

National Integrity Systems

Country Study Report

Ghana 2001

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Ghana

The Basic Political, Administrative and Judicial Structures for Controlling Corruption

The basic political, administrative and judicial structures for controlling corruption are set in the 1992 Constitution which provides for an elected President with a four year term who sits at the top of the Executive Branch, a unicameral legislature whose members are elected every four years from 200 constituencies. The Constitution also provides for a Council of State (a cross between an upper house and council of elders) which acts as an advisory and consultative role to the President, especially in the area of public appointments.

The Judiciary is a constitutionally independent career institution, whose members have tenure. There is a public service comprising the Civil Service, Police Service, Armed Forces, Public Boards and Corporations and other Public Services. These are separate and partially autonomous (they are governed councils or commissions), but they come broadly under the Executive Branch, especially in terms of the appointment of their top executives.

Currently, there are three TV stations - Ghana Television which is state-owned and is the only one with nationwide coverage, TV3 which is privately owned but with substantial government shares, and Metro TV which is fully private. There are 5 state owned newspapers (3 dailies and 2 weekend), three party papers (two for the opposition NDC and one for the ruling NPP), and many private newspapers and tabloids devoted to politics, entertainment and culture, lottery and sports.

There are nine registered parties, but only four (the New Patriotic Party -NPP with 100 seats, National Democratic Congress - NDC with 92 seats, Peoples National Convention - PNC with 3 seats and Convention Peoples Party - CPP with 1 seat) are represented in Parliament.

On the face of the institutional arrangements in place are enough to promote national integrity. But the reality is different. The actual ability of the constitutional, legal and political orders to promote national integrity and the control of corruption is undermined severely by a number of factors. They include:

- Lack of operational and financial independence on the part of Parliament and the Judiciary; executive/presidential dominance over those institutions. In the case of Parliament, Executive dominance arises from the constitutional fusion of powers, especially the extensive powers of the President, including appointment of MPs as ministers.
- Most of the existing integrity bodies such as CHRAJ and SFO depend on the Attorney General for prosecution. But AG is politically partisan position and operates with a keen eye on political profit.
- Moreover, the government has tended to comply with the rules and procedures in a minimalist and lackadaisical manner.
- There is no comprehensive legislation on public ethics and anti-corruption. Instead, there are a multiplicity of laws and methods for tackling corruption which makes the terrain extremely murky, full of conflict, forum shopping and loopholes.
- The mandate boundaries between key anti-corruption bodies such as CHRAJ, SFO and Auditor General are not fully clear, especially in terms of who takes primary responsibility for public officers asset declaration.
- Despite frequent and sometimes credible media allegations and occasionally proven allegations of corruption in high places, there has never been an instance of prosecution or punishment of a key regime insider in the last decade.

National Integrity System Indicators

Executive

Can citizens sue government for infringement of their civil rights?

Yes. Article 33 of the 1992 Constitution of Ghana expressly empowers the courts to protect Fundamental Human Rights. Article 2 (3) empowers citizens to enforce the Constitution through the agency of the Supreme Court; 2 (4) makes it a high crime to disobey Supreme Court orders issued under the authority of Article 2, and in the case of the President is a ground for removal from office. Furthermore, Article 293 fixes the liability of the Government at the level of a private citizen. This provision is given teeth in the State Proceedings Act, 1998 (Act 555). Section 7 of Act, 1993 (Act 456) establishing the Commission on Human Rights and Administrative Justice mirrors Article 218 of the 1992 Constitution. It mandates the Commission on Human Rights and Administrative Justice to investigate and resolve complaints of violations of human rights and freedoms.

From the beginning of its operations in 1993 to 1998, the Commission on Human Rights and Administrative Justice (CHRAJ) received 32,636 petitions of which it closed 24,711 (See the 1998 report of (CHRAJ). Between 1995-1998 the Commission received 1000 reports in which the Police Service was the Respondent, representing 5% of the total number of complaints since the Commission was founded. (Ibid. page 43) Note however that access to CHRAJ is by "petition" which is less costly and informal, but does not constitute a legal suit.

However, actual instances of citizens suing government are rare; awareness of such rights is low; resources for pursuing such a course of action are scarce most citizens. And on a broader scale, there is hardly any public litigation.

Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executive, ministers and other high level officials?

Yes. Article 286 amplified by the Public Office Holders (Declaration of assets and disqualification) Act, 1998 (Act 550) requires such officials to submit written declarations to the Auditor-General a) before taking office, b) at the end of every 4 years; and c) at the end of the term of office. Article 287 and section 8 of Act 550 empowers CHRAJ to investigate breach.

However, the monitoring and verification machinery is deficient. Act 550 vests custody of the declarations in the Auditor General but does not state an administrative procedure for verification. Access is only through judicial and quasi-judicial process upon allegation of default made to CHRAJ, committees of enquiry and the courts. Compliance is perceived to be very poor

Are there conflict of interest rules?

Yes. Article 284 forbids public officers from putting themselves in positions where their personal interests are likely to conflict with the performance of their official functions.

But in the absence of an enabling legislation setting out the parameters of the constitutional prohibition, there is considerable vagueness in terms of definition, sanction and procedure. However, in the past, CHRAJ has recommended specific sanctions.

However, most legislation regulating public/private fiduciary appointments insert clauses that require board members to disclose interests in the event of likely conflict. Examples include section 7 of the Revenue Agencies (Governing) Board Act, 1998 (Act 558), sections 205-207 of the Companies Code, 1963 (Act 179), section 7(8) of the Social Security Law, 1991 (PNDCL 247) and section 88 of the Civil Service Law, 1993 (PNDCL 327). Article 285 also specifically bars serving appointees in public organizations from chairing the boards of such organizations simultaneously.

