FINDINGS AND RECOMMENDATIONS

BACKGROUND

Governance refers to the administrative and process-oriented elements of governing, the capacity of the government to effectively formulate and implement sound policies and the adherence of citizens to them. Good Governance (GG) refers to how public institutions **should** conduct public affairs and manage public resources in a manner conducive to successful economic development. Corruption affects GG as charted in **Section III;**[1] the ideals of GG are also those of anti-corruption and democratic governance.[2] **This has been a pioneer project, analysing a selection of ACC judgments with a view to offering the benefits of insight for the conduct of future trials and for enhanced policy formulation, as a GG initiative.**

Anti-corruption modes are varied and may include legal and policy reforms: feeding problem analyses into donor policies[3] (increasing donor demands for accountability), bolstering constitutional checks (judicial independence, oversight agencies), involving CSOs in the budget process, creating legal obligations for companies (integrity pledges, self-declarations of situations to authorities and anti-corruption staff orientation), creating sanctionable ethical codes of conduct for MDA staff, reforms in the fields of procurement, public service delivery, financial management systems (improving audit and public administration capacity), minimizing cash transactions, creating legally enforceable transparency obligations re public expenditures (publishing budget allocations), enhancing the effectiveness of internal disciplinary mechanisms, improving specifically human capacity in budgeting, procurement, IT, leadership, management and strategic planning, creating university education programs inculcating ethics, creating legal protection for whistle-blowers, incentive based pay for civil servants and finally Prosecution. **The impact of reform is hinged on enforcement and responsive governance.** As far as the impact of anti-corruption trials is concerned, research indicates that theirs and the efficacy of any other modes of anti-corruption is unclear; it is unclear under which circumstances any particular mode works best.[4] Still, the pursuit of anti-corruption trials is motivated by general principles of criminal justice concerning detection and punishment.[5] With regard to anti-corruption initiatives generally, experts now suggest a focal shift from sector-specific reforms and GG initiatives to addressing political corruption/accountability, by addressing "*the fundamental framework conditions associated with politics*"[6] since political corruption tends to override any other initiatives.

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[1] **Section III. Conspiracy and Procurement,** p. 4, para. 1.

[2] Unnamed, (2016), *Good Governance*, Wikipedia, https://en.wikipedia.org/wiki/Good_governance; The UN identifies 8 characteristics of GG; Consensus Oriented, Participatory, Rule of Law compliant, Effective and Efficient, Accountable, Transparent, Responsive, Equitable and Inclusive.

[3] Coffey, (2016), *Governance and Anti-corruption*, http://www.coffey.com/en/expertise/industry/international-development/governance-and-anti-corruption/. The International Fund for Agricultural Development (IFAD), (2012), *Good Governance & Anti-Corruption*, http://www.ifad.org/operations/finance/pack/pdf/d_1.pdf, p. 9; Such analyses include rrisk assessments and reviews of internal controls and checks.

[4] Stephenson M., (2014), *Should We Use Randomized Trials for Anticorruption Education and Training*, http://globalanticorruptionblog.com/2014/08/28/should-we-use-randomized-trials-for-anticorruption-education-and-training/; "The messiness of reality makes it very difficult to figure out what works, and to isolate the impact of any one intervention…long-term behavioral change…is…very difficult to measure." Raffler P., (2011), *Randomised Control Trials*, Anti-Corruption Research Network (ACRN), http://corruptionresearchnetwork.org/resources/frontpage-articles/randomised-control-trials-2013-a-new-approach-to-assessing-anti-corruption-policies. Søreide T., (2012), *Democracy's Shortcomings in Anti-Corruption*, Chr. Michelsen Institute, http://www.cmi.no/publications/file/4678-democracys-shortcomings-in-anti-corruption.pdf, p. 2; "There is limited empirical evidence on what works in fighting corruption."

[5] Søreide T., (2012), *Democracy's Shortcomings in Anti-Corruption*, Chr. Michelsen Institute, http://www.cmi.no/publications/file/4678-democracys-shortcomings-in-anti-corruption.pdf, p. 11. See also p. 2; "Giving decision-makers incentives (either carrots or sticks) to behave honestly will have a perceivable anti-corruption effect."

[6] Ibid at p. 7.

