justice procedures and the key actors in this area in order for the paralegal to play his or her role effectively.

Session 3.1: History and context of the Ghana Legal System

› **Target group:** All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
› **Recommended time:** One (1) hour.

1. Learning Objectives

By the end of this Module, participants should be able to:

› Recount the important historical events which have the Ghana Legal System.
› Identify possible links between justice sectors institutions and how the developed through history.

2. Core Messages

› The Ghana Legal System has been shaped by the British who colonized the Gold Coast, having initialed come as traders and missionaries.
› As the interest of the British originally appeared to be more of commerce than political governance, the early period of the colonial rule was led by a Committee of Merchants. The British then started providing protection to areas near their forts and castles.
To give the protection offered to the neighboring towns and villages some sense of legitimacy, the British passed two Acts in 1843: the Foreign Jurisdictions Act and the British Settlement Act.

The Bond of 1844 was entered into between Commander Hill representing the British and Fanta Chiefs. The Bond formally recognized the jurisdiction been exercised by the British in settlement near their forts and castles.

Various Constitutions were promulgated, mostly in response to agitations from the locals for increased participation in their governance. There was incremental inclusion of the locals in the governance of the Gold Coast, eventually leading to independence.

### 3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**

**Facilitator introduces the topic**

- Introduce the topic for discussion in this session by focusing on the history of the Ghana Legal System.
- This introduction should put into perspective for the participants the reason for some key attributes of the Ghana Legal System such as the common law antecedents of the Ghana Legal System, the adversarial nature of proceedings and role of key players such as judges, lawyers and prosecutors, the presumption of innocent, etc.

**Step 2**

**Discussions by the table**

- Let participants discuss for about 3 minutes why they think understanding the history of the Ghana Legal System is important for their work.
- Lead the discussion in plenary for an additional 3 minutes.

**Step 3**

The trainer should lead the participants through the Notes provided below:

**History of the Ghana Legal System**

1. **How it all started**

- The history of the Ghana Legal System is intricately linked to the history of prior to colonisation, during the colonial period and after colonial rule.
Ghana became a republic within the Commonwealth on 1st July, 1960. Although the legal system evinces a number of original features and represents a clean break with the past, it inevitably perpetuates by way of organic development much of the former constitutional system.

The history of the Ghana Legal System cannot be understood without reference to the growth of the institutions of government which took place during the years preceding the emergence of Ghana as an independent State.

Before British regulation of the Gold Coast through law, like the Dutch, Danish and other Europeans, they were present merely as traders and missionaries. Colonial rule and assumption of jurisdiction to administer the affairs of the Gold Coast began in the context of protecting the trade interests of the colonizers.

2. The early period of British rule (1821-1874)

Before 1821, the government of the British trading forts and settlements on the Gold Coast had been vested in the Company of Merchants trading to Africa, as successors to the Royal African Company of England. The administration of justice started from the forts and castles such as those at Cape Coast, Dixcove, Accra (Fort James) and Anomabu, and these were kept up by the Crown after 1821.

From 1821 to 1874, the British possessions on the Gold Coast were, apart from the period 1850 to 1866 (when they were treated as a separate entity), under the control of the Governor of Sierra Leone. His powers were, however, in suspense from 1828 to 1843, when the administration was carried on by a Committee of Merchants in London.

3. The Committee of Merchants

The British Government had handed over the administration of the territories in 1828 to a Committee of Merchants selected by the British Government. Local administration was carried on by a President appointed by the Committee, assisted by a council of merchants resident at Cape Coast Castle.

Although theoretically restricted to the forts themselves, the powers thus vested in the Committee of Merchants came to be used on a de facto basis in the neighbouring areas. British justice came to be administered among the inhabitants of these areas.


In 1843, the Crown resumed the government.

In 1843, two Acts were passed by the British Parliament which enabled the administration of such territories on the Gold Coast to be placed on a regular footing.

The first of these Acts, the British Settlements Act, 1843, enabled Orders in Council to be made providing for the establishment of laws, institutions and ordinances for the peace, order and good government of “Her Majesty’s subjects and others” within the settlements on the African coast.

The second Act, the Foreign Jurisdiction Act, 1843, authorised the exercise of political powers acquired by agreement or usage in territories which had not become part of Her Majesty’s dominions by cession or conquest.
On 3rd September, 1844, an Order in Council was made under these Acts requiring judicial authorities in the Gold Coast, when exercising jurisdiction among the indigenous inhabitants, to observe such of the local customs as were compatible with the principles of the law of England, and in default of such customs to proceed in all things as nearly as may be according to the law of England. It was also provided that native offenders might be brought for trial and punished at Cape Coast Castle, or else taken to Sierra Leone.

5. The Bond of 1844

Commander H. W. Hill, the Lieutenant-Governor reached an agreement with the local chiefs that on 6th March, 1844 (the famous Fanti Bond was signed).

By this Bond, the chiefs acknowledged the power and jurisdiction which had been de facto exercised in their territories adjacent to the British forts and settlements, and declared that...

“the first objects of law are the protection of individuals and of property” and that human sacrifices, panyarring or the kidnapping of hostages for debt, and other barbarous customs” are abominations and contrary to law.”

The chiefs agreed that serious crimes should be tried by the Queen’s judicial officers sitting with the chiefs, “moulding the customs of the country to the general principles of British law.”

6. Constitution of 1850

The numbers of the local population which by 1846 acknowledged British jurisdiction amounted to not less than 275,000, scattered over a territory of about 6,000 square miles. This was added to in 1850, when the Danish King ceded the forts of Christiansborg, Augustaborg Fredensborg, Køngensteen and Prindsensteen, together with various houses and plantations, to the British Crown for a payment of £10,000.

In the same year, the forts and settlements on the Gold Coast once again ceased to be dependencies of the Colony of Sierra Leone.

This marked a considerable constitutional advance, with the Gold Coast being given its own Governor and both a Legislative Council and an Executive Council.

a. The Legislative Council

i. The Legislative Council consisted of the Governor and at least two other persons designated by Royal Instructions or warrants. By an exercise of the powers of delegation conferred by the Act, the Legislative Council was required to make: “all such laws, institutions and ordinances as may from time to time be necessary for the peace, order and good government of our subjects and others within the said present or future forts and settlements in the Gold Coast” subject to rules and regulations made by Order in Council and to the right of the Crown to disallow any such ordinances in whole or in part, and with a saving for the future exercise of legislative power by Act of Parliament or Order in Council.
ii. No law was to be passed or question debated unless proposed by the Governor, though other matters might be recorded in the minutes with a statement of reasons by the member concerned.

b. The Executive Council

i. The Royal Charter of 1850 authorised the Governor to summon an Executive Council to assist him in the administration of the government. The Royal Instructions of 1851 provided that, in addition to the Governor, the Executive Council was to consist only of the Judicial Assessor and the Collector of Customs, the latter being replaced in 1853 by the Colonial Secretary.

ii. The Governor was to preside and the quorum was to be three. Except in trivial matters the executive powers of the Governor were only to be exercised by the advice and consent of the Executive Council, unless the case was one of emergency, or unless consultation might cause material prejudice to the Crown.

iii. This rule was, however, qualified by a provision which enabled the Governor to act in disregard of the opposition of the Executive Council provided the matter was reported to the Secretary of State in London.

iv. As with the Legislative Council, no matter could be discussed unless it had been proposed by the Governor, although other members could require points they wished to make to be entered in the minutes.

7. Poll Tax Ordinance

- Although the Gold Coast territories were thus provided with a system of civil government it was still not clear how far it could be taken to extend to the local population. The Act of 1843 under which the Royal Charter was made was limited to the “forts and settlements.”
- The Bond of 1844 contained no such agreement to yield legislative power as would have formed the basis for an Order in Council under the Foreign Jurisdiction Act.
- It soon became clear that the duties imposed on the Governor in relation to the local inhabitants would require the expenditure of greater sums than could be obtained from customs duties and the British Government subsidies, the question of whether there was power to tax the local inhabitants arose.
- Whatever the legal powers of the Governor and Legislative Council might be, it was clear that the yield from any tax was likely to be small unless the co-operation of the chiefs was obtained.
- Accordingly, on 19th April, 1852, the Governor, Major S. J. Hill, summoned a meeting at Cape Coast Castle of “the chiefs and headmen of the countries upon the Gold Coast under British protection.” It was resolved that:

  a. The meeting “constitutes itself into a Legislative Assembly, with full powers to enact such laws as it shall seem fit for the better government of those countries.”
b. That the meeting be recognized by Her Majesty’s Government as legally constituted, that it be called the Legislative Assembly of native chiefs upon the Gold Coast, that it be presided over, assembled, prorogued and adjourned by the Governor, and that its enactments, when sanctioned and approved of by the Governor, shall immediately become the law of the country, subject to Her Majesty’s approval, and “be held binding upon the whole of the population being under the protection of the British Government.”

c. Having assumed its law-making functions, the meeting went on to impose upon the local inhabitants an annual poll tax of one shilling sterling for the support of the Government. In consideration of annual stipends to be paid by the Government, the chiefs agreed to give “their cordial assistance and the full weight of their authority” in supporting the measure.

› Taxes could be sued for and obstruction was made an offence punishable by imprisonment or fine, one half of any fine to be paid to the local chief.
› The revenue was to be devoted to the public good, the education of the people, the general improvement and extension of the judicial system, and the improvement of communications and medical services.
› The poll tax was not a success. Until 1861, when it ceased to be collected, the total gross yield was only £30,000, an average of just over £3,000 a year, from which many expenses had to be deducted.

8. Establishment of Supreme Court, 1853

› By the Supreme Court Ordinance, a regular Ordinance made in 1853 by the Governor with the advice and consent of the Legislative Council, the Supreme Court of Her Majesty’s Forts and Settlements on the Gold Coast was established. It was to be presided over by a Chief Justice, being an English, Irish or Scottish barrister, and was given a civil and criminal jurisdiction within the forts and settlements.
› Where the jurisdiction could only be exercised with the co-operation of a native chief or authority, as in the trial of cases under the Bond of 1844, it remained within the province of the Judicial Assessor. The Governor was given power to regulate by Ordinance the exercise of this jurisdiction, provided that equitable regard was paid to local customs; and rules were laid down for the administration of estates of deceased persons within the protected territories.

9. Constitution of 1866

› In 1865, following the tumults of the Ashanti War of 1863, when three Ashanti armies invaded the British protectorate and ravaged some of its most fertile districts, the British Government, faced with the choice of sending out a large army to assume control of Ashanti or virtually abandoning the Gold Coast, appointed another Select Committee of the House of Commons to advise on the matter.
› The Committee favoured the latter alternative. After reporting that, apart from the original four forts and the ceded Danish forts, a protectorate was assumed by the British over the tribes between the forts and the kingdom of Ashanti, the limits of actual British territory being “wholly indefinite and uncertain,” the Committee
observed that the assumption of further posts east of the Volta had been recommended and that “the present policy inevitably leads to extension.”

10. Departure of the Dutch

- The Dutch, the only other European power remaining on this coast besides the English, held forts intermixed with the English, and interfering with their government. Negotiations were entered into, without result, for better mutual relations.
- Difficulty continued to be caused to the British administration by the existence on the Gold Coast of Dutch forts and settlements intermingled with those of the British. Since the Dutch declined to co-operate in the imposition of customs duties, this led in particular to the practical impossibility of raising customs revenue, which otherwise would have been the most convenient and productive form of taxation.
- In 1860 the Dutch agreed to an exchange which would have transferred their territories east of Cape Coast to the British, and the British territories west of Cape Coast to the Dutch. Objections raised by the local population under British protection in the west to transferring their allegiance to the Dutch led to the abandonment of the scheme. It was however revived and carried through by a Convention signed on 5th March 1867.
- The transfers took place, but gave rise to much unrest and to the formation of the Fanti Confederation in an attempt to preserve the unity and security of the coastal tribes.
- The Constitution of the Confederation, which was drawn up at Mankesim in October and November, 1871, provided an ambitious scheme for mutual defence and the development of communications, education and other services. Legislative powers (including powers of taxation) were also included. The British administration, which had not been consulted, reacted unfavourably, and the scheme came to nothing.

11. Creation of Gold Coast Colony

- Having at last achieved the position of sole European power on the Gold Coast, and having, at considerable cost in life and resources, at last brought about the decisive defeat of the Ashantis, the British Government, disregarded those who still pleaded for the abandonment of this troublesome region.
- By a Royal Charter signed on 24th July, 1874, the Gold Coast and Lagos were separated from Sierra Leone and together constituted a separate colony under the title of the Gold Coast Colony.

12. Constitution of 1874

- During the period from 1874 to 1914, all the territories now comprised in the Republic of Ghana came under the control of the British Crown.
- The Royal Charter of 24th July, 1874, issued under the British Settlements Act, revoked the Commission of 19th February, 1866, so far as it applied to the Gold Coast and Lagos, and constituted these territories a separate colony under the title of the Gold Coast Colony. In providing for a Governor, Legislative Council and Executive Council, the Charter repeated with little variation the terms of the Charter of 1850.
The powers of the Legislative Council now, however, derived not merely from the Charter, but also from the Colonial Laws Validity Act, 1865. This provided that no law made by the legislature of a colony should be void or inoperative on the ground of repugnancy to the common law or to any Act of the Imperial Parliament which did not apply to the colony by express words or necessary intendment. The Act also made it clear that Royal Instructions to the Governor could not fetter his power to assent to legislation, and gave to the colonial legislature full power within its jurisdiction to alter the constitution of the legislature and to establish, reconstitute and abolish courts of justice.

13. Re-establishment of Supreme Court

The Supreme Court of the Gold Coast was re-established by the Supreme Court Ordinance, 1876, which constituted it the Supreme Court of Judicature for the Gold Coast Colony “and for the Territories thereto near or adjacent wherein Her Majesty may at any time before or after the commencement of this Ordinance have acquired powers and jurisdiction “.

14. Constitutional Adjustments

In 1886 a charter was granted to the Royal Niger Company, which took over the administration of the British colony at Lagos. Letters Patent were accordingly issued by which, on 13th January, 1886, Lagos ceased to form part of the Gold Coast Colony.

In the following year an Order in Council was made under the Foreign Jurisdiction Act empowering the Gold Coast Legislative Council to legislate for territories adjoining the Colony which had been brought under British protection. The first African member of the Legislative Council, John Sarbah, was appointed in 1888.

The Ashanti Order in Council, 1906, and the Northern Territories Order in Council, 1906, adjusted the boundary between Ashanti and the Northern Territories, bringing into Ashanti and annexing to the Crown certain areas to the north.

15. Constitution of 1916

After traveling around the Gold Coast Colony around 1912 and seeing social developments as a result of Cocoa production, Clifford drew the conclusion that constitutional changes were called for, and that the administration should have at its command a much larger measure of advice from far more varied sources than was hitherto available.

Governor Clifford accordingly made representations to the Secretary of State for the Colonies requesting an enlargement of the Legislative Council, which then consisted of five official members and four unofficial members. The official members were the Governor himself and the Colonial Secretary, the Attorney-General, the Treasurer and the Principal Medical Officer. The unofficial members consisted of two Europeans respectively representing the merchants and the mining industry, and two Africans.

The British Government accepted Clifford’s view and the next step in constitutional advance was taken. On 25th September, 1916, the existing Constitution, which was established by the Letters Patent of 13th January, 1886, as amplified by Royal
Instructions issued on the same date and Additional Instructions issued on subsequent dates, was revoked. The new Letters Patent and Royal Instructions, which were dated 20th September, 1916, and came into force five days later, effected little alteration except the enlargement of the Legislative Council. The membership of this was increased from nine to twenty-two.