But lack of clarity in the definition of "conflict of interest" situations has resulted in numerous conflict of interest situations in the performance of public functions. Notable incidents include (i). The Minister of Finance's chairing and earning allowances from the board of the Ashanti Goldfields Company, a private gold mining company in which Government held minority shares (ii) The rejection by a government white paper of the definition of conflict of interest by a committee of enquiry set up by government in February 1999 to investigate possible conflicts of interest and other allegations in the award of contracts for the rehabilitation of stadia in November of 1997. (iii). The chairing of the Board of Ghana Airways, a public limited Liability Company by a Supreme Court justice. In direct

contravention of article 285, the Chief Executive of the Ghana National Petroleum Company chairs the company's Board.

Are there rules and registers concerning gifts and hospitality?

Yes. There are rules but there is no registry. It is a criminal offence to receive a gift in the conduct of public business under sections 240 to 243 of the Criminal Code, 1960 (Act 29) and section 2(e) of the Corrupt Practices (Prevention) Act, 1964 (Act 230)

But there are no guidelines on hospitality and treats. Moreover, the burden of proof required in criminal prosecutions is difficult to meet in respect of corruption hence quasi-legal and extra legal methods that partially shift the burden of proof onto the accused have been employed in the past. These have included commissions of enquiry, the citizens vetting committee of the 1981 revolution and People's courts. The legality of Act 230, which shifts the burden of proof was challenged as being in conflict with the fundamental common law principle of presumption of innocence (see Criminal Procedure in Ghana; AME Amissah Sedco Publishing Limited 1982,215-224)

Are members of the executive obliged by law to give reasons for their decisions?

Yes. This is explicit in the case of decisions made under discretionary powers. Article 296 requires officials vested with discretionary power to publish regulations governing the exercise of their discretion.

But the public services have a culture of withholding information. Indeed, public officials take a mandatory oath of secrecy under section 91 of the Civil Service Law, 1993 (PNDCL 327). The State Secrets Act, 1962 (Act 101), the Gold Coast General Orders (1951) and the Civil Service Regulations 1960 (LI 47) are usually cited as the cause of the reticence. Act 101 prescribes a penalty of up to 14 years imprisonment for wrongful disclosure of certain kinds of information. The Civil Service Performance Improvement Program (CSPIP) commenced in 1995 seeks to deliver a customer friendly service with easier access to public information, but it has not changed the culture and practice of public officials routinely denying information to citizens.

Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

No. Awards of contracts are carried out by tender award committees and are required to be done by tender.

However, there is a perception that contracts are sometimes awarded for reasons other than merit sometimes in contravention of the rules. In the 1 - 2 March, 2000 edition of the Ghanaian Chronicle (an independent newspaper), a story alleged that the World Bank office in Ghana had been compelled to withdraw a hundred million dollars of programmed grant to Private Sector Participation (PSP) in the provision of potable water because of a lack of transparency. The story alleged that the British government had also withdrawn eighteen million pounds from the project for the same reason. The then Minister of Works and Housing was accused of sidestepping the ongoing tender process in favor of a company that did not even bid in the first place. In The Ghanaian Times (a state owned paper) of 4th March, 2000, the Minister mounted a spirited defense which confirmed the essential suspicion that a company outside the tender process was being considered for the works because, in the Minister's opinion, that company was potentially cheaper than the other 4 properly short listed.

Moreover, most public boards are dormant or their members are non-performing and focused on drawing allowances and other perks.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes. Article 103 (3) empowers committees of parliament to oversee the workings of public officers through investigations and enquiry. Furthermore, Chapter 23 authorizes the President to appoint committees of enquiry. And CHRAJ has a mandate to ensure administrative justice.

Generally, ministers are substantive agents to the President and the President shares legislative authority with the Parliament. Several pieces of legislation enjoin the executive to act on the advice of or in consultation with independent bodies and technocrats.

However, these checks are ineffective and poorly enforced in practice. The president and ministers often have a role in the appointment of members of the bodies that are supposed to be advising, thereby creating a “gratitude effect”.

Legislature

Is the Legislature required to approve the budget?

Yes. Chapter 13 of the Constitution, particularly Articles 178 and 179 require the legislature to approve all expenditure. Sections 138 to 150 of the standing orders of Parliament details the approval procedures. Approved expenditures are passed in an annual appropriation act. Shortfalls are paid out on the Legislature's approval of supplementary estimates.

But the budgetary review and approval process in the 4th Republic has been largely formal and superficial. The time given to the Finance Committee of Parliament and Parliament to review, debate and propose changes is woefully inadequate and they lack the resources and expertise to do a thorough job of it. Civil society input is negligible, and the budget debate is rushed on inadequate information. There has been no rejection of a budget proposal yet, even though the Executive has been known to sidestep the need for approval. Financial agreements for the purchase of a new presidential jet were secretly concluded in February 1999 and the jet brought into the country before approval was belatedly sought, after loud civil society displeasure. Though in service, formal approval is yet to be given for the purchase (see Hansard 4th series vol. 24 no. 21 section on motions 15th February 1999). The Public Accounts Committee revealed consistent and significant over expenditures from fiscal 1994 to 1998, made without recourse to supplementary votes as required under article 179(8) of the Constitution (The Ghanaian Chronicle May 8-9, 1999 page 3 and May 12-13, 1999 page 11).

Are there significant categories of public expenditure that do not require legislative approval?

None. The financial provisions in the Constitution are quite rigid on the authorization of expenditure. Article 108 demands that all transactions with monetary implications for the Consolidated Fund must have parliamentary approval. Appropriations acts are passed on the consolidated fund only. The Controller and Accountant-General pays out money from the fund upon the warrant of the Minister of Finance, who draws authority from the relevant appropriations act.

Are there conflict of interest rules for Parliamentarians?

Yes. Article 104 (5) requires parliamentarians to declare their interest to the Speaker and request permission from him to pursue private business interests. MPS are also to refrain from voting in any contract with government to which they are party. Article 98(2)(b) forbids the holding of a private office of emolument if there is likelihood of conflict with legislative duties. Section 173 of the standing orders of Parliament sets up a committee on members holding offices of profit which monitors likely conflicts of interest arising from members private activities.

There have been few instances of voluntary compliance; the Business Committee has had no cause to censure any person for violations of these rules so far. However, the absence of censure may not necessarily mean a lack of malfeasance. It is more likely to reflect ineffective enforcement of existing rules.