The snaps are; 1.) Criminal trial based analyses of the judgments i.e. of the actual trial process/performance; see **Section II. Diligent Case Preparation**, and 2.) Governance based analyses of the judgments, i.e. channeling the information therein into the governance process; see **Section I. IM and KM** and **Section IV. Control and Management of Public Funds**. **Section III. Conspiracy and Procurement** falls into both categories. Category 1 analyses consider the effectiveness of these ACC trials in attaining the objects of criminal trials both generally, (deterrence, counter-impunity, the enforcement of individual and collective responsibility), and with specific regard to anti-corruption i.e. enhancing anti-corruption. The analyses consider whether the success/efficacy of trials is enhanced by their method of conduct. Category 2 analyses considers the trials as an autopsy into the operation of MDAs, harnessing judicial articulations as prescriptions a.) on their appropriate modus operandi, expressly recognizing legitimate/illegitimate conduct, b.) on the scope of rights and duties of the governing as against the governed and vice versa and c.) on remedial actions. Category 2 is pertinent to policy formulation since the information uncovered *actually* situating the Accused within institutional contexts, aids the charting of macro and meso level triggers of corruption in the Accused, going a step beyond the usual theoretical bases of anti-corruption policies which are generally non-prescriptive.[7] Category 1 and category 2 assessments converge by considering the extent to which trial conduct and prosecutorial strategy facilitate the revelation of policy worthy information and by considering whether prosecution reinforces rules, processes and disciplinary procedures that are part of the usual governance process.

[7] The theoretical models for anti-corruption policies tend to be the principal-agent, political economy and collective action problem analyses; Mungiu-Pippidi A. (2011), *Contextual Choices in Fighting Corruption: Lessons Learned*, Report 4, Evaluation Department, Norwegian Agency for Development Cooperation, NORAD.

OVERALL FINDINGS

Re: Section 1. IM/KM

☑ The MDAs concerned failed to make Information/Knowledge Management values and principles central to their organizational management styles shaping routine practices, resulting in a generalized practice/culture of non-reporting contributing to the commission of corruption offences. IM means the systems and processes for collecting, managing and distributing information. KM means the strategies and processes designed to identify, capture, structure, leverage, and share the explicit and tacit knowledge of individuals.

☑ In the ***Sesay*** **,** ***Ken Gborie, ABC, Daoh*** and ***Katta*** cases, apparent poor communication (KM) resulted in poor work coordination; there was ignorance about individual roles and responsibilities and those of colleagues and their respective bounds, the source of these obligations and their precise nature. This contributed to the commission of acts of corruption.

Re: Section II. Diligent Case Preparation

☑ The ACC did not submit evidence supporting several charges in the ***Sesay, Doah, Al Jazeera, FCC, Lukuley*** and ***Katta*** cases, due to non-exhaustive investigative/prosecutorial techniques on securing/eliciting evidence. Evidential issues at trial stemmed from failure to meet the evidential requirements during investigations. ACC investigators appear to have failed to insist on developing lines of interviewing/ probing critical sources, and when testifying, to master crucial case data.

☑ Decisions to prosecute, based on one main source of evidence or where the Accused are acquitted on all charges, likely undermine public confidence in the ACC, the criminal justice system and the rule of law; ***Daoh*** and ***Al Jazeera***,

☑ In the ***ABC, Lukuley, Doah*** and ***Katta*** cases, the ACC defectively framed several charges; in ***Daoh***, it construed misappropriation as a strict liability offence. In ***Lukuley,*** it overloaded the indictment by duplicating the charges; bringing several different charges against an Accused for the same set of circumstances, charging as a single count, different criminal acts which are non-continuous offences, allegedly committed during an extended temporal frame or, charging the commission of a non-continuous offence between two stated dates, instead of, "on a day unknown" between the two dates. In the ***ABC*** and ***Lukuley*** cases, the ACC brought charges as a means for enforcing compliance with investigations, but it was held that compliance should be sought via alternative means. The ACC has also thrice erroneously framed conspiracy charges, in the ***FCC, Ken Gborie*** and ***Katta*** cases as s. 128, instead of s. 128 (1).

