

COUNTRIES AT THE CROSSROADS

Countries at the Crossroads 2012: Ghana

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Introduction

Ghana was a constitutional democracy at its independence in 1957. However, the country soon slipped into authoritarianism in 1960, when the Westminster-style parliamentary constitution inherited from Britain was replaced with one that widely broadened the president's authority to detain persons without trial, nullify court decisions, and dismiss judges. The new constitution also gave the president unfettered discretionary powers over the use of public funds, extremely broad appointment powers, and the power to countermand decisions taken by the legislature. Within a few years of nationhood, Ghana was a one-party state, with life tenure effectively conferred on its founding president, Kwame Nkrumah.²

In 1966, the military, in cooperation with the top echelons of the police, overthrew Nkrumah's government.³ While this coup was ostensibly staged to stop political repression and economic mismanagement under Nkrumah, the country did not return to a path of democracy and economic development. Nkrumah's removal began a cycle of military regimes prompted by coups that were punctuated by brief periods of constitutional multi-party government.⁴

In the early 1990s, the governing military council—the Provisional National Defence Council (PNDC)—began the process of returning the country to constitutional rule. In 1992, the chairman of the PNDC, Jerry Rawlings, won multi-party presidential elections as the candidate of the National Democratic Congress (NDC), a party formed by the PNDC to contest the election. A new constitution was promulgated in 1993 that provides for a popularly elected president and legislature, a two-term limit to presidential tenure, a bill of rights, an independent judiciary, an ombudsman, and a media commission, among other measures. While significant deficits remain, democracy, protection of rights, and quality of governance under the Fourth Republic have steadily improved, and the military has come under significant civil control.⁵

Jerry Rawlings was re-elected in 1996. He was constitutionally barred from seeking a third term in the 2000 presidential election. His vice president, John Atta Mills, stood as the presidential candidate of the NDC, but lost to the candidate of the New Patriotic Party (NPP), John Kufuor. Kufuor was re-elected in 2004, and the NPP increased its parliamentary majority significantly. However, the NPP and its presidential candidate in the 2008 elections were narrowly defeated by Mills and the NDC. Despite its generally positive economic and political governance record, the NPP was unable to overcome deep-seated perceptions that it was corrupt, out of touch with the electorate, and insufficiently inclusive. The Mills government (and a new parliament with a narrow NDC majority) was sworn in on January 7, 2009.⁶

The slim margin of the 2008 election has contributed to the high levels of political polarization and mistrust between the major parties in Ghana today. Although minor parties exist, the left-of-center NDC, which has its roots in the populist revolutions of the late 1970s and early 1980s, and the right-of-center NPP, which traces its roots back to the conservative nationalist movement of the 1940s, are dominant. Together, they have accounted for over 90 percent of the popular vote. The winner-take-all nature of Ghana's constitution has made the capture of the presidency the overwhelming objective of both political parties, as this comes

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with significant financial, political, and ethnic-patronage advantages. As a result, Ghanaian politics is a highly polarized, high-stakes game.

Accountability and Public Voice

Ghana's constitution provides a legal framework for regular, free, and fair elections open to multiple parties and with universal and equal adult suffrage. Ghana's Electoral Commission (EC) is independent and widely respected in the country and internationally.⁷ It makes reasonable effort to ensure that ballots are tabulated honestly and without intimidation. While the opposition parties bitterly contested the 1992 presidential election results, the losing parties accepted the outcomes of subsequent elections (1996, 2000, 2004, and 2008); this reflects the success of transparency- and fairness-enhancing reforms to the electoral process in the mid-1990s. The system proved resilient enough to survive the intense competition of the 2000 and 2008 polls⁸ and produce two electoral turnovers, making Ghana unique among African democracies.⁹

Election administration in Ghana has severe shortcomings, however. First, the integrity of voters' roll is questionable. The current register is undeniably bloated.¹⁰ Voter registration is episodic—it only takes place prior to nationwide electoral contests (roughly every three years). The EC relies on large numbers of temporary personnel of dubious professionalism and integrity, and the EC's overall credibility is based on the personal record of the incumbent chairman, Kwadwo Afari-Gyan—who retires after 2012—rather than on its strength as an institution. Ghanaian elections have been fraught with extreme tension, including intimidation, organized thuggery, and sporadic flare-ups of interparty violence. This is especially the case between supporters of the two major parties, the NDC and the NPP, both of whom engage muscle-bound enforcers to intimidate political opponents and maximize votes in their electoral strongholds.¹¹ The EC has typically been reluctant to address violence and intimidation outside the immediate vicinity of the ballot boxes. It has also done little to curb abuse of incumbency for partisan advantage. For example, incumbent parties and the executive branch agencies often use the public funds and other resources, including the national security services.¹² It has been delinquent in enforcing campaign finance laws and ensuring that political parties submit audited accounts as required by statute. Thus, questions persist about the funding sources of political parties.