Are there rules concerning gifts and hospitality?

Not specific to parliamentarians. The general rules against corruption and receipt of gifts apply.

What powers of sanction are in place against parliamentarians?

The House can commit a member for contempt and suspend such a member for up to 14 days under sections 100 and 101 of the Standing Orders of parliament. Section 102(3) permits the speaker to suspend a member for the duration of a session and to strip such a member of all privileges and immunities. The Committee of Privileges recommends this in respect of contempt to a fellow member of the House where the guilty member refuses to apologize. Other matters deemed contemptuous of parliament including attempts at bribery are listed under section 28 and are to be referred to the Committee of Privileges set up by section 164 of the Standing Orders.

Have they ever been invoked?

Not so far, according to the librarian of Parliament, Mr. Kofi Agbemor.

Is there an independent electoral commission?

Yes. Article 43 sets up the commission whilst article 46 provides that the electoral commission shall not be subject to the direction or control of any person or authority. Article 54 grants it financial independence by charging its expenditure on the consolidated fund. The commission is enabled under the Electoral Commission Act, 1993 (Act 451).

A survey by Research International in September 1999 showed that only 37% of the respondents thought the EC operated independently. Yet, up to 84% thought it had conducted the 1996 elections well. Article 70(2) vests the power of appointment to the EC in the President. 53% of respondents to the survey thought this would compromise the commission in favour of the President's political party. These findings largely reinforce earlier results of a 1997 survey by the International Federation of Electoral Systems (IFES) and the 1999 Ghana Center for Democratic Development (CDD-Ghana) Afro Barometer survey

Political Party Funding**Are there rules on political party funding?**

Yes. Article 55(14) requires declaration and publication of accounts whilst article 55(15) restricts contributions to political parties to only citizens. Sections 23 and 24 of the Political Parties Act, 2000 (Act 574) restrict political contributions to only citizens. Under section 25, contributions by non-citizens are to be forfeited to the state and the would-be contributors adjudged as illegal immigrants subject to deportation. Foreign contributions to the EC are welcome.

However, monitoring is extremely weak. And they have not been enforced to date. In the few instances where foreigners have made donations in violation of the law, the beneficiary political party has only shamed into returning the contribution to the contributor without punishment.

Are substantial donations and their sources made public?

Section 13(2) of Act 574 demands disclosure of the sources. So does article 14(a) of the Constitution. But there is very systematic disclosure and verification of declarations. In the run up to the year 2000 election, the first 3 copies of the then ruling party's manifesto were reportedly bought for a total of 410 million cedis by three individuals. Though the EC is yet to receive and publish that party's account, the ceremonial function where the manifesto was launched, received wide media coverage (The Independent no. 61 August 10, 2000 front and back pages).

Are there rules on political party expenditures?

Sections 13 and 14 of the political parties act, 2000 (Act 574) demands declaration of assets and expenditure within 90 days of receipt of operational certificate and another declaration 21 days before an election respectively. Section 14(2) of Act 574 requires submission of detailed statements of expenditure within 6 months of an election.

But there are no rules to cap expenditure, and monitoring and reporting requirements are loose. In 1996, the two largest parties met the requirement at a minimal level. But the quality of the reports were very low and their integrity highly dubious.

Are political party accounts published?

Article 14(b) demands publication of accounts. Section 13(5) of Act 574 authorizes the EC to publish received accounts in the gazette. The Electoral Commission (EC) has published the 1992 and 1996 accounts.

Does an independent institution check accounts?

Yes, in a superficial way.

Though sections 13(6)(b) and 14(4)(b) vests the EC with the power to cancel a party's registration in the event of false declarations, it does not provide explicitly for an independent audit. Moreover, the

EC lacks the human and logistic capacity to audit, even if it was so inclined, and has not sourced external auditors.

Supreme Audit Institution

Is the Auditor General independent?

Yes. Appointment is by the President acting in consultation with the Council of State (section 10(1) of the Audit Service Act, 2000(Act 584)). Article 187(7)(a) states that the performance of the function shall not be under the control or direction of any person or authority. Article 187(13) insulates the officer from arbitrary removal and 187(11) charge's remuneration to the consolidated fund. Section 18 of act 584 affirms the independence of the office.

Indeed, the current incumbent has not disclosed any attempts to subvert the independence of the office. However, he has passed the age of compulsory retirement from the Public Service and is in office by virtue an extension of his contract by the former President.

Are all public expenditures audited annually?

Yes. Article 187(2) requires an annual audit of all public institutions. Section 11- 15 of act 584 enables the annual audit of all manner of public accounts.

But the Army is obdurate about opening up its operational account for scrutiny (see Report of the Auditor-General for the year ended 1998 page 3).

Parliament has been unable to appoint an auditor to audit the Auditor Generals office as demanded by article 187(15) of the Constitution.

Is reporting up to date?

Not quite. Article 187(5) instructs that the report of the preceding year should be presented within 6 months of the following year.

But even on a fast track adopted with the support of the European Union, the report is a year behind (up to 1999) and there are gaps in the previous years (see Report of the Auditor-General for the year ended 1998 preface).

Are reports submitted to a public accounts committee and debated by the legislature?

Yes.

But Parliamentary review of the Audit Report is also in arrears. By 2000, Parliament had only reviewed 1997. Parliamentary review is improved but still ineffective and comes with no penalties against errant public agencies.

Are all public expenditures declared in the official budget?

Please refer to Legislature paragraphs 1 and 2.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, Ministers and other officials)?

Yes. Article 2 of the Constitution vests the Courts with the authority to review and strike down executive decisions that the judiciary determines to be in contravention of the Constitution. Article 33 also vests the Superior Courts with the power to issue orders that compel executive compliance with the demands of basic rights.

In a landmark decision on January 26 2000, the Supreme Court declared upon interpretation of article 168 of the Constitution that the Presidency had no right to appoint heads of state media institutions. The court reversed such appointments saying appointments were the prerogative of the National Media Commission.

But in general, the courts have been timid in using powers to review executive decisions.

Are judges independent?