The official members added were the Secretary for Native Affairs (native affairs being in Clifford’s opinion the most important matters which should engage the attention of the Government), the Comptroller of Customs, the Director of Public Works and the General Manager of Railways (three technical officers whose advice was needed), and the three Provincial Commissioners, as “impartial spokesmen of the Provinces”. On the unofficial side a third European, an official of the Bank of British West Africa, was added to represent the general European interest. Also added were three paramount chiefs drawn from different parts of the Colony. These were Nana Ofori Atta (the Omanhene of Akim Abuakwa), Nana Amonoo V (the Omanhene of Anamabu) and Awame Sri II (the Fia of Awuna Ga), who were chosen to represent the peoples speaking Twi, Fanti, and Ewe respectively. Finally E. J. P. Brown and J. E. Casely Hayford were added as unofficial members to speak for the political interests of the Central Province and the Western Province respectively.

16. Constitution of 1925

Guggisberg had formed the view, in pursuit of the policy of indirect rule, that the native institutions required strengthening. To this end several attempts (which finally succeeded) were made to pass a new Native Administration Ordinance. Another step in this direction was the creation of Provincial Councils.

The Provincial Councils were created by the instrument which provided for an enlarged, partly-elected Legislative Council. This was the Gold Coast Colony (Legislative Council) Order in Council, 1925, which was made on 8th April, 1925, and came into force on 15th April in the following year. It marked a considerable advance in that it gave the Colony elected representation for the first time.

17. Judicial Reforms

A step towards unification of the administration of the Colony and its dependencies was taken in 1935, when for the first time it became possible to legislate for the Colony, Ashanti and the Northern Territories by one Ordinance. This did not alter the position under which legislation for the Colony required the advice and consent of the Legislative Council, whereas the Governor alone could legislate for the dependencies. One of the first laws to be made under this useful provision was a re-enactment of the Courts Ordinance of 1876, which was thus extended to the whole of the Gold Coast. A number of changes were made in accordance with the Government’s new policy that: “as far as it is consistent with financial needs, justice should be administered by qualified lawyers, and it is only when those qualified lawyers cannot be found that it should be administered by those not qualified.”

District commissioners’ courts were replaced by magistrates’ courts, the magistrates being lawyers where possible. District magistrates and district commissioners ceased to form part of the Supreme Court. The judges of the Supreme Courts of
Nigeria, Sierra Leone and the Gambia were made *ex officio* judges of the Gold Coast Supreme Court.

Improved facilities for appeals from the Supreme Court came into being with the establishment in 1928 of the West African Court of Appeal. This meant that such appeals did not have to go direct to the Privy Council in London, although the Privy Council was not removed as a final appeal tribunal. The West African Court of Appeal consisted of the judges of the Gold Coast Supreme Court and of the other superior courts in the British colonies and protectorates in West Africa from which appeals lay.

### 18. Constitution of 1946

- The Colony and Ashanti achieved representative government with the coming into force on 29th March, 1946, of the Burns Constitution, the first of five Constitutions that were to follow in rapid succession during the ensuing fifteen years.
- By this, the operation of the Legislative Council was extended to Ashanti, the elected members were increased from eleven to eighteen, the *ex officio* members were reduced from thirteen to six, and the nominated members were increased from two to six. The elected members therefore had a majority of six over the official and nominated members.

### 19. Constitution of 1951

- A new Constitution was came into force on 1st January, 1951.
- The main instrument was the Gold Coast (Constitution) Order in Council, 1950, which for the first time applied uniform constitutional provisions to all the territories now included in Ghana.
- The old Executive Council was completely reconstituted, and the Legislative Council made way for a Legislative Assembly consisting almost entirely of elected Africans.

### 20. Constitution of 1954

- The British Government accepted the proposals and on 5th May, 1954, the major part of the Gold Coast (Constitution) Order in Council, 1954 (S.I. 1954 No. 551), came into operation.
- This repeated many features of the previous Constitution and also for the first time in a Gold Coast Constitution included detailed provisions as to the judiciary and public finance.

### Step 4

Lead participants to isolate the key historical facts about the Ghana Legal System. There is no need to break into groups.
Step 5

Wrap up with a recount of some of important occurrences in history culminating in the Ghana Legal System as it is today. You may highlight occurrences such as the promulgation of the Foreign Jurisdiction Act and the British Settlement Act, 1843, the Bond of 1844 and the various Constitutions established for the maintenance of law and order in the Gold Coast.
Session 3.2: Sources of law in Ghana

Target group: All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
Recommended time: One (1) hour

1. Learning Objectives

By the end of this Module, participants should be able to:

- Identify the sources of law in Ghana
- Explain the differences in the various sources of law
- Explain how the sources of law impact the work of the paralegal in Ghana

2. Core Messages

- Article 11 of the 1992 Constitution provides the list of all the sources of law in Ghana
- Common law of Ghana as a source of law comprises the English common law, equity and customary law
- Customary law is defined with reference to customs applicable to particular communities in Ghana
- All laws must be consistent with the Constitution in order to be deemed to be part of the laws of Ghana. Any law which inconsistent with the Constitution is to the extent of the inconsistency, void.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

Step 1

Facilitator introduces the topic as the sources of law in Ghana emphasizing that a source is where something derives its authority or power from.

Step 2

Participants may briefly discuss and describe any encounters they have previously had with any source of law in Ghana.
Step 3

The trainer should lead the participants through the Notes provided below:

Article 11 of the 1992 Constitution sums up the sources of the laws of Ghana as follows:

› Constitution
› Enactments made by or under the authority of the Parliament established by this Constitution;
› Any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution (Subsidiary Legislation)
› Customary law
› The existing law; and
› The common law.

The 1992 Republican Constitution as a Source of Law in Ghana

› The 1992 Constitution is the supreme law of Ghana and thus is expressly stated by article 1(2) of the constitution. The provision states as follows:
  “1(2) The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution should, to the extent of the inconsistency, be void.”
› This constitutional provision establishes a doctrine of supremacy of the 1992 Constitution in the Ghanaian jurisdiction. This doctrine implies Parliament’s enactments and those of previous legislatures are subject to the supremacy of the constitution.
  “In my view, even though Parliament has the right to legislate, this right is not without the limit, and the right to enact a law that 4 June and 31 December should be declared public holidays cannot be left to linger in the realm of public policy. Such legislation must be within the parameters of the powers conferred on the legislature, and under article 1(2) of the Constitution, 1992 any law found to be inconsistent with any provision of the Constitution (the supreme law) shall, to the extent of such inconsistency, be void”.
› The above statement reiterates the fundamental nature of the Constitution. All laws derived their validity from the Constitution and although there were laws in existence prior to the coming into effect of the Constitution, such laws shall in so far as they are not inconsistent with the provisions of the Constitution, continue in force as if enacted, issued, or made under the authority of the Constitution.

Parliamentary Enactments as Sources of Law in Ghana

› The legislative power in Ghana is vested in Parliament and is exercised in accordance with the provisions of the 1992 Constitution.
See article 93(2) of the 1992 Constitution.

Parliament is therefore not the supreme in so far as the exercise of its legislative powers is subject to the provisions of the Constitution. This is expressly stated in articles 1(2) and 2(1) which provides as follows:

“2(1) A person who alleges that - (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.”

Parliament’s legislative power is further limited in other respects. Its powers do not extend to the making of a law to alter the decision or judgment of any court;

See article 107(a), 1992 Constitution.

Parliament may it create a law which operates retroactively.

See article 107(b) of the 1992 Constitution.

An exception is provided for by articles 178 and 182 of the 1992 Constitution dealing with withdrawals from the consolidated fund and the contingency fund and public debt respectively.

Parliament has no power to legislate for creation of a one-party state.

See article 3(1), 1992 Constitution

Parliament cannot make laws relating to chieftaincy without having referred the draft to the National House of Chiefs for advice.

See article 106(3), 1992 Constitution

Parliament cannot make laws relating to financial and budgetary matters unless the Bill is introduced or motion is introduced by or on behalf of the President.

See article 108, 1992 Constitution

Subsidiary or Subordinate Legislation as Sources of Law in Ghana

Subsidiary legislation, also known as delegated or subordinate legislation, is one made by a subordinate body, such as a District Assembly or a minister of state, under the authority of parliament or the constitution, usually through the delegation of the legislative power in a statute.

The 1992 Constitution classifies subsidiary legislation as part of the laws of Ghana. Article 11(7) of the Constitution provides further that any Order, Rule or Regulation made by a person or authority under a power conferred by the Constitution or any other law, shall be laid before Parliament, published in the Gazette and comes into force after twenty-one sitting days of Parliament, unless two-thirds or more members of Parliament vote to annul it.

The Existing Law as a Source of Law in Ghana

Article 11(4) of the 1992 Constitution provides that the existing law shall, except as otherwise provided in article 11(1) of the 1992 constitution, comprise the written and unwritten laws of Ghana, as they existed immediately before the coming into force of the Constitution, and any Act, Decree, Laws or statutory instrument issued or made before that date, which is to come into force on or after that date.
Article 11 of the 1992 constitution states that:

“(5) Subject to the provisions of this Constitution, the existing law shall not be affected by the coming into force of this Constitution.

(6) The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution.”

In Ellis v. Attorney-General [2000] SCGLR 24, the Supreme Court upheld the Hemang Lands (Acquisition and Compensation) Law, 1992 (PNDCL 294), as an existing law. The plaintiff claimed that PNDCL 294 had unlawfully expropriated his lands and brought an action or a declaration that the law was a nullity for being inconsistent with or contravening the 1992 Constitution. The supreme court rejected the claim, holding that PNDCL 294, as an enactment, had been passed and the plaintiff’s lands had been acquired and vested in the Republic before the coming into force of the 1992 Constitution on 7 January 1993.

Customary Law as a Source of Law in Ghana

Article 11(3) provides:

‘For the purposes of this article, “customary law” means the rules of law, which by custom are applicable to particular communities in Ghana.’

Under section 55 of the Courts Act, 1993, any question as to the existence or content of a rule of customary law is a question of law for the court and not a question of fact. Thus, under this provision judicial notice is taken of customary law. However, in view of the unwritten nature of customary law, it is further provided that if the court entertains any doubt as to the existence or content of the customary law in any proceedings, it may, after consulting such reported cases, textbooks and other sources as might be appropriate, adjourn the proceedings to enable it to hold an inquiry, attended by persons possessing knowledge of the customary law.

Changes in Customary Law have either occurred through evolving cultural practices or through piecemeal judicial intervention. For instance in, Attah v. Esson [1976] 1 GLR 128, the Court of Appeal held that a customary principle which allowed a customary landlord to enter onto agricultural land granted under customary tenancy to gather the fruits of economic trees was outdated and has ceased to be law.

Common law and Equity

Common law generally comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of imperial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

Article 11(2) of the 1992 Constitution provides that the common law of Ghana consists of the received English common law and the doctrines of equity as adapted and applied in Ghana as well as customary laws that have been developed by the courts. This is a reference to the judge-made law that propelled the English legal system and
those of its colonies. In the context of Ghana’s legal history, even present-day British decisions on issues unaffected by statute may be cited, at least, as persuasive authority.

For some time, even outmoded British statutes which were part of the received law as “Statutes of general application” as of July 24th, 1874, under the erstwhile Supreme Court Ordinance of 1876 were applicable in Ghana. In 1982, by Section 61 of P.N.D.C. Law 42, the revolutionary government clearly modified the force of colonial legislation as follows:

“Nowithstanding the provisions of any enactment, all laws in existence before the coming into force of the Proclamation, especially where they are derived from foreign sources, shall only be in operation to the extent that they are compatible with national aspirations.”

**Equity**

- The word “equity” means fair or just in its wider sense, but its legal meaning is the rules developed to mitigate the severity of the common law.
- Equity created new rights by recognising trusts and giving beneficiaries rights against trustees. (A trust arises if one party gives property to trustees to hold for the use of beneficiaries.)
- The common law did not recognise such a device and regarded the trustees as owners.
- Equity also developed the equity of redemption. At common law, under a mortgage, if the mortgagor had not repaid the loan once the legal redemption date had passed, he would lose the property but remain liable to repay the loan. Equity allowed him to keep the property if he repaid the loan with interest. This right to redeem the property is known as the equity of redemption.

**Step 4**

**Group or plenary discussions**
The Trainer may lead groups of trainees or the plenary to discuss.

- What the sources of law in Ghana are.
- What is the hierarchy for these sources of law in Ghana.
- Is there any difference between the English common law and the Common law of Ghana under the 1992 Constitution?

**Step 5**

**What up on the salient points for this Session**

- Article 11 of the 1992 Constitution providing the sources of law in Ghana.
- The supremacy of the Constitution.
Bibliography

1. S.K.B. Asante, 'Over a Hundred Years of a National Legal System in Ghana.


3. Paralegal training manual developed by the Faculty of Law, Ghana Institute of Management and Public Administration
Session 3.3: The Courts structure

› Target group: All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
› Recommended time: One (1) hour.

1. Learning Objectives

By the end of this Module, participants should be able to:

› Explain the classification and the hierarchy of the Courts.
› Explain the composition and jurisdiction of the Courts.

2. Core Messages

› Judicial power is vested in the judiciary which exercises final judicial authority in Ghana.
› The Courts are divided into superior court and the lower courts.
› The authority of a court to handle any case is limited to cases in which the court has jurisdiction.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

Step 1
Facilitator introduces the topic.

Step 2
Participants may briefly discuss their encounter with the Court system indicating the gravity of the case and the court which had jurisdiction to hear the case.

Step 3
The trainer should lead the participants through the Notes provided below:

› Article 125 of the 1992 Constitution recognizes that justice emanates from the people and that the judiciary only administers justice on behalf of the people. The judiciary is an arm of government.
Article 125 vests judicial power in the judiciary with an express provision that the President and Parliament do not have final judicial power.

Article 126 of the 1992 Constitution of Ghana, establishes the Superior Court of Judicature and such lower courts or Tribunals as Parliament may by law establish to administer justice according to law.

The Superior Courts are:

- The Supreme Court.
- The Court of Appeal (Civil and Criminal divisions with branches in Accra, Kumasi, Ho, Koforidua and Sekondi Takoradi).
- The High Court and the Regional Tribunals.

The Lower Courts and Tribunals are made up of Circuit Courts and District Courts. The High Court has specialized divisions. These include:

- The Commercial Court.
- The Financial and Economic Crimes Court.
- The Industrial Court.
- The Human Rights Court.
- The Land Court.
- The Industrial and Labour Court.
- Probate and Administration.
- General jurisdiction.

The lower courts are:

- The Circuit Court and
- The District Court.

The District Courts has specialized divisions. These include:

- The Gender Based Violence Court.
- The Juvenile Court.
- The Family Tribunal.
- The Motor Court.
- The Sanitation Court.

The Constitution confers judicial power on the judicial committees of the National house of Chiefs; regional houses of Chiefs and traditional councils and such other lower courts or tribunals as might be established by law.