☑ In ***Sesay*** and ***Doah,*** the ACC *appears* to have not directed the judge's attention to the tilt of the gamut of cohesive circumstantial, not just direct evidence and they appear to have not explicitly corroborated crucial aspects of the case.

OVERALL FINDINGS

Re: Section III. Conspiracy and Procurement

☑ Conspiracy is an agreement between persons to do an unlawful act by unlawful means (common purpose) and the intention to play a role in the agreed scheme. To address collusive practices, prosecutors prefer to charge conspiracy to commit s. 48 (2) (b) ACA, i.e. wilful or negligent failure to comply with procurement procedure, since it is fits the reality and since evidential tests for conspiracy may be less cumbersome. Conspiracy allows for wide ranging circumstantial evidence to be admitted against the Accused for the fact of an existing scheme to be established. The Accused's role in the scheme must also be established; you must prove that the Accused did an act which contributed to an outcome and the facts of that act and that outcome are proof itself of the Accused's intention to want to bring about that outcome.

☑ Charging conspiracy based purely on the same facts supporting substantive offences is permissible as ***per Katta*** the most recent case reviewed, although the success of a conspiracy appears to then be contingent on the success of the substantive offence; ***Lukuley*** and ***Sesay***.

☑ Generally, evidence admissible against an Accused may be admitted against other Co-Accused; specifically in conspiracy cases this kind of evidence is generalized evidence of the nature and objects of a conspiracy. Generally and specifically in conspiracy cases, a conviction requires evidence implicating the Accused, independent of the evidence against one's co-Accused.

☑ In ***Sesay*** the charges under s. 128 (1) ACA (conspiracy) and s. 48(2) (b) ACA were interpreted as requiring all the Accused to be "Public Officers"; the Accused had to be capable of committing the substantive offence. However, s. 48 (2) (b) never expressly required the Accused to be "Public Officers." This "Public Officer" criterion may hinder prosecutions of private parties and mixed public-private sector bodies for collusive practices. Authorities suggest that in order for a conspiracy to exist, it suffices for one of the parties to be capable of committing the substantive offence. ***Ken Gborie*** adopts a function-based approach to interpreting who is capable of committing s. 48(2) (b) ACA.

☑ Alternative ACA charges for collusive acts are; conspiracy to procure, aid and abet the commission of s. 48 (2) (b) ACA. Other possible charges are procuring, aiding and abetting the offence in s. 48 (2) (b) ACA, but these have less liberal evidential rules and quantitative qualifiers for weighting the contribution of the Accused towards the substantive offence; the Accused must have acted with the intention/ knowledge that his act would have an effect on the act of a principal. S. 32 ACA entitled Bid Rigging is relevant, but is targeted at the treatment of tenders, proposals, quotations or bids, so the evidential requirements are higher. Offering and accepting an advantage under s. 28, using influence for contracts under s. 29, peddling influence under s. 31, offering, receiving or soliciting an advantage for bid-rigging under s. 32, have higher evidential standards bearing on an "exchange element." Procurement officials can be prosecuted under the substantive offence of s. 48 (2) (b), and collusive practices in procurement can be prosecuted under the common law of fraud, embezzlement, theft and larceny by servant.[8]

[8] Telephone conversation with Emmanuel Abdulai Saffa, Coordinator Society for Democratic Initiatives (SDI), 22 June 2016.

OVERALL FINDINGS

Re: Section IV. Control and Management of Public Funds

☑ Monitoring and control occur principally at the request and retirement stages and in between, there is the obligation to comply with the legitimate procurement process for contractual payments/ the disbursement of public funds; Reg. 70 FMR.

☑ In ***Lukuley***, parliament approved vague expenditure headings such as "facilitation and protocol" and "community relations." This was surprising given that Reg. 12 FMR requires expenditure heads be described/ambit to the vote. Neither did the SLMA Board of Directors when processing such requests for payment require more detail. Also, several legal provisions require oversight responsibility to be exercised over a budgetary agency's budget; s. 20 (2) GBAA on a budgetary agency's budget committee, s. 20 (3) GBAA on MOFED's internal audit department and budget bureau, s. 20 (1) GBAA on MOFED's budget bureau and its Financial Secretary, s. 53 (1) GBAA on the Vote Controller's monthly submission on revenue and expenditure to the Financial Secretary or MPs, s. 53 (2) GBAA on the Minister of Finance's quarterly submission to Parliament summarizing government receipts and payments. This was a clear instance of the ignoring of existing written financial controls.

