

Parliamentary Oversight and Corruption in Ghana

Policy Brief, Presenting Key Issues & Lessons Learned

Introduction

Governance in Ghana appears to be deteriorating. A comparison of crucial corruption and parliamentary oversight indicators analyzed some six or seven years ago (Stapenhurst, 2011) and today¹ suggests that the decline in governance and an increase in corruption is correlated with weakening parliamentary oversight. Ghana's ranking on Transparency International's Corruption Perceptions Index suggested slightly declining corruption from 2010 when the country ranked as the 62nd. most corrupt country globally, with a score of 41/100 to the 56th least corrupt country, with a score of 47/100 in 2015. In 2016, however, Ghana's ranking and score fell to 70th. and 43/100, respectively. These trends were mirrored in other surveys such as Afrobarometer.

Concurrently, Parliamentary oversight performance decline due to four critical factors: executive co-optation of Parliament, executive dominance of Parliament, growth of corruption in the oil and gas sector, and excessive partnership.

The Ghanaian Political Context

Ghana enjoys a reputation of stable democracy in Africa, has a thriving multi-party political space in which people are allowed to form political parties and contest elections. There is an Inter-Party Advisory Committee (IPAC) that works closely with the Electoral Commission to shape electoral reforms, as well as the Open Government Partnership (OGP) for transparency, citizens' participation, accountability, and new technologies for good governance. Ghanaians recognize Parliament as a significant institution responsible for keeping checks on the Executive and restrain it from exceeding its powers.

Political Facts:

- Semi-presidential government;
- Most cabinet members required to be MPs;
- Unicameral Parliament is sole, autonomous law-maker;

¹ data collected under the ACE program, in late 2016/early 2017 by interviewer-led and self-administered questionnaires with/by forty-three respondents (12 MPs or former MPs, 12 Parliamentary staff, 11 media representatives and eight representatives of CSOs).

- Parliamentary power to remove the President, Vice President, & Speaker;
- President cannot dissolve Parliament.

Research Findings

Parliament has several oversight tools. It can play a role in cabinet formation, censure ministers, amend the budget, can use an Auditor General who reports to Parliament, in addition to the motion of censure already mentioned. It can authorize public expenditure, impose and waive taxes, authorize grants, and receive loans. It can approve ministers and confirm the appointment of heads of state institutions, independent authorities, deputy ministers, and Supreme Court judges. Ministerial, Chief, and Supreme Court Justices are appointed through a standing Appointment Committee, which is mandated to report to Parliament within three days of a recommendation. Additional oversight bodies such as the Commission of Human Rights and Administrative Justice, an anti-corruption agency, and a Supreme Audit Institution, are also available to Parliament.

Motions of Censure

Despite the power to implement a motion of censure, none has been adopted in 20 years. The research suggests that because the President nominates ministers *from* Parliament for ministerial assignments, Parliament's best legislators may be unavailable to complete their parliamentary duties in exchange for their executive duties. Also, since the Executive and legislature tend to be controlled by the same party, there may be a reluctance to embarrass the government in order to hold their seats. As a result of Party cohesion, there is a diminished willingness to compromise and negotiate with the minority.

Parliament's Oversight Activity and Legitimacy

Parliament's oversight tools have not been put to productive use. The legislature has been active in reviewing appointments and uncovering incidents of fraud and corruption. Nevertheless, that activism has not translated into effective oversight and sanctions, nor is there effective censuring of Ministers through question periods to demand accountability. Excessive partisanship is partly to blame with party cohesion promoting the party, and inhibiting oversight.

In 2016, Ghana's President admitted receiving a vehicle gift from a contractor who later secured a road-construction contract. Critics called for the President's impeachment. The Minority in Parliament formed a special committee to investigate whether the gift infringed on any law or Code of Conduct. Later that year, however, the Speaker of Parliament dismissed the motion,

directing the Minority House members to pursue the case at the Commission for Human Rights and Administrative Justice (CHRAJ). This suggests that the ruling party tends to 'protect their own,' while the opposition typically opposes, simply to distinguish itself from the ruling party.