Accessing the jurisdiction of courts is governed by the general rules of procedure and specific rules for various courts. The general provisions are in the Evidence Act 323, and the Criminal Procedure rules (Act 30). The specific rules are the High Court Civil Procedure rules CI 47 for the High Court and Circuit Court, CI 59 for the District Court, the Court of Appeal rules CI 19 and the Supreme Court rules CI 16.
Hierarchy and jurisdiction of the Courts

The Supreme Court

Composition
1. The Chief Justice and not less than 9 other justices of the Supreme Court.
2. Duly constituted for the exercise of its jurisdiction by not less than 5 justices except when reviewing its own decision, it must be constituted by not less than 7 justices.
3. The Chief Justice has the discretion to empanel an uneven number to sit.
4. The CJ is required by article 296 to be fair and candid in discretion to empanel.

Cases


Jurisdiction

Original jurisdiction
1. The final court of appeal - Article 129 and section 2(1), Act 459.
2. Exclusive original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution; all matters arising as to whether an enactment was made in excess of powers conferred on Parliament or any other authority.
3. Article 2(1) institute the principle of the supremacy of the Constitution, hence the SC has power to declare any law inconsistent with the Constitution void to the extent of the inconsistency.
4. The exclusive original jurisdiction is subject to the jurisdiction of the High Court in the enforcement of fundamental human rights under chapter 5.
5. Original jurisdiction in the Presidential Election petition.s
6. Compensation for punishment received when suppressing or resisting overthrow of the Constitution (treason) –article 3(7).

Appellate jurisdiction
1. SC has appellate jurisdiction from the CA generally.
2. SC has appellate jurisdiction to the exclusion of the CA in an appeal from the HC in cases of treason or High treason.
3. Article 131(3) - The Supreme Court shall have appellate jurisdiction, to the exclusion of the Court of Appeal, to determine matters relating to the conviction or otherwise of a person for high treason or treason by the High Court.
4. Article 131(4) - An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court.
5. Appeals from the Judicial Committees of the National House of Chiefs.
6. Appeals as of right when if the appeal is from High Court or Regional Tribunal to the CA in the exercise of original jurisdiction of the HC or RT.
7. Appeal with leave of the CA if matter commenced from the lower courts.
Supervisory jurisdiction
1. SC has supervisory jurisdiction over all courts.
2. HC has supervisory jurisdiction over lower courts.

Review jurisdiction
The Court may review its own decisions when there is exceptional circumstance resulting in grave miscarriage of justice and discovery of new matter or evidence which could not have been available after a diligent effort at the first instance.

Production of officials documents with security implications
Art 135 - Exclusive jurisdiction on the production of official documents which may be prejudicial to the security of the state or the interest of the public.

Court of Appeal

Composition
1. Composed of CJ and 10 justices of the CA.
2. Constituted by 3 Justices - qualification.

Jurisdiction
1. Does not have an original jurisdiction.
2. CA has appellate jurisdiction.
3. Appeals as of right in Criminal matters from the High Court.
4. In civil matters from the Circuit Court (Section 11(4) of the Courts Act, 1993 (Act 459)
5. With leave in interlocutory matters from the Circuit Court. If leave is refused, seek leave from the Court of Appeal.
7. Possesses all the powers of the Court from which it receives the appeal.

High Court

Composition
2. Constituted by:
   - a single judge,
   - judge and jury;
   - 3 judges for treason or high treason – Article 19(2)(i).

   - Treason – article 19(17) (levying war against Ghana and overthrowing or attempting to overthrow any organ of government created under the Constitution.
   - High Treason – article 3 (overthrowing the Constitution).
**Jurisdiction**

**Original jurisdiction**
1. Jurisdiction in all matters except those excluded – Civil and Criminal.
2. Special jurisdiction to hear Human Rights matters.

**Appellate jurisdiction**
1. In all criminal matters emanating from the Circuit Court.
2. Appeals from District Courts and all its divisions – juvenile courts, family tribunal etc.

**Supervisory jurisdiction**
1. Lower courts and other adjudicatory bodies.
2. May make declaratory judgments where appropriate.
3. May issue prerogative orders of certiorari, prohibition, mandamus, quo warranto.

Fast Track challenges in Tsatsu v. CJ & A-G [2001 – 2002] SCGLR 189; A-G v. Tsatsu Tsikata [2001 – 2002] SCGLR 620. Challenge was that the Court was created by a guideline issued by the CJ rather than through a legislation or CI.

Why should all courts not be fast track? Aren’t we entitled to speedy trials in all the courts? Why pay higher fees at the Fast Track?

**Regional Tribunals**

Composed of the CJ, 1 Chairman and such other members as CJ may specify.

Constituted by Chairman and not less than 2 or more than 4 members.

**Jurisdiction – Article 143(1), 1992 Constitution**
1. Offences against the state and public interest as Parliament may by law establish.
3. Does not have jurisdiction if the trial is by indictment.

**The Lower courts**

**Circuit Court**

*Composition of the Circuit Court*
The Circuit Court is composed of a single judge.
Jurisdiction of the Circuit Court

The jurisdiction of the Circuit Court is provided in the Courts Act, Act 459 as amended. It covers:

1. All civil matters where the value or claim does not exceed GH₵50,000.00.
2. All actions between landlord and tenant.
3. All matters involving ownership, possession and occupation of land.
4. Appointment of guardianship and custody of infants.
5. Probate and administration matters where the value does not exceed GH₵50,000.00.
6. Interpleader in respect of land attached in execution by the Circuit Court.
7. The registrar should refer to Section 41 of Act 459 (as amended) for guidance.
8. L.I. 2211 amends the Courts Act, 1993 (Act 459) - L.I. was passed on the 18th of December, 2014 and entered into force on the 5th of March, 2015.
9. Exercises criminal jurisdiction in criminal matters other than treason, trial on indictment and offences punishable by death – Section 42, Act 620.

District Court

Composition of the District Court

The District Court is composed by a single magistrate. Some may be lay magistrates.

Jurisdiction of the District Court

The jurisdiction of the District Court in civil matters is as provided in the Courts Act 459 and CI 59 as follows:

1. In all civil matters where the value or claim does not exceed GH₵20,000.00.
2. In all claims for relief by way of interpleader in respect of property attached in execution of decree made by the District Court.
3. In civil matters between landlord and tenant.
4. In actions relating to ownership, possession etc. where the value does not exceed GH₵20,000.00.
5. In divorce, paternity, custody of children etc. where the law applicable is customary law.
6. In applications for probate/letters of administration where the value of the estate does not exceed GH₵20,000.00.
7. Refer to section 47 of the Court’s Act for full details of the jurisdiction of the District Court.
8. In matters relating to children (Juvenile) and Family Tribunal.

Criminal jurisdiction of the District Court

Criminal jurisdiction when offence is punishable by a fine not exceeding 500 penalty units or two years imprisonment.
Juvenile Courts

1. cause or matter affecting juveniles.
2. Issues to be dealt with within 6 months, otherwise discharge them and not liable for any prosecution again.

National House of Chiefs (Judicial Committee)

1. Matters falling within jurisdiction of two regional houses of chiefs, and those no within the jurisdiction of any regional house of chiefs.
2. Appellate jurisdiction in a cause or matter affecting chieftaincy as determined by the Regional House of Chiefs.

Regional house of chiefs

The Judicial Committee of the Regional Houses of Chiefs has jurisdiction to determine matters affecting paramount chiefs or queen mothers to a paramount stool or skin.

Traditional council

The Judicial Committee of the Traditional Councils settle chieftaincy causes or matters within its area not involving Asantehene or paramount stools or skins.

Step 4

Group or plenary discussions.

The Trainer may lead groups of trainees or the plenary to discuss.

› The classification of the courts and the significance of the classification.
› The composition and jurisdiction of the various courts.

Step 5

What up on the salient points for this Session.

› The courts structure.
› The jurisdiction of the courts.
Session 3.4: Dispute settlement mechanisms

Target group: All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
Recommended time: One (1) hour.

1. Learning Objectives

By the end of this Module, participants should be able to:

- Explain the methods for dispute resolution.
- Explain the various types of alternative dispute resolution mechanisms.

2. Core Messages

- Disputes may be resolved through processes which are contentious and otherwise.
- Non-contentious forms of dispute resolution are generally referred to as alternative dispute resolution mechanisms.
- The alternative dispute resolution mechanism may be arbitral or non-arbitral.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

Step 1
Facilitator introduces the topic.

Step 2
Participants may briefly discuss their encounter with alternative dispute resolution mechanisms.

Step 3
The trainer should lead the participants through the Notes provided below:

Alternative dispute resolution (ADR)

- Alternative Dispute Resolution is a collective description of methods of resolving disputes, otherwise than through the normal trial process.
The dispute or difference is referred to a neutral third person(s) specially appointed. The selected person(s) hear(s) evidence from both parties to the dispute and settle(s) the disputes in an amicable environment.

Alternative Dispute Resolution (ADR) Act, 2010 (Act 798) makes provision for other ADR mechanism also called Non-Arbitral Mechanisms (NAM).

**Alternative Dispute Resolution**

ADR in Ghana is governed by the Alternative Dispute Resolution (ADR) Act, 2010 (Act 798). The ADR Act makes provision for other ADR mechanisms including NAMs.

NAM is a non-confrontational technique that may resolve disputes without resorting to traditional litigation or arbitration. NAM provides disputants the chance to participate in the **process without interference**. It empowers them to be creative in solving their own conflicts and disputes.

NAM processes are however formal ADR methods involve a process where parties themselves attempts to settle their disputes through negotiation or a third party (referee) is simply invited to assist in the settlement by issuing a non-binding evaluation of the dispute and sometimes **make recommendation of how the dispute could be resolved**.

**C. NAM Techniques**

There are many NAM techniques of resolving disputes.

The most practical techniques of NAM are as follows:

- **Negotiation.**
- **Mediation.**
- **Conciliation.**

**Negotiation**

- Negotiation may be with or without a neutral adviser. It may be direct or indirect.
- In a Direct Negotiation, the parties appoint a member of their team to lead and both parties do their negotiation with or without a neutral adviser.
- In some Negotiations (indirect), the process involves a neutral adviser who sits in the cause of deliberations without taking active part whilst the parties engage themselves in the art of negotiation.

**Mediation**

- In a mediation, a third party known as a Mediator is called upon to assist in finding common ground for compromise when negotiations fail between the parties.
- The mediator may be the neutral adviser during the negotiation or a new person altogether. Agreement on mediation may be made at the contract stage. This is prior to any dispute arising.
Mediation is marginally more expensive than negotiation. However, the advantages of mediation over other forms of NAM techniques include informality, speed and economy. Mediation often leads to an agreed settlement between the parties.

**The process of mediation**
- Preliminary meeting by the mediator to find out the substance of the dispute and to decide how to proceed with the parties.
- Parties make a formal presentation in joint session (all parties present) with probing and interrogations.
- Series of private meetings or caucuses are held between the mediator and each party.
- Mediator moves from one caucus to the other reporting with agreement, the views of each party in turn.
- Mediator finally comes out with agreed proposal that leads to an amicable settlement.

**The role of the mediator in mediation**
- The Mediator helps to gain access to necessary factual and legal information having an important bearing on the dispute.
- The Mediator makes sure that each party understands what the other says and increases perception and empathy between parties.
- The Mediator puts into writing any agreement reached *(Settlement Agreement)* by the parties for signature. The settlement Agreement will be binding on the parties when it is signed.

**Arbitration**
- The process of settlement by a neutral (independent) person or a body where the decision is generally binding is known as an arbitration.
- The decision of the arbitrator is as an award.

**Forms of Arbitration**
In Ghana, there are 2 forms of arbitration recognized in the ADR Act, 2010 (Act 798):
- Formal Arbitration.
- Customary Arbitration (by traditional councils, chiefs and elders subject to natural justice).

**Formal Arbitration**
- It is a process whereby parties agree to submit the matter in dispute to the decision of a person or persons in whom they have confidence and trust and undertake to abide by that decision.
- The outcome is an independent binding equitable decision by a neutral person(s).
- The parties are bound to accept the arbitration award as final and binding on them.
- Formal arbitration is a method of settling disputes which involves technical or commercial elements between two or more persons using methods other than court procedure.
In commercial law, arbitration is defined as a process subject to statutory support by which formal disputes may be determined in a binding manner by a tribunal of the parties’ own choosing.

Customary Arbitration

A. Pre-requisites of valid customary arbitration

The Supreme Court in *Dzasimatu v Dokosi* [1993-94] 1 GLR 463, and also *Budu II v Ceasar* [1959] GLR 470.

Five essential elements are required for valid customary arbitration. These include:

i. Voluntary submission of dispute for settlement.
ii. Prior agreement to be bound by the outcome of the settlement.
iii. Due observance of the rules of natural justice.
iv. Compliance with rules on jurisdiction; and
v. Publication of the award.

Voluntary submission:

The only solid foundation of a valid customary arbitration of a binding award is the voluntary submission of the dispute to a relatively disinterested third party to make a fair investigation into it and give a decision on it.

*Yaw v Amobie* (1958) 3 WALR 406, CA
*Paul v Kokoo* [1962] 2 GLR 213

Care should be taken to scrutinize evidence led in support of what is alleged to be “Arbitration”.

*Nyame v Yeboah* [1961] GLR 281, SC

In a situation where a Chief voluntarily apportioned land between parties, this was held not to constitute an arbitration.

*Foli v Akese* (1930)1 WACA 1

Arbitration found no evidence upon which to adjudicate between the parties, drew an arbitration with the view of bringing peace between them. Held, Arbitrator’s award is set aside. In arbitration, full explanation must be given to the person complained against and that proposal must be accepted by him.

*Asare v Donkor and Serwah II* [1962] 2 GLR 176 SC

It was held that merely attending to the call of a chief out of respect due to a stool but definitely not agreeing to submit a dispute for determination by that chief did not amount to consent to the arbitration.

To amount to arbitration it must be shown that the person complained against agreed to submit to the arbitration after it had been explained to him that his opponent had made a request that the dispute be determined at arbitration and that the person to whom the complaint was lodged should preside over the dispute as the arbitrator.

*Dompreh v Pong* [1965] 1965] GLR 126

Merely consenting to or voluntarily submitting a dispute to an arbitrator is however not conclusive to final arbitration.
It is rather seeking a negotiated settlement thus, no obligation to accept the decision of the third party which becomes binding only if accepted by the parties. 

**Manu v Kontre [1965] GLR 373, SC**

**Mensah v Essah [1976] 1GLR 424, CA**

Proceeding whereby one party requests a chief or an elder to settle a dispute can only be described as negotiation for a settlement. Settlement is the presence or otherwise of a prior agreement to be bound by the decision of the arbitrator.

Prior agreement to accept the award.

Consent or agreement should be given in advance.

The essence of a valid binding arbitration is consent in advance by the parties to be bound by the Arbitration award.

**Vado v Sampede (1957) 3 WALR 35**

Consent is satisfied not at the time of the award when an adverse decision might cause one of the parties to reconsider his participation in the proceedings but at the beginning of the proceedings.

It is an agreement to be bound by the decision made as a precondition for the Arbitration taking place.

**Akunor v Okan [1977] 1 GLR 173, CA**

**Publication**

The find decision or award should be brought to the notice of the parties involved.

This may be done orally or by writing informing the parties what the find award is.

**Procedure**

Customary Arbitration need not follow any formal procedure.

There must be a hearing of both sides in a judicial manner.

Both sides must be given the fullest opportunity to present their case **Mensah v Essah [1976] 1GLR 424** *(natural justice law).*

A purported arbitration was declared invalid for, inter alia, failure to hear both sides in a judicial manner.