☑ Reg. 73 (1) FMR states:"All disbursements of public money shall be properly supported by payment vouchers." Reg. 74 (1) FMR states that vouchers for contractual payments shall be supported by documentary proof of having followed the legitimate procurement procedure. Retirement of these documents can be made to the concerned unit within MOHS, to the donor or to MOFED, depending on the source and pathway of the funds. The rule on vouchers also extends to payment of government staff as per Reg. 96 (2), (5), (3) FMR. The absence of supporting documents for the disbursement of public funds was the crux of the ***ABC***, ***SLMA***, ***FCC***, ***Daoh*** and ***Ken Gborie*** cases.

☑ Reg. 6 FMR states that each budgetary agency shall have a Chief Finance Officer (CFO) to assist the Vote Controller in the effective financial management of an agency. There is no CFO at the MOHS; the functions of CFO are said to be performed by the Senior Accountant and Director of Financial Resources (DFR), but there are no written provisions on the offices of the DFR, CFO and Senior Accountant in the GBA/FMR.

☑ Finance Officers (FOs) are attached to programmes and are responsible for the disbursement of programme funds. Under the supervision of the DFR, the FO reviews requests for funds and funds are retired through him. In ***Ken Gborie***, the FO was repeatedly bypassed by the Accused; the Director and the M &E Officer, DPI, who took on the responsibility of disbursing/administering project funds.

☑ The absence of provisions in the GBAA/FMR on the FO and the DFR or the relationship between them fostered a culture of programme officers/managers hogging the financial management of public/donor funds, bypassing FOs and disregarding their advice on observing legitimate procurement

processes. This tacit understanding of the suitable manner of managing donor funds was taken advantage of by the Accused.

☑ The Court in examining the liability of the Accused in the FCC case, as concerns issues of administration, financial management did not seek to ascertain what their roles and responsibilities were in other public administration/financial management related laws; GBAA and FMR.

☑ In the ***FCC*** case, the Court appeared not to recognise that audits are seen as the most crucial form of financial control and means of monitoring the monitors (for e.g. the DFR/ FO). The Court rubbished audit findings without asking incisive questions to clarify the underlying technicalities and did not discuss the implications of the FCC's lax responses to audit recommendations/info. requests despite GBAA/FMR audit compliance obligations.

☑ Audits recommendations tend to revert to ignored legal/statutory obligations. Compliance with audit recommendations demonstrates a belated attempt to exercise powers/duties and that any prior lapse was inadvertent. Where complete compliance is impracticable, steps taken towards that end, may well serve as proof of diligence. Noncompliance demonstrates an all encompassing lack of diligence towards professional obligations (general professional negligence) or wilful/ intentional breaches.

☑ Time-bound legal obligations to respond to the audit queries and recommendations from the Auditor-General exist in the GBAA/FMR, but none such exist to respond to internal and external audits, not undertaken by the Auditor-General, although Reg. 2 FMR and 46 (2) GBAA obligate the Vote Controller, to "promptly answer all audit queries."

OVERALL RECOMMENDATIONS

Re: Section 1. IM/KM

☑ IM and KM should be incorporated as key values and essential modus operandi into current MDA management styles and strategies; organizational culture should be transformed by engaging with staff and making understood the functional necessity of IM/KM. Durable KM/IM systems should be built, maintained and regularly reviewed, including providing adequate record keeping facilities and employing qualified IM/KM professionals.

☑ ACC investigators should be aided in developing their knowledgebase of the employ of IM systems for investigations.

☑ Human resources units of MDAs should work with the ACC and governance institutions to devise interactive training sessions and manuals which identify relevant legal/policy provisions as per the office and construe these conjointly with relevant donor instructions. Training should address probable scenarios possibly through role play; steps to be taken to address any potential problems, legal and ethical obligations and the practical (institutional and societal) consequences of non-adherence to new policies on IM/KM, including sanctions. Staff should be encouraged to seek assistance in clarifying these issues from HR units. Internal monitoring on adherence and disciplinary measures should also be consistently enforced.