Yes. Article 127 is explicit in granting administrative, judicial and financial independence to the Judiciary. The Chief Justice is appointed by the President in consultation with the Council of State and with the approval of Parliament. Other Superior Court Justices are appointed by the Presidency upon advice of the Judicial Council, in consultation with the Council of State and the approval of Parliament. The Justices are subject to an age limitation but can otherwise not be removed except for proven misbehavior, incompetence or infirmity through a tribunal hearing process of their peers. Also Article 107 protects the integrity of the judicial process by prohibiting retro active legislation.

But while judges have constitutional independence, they lack operational and logistical independence.

Is recruitment and career development based on merit?

Article 128(4) states that a potential appointee has to be of high moral character, proven integrity and should have been a lawyer of not less than 15 years standing.

But appointments to the Superior Courts have not been without controversy. The constitutional criteria have not always succeeded in ensuring the selection of meritorious justices. In 1995, the Ghana Bar Association mounted a legal challenge to the President's nominee for Chief Justice on the grounds that the nominee was not of "high moral character and proven integrity," being suspected of secretly retracting and rewriting an opinion. The Bar lost the case, the Chief Justice was confirmed, but relationships within the justice system remained strained. Indeed, the President, especially where his party has a strong majority in Parliament ends up exercising a far stronger role in the appointment of judges, at the expense of other bodies involved in the appointment process such as the Judicial Council. Moreover, the Judicial Council itself is currently dominated by representatives from quasi-government legal bodies, thereby increasing the hold of the government on that body.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

Yes. Some prosecutions such as currency fraud within the financial sector are ongoing, but they have not been concluded.)

Does the educational system pay attention to integrity issues and corruption/bribery? Is it expected to?

Not directly.

First and second cycle schools run broad social science courses within which individual schools are expected to deal with environmental, religious, moral and civic issues. Without direct guidelines and standard formats, civic education has almost withered.

Civil Service**Are there laws establishing criminal and administrative sanctions for bribery?**

Yes. Part 10 (sections 71-82) of the Civil Service Law, 1993 (PNDCL 327) provides disciplinary procedures and sanctions for a broad range of malfeasance including corruption. Direct criminal sanctions are also provided (see Executive paragraph 4)

However, there is recognition that the existing law is inadequate and there is a bill before Parliament for the review of those laws.

Are there rules requiring political independence of the civil service?

Article 191 forbids discrimination or arbitrary dismissal of civil servants. Article 194 confers security of tenure and financial independence on the members of the Public Services Commission, the apex management body of the civil services and 198 states that the Commission shall not be subject to any other authority or person in the performance of its duties.

Are recruitment / career development rules based on merit?

Yes. Article 196 vests the power to select public / civil servants in the Public Services Commission on neutral merit based grounds. Section 56 of the Civil Service Law, 1993 (PNDCL 327) states that only qualified people are to be appointed. However, the Chief Directors of ministries are appointed directly by the Executive under section 19 of Law 327.

Are there specific rules to prevent nepotism? Cronyism?

Yes. Civil Service recruitment is merit based under PNDC Law 327. Moreover, Article 218B of the 1992 Constitution allows CHRAJ to rectify perceived imbalances post facto.

Though there is no direct evidence, there is a strong public perception of partisan political considerations, nepotism and cronyism in the handling of public appointments.

Are there rules concerning acceptance of gifts and hospitality?

See paragraph 4 of the Executive.

Are there restrictions on post public service employment?

None. But section 72 of Law 327 allows the re-engagement on contract of retired public/civil servants. Given that the state is the largest sector in terms of formal employment, the liberty to extend mandatory retirement through re-engagements is heavily abused. Top public servants keep their jobs well beyond retiring age as they renew limited contracts regularly or even change birth dates to avoid the mandatory retirement date.

Are procedures and criteria for administrative decisions published (e.g. for granting permits, licenses, bank loans, building plots, tax assessments, etc)?

Yes. The Head of Civil Service launched a set of service brochures in 1999.(see CSPIP News Vol. 1 No. 5 Dec.1999)

However, they tend to be long and public awareness of their existence very low.

Are there complaint mechanisms for public servants and whistleblower protection measures?

There are no effective administrative mechanisms. According to a recent survey, 27.5% of public officials saw the existing reporting mechanisms as adequate, and over 30% disagreed that a reporter of corruption was protected.(The Ghana Governance and Corruption Survey, August 2000 page 27).

Are there means for complaints by members of the public?

Yes. Section 20 of the Serious Fraud Office Act, 1993 (Act 466) makes provision for the reward of informers. Section 7 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) empowers the Commission to act on complaints by the public. Section 8 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) requires allegations of non-compliance to be reported to the Commissioner of Human Rights and Administrative Justice.

But in practice, very few people avail themselves of these mechanisms. 81.3% of Ghanaian households did not even know of the available reporting structures (Ibid. page 27).

Police and Prosecutors

Is the Commissioner of Police independent? i.e. are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?

Article 202 specifies that the President in consultation with the Council of State shall appoint the Inspector General of Police but does not provide for tenure. Where no provision is made as to tenure, Article 297 provides that the power to appoint under the Constitution implies the power to remove.

But Inspectors- General of the Police have held their offices at the pleasure of the President. Usually, an incumbent is asked to proceed on leave and a new one appointed (See the Free Press January 24-30, 2001 page 1) The IGP also reports to the Minister of Interior.

Are public prosecutors independent?

No. Article 88(3) makes the Attorney General responsible for all prosecutions. The Attorney General may delegate the authority to prosecute, which is done through the Director of Public Prosecutions. Under section 54 of the Criminal Procedure Code (Act 30), the Attorney General retains discretionary powers to discontinue from a prosecution without stated reason.

It must be noted that the Attorney General is a political appointee. And in the Rawlings-NDC government, the Attorney General and Minister of Justice was a very senior figure in the party and its

treasurer. Thus it is feared that the powers vested in the office may be misapplied, especially where culprits are political cronies.

Are there special units for investigating and prosecuting corruption crimes?

Yes. The Police, Commission on Human Rights and Administrative Justice and Serious Fraud Office all investigate corruption in the course of duty though CHRAJ has a constitutional mandate to control corruption.