**Taking of evidence**

Although the law requested that the decision of arbitration must be arrived at on merits, no formal procedure was requested at the proceedings and it was also not on all occasions that the taking of evidence would be requested to enable the arbitrator to arrive at a fair decision on the merits – **Asano v Taku [1973] 2 GLR 312.**

The onus of establishing that there has been a valid customary arbitration is on the person relying on the arbitration.

**B. Effect of a valid customary arbitration**

There is no right in the parties to arbitration or a negotiation settlement to withdraw once the award has been made and accepted.

Parties who had consented to an arbitration fixing the boundaries to a piece of land could not resile from the arbitration – **Oyete and Ntim v Edumawu and Aduo (1956) 1 WALR 278.**
A plaintiff was estopped from bringing fresh action in court claiming the same property from the defendant when the same issue had been disposed of in a customary arbitration - *Akunor v Okran* [1977] 1 GLR 173.

Parties cannot reopen the arbitration issue by initiating fresh arbitration or by initiating court action except where this is done by consent.

Once an arbitration award exists, it stops the parties from re-opening the case - *Vado v Sempede*.

Where a dispute relating to title to a house was settled by the High Court and the same dispute was later submitted to an arbitrator whose award was embodied in a subsequent consent judgment, it was held that the arbitration award was binding on the parties and they could not claim their rights under the original judgment - *Akwei v Akwei* [1961] GLR 212.

Payment of a fee is not even conclusive evidence of a binding arbitration since it could be equally consistent of the giving of a present, according to customs, to those who attempt reconciliation.

Whether the prior agreement exists or not is a **question of fact** to be determined by the evidence - *Zogli v Ganyo* [1977] 2 GLR 297, CA where it was held that the result of negotiated settlement is not binding until it was accepted by both parties.

**Certainty of the subject matter and the finality of the award**

For an arbitration to be effective and binding on the parties, it should be a final one in the sense that the subject matter is certain.

Where an award statement was that some properties of the plaintiff’s father should be given to the plaintiffs but the identities of the properties were unknown, the award was held not to be a final one. It had no binding effect on the parties - *Fordjour v Nimo* [1962] 1 GLR 305.

**Where a dispute has been decided upon and award given, if subsequently another dispute arises, the parties may:**

- Apply to enforce award.
- Submit the dispute to further arbitration or.
- Waive the award and have the dispute settle in court.
- The judgment of the court will then supersede the award; and the award cannot thereafter be removed or enforced by application in court.
- Notwithstanding a judgment, parties can subject the subject matter of the judgment to arbitration and the award of the arbitration will supersede the judgment.
- Judgment which is a nullity cannot be converted into a binding lawful judgment by agreement of the parties.

**Crimes**

- No criminal case can be disposed of by settlement out of court or by customary arbitration except as provided in the Courts Act, 1993 (Act 459).
- Customary arbitration has no jurisdiction in criminal matters. Hence, the finding of arbitration that the plaintiff had stolen from his concubine was held to be **ultra vires**.
Enforcement of Awards

» There’s no machinery. The only method of enforcing such an award is by an action in a court of competent jurisdiction.

» A person who desires to enforce a customary award has to file a writ of summons for:
  
  - Declaration that that particular award was actually made.
  - A declaration that the award was valid.
  - An order for the enforcement of the award.

» “Parties take their arbitrations for better or for worse, both as to decision of fact and decisions of law.”

  _Foli v Akese (1930) 1 WACA 1_

» Customary arbitration award may however be set aside where it is proved that the award was as the result of **Corruption** or **Fraud**.

Conflict of interest

_In Paul v Kokoo [1962] 2 GLR 213, SC, it was held: arbitration by a person who is himself involved in the dispute is not reasonable._

Step 4

Group or plenary discussions

The Trainer may lead groups of trainees or the plenary to discuss.

» The essential elements of the various forms of ADR.

» The appropriate cases for ADR.

Step 5

What up on the salient points for this Session

» The importance of ADR.

» Various methods of ADR.
Session 3.5: Basic criminal law

Target group: All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
Recommended time: One (1) hour.

1. Learning Objectives

By the end of this Module, participants should be able to:

- State the foundational laws in Criminal law in Ghana.
- Accurately state what criminal law is.
- Distinguish between acts which are crimes and those which are not crimes.
- Explain the ingredients of some basic criminal offences.

2. Core Messages

- Criminal law is the branch of the law which lays down the circumstances in which citizens render themselves liable to suffer punishment at the hands of the State.
- The 1992 Constitution, e.g. article 19 (5) and (11), the Criminal Offences Act, 1960 (Act 29) and Criminal Procedure and Other Offences Act, 1960 (Act 30).
- There are two basic types of offences: Inchoate Offences and Complete Offences.

3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

Step 1
Facilitator introduces the topic.

Step 2
Participants may briefly discuss their encounter with alternative dispute resolution mechanisms.

Step 3
The trainer should lead the participants through the Notes provided below: Objective and relevance of the module.
The meaning of criminal law

› Criminal law is the branch of the law which lays down the circumstances in which citizens render themselves liable to suffer punishment at the hands of the State.
› The accused person must have a guilty mind and must have engaged in a guilty act to be considered blameworthy.
› The effect of going through the criminal justice system can be very tough on the accused person.
› The burden imposed on the State in criminal matters is heavy so the State must be afforded the opportunity to exercise its mandate appropriately.

Basic Legal References

The foundational laws of Criminal law in Ghana are:

› The 1992 Constitution, e.g. article 19 (5) and (11).
› The Criminal Offences Act, 1960 (Act 29) and
› Criminal Procedure and Other Offences Act, 1960 (Act 30).

Categories of offences

› There are various offences that fall under the broad categories such as:

i. Offences against Rights of Property, e.g. defrauding by false pretense, forgery, unlawful entry etc.
ii. Offences against Public morals, e.g. persons trading in prostitution and gross indecency, keeping a brothel, etc.
iii. Offences against the person, e.g. murder, manslaughter, assault, causing harm, etc.
iv. Offences against the peace, e.g. Rioting, forcible entry, assault on public officer, etc.
v. Offences in relation to public officers and public elections, e.g. false declaration of votes, bribing a voter, etc.
vii. Offences concerning the administration of Justice, e.g. Perjury, etc.
vii. Offences against Public Order, Health and Morality, e.g. Insulting the National Flag or emblem, false reports injuring the reputation of the state.
viii. Offences against the safety of the state, e.g. Treason, high treason, piracy, etc.
ix. Special offences, e.g. Importation of explosives, narcotics etc.

Types of Offences

› There are basically two types of offences: Inchoate Offences and Complete Offences

i. Preparing for or seeking to commit another crime.
ii. Conduct deemed criminal though actual harm not caused.
iii. Presence of mens rea or intent.
iv. Presence of all the elements of a crime (corpus delicti).
Substantive offences

1. Stealing

Meaning of stealing

› The laws defining offences relating to unlawful and dishonest dispossession of another person of her property is sections 120 to 127A of the Criminal and other Offences Act, 1960 (Act 25).
› The provisions describe what constitutes stealing in the following terms: ‘A person steals if he dishonestly appropriates a thing of which he is not the owner.’
› Dishonest appropriation is therefore the main ingredient in the offence of stealing under the Ghanaian law and ‘the three essential elements which require proof in a charge of stealing … are (i) that the person charged must not be the owner of the thing allegedly stolen; (ii) that he must have appropriated the thing; (iii) that the appropriation must have been dishonest.

Case: Ampah v. The Republic [1977] 2 GLR 171


Nature of what is capable of being stolen

› The nature and character of the thing capable of being stolen is quite extensive.
› Section 123(1) of Act 29 explains that the crime of stealing can be committed in respect of anything, whether living or dead, and whether fixed to the soil or to any building or fixture, or not so fixed, and whether the thing be a mineral or water, or gas, or electricity, or of any other nature, and whether the value thereof be intrinsic or for the purpose of evidence, or be of value only for a particular purpose or to a particular person, and whether the value thereof do or do not amount to the value of the lowest denomination of coin; and any document shall be deemed to be of some value, whether it be complete or incomplete, and whether or not it be satisfied, exhausted, or cancelled.
› Act 29 provision is a very wide net and enables several acts and items to be included in the stipulation of things that could be stolen. Incidentally, Act 29 also provides that a thing lost can be stolen.

Case: Sam v. The Republic [1967] 2 GLR 283

Stealing a lost item

› If a person,
  a. at the time of appropriating it, he knows who is the owner of the thing or by whom it has been lost; or
  b. the character or situation of the thing, the marks upon it, or any other circumstances is or are such as to indicate the owner of the thing or the person by whom has been lost; or
c. the character or situation of the thing, the marks upon it, or any other circumstance is or are such as that the person who has lost the thing appears likely to be able to recover it by reasonable search and enquiry, if it were not removed or concealed by any other person.

**Kramo Wala v. The Republic [1973] 1 GLR 287**

- Two illustrations, in sharp relief, are provided in Act 29 in respect of section 127, both of which put weight on the absence of ‘reasonable enquiry’ to convict a person for the offence of stealing a thing that is lost by someone and found by the accused person. A person will be guilty of the offence of stealing in respect of an item which was lost and he finds same, if he knows the owner of the item and refuses to return it also where the thing found has identification marks on it to facilitate discovery of the owner of the property, yet the person who finds it refuses to return it; or where there is the remotest chance of discovering the owner of the lost item were it not concealed by the person who finds the thing.

2. **Disturbing the peace in a public place - 298**

- Disturbing the peace, also known as breach of the peace, is a criminal offense that occurs when a person engages in some form of disorderly conduct such as fighting or causing excessively loud noise. When a person’s words or conduct jeopardizes another person’s right to peace and tranquility, he or she may be charged with disturbing the peace.
- Section 298 provides that a person commits a criminal offence and is liable to a fine not exceeding, ten penalty units, who in a public place, or in a place within sight or hearing of persons who are in that place:
  - Disturbs the peace by fighting or quarrelling or by making loud or unseemly noise
  - Abets an unlawful fight
  - Sings a profane, an indecent or obscene song, etc.

3. **Offensive conduct conducive to breaches of the peace – Section 207**

- Offensive conduct conducive to breaches of the peace A person who in a public place or at a public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or by which a breach of the peace is likely to be occasioned, commits a misdemeanour.

**Cases:**

- **Kungua & others v. The Republic [1984-86] GLRD 128** (beating gong gong that no one should pay levies is not offensive or abusive.

- **Gaba v The Republic 1984-86 GLRD 80** (The act must take place in a public place)

- **Quansah v. The Republic [1980] GLR 263.**

4. Assault – Section 84 – 88A, Act 29

The various offences capable of being committed in relation to assault are:

› Assault and battery: This is an actual physical touch of another with intent to cause fear, annoyance, etc without the consent of the person who has been touched.
› The slightest touch suffices.


Case: Comfort v. The Republic [1972] 2 GLR 1

› Assault without battery: This is an action done with intent to cause fear of an imminent battery of another person.
› Imprisonment: This is the detention of a person without the person’s consent or justification or compelling a person to move to or be carried to a particular location.

5. Causing harm – Section 69

This is when one intentionally and unlawfully causes harm to another. Where the harm is intentional but lawful, no crime has been committed.

Case: Brobbey v. The Republic [[1982-83] GLRD 65

Section 76 defines harm to be unlawful when it is intentionally or negligently caused without any lawful justification.

6. Female genital mutilation – Section 69A

The removal wholly or partly of the female sex organ is referred to as female genital mutilation. It is irrelevant whether the practice if female genital mutilation is a customary practice.

Anyone who participates in female genital mutilation is equally guilty of the crime.

7. Duty to give access to necessaries of health and life – Section 79

A spouse is under a duty to provide the necessaries of life and health to the other spouse when that other spouse is under the control of the other being requested to provide such necessaries of life and health.

A husband is under a duty to provide necessaries of health and life to his wife when the wife is under his control and vice versa.
A parent is under a duty to provide necessaries of health and life to the child who under his or her control. If the parent does not have the means, he is under an obligation to seek help from public sources mandated to provide such a help.

“Necessaries of health and life” is defined to include proper food, clothing, shelter, warmth, medical or surgical treatment, and any other matter which is reasonably necessary for the preservation of the health and life of a person.

**Case: R v. Senior (1899-1901) 19 COX C.C. 679**

In this case, the Appellant’s son died because he neglected to provide medical assistance for him. He belonged to a sect called “the Peculiar People” who believed it was sinful to seek medical help. His conviction was affirmed.

8. Abortion

“Abortion or miscarriage” is defined to mean the premature expulsion or removal of conception from the uterus or womb before the period of gestation is completed.

Any woman who with intent to cause abortion or miscarriage administers to herself or agrees for someone to administer to her any substance is guilty if abortion. The person who administer the substance is equally guilty.

Abortion may, however be lawfully carried out by registered medical practitioners in certain circumstances including:

1. Where the pregnancy is as a result of rape, defilement or incest and the abortion is requested by the victim or anyone under whose case the victim is.
2. Where the pregnancy poses risk to the life of the pregnant woman.
3. Where there is a substantial risk that child may suffer disease or a serious physical abnormality.

**Obeng v. The Republic [1971] 2 GLR 107**

In this case, the appellant agree to procure abortion on a pregnant girlfriend. The arrangements were made and the person to do the abortion administered an injection to the girl. The result of those acts was an incomplete abortion. His appeal against conviction for attempted abortion was dismissed.

9. Rape – Section 97

This is carnal knowledge of a female of not less than 16 years without her consent. Carnal knowledge is the act of physical penetration

**Queen v. Papadimitropulous (1957) 98 CLR 60**

When consent is withdrawn, any sexual act beyond that point is rape.
10. Defilement – Section 101

This is carnal knowledge of a child under 16 years of age. It is irrelevant whether the victim consented.


11. Indecent assault – Section 103

Sexual bodily contact without consent or where a person sexually violates the body of the other person in a manner which is not necessarily carnal or unnatural carnal knowledge.


12. Unlawful damage – Section 172

It is an offence to cause damage to another person’s property. Property includes movable and immovable property.

“Damage” is defined to include not only damage to the matter of a thing, but also an interruption in the use of that thing, or an interference with that thing by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.

13. Unlawful entry

A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person enters


Case: R. v. Davis (1823) Russ.& Ry. 499 – when only his finger entered, there was sufficient unlawful entry.

14. Defrauding by false pretences – Section 131

A false pretence is a representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that it is true, and made with an intent to defraud.
A representation may be made by written or spoken words, or by personation, or by any other conduct, sign, or means of any kind; (b) the expression “a representation of the existence of a state of facts” includes a representation as to the non-existence of a thing or a condition of things, and a representation of any right, liability, authority, ability, dignity or ground or credit or confidence as resulting from an alleged past fact or state of facts, but does not include a mere representation of an intention or a state of mind in the person making the representation, nor a mere representation or promise that anything will happen or will be done, or is likely to happen or to be done;

Illustrations Subsection (2) 1.

A goes into a shop dressed as an officer in the Army, which A is not. If A does this in order to gain credit which A would not otherwise get, A has committed the criminal offence of a false pretence, although A does not actually say that A is an officer. 2. The following pretences which are false are sufficient “false pretences” by A within the meaning of this Chapter: (a) that a picture which A is selling once belonged to a particular collector; (b) that a picture which A is selling was painted by a particular painter; (c) that a picture which A is selling belongs to A; (d) that A is entitled to a legacy under the will of a deceased relative; (e) that A has an account at a particular bank; or (f) that A has the authority of another person to act on that person’s behalf. 3. The following are not sufficient, although false: (a) that the picture is a valuable work of A; (b) that A expects to receive a legacy when a relative dies.