The NPP and the NDC have shown little interest in correcting these fundamental challenges to electoral credibility; instead, they endeavor to win by outdoing the other party's use of intimidation and rigging. Furthermore, the problems that made the 2008 elections particularly fraught appear to have worsened. Concerns about voter registration remain. The electoral timetable is still compressed, and voter education is insufficient. Uncertainty and arbitrariness persist in the application of basic electoral rules, such as when a ballot paper should be declared void and on what grounds. In addition, the extreme levels of violence and intimidation that characterized the 2008 polls have continued. The rerun of the parliamentary elections in the Akwatia constituency in August 2009 and a by-election in the Chereponi constituency in September 2009 saw unprecedented levels of violence and voter intimidation. At Chereponi, a member of Ghana's intelligence service was videotaped firing indiscriminately into a crowd of demonstrating opposition party members.¹³ Moreover, the local government elections of 2010 (which are officially nonpartisan, but in practice are highly partisan) were also botched, with poll materials not deployed on time, or insufficient in quantity. There is little evidence that reform is afoot, although admittedly the EC's organizational shortcomings were exacerbated by the legislature's failure to provide more certainty about the date of the local elections.¹⁴

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There are increasing signs that both parties are becoming more adversarial and less willing to compromise. The rhetoric employed by official and unofficial party spokespersons has become more stridently partisan. Being a high-profile party “attack dog” seems to bring personal reward, as a number of those responsible for some of the most extreme campaign pronouncements during the 2008 election have since been appointed to high-level posts—including ministerial positions—within the current government. The results of elections for the executives of the NDC and NPP suggest that moderates are now less likely to become party executives than hawks. At the time of writing this report, public rhetoric remains as partisan as during a general election, even though the country is near the middle of the electoral cycle. Vituperation during political discussions is becoming common, and radio panel programs on politics often degenerate into shouting matches. Many in the NPP believe that the 2008 election was lost because they did not match the NDCs strong-arm tactics on election-day—hence the need to exhort their followers to be more “vigilant.”¹⁵ Even the urbane politician Nana Akufo-Addo, the leader of the NPP, has infamously urged his party’s supporters not to be intimidated by the tactics of the NDC, and has even suggested that his supporters should be prepared to “fight to the death.”¹⁶ The NDC has announced the creation of a “Heroes Fund” to be used to compensate party supporters who suffer physical injury or their families in the event of death as a result of election violence.¹⁷

Both parties have attempted to improve internal democracy. The Electoral College for the selection of the NPP’s 2012 presidential candidate was expanded from fewer than 3,000 to over 110,000 electors. This made the party’s 2010 presidential primary more democratic and enabled it to avoid repeating some of the mistakes of 2007, when the primary involved lavish spending on campaign advertising and allegations of attempts to bribe delegates. However, some candidates complained that the primary was held too early, which apparently made it difficult for candidates other than the frontrunner and eventual winner, Akufo Addo, to build effective campaigns.¹⁸

The NDC also restructured its primary process to level the playing field, making room for candidates from its various factions to contest the party’s 2010 national executive elections. Hardline critics of the incumbent president, such as Ekwow Spio-Gabrah (former minister of information and ambassador to the United States who had lost the NDC presidential primary to President Mills in 2007) and Nana Konadu Agyeman-Rawlings (wife of NDC founder and former president Jerry Rawlings), were elected to senior party positions. Indeed, Agyeman-Rawlings’s spirited challenge to President Mills in the June 2011 NDC primary confirmed the NDC’s increasing openness to internal competition.¹⁹

The greater governance challenge is lack of governmental accountability. The constitution establishes a system of checks and balances among the three branches of government, but the executive branch is dominant. Power is centralized in the hands of the president, the executive branch, and, arguably, the ruling party, thus severely undermining accountability. There is generally insufficient regulation of presidential discretionary authority, and a lack of legislative oversight of the president. The constitution, laws, and conventions enable the president to side-step parliament in lawmaking. The executive, through its parliamentary majority, is able to use a combination of incentives and threats to pass even the most unpopular measures through parliament. This has included approval for loans and agreements that lack sufficient documentation. The discovery of oil in commercial quantities has amplified this trend, as future oil receipts are now available to serve as collateral for present loans. From 2009 to 2011, for example, the Mills government reportedly contracted billions of dollars in new loans.²⁰