Again in 2016, the minority voiced its disagreement over a significant loan being procured by the government for the Electricity Company of Ghana (ECG) to serve rural areas better. Despite Minority opposition over the terms and condition of the facility, and the 5% "commercial" interest rate, this passed.

These examples and many others have earned the Legislature the reputation of an institution that condones, rather than combats, corruption.

The Public Accounts Committee

The Public Accounts Committee (PAC) hearings were both opened to the public and held in different regions of the country to review public spending. During the 6th Parliament (expired January 2017), the PAC retrieved over Ghc20 billion from various public institutions and paid into government coffers. There is concern that the PAC will not be as successful at retrieving resources in the long-term. The Financial Administration Tribunal, with a High Court Justice who is an accountant, was then established to strengthen the PAC's work in monitoring public officers found culpable of financial malfeasance.

There is a discrepancy over the court responsible for financial malfeasance. Financial Administration Courts (FAC) have been established in some urban areas. However, the PAC has reservations about the composition of the court and the Chairman and believes there is a discrepancy between the Court's functioning and mandate.

Committees cannot prosecute but instead rely on agencies for action. Ultimately, the office of the Attorney General (AG) is responsible for prosecution. The AG is part of the executive branch and responsible for prosecutions from Parliament, the Serious Frauds Office (SFO), and the Auditor General. Some have called for the decoupling of the Minister of Justice from the Attorney-General's office to reduce corruption.

Parliamentary committees also cannot initiate activities, investigations, or inquiries unless a matter has been referred to them by the Speaker of the House and referred to it by the full House. Party cohesion means that the government can prevent Parliament from tasking a Committee to investigate a matter where the findings would embarrass the government.

The Parliament of Ghana has significant potential oversight powers for fighting corruption, given its tools and efforts. Nevertheless, potential does not translate to effectiveness in this case, and several believe that Parliament is part of the problem.²

Auditor General

The Ghanaian Parliament relies on the Auditor General's Office (AGO) for its audited accounts to conduct ex-post oversight. It is one of the most under-resourced institutions in Ghana, both financially and in skillset, and its funds are not released on time. Ten years after the discovery of oil, for example, the AGO is yet to do a comprehensive audit of public institutions in the sector. Retooling the department with skills for large-scale investigations is paramount to ensuring sound financial management practices across the public service.

Adequately resourcing the AGO will empower the Legislature to better check the Executive. Some speculate that the resource predicament is intentional since an under-resourced AGO will be less likely to point out corruption, which is seen as bad publicity for the Executive.

The resource constraints cause the AGO to outsource to external audit firms, eventually paid by the institutions they audit. This presents the added possibility that the firms write useful reports for fear of not being rehired.

The Ombudsman

The Commission for Human Rights and Administrative Justice (CHRAJ) functions as the ombudsman. It investigates all complaints of human rights abuses and freedoms and also performs the functions of an anti-corruption agency. It is independent of the three arms of government, pursues administrative justice, investigates complaints about maladministration, and ensures a code of conduct pursuant for public officials.

The CHRAJ is constrained financially and, therefore, unable to effectively fight public sector corruption. It receives several cases annually but can only respond to a handful. Even with offices in ten regions of Ghana, it does not have offices in all 275 districts to investigate potential cases of corruption and administrative lapses in public institutions locally. They tend to favor human rights investigations at the expense of corruption.

The ombudsman is also not empowered to prosecute. In most cases, public officials found guilty are asked to abdicate their position, which will not deter others. The President nominates candidates for the position of Commissioner, which is another challenge in the role in fighting

² IEA, "List of Most Corrupt Ghanaian Institutions: Police, The Presidency, Parliament, All Feature Prominently," www.ieagh.org

corruption. A fair and rigorous mechanism will go a long way to select the right head to push the anti-corruption agenda far.