15. Fraudulent breach of trust

A person commits a fraudulent breach of trust if that person dishonestly appropriates a thing the ownership of which is invested in that person as a trustee for or on behalf of any other person. This is like stealing something entrusted into your care.

16. Riot – Section 196

196. Definition of riot (1) Five or more persons together in a public or private place commit the criminal offence of a riot where they commence or attempt (a) to execute a common purpose with violence, and without lawful authority to use that violence for that purpose; or (b) to execute a common purpose of obstructing or resisting the execution of a legal process or authority; or (c) to facilitate, by force or by show of force or of numbers, the commission of a criminal offence. (2) A person shall not be convicted of a riot only because that person in common with the others to the number of five or more, suddenly engage in an unlawful fight, unless five or more of them fight with a common purpose against any other person.

17. Unlawful assembly – Section 202

201. Definition of unlawful assembly (1) For the purposes of this Chapter, there is an unlawful assembly when three or more persons assemble with intent to commit an offence, or having assembled with an intent to carry out a common purpose, conduct themselves in a manner likely to cause persons in the neighbourhood reasonably to fear
that the persons so assembled will commit a breach of the peace, or will by the assembly needlessly and without a reasonable occasion provoke other persons to commit a breach of the peace. (2) It is immaterial that the original assembling was lawful if, having assembled, they conduct themselves with a common purpose in that manner.

**Inchoate offences**

- Part 1 of the Criminal Offences Act, 1960 (Act 29) covers inchoate offences to all substantive offences.
- These inchoate offences are Attempt, Preparation, Conspiracy and Abetment in sections 18, 19, 20 and 23 respectively of the Criminal Offences Act, 1960 (Act 30).

1. **Attempt to commit offences**

   - Section 18 of Act 29 criminalizes attempts to commit offences. Section 18 (1) of Act 30 provides that “a person who attempts to commit a criminal offence shall not be acquitted on the ground that the criminal offence could not be committed according to the intent:

     a. by reason of the imperfection or other condition of the means; or
     b. by reason of the circumstances under which they are used; or
     c. by reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed; or
     d. by reason of the absence of that person or thing.

   - Some instances of criminal attempt are:

     1. A buys a printer and brings it into B’s room, intending to print a fake travel document for B. A has not attempted to procure a fake travel document for B. But if A begins to print the fake travel document, though A afterwards desists and shuts down the printer without the copy fully printing out, A commits of an attempt and is liable for punishment.
     2. A points a gun, believing it to be loaded, and meaning immediately to discharge it at B. A has committed the criminal offence of an attempt, although the gun is not in fact loaded.
     3. A puts A’s hand into B’s pocket, with the purpose of stealing. A has committed the criminal offence of an attempt, although there is nothing in the pocket of B to steal.
     4. A travelled a long distance to ferry B across a border without a valid travel document. A has committed the criminal offence of an attempt, although B in fact had a requisite travel documents.

2. **Preparation to commit a crime**

   - Section 19 of Act 29 provides that “a person who prepares or supplies, or has in possession, custody, or control, or in the possession, custody or control of any other person on behalf of that person, any instrument, materials, or means, with the intent that the instruments, materials, or means, may be used by that person, or by any
other person, in committing a criminal offence by which life is likely to be endangered, or a forgery, or a felony, commits a criminal offence and is liable to punishment in like manner as if that person had attempted to commit that criminal offence.”

This means that if one has effective control over an item or the item is in the custody of another person over whom one has control and the item is intended to be used for the commission of a crime in which forgery will be committed or someone’s life will be at risk, then, an offence of preparation has been committed and will be tried as if the person had attempted to commit such an offence.

3. Abetment of a crime

Section 20(1) of Act 29 provides that a person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilities, encourages, or promotes, whether by a personal act or presence or otherwise, and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by any other person, whether known or unknown, certain, or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence.

Some instances of abetment are:

1. Assisting other persons to steal.
2. Aiding another person subject to deportation to escape. This could occur through the provision of information to the person subject to deportation.
3. A encourages B to travel with a fake passport. A commits the criminal offence of abetting travel without appropriate travel document.
4. A offers B money to smuggle C from Aflao to Lome. Here A commits the criminal offence of abetting human smuggling.
5. A and B are travelling with a fake passport. C hinders an Police Officer from arresting A and B. C has committed the criminal offence of abetting the unlawful travel of A and B.

4. Conspiracy to commit a crime

Section 23(1) of Act 29 provides that where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

Section 23(2) takes care of a situation in which one person is in Ghana and agreeing with another who is outside the jurisdiction to commit or abet the commission of a crime. The section provides that “a person within the jurisdiction of the Courts can be convicted of conspiracy by agreeing with another person who is beyond the jurisdiction, for the commission of abetment of a criminal offence to be committed by them or either of them, or by any other person, within or beyond the jurisdiction.”

Some instances of conspiracy

1. A and B agree together to procure C to produce a fake passport and a visa for A to travel to the United States. Here, A and B have both committed conspiracy to abet the crime of producing a fake passport with a visa.
2. A in Accra and B in Lagos agreed and arranged for A to travel to Abidjan to smuggle 5 girls to Dakar. Here A has committed a conspiracy punishable under this Act.

Defences

Defences may provide partial or total absolution from punishment. Some of the defences available in criminal trials are:

1. Insanity

   - In Ghana, everyone is presumed sane. However, the presumption of sanity is rebutted where one of two situations is established, namely:
     1. A defect in the mental faculty which renders the accused incapable of knowing the nature and consequences of his actions; or
     2. A mental delusion which renders the accused an unfit subject for punishment.

   - Insanity or insane delusions may negate the intent of any crime, although it pertains only to those crimes having an intent element.

   - A variety of rules have been advanced to define what, precisely, constitutes criminal insanity. The most common definitions involve either an actor’s lack of understanding of the wrongfulness of the offending conduct, or the actor’s inability to conform to the law.

   - The defence of insanity is a partial defence, that is, a successful plea of insanity does not lead to an acquittal. It leads to the pronouncement of the verdict of “guilty but insane” - this is known as the special verdict provided for under section 137 of Act 30 – See the opening paragraph of section 27 of Act 29.

   - Under the special verdict, the insane convict is not treated like an ordinary convict - he is kept away from society often in a mental institution “till the pleasure of the President be known” - Section 137 of Act 30.

2. Automatism

   - Automatism is a form of mental disorder which negates mens rea but does not amount to insanity. Examples are somnambulism (sleepwalking); concussion; epileptic fits; hypoglycaemia (a defect in blood-sugar); etc.

   - It is a common law defence in aid of a person who has done an act but without being conscious of the fact - i.e. the person is purely an automaton - that is - a state in which the body behaves like a machine or robot and the mind becomes a non-controlling component of the body, a state of carrying out an act without the subject’s awareness.

   - It is a defence because the mind does not correlate with what is being done.

3. Intoxication

   - Strictly speaking it could be argued that intoxication is not a defence but a denial of mens rea; the main difference being that, a defence accepts that the mens rea and actus reus of an offence are present.
With intoxication, there is no acceptance of the mens rea of the offence. For offences of basic intent, the act itself is criminalised. All that is needed is the intent to do the act. Such intent can be inferred relatively easily when the intoxicated one is still in control of his actions.

Intoxication will rarely (if ever) deny the mens rea of crimes of basic intent. With specific intent, the character of the act is criminalised, for the act itself is often objectively innocent.

Appropriation of an item is perfectly innocent, yet when one appropriates it with the intent to permanently deprive the owner of it, there is a theft.

This is much more difficult to prove beyond reasonable doubt, for an intoxicated person may exercise control over his actions but will often lack an understanding of what is being done and without this understanding the necessary intent cannot be proven.

Therefore, whilst it is tempting to think of intoxication as a defence, it is more accurate to see it as a denial of the mens rea of an offence – where the mens rea or actus reus is not proven, there is no need for defences.

4. Mistake of Fact or Mistake of Law

Ignorance or mistake of fact can excuse a person from criminal responsibility. For instance, if you took a laptop honestly believing it to be yours, then this may be a defense against a charge of stealing.

However, ignorance of the law cannot excuse one from criminal responsibility - or as the popular adage, ignorance of the law is no excuse – ignorantia juris non excusat.

It is said that a person who acts in ignorance of a fact has no intention of engaging in a forbidden conduct. However, a person who acts not in ignorance of a fact but in ignorance of the law intends to engage in the prohibited conduct, although he or she does not know that, the conduct is prohibited by law.

5. Lawful Capacity of Office

This defence is generally available to public servants and first responders such as Police Officers, Fire-Fighters, etc.

It usually protects the first responders from responsibility for otherwise criminal actions that the first responder must perform as an appointed agent of the jurisdiction in the course of their duties. For example, a paramedic who forcibly enters a house or building in answer to an emergency call cannot be charged with breaking and entering; a judge who sentences a man to death for a crime cannot be charged with attempted murder if the convicted man is later exonerated. Such protection is generally limited to acts required in the course and scope of employment and it does not preclude gross negligence or malicious intent.

6. Legal Duty

This “lawful capacity of office” defence can also apply to civilians who do not hold such a position, but whose assistance is requested by someone who does, such as a police officer.

A person, who witnesses a criminal being chased by police who yells “stop that man!”, and obliges resulting in injury to the criminal, cannot be charged with assault or sued for personal injury.
“Good Samaritan” laws generally provide immunity in civil and criminal proceedings to persons who, in good faith, cause injury while attempting to help a person in distress, protecting such persons even in cases where greater harm resulted from the action than would have occurred otherwise.

7. Self Defence

- Self-defence is, in general, some reasonable action taken in protection of one’s self. An act taken in self-defence often is not a crime at all; no punishment will be imposed.
- To qualify, any defensive force must be proportionate to the threat.
- Use of a firearm in response to a non-lethal threat is a typical example of disproportionate force; however, such decisions are dependent on the situation and the applicable law, and thus the example situation can in some circumstances be defensible, generally because of a codified presumption intended to prevent the unjust negation of this defence by the trier of fact.

8. Duress

- One who is “under duress” is forced into an unlawful act. Duress can be a defence in many jurisdictions, although not for the most serious crimes of murder, attempted murder, being an accessory to murder and in many countries, treason.
- Duress must involve the threat of imminent peril of death or serious injury, operating on the defendant’s mind and overbearing his will.
- Threats to third persons may qualify. The accused must reasonably believe the threat, and there is no defence if “a sober person of reasonable firmness, sharing the characteristics of the accused” would have responded differently. Age, pregnancy, physical disability, mental illness, sexuality have been considered, although basic intelligence has been rejected as a criterion.

Case studies and questions

Group 1

A points a pistol at B in a manner that gives B reasonable grounds for fearing that B will be immediately shot. Has A committed an assault even if A does not intend to fire? What if the pistol is not loaded, and A knows that it is not loaded?

A child was carried at the back by the mother. C knocks the Mother’s hand and the child fell. Is this battery?

Group 2

A at a distance of ten metres from B runs at B with apparent intention of striking B and intending to put B in fear of an immediate beating. Has A committed an assault? Will it matter if A never came within actual reach of B?
Group 3

A being near B, lifts a stick and threatens at once to strike B, unless B immediately apologises. Has committed an assault?

Group 4

A detains B on board a ship. B is let free within the ship but was prevented from leaving the ship until she sailed. Was B imprisoned?

Group 5

A, by falsely pretending that B is under arrest, prevents B from leaving B’s own house. Has A imprisoned B?

Handout: 3.5.1

86. Assault and battery

(1) A person makes an assault and battery on another person, if without the other person’s consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting the other person to anger, that person forcibly touches the other person.

(2) The application of subsection (1) is subject to the following provisions:

(a) where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be a touch that is likely to cause harm or pain, or is intended to be a touch that, but for the consent obtained by the deceit, would have been likely to cause harm, pain, fear or annoyance, or to excite anger;

(b) where the proper person is insensible, unconscious, or insane, or is, by reason of infancy or any other circumstance, unable to give or refuse consent, it suffices, with respect to intention, (i) that the touch is intended to cause harm, pain, fear or annoyance, or (ii) that the touch is intended to be a touch that would be likely to cause harm, pain, fear, or annoyance to, or to excite the other person’s anger, if that person were able to give or refuse consent, and were not consenting;

(c) the slightest actual touch suffices for an assault and a battery, if the intention is an intention as is required by this section;

(d) a person is touched, within the meaning of this section, if the body is touched, or if the clothes or any other thing in contact with the body or with the clothes on the body are or is touched, although the body is not actually touched; and

(e) for the purpose of this section, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention is to cause the harm, pain, fear, or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause that person to be exposed, to harm, pain, fear, or annoyance from any other cause.
Handout: 3.5.2

**87. Assault without actual battery**

(1) A person makes an assault without actual battery on another person, if by an act apparently done in commencement of an assault and battery, the person intentionally puts the other person in fear of an instant assault and battery.

(2) The application of subsection, (1) is subject to the following provisions:

(a) it is not necessary that an actual assault and battery should be intended, or that the instruments or means by which the assault and battery is apparently intended to be made should be, or should by the person using them be believed to be, of a kind or in a condition that an assault and battery could be made by means of them;

(b) a person can make an assault, within the meaning of this section, by moving, or causing a person, an animal, or a matter to move, towards another person, although that person or the other person, animal, or matter, is not yet within a distance from the other person that an assault and battery can be made; and

(c) an assault can be made on a person, within the meaning of this section, although that person can avoid actual assault and battery by retreating, or by consenting to do, or to abstain from doing, an act.
Handout: 3.5.3

88. Definition of, and provisions relating to, imprisonment

(1) A person imprisons another person if, intentionally and without the other person’s consent, that person detains the other person in a particular place, of whatever extent or character and whether enclosed or not, or compels the other person to move to or be carried in a particular direction.

(2) The application of subsection (1) is subject to the following provision, namely, that the detention or compulsion may be constituted, within the meaning of this section, (a) by force or by a physical obstruction to a person’s escape, or (b) by creating the belief that the other person cannot depart from a place, or refuse to move or be carried in a particular direction, without overcoming force or incurring danger or harm, pain or annoyance, or (c) by creating the belief that the other person is under legal arrest, or (d) by creating the belief to the other person of immediate imprisonment if the other person does not consent to do, or to abstain from doing, an act.

88A. Cruel practices in relation to bereaved spouses

(1) A person who compels a bereaved spouse or a relative of the spouse to undergo a custom or practice that is cruel in nature commits a misdemeanour. (2) For the purposes of subsection (1), a custom or practice is cruel in nature if it constitutes an assault within the meaning of sections 85, 86, 87 and 88.25(25).
Session 3.6: Outline of Criminal Procedure in Ghana

› Target group: All non-lawyers who participate in the justice delivery from the perspective of the LAS (ADR Officers, National Service Persons, etc).
› Recommended time: One (1) hour.

1. Learning Objectives

By the end of this Module, participants should be able to:

› State the foundational laws in Criminal law in Ghana.
› Accurately state what criminal law is.
› Distinguish between acts which are crimes and those which are not crimes.
› Explain the ingredients of some basic criminal offences.