The president also exerts considerable economic power through control of key sectors of the economy (e.g., cocoa) and key parastatals. These include the Ghana National Petroleum Company, the Ghana Commercial Bank, and the Social Security and National

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Insurance Trust, which is Ghana's largest institutional investor, with significant interests in a number of government and privately held entities. The president has almost unfettered control over the direction of economic policy and revenues from Ghana's natural resource sector. The recent discovery of oil has further concentrated power in the hands of the executive, and has therefore introduced a new incentive to winning power.²¹ Both the NDC and NPP have advocated for more robust checks and balances at times, but only as long as they do not hold power themselves.²²

Ghana has undertaken a far-reaching governmental public sector reform initiative to harmonize public sector payrolls, called the Single Spine Salary Structure. The Mills-NDC government has persisted in its effort to implement the initiative (which began under the previous government), in spite of administrative bottlenecks and trenchant resistance from status quo interests. Nonetheless, Ghana continues to face challenges in making a distinction between its professional and career public service class on the one hand, and the politically appointed public service class on the other. The situation has worsened under the Fourth Republic, as the classic notion of a professional nonpartisan public bureaucracy with politically neutral officials serving the nation, rather than the ruling party or president, has been replaced with a politicized bureaucracy. Some high-profile public officials have begun aligning themselves with political parties and openly engaging in partisan political activity.²³

The Mills-NDC government, like its predecessors, has treated the leadership and boards of all state councils, boards and trusts (sub-vented agencies), such as the National Health Insurance Scheme, Ghana Education Trust Fund, Agricultural Development Bank, National School Feeding Program, National Disaster Management Organization, and National Youth Employment Program, as political appointees.²⁴

Non-governmental organizations (NGOs) in Ghana are largely free from state pressure, can solicit funding from external sources, and play major roles in highlighting concerns and providing technical support related to social, economic, and political development. NGOs have helped draft some key pieces of legislation, such as the Whistleblower's Protection Act and the Persons with Disabilities Act, but their influence on political governance and economic policy has been marginal. Ghana's NGO regulatory framework is outdated; the ongoing 20-year effort to pass a new NGO law has stalled due the inability of successive governments and civil society organizations to agree on an appropriate balance between regulation and interference in their activities.²⁵ The failure to properly regulate the sector has fostered the proliferation of partisan and unregistered organizations. Created by both pro-government and pro-opposition actors, these entities often engage in stridently partisan public commentary.²⁶ The NGO sector as a whole is becoming increasingly politicized. Also, political actors seek to delegitimize genuinely objective NGOs through unwarranted vilification, intimidation, and branding.²⁷

Freedom of expression is enshrined in the constitution, and the state does not hinder access to the internet. State broadcasters are officially neutral, although in practice they continue to be somewhat biased toward official government positions. For example, there have been cases in which panel discussions on radio stations were shut down due to insufficient government representation on the panels, as well as raids by security services to end programs that aired statements with which they disagreed.

There is a wide variety of print and electronic media that present multiple positions and viewpoints in the public domain,²⁸ but lucrative government advertising contracts tend to go only to pro-government private newspapers or state-owned papers. Although most private radio and TV stations are independent, the opposite is true of private newspapers, which are often highly partisan.²⁹

Intimidation of journalists has recently increased. Ghana's criminal libel laws were repealed in 2001. However, a law prohibiting the publication of intentionally false statements

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likely to “cause fear and alarm to the public or a breach of the peace” has been capriciously misapplied³⁰ against a number of journalists and media personalities in the last two years. The misapplication of this law has significantly undermined the progress Ghana made to entrench media freedom. In one particularly egregious example, a journalist from the *Ghanaian Times*, a state-owned newspaper, was arrested for publishing that a government housing project intended for security personnel had been abandoned and was now occupied by squatters, some of whom were allegedly criminals. Other reasons for arrests of journalists have included a failure to reveal a source, or “insulting the president.”³¹

Civil Liberties

Chapter 5 of the constitution establishes legal protection for almost all fundamental human rights, including the rights to life and personal liberty, guarantees against slavery and forced labor, equality and freedom from discrimination, free speech, freedom of thought, religious freedom, freedom of assembly, the right to information, and freedom of movement. There have been remarkable improvements in the protection of basic human rights and acceptance of dissenting opinions as compared to the pre-1993 track record of political instability and authoritarianism.³² However, reports are persistent of torture and physical abuse in police custody of detainees suspected of violent crimes, in spite of constitutional prohibitions on torture and physical abuse.³³