Anti-Corruption Agency

The Economic and Organized Crime Office (EOCO) is the country's *central* anti-corruption institution. Its reputation, however, has suffered a setback because of the constant interference of political elites in its activities and because it tends to deal with cases selectively. Government appointees are investigated when their party loses an election, and investigations wane for political figures whose party is in power. The head of EOCO is also appointed by the President, whose interest is usually protected by his appointee. The appointment of the head of the institution should be free from the manipulation of the Executive to guarantee the independence of the institution.

To sum up, the data on both internal and external tools of oversight provides a picture of retrogression rather than an improvement in the Ghanaian Legislature's role in oversight and accountability.

Accounting for Parliament's Poor Performance

Several constitutional factors affect parliamentary effectiveness in Ghana. Restrictions on Parliament's formal powers make Ghana's Parliament an unequal partner with the Executive in national policymaking. The constitutional requirement for MPs to be ministers gives the President the ability to 'reward' loyal MPs or 'neutralize' difficult MPs, thereby providing an incentive for MPs from the ruling party to want to please the Executive rather than exercise their oversight authority over the Executive.

Parliament's *Standing Orders* do not facilitate its oversight functions effectively. The inability of the House to review these orders suggests the insufficient political will to do so. Under the current Rules, a Committee cannot commence investigation unless the matter has been referred to it by the full House. Control of the Parliamentary majority and the Executive by the same party means the government can easily prevent Parliament from tasking a Committee to investigate a matter where the findings would embarrass the government.

Third, Parliament has been unable to exercise effective scrutiny and control over the budget process. The budget process begins too late in the year for detailed analysis, and Parliament lacks the resources and technical capacity to analyze in detail critically. Even though there is a research department, its capacity is often overstretched. As a result, Parliamentary scrutiny tends to be "hurried, superficial and partisan."

The Parliament of Ghana is dependent on the Executive for its resources, and its independence is compromised by the fact that the majority of Ministers are drawn from Parliament and appointed

by the President. The Constitution limits its legislative and budget powers, and it lacks adequate research and technical support capacity.

In addition to the above, **four critical factors** explain the poor oversight performance of the Ghana Parliament. They are:

(i) **Executive Co-optation of Parliament:** Ghana's system of government has created a situation of patronage where other branches of government have become "appendages" of the Executive. This is particularly the case when it comes to Executive-Legislative relations. Constitutional restrictions on Parliament's formal powers make Parliament a less-than-equal partner with the Executive in national policymaking.

(ii) **Executive Dominance of Parliament:** The Executive branch of government has become too powerful. Appointing MPs to serve in the Executive reduces the effectiveness of the House to hold the Executive in check, undermining debates on legislation introduced by the Executive, and increasing the chances that these laws will be passed without scrutiny, in addition to the oversight impact.

Executive dominance of Parliament also manifests in the distribution and control of resources to the legislature. In Ghana, Parliament does not autonomously determine its budget. It depends on the Executive for resources to run its activities. An antagonistic relationship between the two arms of government fueled by extreme scrutiny of the Executive could result in substantial budget cuts, thereby limiting what the legislature can do.

(iii) **Corruption opportunities in the oil and gas sector:** The Executive arm of government in Ghana is heavily engaged by the international oil companies (IOCs). At each chain of the extraction, production, and distribution process, the executive arm of government, through its agents in public institutions, have contact with these IOCs, and any exploitation will likely be in the public domain. Parliament's scrutiny of these contracts is usually a subject of great concern. Parliament's role is usually not made public, which creates room for cronyism and corruption. Most of the oil blocks in Ghana that were sold were not advertised and subjected to competitive bidding. Civil Society Organizations have criticized the process as highly secretive.

There are also instances in which the award of oil blocks contravenes parliamentary processes with members kept in the loop yet given complex oil contracts to analyze and approve in very short periods without furnishing them with enough information to debate the contracts. Few members of Parliament have devoted sufficient attention to the allocation and disbursement procedure, owing to inadequate information and often the personal benefits that they expect from their lack of active participation and scrutiny.

From the supply side, Parliament's role in corruption in the oil and gas sector is built on the abundant resources at the disposal of IOCs and their suppliers. The quest to make huge profits means that IOCs are prepared to go beyond healthy competition to induce members to secure resources at fiscal terms and conditions that do not benefit the people. Committee dealings usually

lack transparency and exploit the loopholes in the Standing Orders of Parliament to push through agreements with private entities.