2. Core Messages

› There are two main types of trials: Summary trial and trials on indictment.
› Generally, criminal proceedings must be held in public.
› The prosecution or a person convicted of an offence in a criminal case, tried by a Circuit Court or tried by a District or Juvenile Court may appeal against the judgment to the High Court.
› A person aggrieved by an interlocutory order or decision made or given by a District Court may appeal against the decision or order to the High Court with the leave of the District Court or of the High Court, and the High Court shall have jurisdiction to hear and determine the appeal.
› An appeal under this section against a judgment of a Circuit, District or a Juvenile Court, shall, subject to a transfer directed by the Chief Justice, be made to the Justice of the High Court exercising jurisdiction over the area of jurisdiction of the Circuit, District or Juvenile Court.
› Appeals from the High Court and the Regional Tribunal go to the Court of Appeal. The appeal is as of right.
› Where the appeal emanates from a lower court other than the High Court, one must ask for leave to go to the Court of Appeal or the Supreme Court.
3. Recommended Methodology

The following five steps are recommended in facilitating discussions in this Session.

**Step 1**
Facilitator introduces the topic.

**Step 2**
Participants may briefly discuss their encounter with alternative dispute resolution mechanisms.

**Step 3**
The trainer should lead the participants through the Notes provided below: Objective and relevance of the module:

- Some of the key institutions involved in the criminal justice system are: the police, the courts, the Attorney General and the prisons.

**Types of trials**
- Summary trials
- Trial on indictment or trial by jury

**Venue of trials**
Except as provided by the constitution or an enactment, all criminal proceedings shall be held in public.

**Jurisdiction of the District Court**
Section 48 of the Courts Act 1993 Act 459 sets out the criminal jurisdiction of the district courts. The district court has jurisdiction to try summarily the following:

i. An offence punishable by a fine not exceeding 500 penalty units. A penalty unit is twelve Ghana Cedis (GH¢12);
ii. An offence punishable by a term of imprisonment not exceeding two years;
iii. An offence punishable by both (a) and (b).
iv. Pursuant to section 300 of the Criminal Procedure Act, Act 30 and section 48 (4) of the Courts Act, the District Court can however impose increased punishment or twice the maximum punishment on an accused person with a previous conviction.
Objection to Jurisdiction

Where a person is charged before the district court for committing an offence within the area of the jurisdiction of another court, the magistrate shall send the person to the appropriate district court under a warrant, unless the magistrate is authorised to proceed with the case in his court.

(See section 42 of Act 30)

Commencement of criminal trials

Criminal summons

The district court has general authority to cause an accused person to be brought before it. The accused person must be within the area of the magistrate’s jurisdiction or district and the offence must have been committed in his area of jurisdiction. (See section 41 of Act 30/1960)

The normal process frequently used by the general public in instituting criminal proceedings, is by a report of the crime, the offence or the perpetrator to the police. The perpetrator is invited or arrested by the police and statements taken by the investigating officer in charge of the case. The following may happen:

i. If it is a minor offence, the suspect is granted police inquiry bail and told when to report at the police station for further investigations.

ii. As soon as the police conclude that there is sufficient evidence against the suspect he is charged. A charged statement is taken from the suspect and he is arraigned before Court.

iii. The accused has to be reminded of his Miranda rights – right to lawyer of choice and right to be silent and anything said may be used in court against the suspect.

iv. The police may also apply for criminal summons to issue. In practice, the police fill in the criminal summons forms and the magistrate within whose jurisdiction the offence was allegedly committed appends his signature. The summons is served on the suspect. Upon receipt of the summons the suspect reports to the police station from where the summons emanated.

v. Where the suspect refuses to honour police invitation he can be served with criminal summons to attend court at a date specified on the summons. After court he reports to the police where his charged statement is taken and then put before court for his plea to be taken.

Warrants

Where the court is satisfied that the accused person has been served or properly warned to attend court but has refused to attend court, the court may issue a bench warrant for his arrest. (see Section 72 of Act 30).
The Charge sheet

There shall be a separate charge or count for each distinct offence on the charge sheet. The charge or count shall contain the following:

i. The specific crime and statute creating the offence.
ii. The statement of offence.
iii. The particulars of offence.

Joinder of Charges

i. For each offence for which a person is accused of, there shall be a separate charge or count.

ii. The counts arising out of same facts or form part of a series of offences may be joined and tried together. (see Section 109 of Act 30).

Joiner of accused persons

The following accused persons may be charged and tried together:

i. Persons accused of the same offence committed in the same transaction.

ii. Persons accused of an offence, abetment, conspiracy and attempt.

iii. Persons accused of different offences emanating from the same facts, or form or are part of a series of offences of similar character.

iv. Persons accused of different offences but committed in the course of the same transaction. (see Section 110 of Act 30).

Statement of offence

It describes the offence and contains the section and enactment creating the offence.

Particulars of offence

The particulars of offence must contain the necessary information or particulars as to the nature of the charge.

Nolle prosequi


ii. By convention, the Attorney-General does not need to explain to the Court why he enters a nolle prosequi. But I have no doubt whatsoever that under the Constitution the public has a right to comment and react to the exercise of that right when there are matters of national and constitutional interest arising from such a decision.

iii. The late Mr. Justice A. N. E. Amissah accurately states the position in his “Criminal Procedure in Ghana” as follows:
“The power of the Attorney-General to discontinue a case by the entry of a nolle prosequi or withdrawal is political in nature. No law prescribes the conditions under which it should be exercised or requires that he explains the reasons under which it should be exercised or requires that he explains the reasons for doing so. However, if he does so improperly this might have serious political consequences for the Government of which he is a member or result in his personal fall from office....the entry of a nolle prosequi in the famous Campbell case which had political overtones led to the fall of the first Labour Government in 1924...”

The trial

Procedure prior to the trial

When a case is called in court the following procedure takes place:

i. The accused person responds and moves to the dock.
ii. The prosecutor announces himself.
iii. Defence lawyer, if any, announces himself.
iv. The charge is then read and explained to the accused in the language he understands and same is recorded.
v. Plea of the accused is taken. In a trial for murder, the plea cannot be one of guilty.
vi. Where the accused pleads not guilty, the accused is admitted to bail upon an application by his lawyer or by himself. If the accused person is unrepresented, the court on its own motion (suo motu) should consider if it is appropriate to admit accused to bail.
vii. Case proceeds to trial or is adjourned for trial at a future date.
viii. Where accused pleads guilty with explanation, the explanation of the accused is recorded.
ix. If the explanation given shows that the accused has a defence to the charge or is simply not guilty, the court will enter a plea of not guilty for the accused. The court would then consider if it is appropriate to grant the accused bail and then adjourn for hearing. If on the other hand the explanation shows that the accused is guilty, the court shall enter a guilty plea for him and proceed to convict him accordingly.
x. Where the accused pleads guilty, the accused is convicted on his own plea. Counsel or the accused if not represented, is allowed to make a submission for mitigation of sentence. This is referred to as the “allocutus”.
xii. Before sentencing, the court would ask the prosecutor whether or not the accused is known to have previous conviction for similar offence(s).
xii. If the accused is known, the court ascertains that fact from a certified true copy of his previous conviction and then proceeds to sentence the accused accordingly.

Bail

The court has discretion to grant bail to a person brought to court:

i. Before the trial commences.
ii. In the course of the trial or.
iii. Pending an appeal.
In assessing whether to grant bail or not, the court shall consider the amount involved in the offence and the circumstance of the case. Bail shall not be excessive or harsh or withheld as a punishment.

The court shall however refuse to grant bail if it is satisfied that the accused:

i. may not appear to stand trial, or
ii. may interfere with a witness or
iii. interfere with the evidence or
iv. hamper police investigations or
v. may commit a further offence when on bail or
vi. is charged with an offense punishable by imprisonment exceeding six months which is alleged to have been committed during the time the accused was on bail.

Factor to take into account when considering whether an accused person may appear to stand trial

i. The nature of the offence.
ii. The nature of the evidence in support of the charge.
iii. The severity of the punishment attached to the offence.
iv. Whether having been released on bail in a previous case accused failed to attend court or.
v. Failed to comply with the conditions for the bail.
vi. Whether or not the accused person has a fixed place of abode.
 vii. Whether or not he is in gainful employment.
 viii. Whether the sureties are independent, and of good character and of sufficient means.

There are no longer cases referred to as “No non-bailable” cases - See Martin Kpebu v. Attorney General [2015-2016] SCGLR 227.

Fair trial requirements – Article 19(1) – fair with reasonable time.

Article 19(11) – no offence until written and penalty provided except contempt: British Airways v. AG 1996-97 SCGLR 547.

Procedure during trial

in criminal matters the prosecution, has the burden of proof unless otherwise prescribed by statute. Hence it is the prosecution that starts to lead evidence to prove the charges preferred against the accused person.

The standard of proof of each ingredient of the charge is proof beyond reasonable doubt (NOT beyond all reasonable doubt). The procedure for leading evidence in proof of charges is as follows:

i. The prosecution calls its witnesses and each of them is cross examined by the defence counsel or the accused when he is not represented by a lawyer. Thereafter he may be re-examined by the prosecutor.
ii. The prosecution determines the order of calling its witnesses and who to call as a witness.

iii. At the close of the case for the prosecution the court has a duty to determine whether or not a case has been made against the accused to warrant him being called upon to open his defence.

iv. When the court determines that the prosecution has not made a case against the accused on any or all the charges, the court shall acquit and discharge the accused on such or all the charges. This may be done upon a submission of no case on behalf of the accused or by the court on its own initiative.

v. When the court determines that a case is made against the accused on any or all the charges, the accused shall be called upon to open his defence. He is then reminded of the charge(s), his right to give evidence on oath personally or make a statement from the dock and to call witnesses if he desires.

vi. When the accused opts to give evidence he may be cross examined by the prosecution. If the accused calls any witnesses, they may also be subject to cross examination by the prosecution. Thereafter the witnesses may be re-examined by the accused or his lawyer.

vii. Where the prosecution is conducted by an attorney and the accused is represented by a lawyer they may each file addresses for the court’s consideration.

viii. The addresses are a summary of the case presented either by the attorney on behalf of the prosecution or by the defence lawyer on behalf of the accused.

Proof in criminal trials

i. In criminal trials the prosecution has the burden of proof of the charge(s) beyond reasonable doubt.

ii. However when the burden of persuasion is on the accused person as to a fact the converse of which is essential to guilt, the accused is required only to raise a reasonable doubt.

The decision / judgment

The court upon hearing the totality of evidence led in support and against the charges would make findings of fact and apply the relevant law and come to a decision of either:

i. Finding the accused guilty of the offence.

ii. Finding the accused not guilty of the offence.

Conviction and sentencing

i. When the accused is found guilty he is convicted of the offence(s) committed.

ii. The court will then find out if the accused is “known” or has previous conviction on a similar offence(s) before passing sentence.

iii. The court shall inform the convict of his right to appeal. (see Section 177 of Act 30/60).
Appeals

i. A right of Appeal is conferred by law and thus gives the opportunity to any person who has been convicted and sentenced, the right of appeal to a higher court if not satisfied with the conviction and/or sentence.

ii. Aside the existence of a Final Appeal there is however another form of appeal known as the Interlocutory Appeal.

iii. This is an appeal filed against an order of the court in the process of the trial. They are interlocutory in the sense that it does not deal with the final matter.

In criminal cases a person can appeal against a:

i. Conviction or,

ii. Conviction and Sentence or,

iii. Sentence.

iv. An order to open defence.

Some Basic Rules to note in appeal proceedings:

i. Appeal is made in a form of a petition, in writing.

ii. 30 days within which to appeal.

iii. 30 days elapses, apply for leave supported by affidavits.

Powers of the Appellate Court

There are several orders available to an appellate court in a criminal case. The Appellate Court has the power to do any of the following:

i. Reverse the findings and sentence and acquit and discharge; or convict the accused; or order the accused to be retried by a court of competent jurisdiction; or commit the accused for trial.

ii. Alter the ‘findings maintaining the sentence with or without altering the ‘findings; reduce or increase the sentence.

iii. With or without the reduction or increase and with or without altering the ‘findings, or alter the nature of the sentence.

iv. Annul the conviction and substitute a special ‘finding to the effect that the accused was guilty of the act or omission charged but was criminally insane so as not to be responsible at the time when the act was done or the omission was made, and order the accused to be confined as a criminally insane person in a mental hospital, prison or any other suitable place of safe custody.

v. Annul or vary an order of imprisonment or any other punishment imposed on the person convicted.

vi. Annul or vary an order for the payment of compensation, or of the expenses of the prosecution, or for the restoration of property to a person whether or not the conviction is quashed.

vii. On an appeal from any other order; alter or reverse the order, and make an amendment or a consequential or an incidental order that may appear just and proper.
Training Modules and Materials on Basic Law and Anti-Corruption in Ghana

Step 4

Break out group assignments
Plenary discussions:

The topic: How may the criminal procedures in Ghana be improved?

Step 5

Wrap Up and review of session
› Review objectives.
› Participants share take-aways from the session.
Module 4

Basic civil law for para-legal officers

Session 4.1: Contract law and Drafting Agreements
Session 4.2: Labour and Industrial disputes: Employee Employer relationship
Session 4.3: Maintenance, Custody, Paternity and divorce cases
Session 4.4: Inmovable property
Session 4.5: Landlord/Tenant relationships
Session 4.6: Administration of Estates (Testate and Intestate Succession)
Session 4.7: Insurance
Section 4.1: Contract Law and Drafting Agreement

Centrality of promises in contracts

1. For a contract to exist, there must be promise. A promise is an undertaking to act or refrain from acting in a specified way at some future time.
2. This promise may be made in express words or implied (i.e., inferred from conduct or from the circumstances of the transaction).
3. Bilateral contracts are formed when promises remain outstanding on both sides at the instant of contracting. Unilateral contracts are formed when one party has fully performed but a promise by the other party remains to be performed at the time of contracting.

Elements of Contract Formation

1. To form a legally binding contract, some basic elements of contract formation must be satisfied.
2. Agreement between the Parties.
   a. Offer: a promise to be bound by some stated terms when the person to whom the promise is made, the offeree responds positively to the proposal from the other side, the offeror.
   b. Acceptance: An unqualified positive answer to the terms proposed in the offer. It must correspond exactly to the terms of the offer. This is the mirror image rule. Acceptance must be communicated.
   c. There can be no mere mental acceptance.

Cases: NTHC v. Antwi; Fofie v. Zanyo

3. The parties to the contract must have capacity to contract;
   a. Both parties must be at least 18 years of age but in certain circumstances persons below 18 may be bound by their agreements.
   b. Contracts for the supply of necessaries of life and health; beneficial contracts of services such as apprenticeship agreements; and contracts in which the minor or infant acquires an interest in a subject matter of a permanent character. Leases and rental of properties are examples.
   c. The effects of a child being bound by an Agreement is that the price has to be paid for the items received.
d. The law concerning insane persons relative to voidability is much the same as it is for infants.

e. Drunkenness or intoxication: A contract made by a person while he is drunk, so that he is incapable of understanding the effect and nature of it, is voidable at his option.

f. The rules applicable to infancy with respect to affirmance, ratification and disaffirmance are generally applicable to contracts of drunken persons, once he/she becomes sober.

4. Consideration

a. Both must provide a price of the bargain. Anything of value suffices as consideration. This does not have to be market value. In other words, consideration does not have to be adequate. It is important for consideration to be sufficient.

b. Consideration does not have to be past, unless it is preceded by a request or obtained in a business setting.

c. A promise to forgive a debt will be valid even in the absence of consideration.

d. People may be deemed to have provided consideration with their public office. However, the courts will not enforce such contracts because they will be deemed to be contrary to public policy and the general interest of the public.