Ghana’s prisons are severely overcrowded. In 2008, the country’s prisons had an official capacity of 8,000 inmates but actually housed over 14,000. Ghana’s Commission on Human Rights and Administrative Justice (CHRAJ) reported that prisoners’ rights to bedding and medical care are violated. Detention without trial is common. Pre-trial detainees made up approximately 29.7 percent of the prison population in October 2008, an increase from an estimated 22 percent in 2003. A recent government initiative, the Justice for All Program, has taken some steps toward decongesting the prisons.³⁴

Most Ghanaians living in urban areas consider crime a serious concern. There are regular media reports of home invasions and robbery. The government has responded by increasing the number of police checkpoints, which has had little impact on violent crime. The police frequently contend that violent crime in Accra is on the decline. However, the lack of transparency in their crime records makes it difficult to verify these claims.³⁵

Citizens continue to engage in vigilantism to apprehend alleged criminals, sometimes leading to serious injury or death of the alleged criminal. Similarly, “land guards,” private guards hired by wealthy individuals to protect their immovable property, continue extra-legal land-title enforcement activities in the peri-urban areas of major cities. Even more troubling are the increasing instances of illegal activity conducted by supporters of the ruling party, so-called party “foot soldiers,” who have demanded material compensation as a reward for their support during the 2008 election.³⁶ Throughout Ghana, foot soldiers have attempted to forcibly take control of public toilets, tollbooths, car parks, and offices of the National Health Insurance Scheme and the National Youth Employment Program.³⁷ In some instances, employees of state agencies were physically assaulted for challenging the takeover of their office premises.³⁸

The rights of people living in mining communities have been increasingly abused in the last five years. State authorities that grant mining concessions to corporate entities typically fail to protect the interests of the affected communities. Small-scale miners are routinely abused by private security companies hired by mining firms to protect their concessions. This often happens with the connivance or assistance of the state security

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agencies and, occasionally, local government and traditional authorities. Mining communities have also been plagued with environmental degradation, poisoned water supplies, destruction of crops, and an unusually high incidence of diseases such as cholera and tuberculosis.³⁹

The International Labour Organisation (ILO) and its International Programme on the Elimination of Child Labour (IPEC) have raised concerns about human, particularly child, trafficking in some farming and fishing communities in Ghana. They also raised concerns about the poor financial commitment of the government toward addressing child trafficking issues.⁴⁰ Multiple sting operations by Ghanaian investigative journalist Anas Aremeyaw Anas have uncovered disturbing instances of human trafficking.⁴¹

The High Court has original jurisdiction in human rights matters, and a human rights division of the High Court has been established. The Human Rights Court has been fairly successful in protecting the rights of ordinary citizens and opposition politicians against overreaching government agencies.⁴² Meanwhile, CHRAJ is the primary organ for redress of human rights violations in Ghana, and it has acquired a reputation for investigative independence. However, a recent Supreme Court decision has reduced its ability to initiate investigations.

Ghana has shown increasing sensitivity toward gender issues. Both parties have created or allowed the creation of institutions, including ministries, designed to enhance gender equality. Nevertheless, the number of women in public office is on the decline. The number of women in parliament dropped from 23 to 20 after the 2008 elections.⁴³ Far fewer female candidates contested and won seats in the 2010 local government elections and even fewer emerged from the NPP and NDC national executives' elections and parliamentary primaries. The Mills government has committed itself to appointing women to 40 percent of government positions, but this target has not been met, and there is very little likelihood that it will be. The Mills government has appointed very few women as district mayors.

In addition, some key gender laws are yet to be passed. For example, the 1993 constitution guarantees the property rights of spouses, and enjoins parliament to pass a law detailing the operation of this right, but this is yet to be done. In addition, legislation is required to remedy gender discriminatory gaps in Ghana's inheritance and citizenship laws. The passage of legislation in Ghana is usually slow and bureaucratic, and gender equality legislation is rarely prioritized even though it is important to a large segment of the population. The criminal code criminalizes rape, defilement, incest, abduction, and forced marriage. However, women in some areas are still subjected to harmful traditional practices, including infringements on widows' rights, banishment to "witches" camps, and female genital mutilation.⁴⁴ There is little evidence that legal and constitutional protections against child labor are being enforced, including forms of ritual servitude such as *trokosi*, in which female children are sent to live in "voodoo" shrines to atone for the debts or spiritual and corporeal misdeeds of family members.⁴⁵