Re: Section II. Diligent Case Preparation

☑ Prosecution should not be motivated by public relations. The evidence must disclose a prospect of conviction. Investigations and persuasive press statements could satisfy the public relations element. Civil, administrative and disciplinary sanctions could be pursued or prosecutions postponed pending the securing of more evidence.

☑ More comprehensive communication and coordinated team work between prosecution and investigations, including joint assessments of evidential strengths and weaknesses/GAP analysis from which clearer directives can be issued to investigators, may generate more pointed evidence. The net must be cast wide in securing information; interviewing should be open, persistent and legitimately exploiting all sources available. Levels of planning for evidence presentation should move from the general to the specific. The relevance of particular kinds of evidence and the nexuses between them should be spelt out. Investigators should know crucial case data and MDA processes. *The Acting Chief of Investigations, in the Investigations, Intelligence and Prosecutions Unit (IIP) ACC, asserts that Prosecutors now have a substantial influence over the progress/ direction of investigations, although initially investigators would complete investigations with limited prosecutorial input. He asserts that the Prosecution's final trial brief and oral closing submissions tend to be watertight and compelling but that recently "a poor manner of presentation of material has crept in.*"

☑ Resource constraints may have impacted evidential issues. Efficient case management software would have an invaluable impact on searching and analyzing large quantities of data. *The Acting Chief of Investigations asserts that resource constraints are a non-issue but admits to the lack of case/evidential management software with more sophisticated modes of analyses than current methods that employ word docs.*

OVERALL RECOMMENDATIONS

☑ Duplicating charges should be avoided; the most serious offence encapsulating the seriousness of the criminal conduct should be charged.

☑ Expert knowledge on technical matters/that the ACC feels ill-equipped to address, should shape the investigations phase, rather than being only delimited by trial examinations.

☑ The ACC should maintain inter-institutional cooperation with clear lines of communication; preferably standing inter-agency investigation teams, with investigators, accountants, auditors from the customs, tax and labour department, Audit Service SL, the financial intelligence unit of the Bank of Sierra Leone, the SLPA, Court Registries, the NPPA, internal auditors and staff of the internal disciplinary units of concerned MDAs. Standing inter-agency investigation teams would allow for the progressive alignment of working methods and process in areas of shared concern /competence; as opposed to just cooperating when the need arises, working methods would be streamlined and harmonised to better inform and enhance each other and to facilitate investigate needs. *However, the Acting Chief of Investigations states that it is sufficient that the ACC's interaction with the SLP is generally regulated by ss. 78 (2) (b), 79 and 10 (2) ACA '08, that an ACC Financial Intelligence Unit was established in 2013 and that the ACC has institutional go-to persons.* The discerned issues suggest that delicate drafting matters could involve the LOD. *However, the Acting Chief of Investigations asserts that drafting indictments is simple with never any need for the LOD.*

Re: Section III. Conspiracy and Procurement

☑ All suggestions concerning improvements that might mitigate corrupt practices in procurement ultimately depend on human will power; massive institutional corruption can hardly be countered.

☑ Decisions to employ the sole source procurement and selective/restricted bidding method and the supporting reasoning could be subject to an obligation to publish; shortlists of bidders (restricted bidding) could be drawn up more transparently amidst larger groups with the reasoning published.

☑ Donor reps. could be positioned in all procurement organs in procuring entities for a broad overview of the process and to ensure the cohesiveness in the necessary links. Worst case scenario, they could prompt review/investigations and in the event of a trial/inquiry provide objective evidence.

☑ Open bidding processes minimise the risk for collusion/corruption if used in competitive markets. Although restricted bidding processes may be conducted in the same manner as open bidding, inviting a select group to bid to the exclusion of others, restricted bidding appears imprudent given the already oligopolistic nature of markets in SL.

☑ The role of the PC, the significance of its decisions/recommendations needs to be stark and unequivocal. It could more proactively inquire into the status of awards, ensuring its decisions are observed. If contracts are awarded contrary or prior to its conclusive determination, it should issue statements to the procuring entity, the NPPA, the ACC and be able to nullify or retract such contracts.