5. Legal Intent

a. The parties must intend that their actions will bind them in law. This intention may be determined through examining the setting in which the parties are operating: commercial or domestic settings.

b. Agreements in the domestic setting will generally not be binding although even domestic arrangements may bind when the parties are very formal and the relationship is strained, for example.

c. The contract must have a lawful purpose; and the contract must be in a form permitted by law.

d. It must be demonstrated that the parties were on the same page in the formation of the contract. For instance, the Agreement should not have been obtained under duress or undue influence, misrepresentation or through unconscionable conducts.

e. An event which out of the control of the parties rendering the performance of the contract impossible will relief each of the parties from their obligations unless they agree otherwise.

**Written and oral contracts**

1. Although oral contracts may be enforceable under some situations,

2. In other situations certain types of contracts must be recorded in writing and signed in order to be enforceable: e.g. tenancies beyond 3 years and this should not be interpreted to the disfavor of the party for whose benefit the law was made.
Drafting Agreements

Standard parts of an Agreement:

i. **Title**
The title should reflect the subject matter of the transaction and, if appropriate, the parties, e.g. a Settlement Agreement.

ii. **Preamble (Recitals)**
Most transaction agreements begin with some form of a preamble that identifies the purpose of the document and describes the transaction, the intent of the parties and any assumed facts underlying the transaction. The preamble identifies the parties and the date of the transaction as well as the nature of the transaction. In many contracts, this appear as the “whereas” section, in which all of the statements begin with that term.

iii. **Definitions**
The use of defined terms can simplify a document immeasurably. While the number and extent of the definition section depend upon the nature of the agreement, virtually all contracts will include some defined terms.

iv. **Consideration**
Although it need not be complicated, the consideration should be explicitly stated since agreements must be supported by consideration. This may be expressed as an exchange of dollars or of goods, or perhaps an exchange of mutual promises.

v. **Covenants**
The covenants memorialize the promises that are being made by the parties. Examples include promises to deliver certain goods or to refrain from particular activities.

vi. **Representations and Warranties**
Representations and warranties identify the assumed facts underlying the agreement. These sections represent the real heart of the deal and tend to be heavily negotiated. An example would be a representation and warranty that the goods to be sold are in working order.

vii. **Indemnification**
The indemnification portion of the contract deals with the allocation of liability in the event that all does not go as planned. Questions to be addressed in this portion of the contract include who will be liable for what, and to what extent.

viii. **Breach and Cure**
Although promises are not necessarily made to be broken, that possibility must be considered when drafting a contract. What will constitute a breach of the agreement? What opportunity will the parties have to “cure” the breach?
ix. Termination
This section should identify under what circumstances the parties can terminate the agreement and the procedures for termination.

x. Remedies
The remedies section addresses the consequences in the event of termination. This section should specify what the parties are entitled to in the event of breach or termination. It may identify a dollar amount, a formula, or simply a mechanism for determining the appropriate remedy (such as arbitration).
Session 4.2: Labour and Industrial disputes: Employee Employer relationship

The Rights and privileges of employers and employees is the focus of labour and Industrial law. For the Legal Aid Scheme, it is likely that the employee who may be the underdog in this relationship will be the client of the Legal Aid Scheme. Officials need to be trained on the various laws that relate to Labour and Industrial issues to be able to offer constructive and useful advice to clients.

Notes to the Facilitator

Facilitators need to enlighten the trainees on various provisions of the 1992 Constitution and other Laws on procedures for handling cases that apply to labour, employers, trade unions and industrial relations. Some of these laws are:

vi. Labour Regulations, 2007 (L.1 1833).
vii. High Court Civil Procedure Rules (C.I. 47).

Basic Required Knowledge

i. Where parties agree to settlement by negotiation: The parties to an industrial dispute are under an obligation to negotiate in good faith, with a view to reach a settlement of the dispute, in accordance with the dispute settlement procedures established in the collective agreement or contract of employment. However, subject to the time limit in respect of essential services, if the parties fail to settle a dispute by negotiation within seven days after the occurrence of the dispute, either party or both parties by agreement, may refer the dispute to the National Labour Commission and seek the assistance of the Commission for the appointment of a mediator.

ii. Where parties agree to settlement by mediation: At the end of the mediation proceeding, if there is settlement of the dispute, the agreement shall be recorded in writing and signed by the mediator and the parties to the dispute and this is binding on the parties. However, if at the end of the mediation proceedings, an agreement is not reached, the mediator shall immediately declare the dispute as unresolved and refer the dispute to the Commission.

iii. Where parties agree to settlement by Arbitration: In the case of a dispute being settled by arbitration the parties shall, within three days after the appointment of an
arbitrator or an arbitration panel, submit to the arbitrator in writing, a statement of the issues or questions in dispute signed by one or more of the parties or their representatives and the decision of the arbitrator or a majority of the arbitrators shall constitute the award and this is binding on the parties.


v. Article 24 (1) of the 1992 Constitution states that every person has the right to work under satisfactory, safe, and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.

vi. Again, clause 2 of the same article provides that “every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.”

vii. The 1992 Republican Constitution again provides in Article 24(4) points out that “Restriction shall not be placed on the exercise of the right of the worker to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests.”

viii. The President is required to report to Parliament once a year on all the steps taken to ensure the realisation of the policy objectives contained in the Directive Principles of State Policy (DPSP), particularly the realisation of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education.


x. Act 651 covers all employers and employees except those in strategic establishments such as the Armed Forces, Police Service, Prisons Service and the Security Intelligence Agencies.

xi. Major provisions of the Labour Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers’ organisations and collective agreements, strikes, establishment of a National Tripartite Committee, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission (NLC).

xii. The NLC is heavily engaged in the settlement of labour related disputes, investigation of unfair labour practices and the promotion of labour cooperation between labour and management

xiii. Act 651 prohibits employers or employees engaged in the provision of an essential service from resorting to a lockout or strike in connection with or in furtherance of any industrial dispute involving the workers.

xiv. There are pending cases at the High Court with respect to this issue in connection with strike actions embarked upon by members of the Ghana Medical Association.
Casual laborers

i. Section 12 (1) of the Labour Act provides that “The employment of a worker by an employer for a period of six months or more or for a number of working days equivalent to six months or more within a year shall be secured by a written contract of employment.”

ii. However, there are several cases of workers being kept as casual labour long after six (6) months of work and others who are laid off just about six (6) months in order to circumvent this law. The engagements of these casual labourers are not secured with any written contracts.

iii. Paragraph (2) of the same section adds that a contract of employment shall express in clear terms the rights and obligations of the parties.

iv. These are fundamental rights of the employee in any employment set up. Employees, according to the Labour Act, 2003, are entitled to be furnished with the statement of the particulars of the main terms of contract of employment signed by the employer.

Training employees

i. It is useful to note that the National Vocational Training Act (Act 351), 1970 and the National Vocational Training Regulations (Executive Instrument 15) enjoin companies to introduce apprenticeship schemes when there is a technical business attached to the establishment.

ii. Employers are therefore obliged to provide training for their employees for the attainment of the level of competence required for the performance of their jobs and to enhance their career.

Apprenticeship

i. It is useful to note that the National Vocational Training Act (Act 351), 1970 and the National Vocational Training Regulations (Executive Instrument 15) enjoin companies to introduce apprenticeship schemes when there is a technical business attached to the establishment.

ii. Employers are therefore obliged to provide training for their employees for the attainment of the level of competence required for the performance of their jobs and to enhance their career.

Categories of workers rights

i. These provisions aim at protecting the employee in Ghana in order to enhance productivity. The Labour Act, 2003 (Act 651) catalogues the rights of a worker as:
a. the right to work under satisfactory, safe and healthy conditions.
b. the right to receive equal pay for equal work
c. the right to rest, leisure and holidays with pay
d. the right to form or join a Trade Union
e. be trained and retrained for the development of his or her skills
f. receive information relevant to his or her work

Written employment contracts

a. In the absence of written terms of employment, employees face challenging moments regarding their proof of employment when they are subjected to harsh treatment. Such employees would not be able to make demands with reference at appropriate avenues for redress.
b. The case would be different where the employee has a contract document stating rights and responsibilities and terms of conditions of employment.

Employment Tribunal

a. The employee can apply to the Employment Tribunal who may determine what should be in the written statement if the employer fails to supply a statement within two (2) months of starting the work.
Session 4.3: Family law concerns:
(Maintenance, Custody, Paternity, Divorce)

Underlining the basic relationship and unit of our Ghanaian Society is the Family. This relationship with its many nuances is often wrought with problems which sometimes turn the relationship sour. Many of these problems can be solved through the use of Alternative Dispute Mechanisms.

Notes to the Facilitator

The Laws to be considered by any Official handling a divorce or a family law matter are:

i. Articles 22, 27, 28 and 29 of the 1992 Constitution.

ii. Marriages Act (CAP 127).


vii. District Court Rules, 2009 (C.I. 59).

viii. High Court (Civil Procedure) Rules, 2004 (C.I. 47).

Basic Knowledge to be emphasized at the training

i. Matrimonial Applications under District Court Rules, 2009 (C.I. 59). Section 1of C.I 59 gives jurisdiction to the Court to deal with cases on divorce, paternity, custody of children and other matrimonial causes. The court sitting as a Family Tribunal has jurisdiction on Parentage, Custody, Access and Maintenance.

ii. Proceedings for divorce, maintenance, child custody and paternity shall be commenced by filing the appropriate form.

iii. A defendant who wishes to be heard in any one of these causes shall also file the appropriate form within fourteen days from the date of service of the plaintiff’s form.

iv. The proceeding in the Family Tribunal shall be conducted in chambers but these Rules shall generally be applied.

v. Each and every form filled shall be accompanied by an affidavit sworn to by the plaintiff verifying the facts stated in the form.
Session 4.4: Immovable Property

Conveyancing involves identifying the interest in land capable of transfer; investigation of titles of the prospective transferor; and the form and content of the documents of transfer (instruments of Conveyancing/Indenture): Conveyancing is therefore a practical application of land law. A strong understanding of land law is critical for success in Conveyancing.

Basic laws

The basic laws which regulate land disputes are:

i. Land Title Registration Act, 1986 (P.N.D.C.L 152).

Basic Knowledge to be emphasized at the training

i. Law of immovable property: Land Law deals with interests, rights and liabilities in land, whilst Conveyancing deals with the processes of transferring such instruments, rights (and liabilities) in land, as well as creating them.
ii. Law of Contract: It must be noted that conveyancing is about the transfer of title(s) and that these transfers are made by contract, thus an official should have an appreciation of why contract law plays such an important part in the subject. A contract for the sale or other disposition of land must comply with the general rules of the law of contract.
iii. Equity and Trusts: A thorough knowledge of the Maxims of equity, trust and equitable remedies and trusts is a must in the study of Conveyancing. In addition, it is necessary that one understands clearly the law relating to trusts and trusts for sale.
iv. Law of Succession: Knowledge of this is important particularly where the transaction involves personal representatives, Example; Issues on Probate and Administration.
v. Company Law: This will be useful in dealing with the position of companies in conveyancing transactions.
vi. Planning Law: This is important because a breach of the planning regulations and laws could lead to disastrous consequences for the client, including demolition of buildings erected at great cost if it is contrary to the plan of the area concerned.
vii. Law of Taxation: It is important for an Official to understand this area so that he can be well placed to advise his client on such matters as Capital Gains Tax, Value Added Tax, and Stamp Duty etc.
Session 4.5: Landlord-Tenant Relationship

This area of the law deals with the rights and duties of Landlords and Tenants. It also includes elements of immovable property and contract law. In Ghana there are many persons who rent and often times the relationship with the landlord becomes sour during and after the determination of a tenancy agreement. This often leaves many homeless with very little redress. This Unit in this Module equips the Legal Aid officer to provide the right interventions for persons who can otherwise not afford representation to vindicate their rights in this relationship.

Basic Legal References

The basic laws which regulate the landlord and tenant relationship are:

i. The Rent Act, 1963 (Act 220).
ii. The Rent Control Law, 1986 (PNDCL 138).
iii. The Rent Control (Amendment) Law, 1986 (PNDCL 163).

Notes to the Trainer

Basic Knowledge to be emphasized at the training include:

i. The Rent Act, 1963 (Act 220) deals with cases involving premises, buildings, structures, whether fully or partially completed, and which were already in existence at the commencement of the relationship of landlord and tenant.

ii. The Act does not cover vacant or undeveloped lands; it does not apply to government buildings or leases with the State Housing Company Limited or Tema Development Company Limited where the Minister has certified the premises as being let at a rent which yields no financial gain to the Government, Section 1(2)(e) of Act 220. It also does not cover agreements involving market stalls belonging to a city, urban, municipal, town or village council, Section 1(2)(f) of the Rent Act.

iii. Areas of Concentration include:

- Obligations and Covenants of the landlord.
- Rights and Remedies of the Landlord.
- Obligations of the Tenants.
- Rights and Remedies of Tenants.
- Specific Offences.
Session 4.6: Administration of Estates (Testate and Intestate Succession)

At the heart of the administration of estates or the law on succession are property rights. Due to the value that many place in the acquisition of property, this area is a highly contested area and many clients to the Scheme would be requiring aid in this area. Training under this Unit should therefore focus on providing the requisite understanding about the various manifestations of testate and intestate succession.

Basic Legal References

The basic laws that regulate Administration of Estates are:

ii. Intestate Succession Act, 1985 (P.N.D.C.L. 111).
v. District Court Rules, 2009 (C.I. 59).

Basic Knowledge to be emphasized at the training include:

Various forms of Intestacy and the manner in which the estate is devolved

i. Intestate survived by spouse and child.
ii. Intestate survived by spouse only.
iii. Intestate survived by child only.
iv. Intestate survived by parent only.
v. Intestate survived by neither spouse, parent nor child.

Issues on Probate and Administration

i. Application for Probate and Administration.
ii. Procedure for handling Probate with will annexed.
iii. Administration not with will annexed.
iv. Contentious Probate matters.
Session 4.7: Insurance

Basic Legal References

iii. District Court Rules, 2009 (C.I. 59).
iv. High Court (Civil Procedure) Rules, 2004 C.I. 47.

Basic Knowledge to be emphasized at the training

Knowledge and Understanding of the following is required:

Application and Nature of Commercial claims

Rules and Procedure on:

i. Insurance of Commercial Buildings under construction.
ii. Insurance of Commercial Buildings.
iii. Establishment of Fire Service Maintenance Fund.
iv. Establishment of Motor Compensation Fund. Commencement and regulation is conducted in the same way as actions in the High Court.

Application and Nature of Commercial claims insurance Commission and compensation for hit and run and other non-claims.

192. There is hereby established a Motor Compensation Fund.

Object of the Compensation Fund

Section provides that the Fund is to be used to:

a. compensate persons who suffer injury or death through a motor accident and who are unable to obtain compensation from an insurance company, and
b. promote public education on motor insurance in particular and insurance business in general.

Establishment of a Client Rescue Fund

Section 197 established a Client Rescue Fund. The Fund isto be used to compensate clients of insurance companies that become bankrupt.
The Commission is to allocate a percentage of the gross premium received by each direct insurer to be paid into the Fund. Emergency treatment for road traffic accident victims.