Measures to address disability issues have lagged. Implementation of the Persons with Disabilities Act (Act 715) passed by the previous administration in 2006 has scarcely moved beyond the Mills administration's inauguration of the National Disability Council. The act prohibits employment and education-based discrimination against the disabled, and mandates improved access to buildings and transportation services. However, disabled Ghanaians continue to suffer exclusion from education and unemployment, and access has not improved significantly.⁴⁶

Freedom of conscience and worship is largely respected in Ghana. Religious groups are among the most active of the country's civil society organizations, and there are no government restrictions on the operation and membership of religious groups and faith-based associations. However, Ghana is a predominantly Christian country, and political and economic power is concentrated in the hands of a southern Christian elite.⁴⁷ The current

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president has been particularly unabashed about making appeals based on his Christian beliefs. Islam, the faith of 18 percent of the population, is stereotyped as the religion of the poor and the marginalized. It is also associated with the less-developed north of Ghana, though migration has made Islam as common in the south as in the north.

There is a north-south divide in relation to income disparities and access to services and economic opportunities. Three of Ghana's four poorest regions are in the north.⁴⁸ Government efforts to address the problem through targeted poverty reduction and development programs are typically undermined by inadequate funding and endemic political patronage.

Despite being a multiethnic country,⁴⁹ there is relatively little discrimination based solely on ethnicity in Ghana. However, local disputes over land use and chieftaincy sometimes lead to ethnically tinged violence, and the political exploitation of ethnicity has exacerbated some conflicts. This is particularly true in areas where tenant farmers occupy and develop land whose owners are from another ethnic group.⁵⁰

The rights to freedom of association and assembly are respected. Business and political organizations abound, and there are few impediments to joining trade unions, though some obstacles have been placed in the way of the creation of new unions.⁵¹ Unions are still important actors, but their power is tempered by statutory provisions that require labor disputes to be heard by the Labour Commission prior to the declaration of a strike.

The persecution of sexual minorities has escalated. Prominent figures in the media, religious community, and civil society have demanded more robust enforcement of laws in Ghana's criminal code prohibiting homosexuality. The Bureau of National Security recently announced that it was initiating investigations into the activities of sexual minorities.⁵²

The constitution protects the right to protest. The Public Order Act stipulates that persons wishing to demonstrate must first inform the police, but the police cannot stop a demonstration without going to court for an injunction. However, the treatment of large, spontaneous political gatherings is not uniform: the police and other public authorities tend to discriminate against public gatherings deemed unfavorable to incumbent parties and presidents.⁵³

Rule of Law

The constitution grants judicial power exclusively to the judiciary within a system of three separate but ostensibly equal branches of government. It also grants the Supreme Court the power to strike down laws and executive actions that it deems unconstitutional. Judges in Ghana have security of tenure once appointed. However, the executive influences the judicial system through the selection and promotion of superior court judges, and by its almost unrestricted control of the public purse, including the budget of the judiciary.⁵⁴

Since 2010, there has been a very public dispute between the judiciary and the ruling party. In response to a number of court decisions unfavorable to the ruling party, the party chairman demanded in a press conference that the chief justice "purge" and "cleanse" the judiciary. He threatened that "we will clean it if they don't take steps to clean it," and, "we will clean it and let everybody everywhere blame us for interfering in the judiciary and we will take them on." When asked specifically how he intended to do this, he responded, somewhat ominously, "there are many ways to kill a cat."⁵⁵ Both the then attorney-general and her deputy subsequently made comments essentially repeating the remarks of the ruling party chairman.⁵⁶ This dispute could be viewed as evidence of the independence of the judiciary, but it also raises disturbing issues. When ruling party militants held demonstrations near the courts after a recent judicial decision they considered hostile to the government,

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judges responded by staying away from the courts for their own safety. Pro-government organizations and individuals have launched sustained attacks to discredit the judiciary. The chief justice herself has been the subject of some of the worst attacks. In addition, the budget of the judiciary has reportedly been slashed.

The constitution guarantees the right to counsel, and recent cases in the Human Rights Court have reaffirmed this right.⁵⁷ Attempts by national intelligence operatives to interrogate officials of the previous NPP government without their counsel present were ruled unconstitutional by the Human Rights Court. However, the cost of hiring an attorney is prohibitive for many citizens and Ghana's legal aid system has limited capacity and resources.⁵⁸

Since the return to democratic rule, the military's political role has declined markedly, and the risk of another military takeover has diminished. The 1992 constitution introduced clear rules to ensure civilian control of the security forces. These institutional changes, along with the clear and deepening popular aversion to military rule, have helped reshape the relationship between the security services and the state. The military has no noteworthy economic interests, though Ghana's armed forces have recently incorporated an entity called the Defence Industries Holding Company; the chief of defense staff recently suggested that this is part of an overall strategy to make the army more relevant to national development.⁵⁹