OVERALL RECOMMENDATIONS

The Independent Procurement Review Panel should also be able to do this. This could be stipulated in the internal regulatory instruments of MDAs and the PPA currently under review.

☑ Procurement officials should exercise due diligence to determine the real beneficial ownership of bidding companies where such information is not disclosed. However, procurement officers have a tendency of compromising due to low salaries and not being highly qualified. The creation of a directorate/training institution for the public sector procurement cadre to harmonise the whole landscape so that the knowledge of officers is uniform is a compelling policy issue under review.

☑ For joint charges of s. 128 (1) and s. 48 (2) (b), the ACC should openly test out the facts against relevant descriptions of the prohibited conduct found in the PPA and PP Regulations, funnelling the attention of the judge to lists of indicia from global anti-corruption authorities and the NPPA for identifying botched procurement processes and the correlation/correspondence of the facts to the indicia. The ACC's arguments could be framed in terms of alleged facts, legislation + indicia, to streamline the judicial deliberative process. Judgments on collusion should consistently refer to the original source of breached rules, the PPA and PPR, more illustrative yardsticks than the ACA 08.

☑ The PPA and PPR constitute a largely prohibitory framework and do not identify every single instance of collusive practice, which tends to be implicit and elusive. Therefore, judges should interpret the law on collusion progressively, realistically and prohibitively. Evidential assessments should seek to ascertain the presence of prohibited/undesirable outcomes and weigh circumstantial evidence to assess whether the manner in which the bidding process was implemented affected fair and competitive bidding. Judgments should look beyond ACC judgments with similar or identical statutory offences, to also draw from fraud-related judgments prosecuted at common law. They should be openly deliberative, stem from and feed into the policy formation process including the parliamentary review.

☑ Trials on collusion should further elaborate on the nature of the evidence that would meet that standard of the burden of proof beyond reasonable doubt.

☑ The current procurement regulatory framework has several inconsistencies. The PPA, its Regulations, the standard bidding documents and procurement manual need to be harmonised. These inconsistencies should be ironed out in the parliamentary review.

☑ Although different actions can be taken for breaches of the PPA, the ACC has priority over corrupt acts. Apparently, the current PPA review seeks to improve weak channels of communication between all procurement concerned MDAs to avoid overlap. A memorandum of understanding setting out the respective areas of competence of all implicated bodies might be a good place to start.

OVERALL RECOMMENDATIONS

☑ Banks must exercise due diligence in dealing with MDAs and public funds; staff should know that distinct sets of rules apply to specific types of transactions carried out by MDAs and should seek these out where unknown. Their diligence would uncover contractors' fraudulent backgrounds (preventing government official owned firms from bidding against private firms, uncovering joint shareholding by firms) and confirm the contractual award by verifying its documentary basis in order to process contractual payments made with cheques; minutes of the Procurement Committee meetings/report, contract document etc., see Reg. 73 (1) FMR.

☑ The PPA review has not addressed the question of the best available option to prosecute collusion; this should be addressed, especially since the implications of ***Sesay*** for private parties have not been raised in the review. Further, the review should identify and criminalize specific manifestations of collusive practices, indicating that these identified forms are non-exhaustive

Re: Section IV. Control and Management of Public Funds

☑ Ss. 24 (1), 24 (1) (c), 24 (3) and 24 (4) of the GBAA and Regs. 69 (1), (2), (3) of the FMR on the seeking, receipt and maintenance of grants should be harmonized and the meaning of key terms made explicit; "external grants," "domestic grants," "support of government budget programme," "programme," versus "government project," and there should be more clarity on whose personal responsibility it is to "notify the department" of the receipt of a grant. These slight instances of haziness may work collectively to foster corruption. "Financial management" and "Retirement" would also benefit from greater elaboration in the FMR/GBAA or internal policy documents. Judgments should refer to such sources where relevant, since the sense to be derived from terms is necessarily always contextual.

☑ The MOHS hosts a donor liaison office and the presently non-functional Integrated Health Programmes Administration Unit. MOFED hosts an aid coordination and management division. Also, there is DACO, the National Directorate Development Assistance Coordinating Office. If these bodies are to do more than facilitate and organize grant seeking, for e.g. aid in the monitoring of disbursements and in ensuring proper retirement through the FO and the DFR, it would be necessary to have a single regulatory instrument/policy statement spelling out the roles of these distinct bodies, their relationship with each other; demarcating the bounds of their unique responsibilities and the possible areas of overlap or more direct coordination/ interaction.