Is there an independent mechanism to handle complaints of corruption against the Police?

None. Section 23 of the Police Service Act, 1970 (Act 350) provides that a member of the public shall report corruption and such other acts to an offending Police Officer's immediate superior who shall institute an internal investigation, submit a copy of recommendations arising therefrom to the complainant and exercise a discretion as to punishment, if any.

Does civil society have a role in such a mechanism?

Not beyond reporting and receiving a copies of proceedings, in the event of an investigation.

In the last 5 years, have Police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Yes.

However, this is relatively rare and often unpublicized.

Are there any cases of corruption within the prosecuting agencies?

Yes. 67% of Household respondents to the Ghana Governance and Corruption Survey ranked the regular police (who prosecute most crimes) among the institutions perceived to be most corrupt. Though its personnel are hardly ever arrested, it is common public knowledge that the criminal justice system is corrupt. Court staff and prosecutors have sometimes tampered with or stolen exhibits. Judges are also widely perceived to be corrupt.

Which legislative instruments can be used by the Police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private to private corruption punishable by law?

The criminal code, 1960 (Act 29) , Criminal Procedure Code, 1960 (Act 30) and the Corrupt Practices (Prevention) Act, 1964 (Act 230). The existing laws do not contemplate private corruption but such corruption is invariably incidental to public corruption.

Is the law applied?

Yes, but hardly.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the numbers are low, are there other effective measures or other good reasons why the number is low?

No cases of corruption have been prosecuted in the past 10 years through the criminal justice mechanism. The Commission on Human Rights and Administrative Justice and the Serious Fraud Office (SFO) have handled such matters more than the traditional Police.

The Police are lethargic about pursuing their mandate against corruption. This may be because they are not receiving reports on which to act. To trigger a police enquiry, there usually must be a complainant who files a complaint that the police then pursue on the complainant's behalf with the complainant giving evidence in their proceedings. Prosecution witnesses do not enjoy legal protection. Thus whistle blowing is not the norm.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Yes. Section 11(5) of the Ghana Supply Commission Law, 1990 (PNDCL 245) requires the Commission, which is mandated by law as sole procurer for public agencies, to invite tenders for all purchases above 10,000,000.00 cedis. Section 39 of the Local Government Act, 1993 (Act 462) requires District Assemblies to set up tender boards to advise and manage all procurement matters at the district level. District tender boards are regulated under the Local Government (District Tender Boards) (Establishment) Regulations, 1995 (LI 1606). The regulations provide elaborate guidelines on open tender procedures at district level. Furthermore, procurements financed from international aid resources are routinely subject to competitive bidding.

Law 245, the only national level rule, seems targeted at the procurement of goods, thereby leaving the procurement of works and services largely to convention. (Refer to paragraph 6 on the Executive).

Are the rules laid down in documents publicly accessible?

Yes. Available rules are published as referred to above, in the form of laws and regulations.

Are there strict formal requirements that limit the extent of sole sourcing?

To some extent, yes.

Currently, in the absence of formal rules governing procurement of works and services at national level, a multiple regime exists. International aid funded projects are sourced on the particular fund providers terms, including any provisions on sole sourcing, thereby eliminating local discretion. Sole sourcing of government funded projects depend on the surrounding circumstances including time, readiness of contractor and price (see Report of the Committee of Inquiry into the Award of Contracts in Respect of the Renovation Works at the Accra and Kumasi Sports Stadia, Accra June 1999, page 18).

Are all major public procurements widely advertised to the private sector?

Yes.

Are procurement decisions made public?

No. A decision is usually revealed only where the performance of the contract is in the public domain.

Is there a procedure to request review of procurement decisions?

None.

Can an unfavorable decision be reviewed in a court of Law?

Yes. Article 125(5) of the Constitution vests jurisdiction in all matters in the courts. Nothing stops an aggrieved party in any situation from seeking redress in court.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

None

Are there rules to prevent nepotism/conflict of interest in public procurement?

Yes. Section 9 of Law 245 requires board members of the Supply Commission to disclose financial interests, section 39(3) of Act 462 demands that appointees to district tender boards declare their assets and this is further elaborated in section 4 of L I 1606.

Are assets, incomes and life styles of public procurement officers monitored?

No machinery exists for monitoring procurement officers in particular beyond compliance with the general requirement to declare assets. Moreover, there is no administrative machinery for routine follow up of asset declarations filed with the Auditor-General. In the course of carrying out its mandate, the Serious Fraud Office has uncovered methods of procurement fraud but it does not have a

mechanism for persistent preventive monitoring. (See 1999 Annual Report of the Serious Fraud Office – SFO - page 18).

There is widespread abuse of public procurement procedures (Passim, Ghana Governance and Corruption Survey, 2000; and Annual Report of the SFO, 1999 and Survey Report of CDD-Ghana: Popular Attitudes to Democracy and Markets in Ghana, pages 34 and 35).

Ombudsman

Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Yes. The Commission on Human Rights and Administrative Justice (CHRAJ) which functions both as human rights commission and an Ombudsman is an independent constitutional body set up by chapter 18 of the 1992 Constitution. It is mandated to protect human rights, prevent administrative injustice and investigate allegations of public corruption. Act 456 of 1993 established the Commission. The Commission's Complaint Procedure Regulations, 1994 (C I 7) sets out the administrative procedures for accessing the Commission's services.

Is the ombudsman independent? Are appointments required to be based on merit? Is the appointee protected from removal without relevant justification? Has an ombudsman been removed without relevant justification in the last 5 years?

The Ombudsman is constitutionally independent. Article 225 of the Constitution insulates the Commission from interference in the performance of its functions. A prospective Commissioner must have the qualifications required for an appointment as an appeal court judge whilst a deputy commissioner must have the qualifications of a high court judge. The procedure for removal of a commissioner is the same as that of a justice of the superior court. It must be based on grounds of infirmity of body and mind and misconduct as determined by a panel of judges appointed by the Chief Justice which then makes recommendations to the President. No removals have occurred in the last 5 years.