The security services have made strides in respecting human rights since the inception of the Fourth Republic, but they have by no means institutionalized values related to human rights. Suspects that appear to have been physically assaulted by the police are routinely displayed on television and in newspapers. In one particularly shocking incident, police officers in Bawku marched a suspect naked through the streets of the town. To the embarrassment of Ghana's security services, the suspect's interrogation, during which he remained naked, was filmed by one of the members of the participating security personnel and was eventually leaked to the press. In another equally shocking incident, military personnel assigned to guard the office of the president forced two trespassers, one male and one female, to perform sexual acts at gunpoint. Again, the incident was recorded by one of the military personnel present and was leaked on the internet. Although the military announced that the officers in question had been punished, they failed to specify what punishments had been meted out.⁶⁰

The state intelligence agencies appear to have significantly expanded their activities under the present administration. The Bureau of National Investigations (BNI), which is the state's principal intelligence arm, has become the primary agency tasked with investigating officials from the previous administration. More ominously, the intelligence agencies have been expanding their duties to include matters that would not ordinarily be within their purview, such as the amorphous rubric of "human security." This is, at least in part, the inevitable consequence of the failure of successive administrations to properly define the role of the state security and intelligence agencies in Ghana, nor to clearly demarcate the boundaries between the interests of the regime and/or party in power, on the one hand, and those of the state and public, on the other. In the meantime, the practice of governments using the security agencies for regime and ruling party security purposes rather than national security purposes remains entrenched and is possibly worsening. An example is the seizure of all copies of a movie on DVD whose title appeared to poke fun at the president.⁶¹

While the constitution guarantees property rights equally to all citizens, Article 20(1) implicitly reserves the government's authority to seize private property for a stated public purpose, as long as there is "prompt payment" to the dispossessed party of "fair and adequate compensation." It is not clear that these conditions have always been adhered to. In addition, land acquired for public purposes has been sold to private developers and to government officials. This was a contentious issue in the 2008 electoral campaign, with the indigenous

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population of Accra, the Ga, requesting the return of land the state had ostensibly seized for a public purpose but never developed. Lawsuits and nativist demonstrations have become key features of the movement for the return of Ga land. The NDC made the return of Ga land one of its campaign promises, though the pledge has yet to be honored.

Conflict between some rural communities in southern Ghana and Fulani herdsmen is on the rise. These pastoralists, mainly from arid Niger and Mali, who rear and breed cattle in farming communities in southern Ghana, have engaged in recurrent violent confrontations with local tenant farmers over ambiguous land rights. Land custodians often enter into arrangements with the Fulani herdsmen to permit them to rear their own cattle alongside those of the Fulani. Conflicts have arisen when the cattle grazing results in the destruction of the crops of tenant farmers, or in competition between the Fulani and the tenant farmers for land.⁶²

Anticorruption and Transparency

Ghana is less corrupt than its regional peers, although both major parties tolerate corruption.⁶³ Ranked as one of the top 10 economies in Africa for doing business, Ghana remains the easiest place to do business in West Africa.⁶⁴ However, the business environment still faces major challenges, including excessive regulatory obstructions and widespread corruption stemming in part from the poor remuneration of public employees. According to the World Economic Forum's Global Competitiveness Report for 2010–11, on a 7-point scale (where 1 is "very common" and 7 is "never occurs"), business executives in Ghana give a score of 3.3 to the diversion of public funds to companies, individuals, or groups due to corruption. In addition, business executives give a score of 2.8 (1 is "always show favoritism" and 7 is "never show favoritism") to the "favoritism of government officials towards well-connected companies and individuals when deciding upon policies and contracts."⁶⁵

Since 2009, a number of ministers have been compelled to resign following corruption allegations. Alhaji Muntaka, a sports minister, resigned after it was revealed that he had used his ministry's resources to fund personal expenses. Health Minister George Sipa-Yanke and another minister at the presidency, Seidu Amadu, resigned when implicated in a prosecution in a United Kingdom court in which a UK construction company, Mabey & Johnson, was convicted for allegedly bribing Ghanaian officials and other foreigners to facilitate the award of contracts. In addition, after an approximately \$30 million debt claim against the state by a private individual (who was also a Mills administration and ruling party financier) was settled under suspicious circumstances, the education minister, who had been attorney general when the payment was made, resigned.⁶⁶ The incumbent attorney general, who had questioned the payments, was also dismissed, purportedly for insubordination. However, the government has scarcely been cooperative with CHRAJ investigations in the Mabey & Johnson matter.⁶⁷