The demand side of corruption in Parliament is impacted by the need to raise funds to finance member's political activities. Political campaigns are influenced by private money. Since governments do not sponsor political parties, both incumbent and aspiring candidates alike are compelled to raise money to finance their campaigns. Members in the House are thus compelled to accept inducements from private entities and the Executive alike and to do their bidding at the committee level. Soon after former President Kuffour was elected into office, he pushed for a bipartisan debate on political party funding, claiming that "state funding will be the best guarantee to sustain multi-party democracy prescribed in the national Constitution to anchor democratic governance of the state,"³. Inevitably, state funding will go to reduce corruption in the legislature and counter the influence to provide money, particularly from the oil sector in Ghana.

(iv) **Excessive partisanship:** Even though tools abound for the legislature to exercise oversight, the degree of professionalism attached to it is as important as the function itself. Effective oversight can easily occur at the committee level, dedicated to cover all the ministries department and agencies in the Executive. In as much as the core competencies of the legislature appointed to do the oversight in these committees are important, the level of discussion and cohesion among the members is critical. The legislature should be unified by state interest, but extreme partisanship could diminish the unison required for this function.

Members affiliated with the ruling party are, therefore, more likely to shield the government and may prevent full scrutiny. They thus argue, based on party lines and reduce their effectiveness.

Recommendations and Implications for Policy

Oversight *potential* does not translate into oversight, despite the availability of any oversight tools in Ghana. It is not unique for a young democracy to experience periods of executive dominance.

Ghanaian MPs confessed that even though committees of Parliament had the power to obtain information from the Executive, they were not exercising this role effectively. Parliamentary Committees could invite the minister in charge to appear before it, write to persons in the ministry to provide information, etc. but these prerogatives were not exercised as often or in the ways that they should be. Responses to such requests were slow or not forthcoming. For instance, even though a bench warrant can arrest a Minister, this power was not exercised.⁴

Our analysis reveals one critical issue that will need to be given attention if parliamentary oversight is to have any meaning within the Ghanaian context: MPs in Ghana are driven more by private

³ See:

<http://www.africanelections.org/ghana/news_detail.php?nws=7300&t=AEP%20Explainer:%20Political%20Party%20Funding%20in%20Ghana.>

⁴ African Parliamentary Index (API) at www.parlcentafrica.org

economic and political incentives than public goods provision. The biggest challenge for policy is how to shift incentives from private/personal to public goods provision.

From the supply side, this will urgently require a reinvigoration of the current rule of law mechanisms, particularly those related to prosecution. Ghana needs an effective investigative mechanism to catch MPs driven by personal incentives, 'name and shame,' and prosecution. This will create a strong deterrent that is needed to curtail the impunity of the elite that is pervasive in Ghana. This will be a reliable state instrument that requires the commitment and leadership of the Ghanaian state.

From the demand side, there is the need for active citizen groups, particularly from professional associations, with incentives for public goods provision, to demand and exact accountability from duty-bearers, particularly MPs. There is an urgent need to increase civil society's influence on parliamentary actions in Ghana in order to engender better accountability and responsiveness of Parliament and government at large. This is premised on the notion that societies get the kind of government they tolerate.

There is a need to build innovative demand-side accountability mechanisms that will link civil society with the actions of the government, traditional authorities, and private enterprise.

Reference

Stapenhurst, Rick (2011) "Legislative Oversight and Curbing Corruption: Presidentialism and Parliamentarianism Revisited. Unpublished thesis. Canberra: Australia National University.

This Briefing Note was written by Rasheed Draman. The author wishes to acknowledge the research assistance and support provided by Brooke Larson, and funding provided by the British Academy and the UK's Department for International Development.

Full research results on Ghana can be found at Rick Stapenhurst, Rasheed Draman, Brooke Larson, and Anthony Staddon (2020) "Anti-Corruption Evidence: The Role of Parliament in Curbing Corruption" New York: Springer.