Can petitioners complain anonymously if they fear reprisals?

Yes - if the complaints relate to corruption.

But rules are not explicit and complainants are not always aware that they can complain to CHRAJ anonymously.

Are reports of the ombudsman published?

Yes. Section 19 of Act 456 requires submission of an annual report to Parliament and allows the Commission the discretion to publish particular case results or matters it deems in the public interest.

The latest published report of the Commission covers the year 1998 and it was submitted to Parliament in 1998. However, the Reports have not been tabled in Parliament for debate.

Does the government act on the ombudsman's recommendations?

Yes. In most cases, Ministries, Departments and Agencies (MDA's) have usually responded to the Commission's conclusions in respect of administrative matters (page 43 of the 1998 annual report).

However, at least in the past government has resisted and challenged the findings and recommendations of CHRAJ. The Attorney General in the government of the National Democratic Congress (NDC) partially succeeded in challenging the jurisdiction of the Commission to inquire into cases property confiscations by extra legal tribunals of the Rawlings-headed regimes of the Armed Forces Revolutionary Council and the Provisional National Defense Council (SC no. 3/96 unreported). Also, in 1996, the government issued a white paper essentially disputing the adverse conclusions of the Commission in a corruption investigation against 4 ministers of state.

The Commission has continued to investigate complaints. But the Commission's activities in the area of investigating media allegations of corruption appears to have slowed down, possibly for lack of resources. Also the government appears to be determined to pre-empt the Commission. In October of 2000, the Commission recommended sanctions against a District Chief Executive for corruption but instead of acting on the recommendations, the President dismissed the DCE without stated cause in a move clearly designed to outflank the Commission.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

Yes. There is the Serious Fraud Office (SFO) - a public investigative agency set up under the Serious Fraud Office Act, 1993 (Act 466) . It is to investigate public acts likely to result in serious financial or economic loss to the state.

Are they independent? i.e. are appointments required to be based on merit? Are appointments generally based on merit? Are the appointees protected from removal without relevant justification? Are their reports published (other than when criminal charges are pending)?

The SFO is not independent. Section 4 of Act 466 places the Office under the Attorney General. The Director and two Deputies are appointed by the President acting upon the advice of the board of the SFO and in consultation with the Public Services Commission. There is a strong perception that the incumbent Director was appointed for reasons other than merit. Though Act 466 is not explicit on removal, public appointees fall under Article 297(a) of the Constitution, which provides that a power to appoint implies a power to remove. In fact, the first Director of SFO (who was yet to be confirmed) was dismissed from office in 1997 following public disagreements between the Director and the government. The former Director's suit challenging his dismissal is still in the court.

Do they report publicly to the legislature on the general scope of their work?

The SFO submits an annual report of its activities to the Attorney General and minister of Justice for onward submission to the President and Parliament.

Can people complain to the agency without fear of recrimination?

There are no legal provisions for witness protection. This hampers investigations and prosecutions somewhat.

But SFO initiated a discussion on the need for Legislation to protect "whistle blowers."

In addition to the lack of protection for informers, public perception of the Office is not positive. It is widely perceived to lack political independence. It was seen as a lackey of the NDC government.

Media

Is there a law guaranteeing freedom of speech and of the press?

Chapter 12 of the Constitution is devoted to legal protection of the Media. Article 162(1) guarantees the freedom and independence of the media, 162(4) insulates editors and publishers from interference from the government and absolves them of penalties for their editorial views, opinions or contents. Article 162 (5) re-emphasizes the freedom of the media to uphold the principles of the Constitution and uphold the responsibility and accountability of the government to the people of Ghana. However, article 164 subjects these guarantees to Laws that are reasonably required to ensure national security, public order, public morality and the protection of reputations, rights and freedoms of others.

Without a definite judicial interpretation of the boundaries of article 164, erosion of the guaranteed freedoms of the media is always eminent. Under color of article 164, Laws that criminalize speech have been maintained on the statute books and actively applied against media practitioners. Moreover, there is a strong perception of judicial complicity in the pseudo-legal persecution of the media. Though all agree that civil libel rules are necessary for the protection of reputations, the courts have been in the habit of slapping disproportionately huge fines on the independent press for civil libel. In May of 1999, the Ghanaian Chronicle suffered damages of 40 million cedis (approximately \$18,000) when it was adjudged liable in the matter of a minister it had accused of self-dealing and abuse of office (CDD Democracy Watch Vol. 1 No. 1. December 1999 page 3).

The new Government of Ghana (inaugurated January 7 2001) has expressed strong intentions of repealing all laws criminalizing speech. It has withdrawn from the prosecution of a criminal/seditious libel case pending for over 5 years against 2 newspapers, their editors and publishers, thereby bringing the proceedings to an abrupt end just before judgment was to be delivered. The Government has also expressed an interest in the passage of freedom of information legislation.

Is there censorship of the media?

Not directly. Article 162(2) expressly forbids censorship.

But official censorship and self-censorship has occurred indirectly through the retention and rampant application of criminal and seditious libel laws, frivolous application of the rules of contempt of court, and granting of preemptive injunctions. Also, the government has used its position as the most lucrative source of advertisement to teach the non-state media a lesson that it does not pay to be assertive and insubordinate to government; it has discriminated against the private media in the placement of government advertisement.

Government has also taken advantage of the absence of clarity on the constitutional and statutory provisions regarding the allocation of radio and television frequencies to unduly delay or deny allocation of frequencies to prospective operators deemed threatening to government.

Censorship has also been imposed indirectly through the appointment of pliable individuals to the boards of state media - until the Supreme Court ruling in 2000 removing such powers from the President and giving them to the National Media Commission. Thus, without giving any reasons, media personnel and programs considered "troublesome" and or politically threatening by government could be taken off the air. Moreover, the fear of reprisals induces a great deal of self censorship on the part of media practitioners.

Is there a spread of media ownership?

Yes. A reasonably even spread prevails. There are state, private and foreign interests in print, radio and television.

However, the state owns the largest circulation dailies and newspaper of record as well as the only TV station whose broadcasts are transmitted nationally.