The Serious Fraud Office is one of the government agencies charged with investigating allegations of corruption. It has been discredited for being a political tool of the government in power. In 2010, in an attempt to make it more respectable, it was transformed into the Economic and Organized Crime Office (EOCO). There is no indication that this "new" anticorruption body will be more independent or effective than its predecessor. One of its first high-profile actions was to raid the offices of the Ghana Football Association and cart away their computers in an attempt to unearth corrupt activities. It is widely known that there are some members of the Mills government who would like to see new leadership at the football association.⁶⁸

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There is insufficient evidence of improved official commitment to the fight against corruption beyond the usual rhetorical claims. Prosecutions are not independent or politically neutral; the attorney general serves as both the chief legal adviser to the executive and the head of the state prosecution service. Instead of promoting accountability among officials while they are in office, the Mills government, like its predecessors, has shown a penchant for the investigation and prosecution of officials of the previous government.

Attempts to strengthen the public office-holder asset disclosure rules have faced the same obstacle as in the NPP-era: a lack of political will for greater transparency. Enforcement of the existing rules is weak. The promise by the Mills government to require members to disclose their assets publicly has not been complied with, confirming lack of political will by all sides of Ghana's political establishment. Moreover, there are no formal conflict of interest rules, although the CHRAJ has published some nonbinding guidelines.

Despite the persistence of an active and effective civic advocacy campaign and numerous promises by public officials in the current government, the Freedom of Information bill has still not been passed. This is further evidence of the fear of transparency exhibited by Ghana's political class.

Located 60 kilometers off Ghana's western shoreline, the oil finds have proven reserves of 6 billion barrels, with an upside potential for 18 billion barrels. In addition, most of the fields contain natural gas. Production began in December 2010. The largest field, Jubilee, is expected to produce about 120,000 barrels of oil per day. Ghana has passed a Petroleum Revenue Management Act, which mandates disclosure of production volumes and revenues from the oil. It also created a Public Interest and Accountability Committee (PIAC), an independent body tasked with monitoring government compliance with the disclosure and accountability measures created by the act. With the exception of the PIAC, Ghana's petroleum laws generally do not create structures or mechanisms that are sufficiently insulated from potential executive influence.

The public procurement regime also remains weak. Some reports and anecdotal evidence suggest that a vast majority of government procurements are still single-sourced rather than awarded through competitive bidding.⁶⁹ The Public Procurement Authority (PPA), created by the Public Procurement Act of 2003, has established a committee to receive and investigate complaints from individuals and institutions concerning public procurement. It has also set up entity tender committees and review boards within government ministries, departments, and agencies. There are reports of continuing widespread abuse in the award of contracts, particularly at the local government level.

The legal framework for addressing corruption still has significant gaps, and the government has failed to make structural and institutional reforms for preventing corruption and improving transparency. Legislation on public accountability and conflicts of interest has received insufficient attention, and is unlikely to be passed soon. Various branches of government continue to play political football with transparency-promoting legislative initiatives, kicking them back and forth between the sector ministries, cabinet, parliament, and the attorney general's department. In the meantime, Ghanaian democracy continues on its path of increasing clientelization, winner-take-all politics, and accompanying political and ethnic polarization.⁷⁰ Political patronage pervades the culture and practice of public and state sector corporate governance.

Anticorruption enforcement efforts are conducted primarily by the EOCO and the CHRAJ, which face major challenges. In addition to lacking prosecutorial autonomy and having to refer investigations to the attorney general for prosecution, CHRAJ is poorly funded and has to contend with a high rate of staff attrition. The EOCO is subject to political pressure, as is the Internal Audit Agency, which is charged with auditing central and local government agencies;⁷¹ the Public Procurement Authority (PPA).⁷² While the constitution

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created the position of an independent auditor general, the office nevertheless has become something of a political tool, particularly in relation to investigations of allegations of financial impropriety by political opponents.

Victims of corruption can pursue their rights by submitting complaints to the CHRAJ, the SFO, and the police, though the quality of the investigations varies widely. The police have established an internal anticorruption unit called the Police Intelligence and Professional Standards Bureau (PIPS). In addition, a Whistleblowers Protection Act was passed in 2006, but it has some significant operational limitations, particularly the absence of a credible reporting institution to receive complaints.

There is considerable corruption in the basic and tertiary education sectors, with regular reports of leakage of examination papers ahead of competitive national final exams for high school students. The highly popular pilot school feeding program has been dogged by allegations of corruption, particularly in the award and cancellation of contracts for cooking and foodstuff purchases.