A percentage of the emergency motor insurance premium to be jointly agreed by the Commission, motor insurer and the Nation Health Insurance Council to be paid to the National Health Insurance Fund by motor insurers to cover the cost of emergency treatment of road accident victims.

Rules and Procedure on:

i. Insurance of Commercial Buildings under construction.
ii. Insurance of Commercial Buildings.
iii. Establishment of Fire Service Maintenance Fund.
iv. Establishment of Motor Compensation Fund Commencement and regulation is conducted in the same way as actions in the High Court.
v. The law provides that a worker irrespective of his status who sustains injury out of and in the course of his employment must be paid cash compensation by his employer.
vi. The Armed Forces are not covered by this law.

Procedure for the processing and payment of compensation

i. If an accident occurs during and in the course of one’s employment, the injured person should report to the immediate supervisor of the company to witness the injury (if any).
ii. The Supervisor shall submit the injured worker to the nearest clinic/hospital for treatment.
iii. The Supervisor shall inform the Human Resource Department /Personnel Department of the injury.
iv. The Human Resource Department/Personnel Department shall report to the nearest labour Officer in accordance with the Labour Act 2003 Act (651)(section 120).

Procedure for processing and payment of compensation

The Labour Officer shall provide the Human Resource Department/Personnel Department with Workmen’s Compensation Forms for completion stating the cause and circumstances of the injury.

i. The attending Medical Officer shall determine the extent of incapacitation.
ii. An injured worker shall not suffer any diminution in his earnings while he undergoes treatment for injuries he has sustained through an accident arising out of, and in the course of his employment.
iii. Where the attending Medical Officer assesses any incapacity in respect of an injured worker, compensation commensurate with the incapacity sustained shall be paid to the worker by the employer.

iv. Compensation to be paid shall be computed by the Labour Officer after he has received the final medical report from the Medical Officer through the employer.

v. For the purposes of the Workmen’s Compensation Law, an accident resulting in the death or serious permanent incapacity of a worker shall be deemed to arise out of and in the course of his employment, notwithstanding that the worker was at the time when the accident happened, acting contravention of any statutory or other regulation applicable to his employment, if such an act was done by the worker for the purposes of and in connection with his employer’s trade or business.

vi. All compensation claims shall be paid before a Labour Officer.

vii. However, in the case of death, it shall be paid at the Court.

viii. No compensation shall be paid in respect of any injury to a worker resulting from an accident, which is attributable to the worker having been at the time thereof under the influence of drink or drugs.

ix. No compensation shall be payable in respect of any incapacity or death resulting from deliberate self-injury.

x. Where the employee was not on the job at the time of the injury, the employer shall pay the medical expenses in respect of the injury.

xi. If the employee is deceased, the employer shall bear the expenses of the burial to the sum of five million cedis (now GHC 500.00) or as stipulated in the relevant Collective Agreement, whichever is the higher.

xii. If the employee is deceased, the employer shall bear the expenses of the burial to the sum of five million cedis (now GHC 500.00) or as stipulated in the relevant Collective Agreement, whichever is the higher.

Workmen’s compensation

i. Workers’ compensation laws protect and support people who are injured on the job.

ii. Provide income and medical benefits to work-accident victims.

iii. Provide income benefits to dependents of those workers who are killed because of work-related accidents or illnesses.

iv. Provide a single remedy to reduce court delays, costs, and workloads arising out of perennial-injury litigation.

v. Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals.

vi. Encourages employers to put in place sound safety measures and rehabilitation.

vii. Promote the study of causes of accidents.

viii. It provide opportunity for training or retraining of workers.
Module 5
International law on corruption and legal aid

Session 5.1: UN Convention against corruption
Session 5.2: Dakar Declaration on legal aid
Session 5.1: UN Convention Against Corruption (UNCAC)

1. Learning Objectives

By the end of this Module, participants should be able to:

› Understand the obligations of States created under the UN Convention against corruption.
› Identify and explain measures that against corruption include preventing corruption, combating corruption and encouraging international cooperation in areas including assets recovery.
› The obligations of States parties under the AU Convention on Preventing and Combating corruption.

2. Core Messages

› The obligations of States created under the UN Convention against corruption include preventing corruption, combating corruption and encouraging international cooperation in areas including assets recovery.
› Each State Party is encouraged to engage in periodic evaluation of its efforts to prevent corruption and combat same when it occurs.
› The obligations of States under the AU Convention on Preventing and Combating corruption.

Step 1

Facilitator introduces the topic

› Introduce the topic for discussion in this Session by focusing on the general purpose of the United Nations Convention against corruption.
› Initiatives to fight corruption at the global level include the adoption of the United Nations Convention against Corruption (UNCAC).

The purposes of this Convention are:

› To promote and strengthen measures to prevent and combat.
› To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
› To promote integrity, accountability and proper management of public affairs and public property.
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Step 2

Discussions by the table. Instructions to the trainer
› Let participants form groups of 4 by their tables without movement.
› Make post-it cards and writing markers available to the participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups which provisions of the UN Convention on UN Convention against corruption.
› Participants should write these down on Post-it papers and stick on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the provisions of the UN Convention against corruption as listed on the Post-its.

Step 3

Summary of Notes on the Convention

United Nations Convention against Corruption

› This step provides the opportunity for the Trainer to present in summary the contents of Handouts clarifying the provisions and pointing out difficult areas of appreciation as follows:

Entry into force

› Ghana signed on 9th December, 2004 and ratified on 27th June, 2007.

Article 1. Statement of purpose

The purposes of this Convention are:

a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
b. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
c. To promote integrity, accountability and proper management of public affairs and public property.

Preventive measures

Article 5. Preventive anti-corruption policies and practices

1. 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.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6 Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
   
   a. Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
   
   b. Increasing and disseminating knowledge about the prevention of corruption.

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

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

Article 7 Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

   a. That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
   
   b. That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
   
   c. That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
   
   d. That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public
training functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8. Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9. Public procurement and management of public finances

1. 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, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

a. The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

b. The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

c. The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

d. An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

e. Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

a. Procedures for the adoption of the national budget;

b. Timely reporting on revenue and expenditure;

c. A system of accounting and auditing standards and related oversight;

d. Effective and efficient systems of risk management and internal control; and

e. Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

a. Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and
decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

b. Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

c. Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11. Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12. Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

   a. Promoting cooperation between law enforcement agencies and relevant private entities;

   b. Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

   c. Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

   d. (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

   e. Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation
or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

f. Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

a. The establishment of off-the-books accounts;

b. The making of off-the-books or inadequately identified transactions;

c. The recording of non-existent expenditure;

d. The entry of liabilities with incorrect identification of their objects;

e. The use of false documents; and

f. The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

a. Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

b. Ensuring that the public has effective access to information;

c. Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;

d. Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
i. For respect of the rights or reputations of others;
ii. For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14. Measures to prevent money-laundering

1. Each State Party shall:

a. Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

b. Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, 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.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

a. To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

b. To maintain such information throughout the payment chain; and

c. To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties
are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Step 5

› Review objectives.
› Participants share take-aways from the session.
Session 5.2: African Union Convention On Preventing and Combating Corruption

Step 1
Facilitator introduces the topic
Introduce the topic for discussion in this Session by focusing on the general purpose.

Step 2
Discussions by the table. Instructions to the trainer
› Let participants form groups of 4 by their tables without movement.
› Make post-it cards and writing markers available to the participants.
› Prepare a space for the sticking of Post-It cards.
› Participants should discuss in these groups which provisions of the.
› Participants should write these down on Post-it papers and stick on the space provided (Post-its are per group and not per individual participants).
› Group leaders should pass brief comments on the provisions of the Protocol on the Free Movement of Persons and Goods as listed on the Post-its.

Step 3
Summary of Handouts
This step provides the opportunity for the Trainer to present in summary the contents below:

Article 7. Fight Against Corruption and Related Offences in the Public Service
› In order to combat corruption and related offences in the public service, State Parties commit themselves to:

1. 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.
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.
3. Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard.
4. Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service.
5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.
Article 10. Funding of Political Parties

- Each State Party shall adopt legislative and other measures to:
  1. Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
  2. Incorporate the principle of transparency into funding of political parties.

Article 6. Laundering of the Proceeds of Corruption

- States Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:
  1. The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
  2. The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;
  3. The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences;

Article 8. Illicit Enrichment

1. Subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment.
2. For State Parties that have established illicit enrichment as an offence under their domestic law, such offence shall be considered an act of corruption or a related offence for the purposes of this Convention.
3. Any State Party that has not established illicit enrichment as an offence shall, in so far as its laws permit, provide assistance and cooperation to the requesting State with respect to the offence as provided in this Convention.

Article 11. Private Sector

- State Parties undertake to:
  1. Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector.
  2. Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights.
  3. Adopt such other measures as may be necessary to prevent companies from paying bribes to win tenders.
Article 20. National Authorities

1. For the purposes of cooperation and mutual legal assistance provided under this Convention, each State Party shall communicate to the Chairperson of the Commission at the time of signing or depositing its instrument of ratification, the designation of a national authority or agency in application of offences established under Article 4 (1) of this Convention.

2. The national authorities or agencies shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.

3. The national authorities or agencies shall communicate with each other directly for the purposes of this Convention.

4. The national authorities or agencies shall be allowed the necessary independence and autonomy, to be able to carry out their duties effectively.

5. State Parties undertake to adopt necessary measures to ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Article 17. Bank Secrecy

1. Each State Party shall adopt such measures necessary to empower its courts or other competent authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing this Convention.

2. The Requesting State shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless with the consent of the Requested State Party.

3. State Parties shall not invoke banking secrecy to justify their refusal to cooperate with regard to acts of corruption and related offences by virtue of this Convention.

4. State Parties commit themselves to enter into bilateral agreements to waive banking secrecy on doubtful accounts and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession.

Step 4

Discussion in plenary

Ghana’s obligations under the African Union Convention on preventing and combating corruption.
Concluding Notes

These Notes highlight the important position of anti-corruption to the development of individuals, communities and States, checking that expectations of the Participants have been met. In addition, these Notes also provide guidance on the evaluation of the content and process of the training.

Session 1: Corruption and National development

The role of the LAS Officer in fighting corruption:

› Know the relevant laws
  • Enforce as appropriate.
  • Refer and defer where appropriate.
  • Communicate needed reviews.

› Develop appropriate skills
  • Listening.
  • Reading.
  • Interpretation (cross referencing laws).
  • Profiling.

› Develop the appropriate attitude
  • Client orientation.
  • Accountability (being responsive and answerable).
  • Courtesy.

The knowledge, skills and attitudes must help the LAS Officer to enforce the laws contained in this Manual efficiently and effectively so as to ensure that mobility is not unduly restrained, and that mobility happens in a secure environment and these ultimately encourages investments needed for human development.

Session 3

1. Checking expectations

› This session is dedicated to providing information to the Trainees on post training support which is available through the LAS.
At this point, it is helpful to cross check if the various expectations of the trainees have been met. This is a general assessment and could be done in a plenary session with everyone encouraged to participate.

The facilitation may be guided by the list of expectations written down on papers and posted on Flip Chart Boards.

2. Evaluations

At the end of the training, the Trainer may use Annexes 1 and 2 for the evaluations of the content and process of the training.

Annex 1 should also have been used at the beginning of the training. It tests mainly the contents of the training. Annex 2 provides an opportunity for the Participants to evaluate the process of the training.

<table>
<thead>
<tr>
<th>Evaluation area</th>
<th>False</th>
<th>Mostly</th>
<th>Mostly true</th>
<th>True</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before beginning, the facilitators discussed participants’ expectations.</td>
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<tr>
<td>I was informed about the aims and learning outcomes at the beginning of each module.</td>
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<td>The facilitator(s) encouraged the participation and collaboration of each participant.</td>
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<td>The facilitators used case studies and examples that were relevant to my context.</td>
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<tr>
<td>There was a balance between theory and real-life examples throughout the training.</td>
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<td>The content and materials presented were sufficient and appropriate.</td>
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<tr>
<td>The aims and learning outcomes of the modules were met.</td>
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<tr>
<td>The facilitators are knowledgeable and have sufficient expertise in the subject matter.</td>
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<table>
<thead>
<tr>
<th>Evaluation area</th>
<th>Excellent</th>
<th>Good</th>
<th>Average</th>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
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<tbody>
<tr>
<td>The organization of the training sessions</td>
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<tr>
<td>The room, equipment and facilities</td>
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<td>The schedule</td>
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<td>The duration</td>
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</table>
## Training Modules and Materials on Basic Law and Anti-Corruption in Ghana

<table>
<thead>
<tr>
<th>Evaluation area</th>
<th>Learning Objectives</th>
<th>Totally met</th>
<th>Partially met</th>
<th>Not met</th>
</tr>
</thead>
<tbody>
<tr>
<td>Module 1</td>
<td>The purpose and context of the training</td>
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<tr>
<td></td>
<td>Mandate of the LAS</td>
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<td></td>
<td>Identifying various sources of laws affecting the work of the LAS</td>
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<tr>
<td>Module 1</td>
<td>List all essential resources to consult in times of difficulties with respect to understanding any provisions of any relevant law.</td>
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<tr>
<td>Module 2</td>
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<td>Module 3</td>
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<td>Module 4</td>
<td>Know the relevant international laws</td>
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<td></td>
<td>Know relevant sub-regional laws</td>
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<tr>
<td>Conclusion</td>
<td>Identify the role of anti-corruption in national development</td>
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<tr>
<td>Areas of training</td>
<td>Please provide as much details as possible</td>
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<td>The most interesting sessions</td>
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<td>The most relevant topic(s)</td>
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<tr>
<td>The topic(s) that should be excluded or that were irrelevant</td>
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<tr>
<td>The topic(s) that should be added to the training</td>
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## Annex 1: Sample Pre and Post-training Evaluation Questionnaire

<table>
<thead>
<tr>
<th>Evaluation area</th>
<th>Questions</th>
<th>Answers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandate of LAS</td>
<td>What is the mandate of the LAS?</td>
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<tr>
<td></td>
<td>List any 2 laws which govern the mandate of the LAS.</td>
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<td></td>
<td>How is anti-corruption important to national development?</td>
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<tr>
<td>Related laws</td>
<td>List 3 function / duties the law imposes on the LAS Officer.</td>
<td></td>
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<tr>
<td>Related laws</td>
<td>List 3</td>
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<td></td>
<td>List 3</td>
<td></td>
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<tr>
<td></td>
<td>List 3</td>
<td></td>
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<tr>
<td>International law</td>
<td>List 3 international laws relevant to corruption</td>
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<tr>
<td></td>
<td>When is Ghana fully bound by an international Convention/Covenant?</td>
<td></td>
</tr>
</tbody>
</table>
Annex 2: Sample Post training Evaluation questionnaire

You have finished a training programme on legal aid and anti-corruption in Ghana. Please help us improve the organization and development of similar training activities in the future by answering the following questions.

1. What is your overall impression of this training?
   A. Excellent
   B. Good
   C. Average
   D. Unsatisfactory

2. Please rate the following:
3. Please read the following statements and rate them based on your opinion:
4. Assessment of learning objectives
   Please indicate whether or not you feel the aims of the training courses were met:
5. If some aims were not met or only partially met, please indicate the reason(s) that best explains why:
   A. The time dedicated was insufficient
   B. Instructional methods were inappropriate
   C. It was irrelevant
   D. Other(s), please explain:

6. Please indicate:
7. What would you recommend to improve the training?
8. What ideas, capacities or attitudes will you try to apply when you are back in your work context?

Thank you for taking the time to respond to these questionnaires