Does any publicly owned media regularly cover the views of government critics?

Yes.

Criticism of government may be featured occasionally but not regularly. And there are credible reports that editors of such media were often censored for such "slippages" at least in the previous administration.

A freelance media commentator was arrested without a charge by the Bureau of National Investigations (BNI) - the state counter insurgency and intelligence arm - immediately after making remarks about the President's style of political campaigning (The Chronicle, November 7-8, 2000 page 1; CDD Democracy Watch, Vol. 1 No. 4, December 2000, p. 11).

Have journalists investigating corruption been physically harmed in the last 5 years?

Yes. Under the two terms of the administration of Rawlings-NDC, the threat of force was always present. The editor of a major independent newspaper was ambushed and "abducted" by the military and detained at the military barracks which houses the Ministry of Defense, for publishing a story alleging discontent in the Army. He was released the following day without a charge (CDD Democracy Watch Vol. 1 No. 2 March 2000 page 6).

Does the Media carry stories about corruption?

The print media including the state owned media are replete with stories about corruption. Recently an independent radio station has also broken the news of a major corruption scandal.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Article 162(3) of the Constitution states that no impediments shall be placed in the establishment of private media, including laws requiring licensing of media ventures.

But the Frequency Allocation Board has not been adequately transparent and independent. While there have been no legal impediments in the way of those who seek to establish newspapers, impediments have been placed in the way of applicants in the electronic media. Allocation of frequencies for radio and TV broadcasts have been manipulated to prevent applicants whose political affiliations and loyalties may be suspect.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

To a large degree, yes. The incidents related in the preceding sections of this heading testify to that.

Civil Society

Does the public have access to information and documents from public authorities?

Not adequately.

Article 21(f) of the 1992 Constitution guarantees the right to information. Section 14(2) of the Public Records and Archives Administration Act, 1997 (Act 535) vests the general management of public records in the Director of a central public records facility with the discretion to maximize the utility of records in the possession of the facility. But the civil /public services, which generate the records, operate under the State Secrets Act, 1962 (Act 101), section 3 of which prohibits wrongful communication of public information in very strong language whilst section 14 prescribes a penalty of 14 years imprisonment for infractions.

Act 101 has shaped public servants' psyche to the extent that though it is selective in the levels of disclosure prohibition, public authorities routinely refuse to release information. On the one hand, refusal could be protective but on the other-, which is the most likely explanation-, all manner of actions not in the public interest may be conveniently hidden from public scrutiny (See The Ghana Governance and Corruption Survey, August 2000 page 39).

Do the public authorities generally co-operate with civil society groups?

Yes. The religious bodies often interact with the political institutional executive at all levels in public forums where exhortatory messages on the evils of corruption are absorbed.

However, government interaction with most other civil society bodies on such issues is not so cordial.

Are there citizen's groups or business groups campaigning against corruption?

Yes. There is a modest but promising coalition against corruption groups a private sector umbrella advocacy organization, civil society governance think tanks, civil society anti corruption advocacy organization, an independent constitutional body and some public agencies. The coalition has managed to attract the attention of the government as a focal point for approaching issues of corruption.

An umbrella organization of religious groups has also been very active in the anti- corruption arena in terms of awareness creation. In July 1998, the Catholic Bishops Conference issued a Pastoral letter against corruption and developed a customized prayer against corruption. Before the year 2000 elections, Muslim and Christian Councils came together and launched a public drive against electoral fraud under one banner.

Are there citizens groups monitoring the government's performance in areas of service delivery, etc?

Yes.

But only a modest beginning has been made so far with the successful roll out of a pilot program to monitor public works in selected districts designed and managed by the Ghana Center for Democratic Development (CDD-Ghana). The pilot, which began in June 2000, covers 12 donor-funded projects in 6 districts of the country. Initially, monitoring had to focus on donor-funded projects because of expected difficulties in getting information on public funded projects. The project utilizes citizens within the locality of the project to carry out the physical monitoring and hopes these persons will be able to galvanize local civil society organizations and community based organizations to participate over time.

A development oriented NGO – the Integrated Social and Community Development and a feminist NGO – Pronet- have been active in monitoring service delivery in the area of water and sanitation.

Do citizens groups regularly make submissions to the legislature on proposed legislation?

Not much, but expanding.

The 1992 Constitution provides for extensive public participation in the affairs of state, especially article 35, which demands that the state create optimum conditions for the realization of citizen

participation. Order 199 of the Standing Orders of the Parliament of Ghana allows “strangers” to address a select committee at the discretion of the committee.

Citizens groups and individuals really got involved in legislative activity when in the first Parliament of the Fourth Republic when there was no opposition party in Parliament. The Ghana Bar Association was active in submitting memos suggesting amendments to Parliament. The Institute of Economic Affairs – an independent think tank - was also active in organizing experts to give inputs Parliament on draft legislation at that time. Perhaps, the golden moment of citizen participation in the legislative process was in 1993 when the Executive introduced the Serious Fraud Office Bill into a virtual one party Parliament. Public indignation at the draconian provisions in the bill boiled over into vigorous debate outside the House and strong representations by way of memoranda and appearances before the House Committee on Constitutional, Legal and Parliamentary Affairs, thereby pressurizing the Legislature to considerably water down the unsavory portions of the bill.

The practice of submissions to the House committees has continued to gain considerable ground in the second Parliament. Select committees have gone into caucus with civil society to discuss prospective bills before laying them on the floor of the House. A classic example is the retreat to a seaside resort in October, 1999 by the Parliamentary Committee on Legal and Constitutional Affairs with legal experts and civil society to review the potentially contentious Immigration/Citizenship bill (see CDD Democracy Watch Vol. 1 No. 1 December 1999, page 11).

Local Government

Is there a legal requirement that meetings of city/town councils be open to the press and public?

No.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and the public?

No.

Progress With Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

No. There has not been an explicit strategy.

But the recently inaugurated New Patriotic Party (NPP) -John Kufour government Ghana has expressed a verbal commitment to attack corruption. In his inaugural address on January 7 2001, President Kufour committed his government to “zero tolerance of corruption.” He voiced similar sentiments in his Sessional Address to Parliament.