Stories of corruption are widely discussed in Ghana's news media. There is a significant amount of investigative reporting, though it is rarely thorough, and in some cases abused for partisan political purposes.

Ghana scored 54 percent on the 2010 Open Budget Index,⁷³ with reports suggesting an increasing but still insufficient degree of transparency in the budget process.⁷⁴ NGOs, and even parliament, have little opportunity to make substantive contributions to the budget process, which begins too late in the year for detailed analysis. There is no budget office to review the budget submissions from the Ministry of Finance, and parliament lacks the requisite resources and technical capacity for undertaking any critical oversight. It has one research department to handle all parliamentary research requests and only one committee room. As a result, parliamentary scrutiny tends to be "hurried, superficial and partisan."⁷⁵ Furthermore, parliament routinely approves supplemental budget expenditures. The last such supplemental expenditure was for an additional \$252.8 million in mid-2009.

The distribution of foreign aid is equally opaque. The capacity of state agencies, such as the Audit Service and the Controller and Accountant General's Department, to track and monitor government expenditures of any kind, including foreign aid, is limited by inadequate technical resources and funding. Civil society groups face similar constraints in their efforts to monitor state spending. They also struggle with an official culture that combines poor recordkeeping with a reluctance to release even the most basic government data. Foreign aid is not normally viewed as a facility for personal enrichment, but it has frequently served as a "strategic resource" that frees other state revenue for political patronage.

Recommendations

- To address the problem of an over-dominant executive and to improve checks and balances, the constitution review exercise must result in the following amendments/reforms: increase the threshold of votes for the parliamentary approval of ministers and other presidential nominees from a simple majority to a super majority, and make presidential appointments to leadership positions in horizontal accountability institutions such as the Commission on Human Rights and Administrative Justice, the Electoral Commission, and the auditor general subject to parliamentary approval with same requirements as above; and devolve power away from central government to local authorities, especially by requiring that mayors of Ghana's districts, municipalities, and metropolitan areas are elected rather than appointed by the president.

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- The level of political polarization in Ghana undermines long-term development planning. Excessive politicization of development planning should be minimized and national/cross-party ownership of development plans and their implementation across regimes should be enhanced by insulating the constitutional body responsible for national development planning from partisan politics. This may be done by subjecting the president's appointment of the leadership of the Planning Commission to a supermajority parliamentary approval.
- Ghana's petroleum resources will be a key driver of corruption, and arguably could create conflict in the medium to long term. The legal and policy framework should therefore be administered in a manner that is both efficient and transparent. This requires, for example, that oil revenues be placed in a public trust that is insulated to the greatest extent possible from Ghana's hyperpartisan political environment.
- Ghana must continue its efforts to mainstream gender by mandating a quota for women for presidential appointments to public office.
- Though Ghana has progressed in the enforcement of human rights over the last few decades, certain social minorities—especially the disabled, homosexuals, and people living with HIV/AIDS—continue to disproportionately face human rights abuses, or have their rights completely denied. Legislation should be passed to make it easier for the rights of vulnerable groups to be enforced by CHRAJ and other authorities.

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⁴ The Military Governments were the National Liberation Council (1966-1969), National Redemption Council (1971-1975), Supreme Military Councils I & II (1975-1979), Armed Forces Revolutionary Council (June – September, 1979), and Provisional National Defense Council (1981-1993). Interspersed within these military regimes was the government of the Second Republic, led by Kofi Busia's-Progress Party (1969-1971), and the government of the Third Republic, led by Hilla Limann's-Peoples National Party (1979-1981) civilian administrations.

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- ¹⁵ Arthur Kennedy, *Chasing the Elephant into the Bush: The Politics of Complacency*, (Bloomington In: AuthorHouse, 2009).
- ¹⁶ Linda Akraasi, "'All Die Be Die' is to Inspire Party Agents – Nana Addo," *Ghanaian Chronicle*, May 1, 2011.
- ¹⁷ "Asiedu-Nketia to establish Heroes Fund" *GNA*, January 1, 2010, <http://www.ghananewsagency.org/details/Politics/Asiedu-Nketiah-to-Establish-NDC-Heroes-Fund/?ci=2&ai=10967>. It was later announced that the purpose of the fund was "to assist supporters and loyalists who have encountered misfortunes, incapacitations or other forms of deprivations in the course of their service to the party." See "NDC Launches Heroes Fund," June 10, 2011, <http://www.modernghana.com/news/333712/1/ndc-launches-heroes-fund-calls-on-the-state-to-ma.html>.
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