☑ FOs are advised to make it standard practice to put in writing pre-and post implementation clarifications made to programme implementers of the requisite forms of retirement attached to specific types of funds.

☑ In ***Ken Gborie***, the defence argued the imprecision of the particulars of the charges based on the mixing of funds in the account. There were challenges to evidential clarity in the judgement on the issue of the source of funding of individual programmes. This could be avoided where separate grants

intended for separate programmes are paid into separate programme accounts, a donor preference possible under s. 8(1) (ii) GBAA.

☑ The simultaneous coincidence of the roles of heads of department/units, Programme Implementers/Officers and account signatories in single individuals in ***Ken Gborie***, enabled the Accused to overstep the bounds of their distinctive roles as Director and M & E officer respectively, and as Programme Implementers, into the domain of financial management. It's worth considering alternative scenarios which do not amount to the threefold coincidence.

☑ As per the experience in the ***ABC*** case, staff members that do sign salary vouchers should only do so at the point of receipt of cash and not before.

☑ MOHS standard good practice is for there to be 2 account signatories from the professional wing and 2 from the administrative wing of the MOHS and that these should be further subdivided into category A and category B signatories; all transactions that require signatures must be signed by one category A and one Category B signatory, each from either wing. The default signatories for most programmes are the Permanent Secretary and the DFR from the administrative wing and the Chief Medical Officer and the Programme Manager/Director/ Coordinator from the professional wing. Since Ken Gborie and Magbity were both from the professional wing, the choice of signatories suggests that a systemic check was bypassed; a weakness incipient at the very point of opening the account and setting up a mandate card. This signals that the choice of signatories should be particularly heeded.

☑ Requests for access to budgetary allocations should be subject to written requirements for internal financial accuracy and consistency with Parliamentary approved expenditure heads. Such requirements are absent in the FMR/GBBA, so could be expressed in internal policy documents.

☑ Donors must also clearly stipulate in their instructions that funds sourced from their grants must retired either with donors, the Department/Ministry concerned or to MOFED; whichever it is, it must be clearly spelled out. Donors should also actively liaise with and demand clear information from concerned departments so that they are all on the same page; London Mining Corp. apparently failed to do this in the ***ABC*** case. From a supra-national perspective, donors must pre-assess the financial management capacity of recipients. It may be worth considering making donor reps. signatories to programme accounts.

☑ The Central Government should exercise due diligence, using available opportunities to enquire into and discern receipt of funds from other sources, especially where they are aware of activities unsupported by the central government.

☑ Reserve accounts should only be accessed pursuant to collective decisions by the MDAs Board of Directors/Management (***FCC***). Withdrawal thresholds concerning the principal signatory/Vote Controller for all accounts, should be discussed and achieved by a collective decision and the knowledge thereof be thoroughly circulated in the MDA.

OVERALL RECOMMENDATIONS

☑ Cheques issued by MDAs should be made out to named individuals/institutions and never to payee/cash as was the case in the ***Lukuley***, ***Ken Gborie*** and the ***ABC*** cases.

☑ The division of the functions of the CFO between the Senior Accountant and DFR of the MOHS, and their interrelationship should be expressly recognized in regulatory instruments or internal policy documents. It should be clear in what way they assume the necessary functions of the CFO.

☑ Audit recommendations that revert to pre-existing due diligence statutory obligation that were initially ignored should be seized upon by the Prosecution and construed conjunctively with the ACA 2008, to reinforce the elements of offences under this latter Act; for e.g. recklessness.

☑ Regular internal audits are recommended, as well as detailed written obligations to respond to internal and external audit queries/recommendations within specified time frames, i.e. audits not undertaken by the Auditor-General.

☑ A breach of generalised obligations in Reg. 2 FMR and 46 (2) GBAA on the Vote Controller, to "promptly answer all audit queries," should in light of Reg. 246 (1) FMR amount to financial misconduct, incurring under Reg. 246 (6) FMR, either disciplinary hearings or criminal proceedings.