How much of the strategy has been implemented?

None.

The verbal pronouncements have yet to be translated into a coherent strategy except that the government has announced a plan to establish an office of accountability within the Executive Branch to foster Executive Branch accountability, it has developed a draft code of conduct for members of the executive branch. The linkages between these executive branch self-policing mechanisms and the existing national integrity institutions are yet to be articulated.

Is the Government meeting its own timetable?

There is no timetable, but the government has accepted an invitation from the Ghana Integrity Initiative (the local chapter of TI) and CDD-Ghana for an ethics and accountability retreat in March 2001 involving resource persons from Transparency International.

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Index

A

Abuse of office, 14
 Access to information, 5, 12, 14, 16
 Accra Sports Stadium, 12
 Afro Barometer survey, 7
 Agbemor, Kofi, 6
 Aid. *See* Donors
 Anonymity, 13
 Anti-corruption strategy. *See* Government anti-corruption strategy
 Armed Forces Revolutionary Council, 13
 Ashanti Goldfields Company, 4
 Assets, declaration of. *See* Disclosure provisions
 Attorney General, 3, 10, 13, 14
 Auditor General, 3, 4

B

Bibliography. *See* References
 Blacklisting, 12
 Bribery, 6, 9, 11
 Broadcasting. *See* Media
 Burden of proof, 5
 Bureau of National Investigations (BNI), 15
 Business Committee, 6

C

Catholic Bishops Conference, 16
 Censorship, 15
 Christian Council, 16
 Civil rights, 4
 Civil service. *See* Public sector
 Civil Service Performance Improvement Program (CSPIP), 5
 Civil society, 16–17
 Level of activity, 6
 Relationship with authorities, 16
 Role in anti-corruption, 11, 16
 Submissions on proposed legislation, 16
 Codes of conduct, 17
 Commission on Human Rights and Administrative Justice (CHRAJ), 3, 4, 5, 9, 11, 13
 Committee of Privileges, 6
 Complaints mechanisms, 10, 11, 13, 14
 Conferences, 16
 Conflict of interest, 4, 6, 12. *See also* Disclosure provisions
 Constitution. *See* Law; Laws
 Convention Peoples Party (CPP), 3
 Conventions, international. *See* International law
 Corrupt relationships, 9
 Corruption, presence of
 Executive, 4, 5, 14
 Financial sector, 9

Local government, 13
 Police and prosecutors, 4, 11
 Public procurement, 5, 12
 Public sector, 10
 Council of State, 3, 8, 10
 Cronyism, 9

D

Disclosure provisions, 3, 4, 5, 6, 7, 10, 12, 14
 Donors
 Capacity building, 8
 Civil society, 16
 Procurement, 5, 12

E

Economic crime
 Fraud, 9, 12
 Education
 Schools, 9
 Election monitoring, 7
 Electoral commission (EC), 7
 Independence, 7
 Electoral misconduct, 15
 Ethics. *See also* Education
 Public service, 3
 European Union (EU), 8
 Executive, 3, 4–5
 Effectiveness, 3
 Prosecutions of, 3
 Reforms, 17
 Rules and procedures, 4, 5
 Sanctions, 4, 5, 8

F

Finance Committee of Parliament, 6
 Fraud, 9, 12
 Freedom of speech, 14
 Frequency Allocation Board, 15

G

Ghana Airways, 4
 Ghana Bar Association, 9, 17
 Ghana Center for Democratic Development (CDD-Ghana), 7, 16, 17
 Ghana Governance and Corruption Survey, 10, 11, 16
 Ghana Integrity Initiative, 17
 Ghana National Petroleum Company, 5
 Ghana Television, 3
 Ghanaian Chronicle, 5, 14
 Ghanaian Times, The, 5
 Gifts. *See* Disclosure provisions
 Government anti-corruption strategy, 17
 Government procurement. *See* Public procurement

- H**
- Hospitality. *See* Disclosure provisions
- Human rights, 4
- I**
- Institute of Economic Affairs, 17
- Integrated Social and Community Development, 16
- International Federation of Electoral Systems (IFES), 7
- Investigative/watchdog agencies, **13, 14**
- Effectiveness, 3
 - Independence, 13, 14
 - Prosecutions, 3
 - Reporting, 13, 14
- J**
- Judicial Council, 9
- Judiciary, **8–9**
- Effectiveness, 3
 - Independence, 3, 8
 - Prosecutions, 9
 - Recruitment and career development, 9
- K**
- Kufour, John, 17
- Kumasi Sports Stadium, 12
- L**
- Law
- Civil society, 16
 - Effectiveness, 3
 - Executive, 3, 4, 5
 - Investigative/watchdog agencies, 4, 5, 13, 14
 - Judiciary, 8
 - Legislature, 6
 - Media, 14
 - Ombudsman, 13
 - Police and prosecutors, 10, 11
 - Political party funding, 7
 - Public procurement, 11
 - Public sector, 9
 - Reforms, 14, 17
 - Supreme audit institution, 8
- Laws, Ghana
- Audit Service Act, 2000 (Act 584)
 - Section 10 (1), 8
 - Section 11-15, 8
 - Section 18, 8
 - Civil Service Law, 1993 (PNDCL 327), 9
 - Section 19, 9
 - Section 56, 9
 - Section 71-82, 9
 - Section 72, 10
 - Section 88, 4
 - Section 91, 5
 - Civil Service Regulations 1960 (LI 47), 5
 - Commission on Human Rights and Administrative Justice Act, 1993 (Act 456), 13
 - Section 19, 13
 - Section 7, 4, 10
 - Companies Code, 1963 (Act 179)
 - Section 205-207, 4
 - Complaint Procedure Regulations, 1994 (CI 7), 13
 - Constitution, 1992
 - Article 103 (3), 5
 - Article 104 (5), 6
 - Article 107, 9
 - Article 108, 6
 - Article 125 (5), 12
 - Article 127, 8
 - Article 128(4), 9
 - Article 14 (a), 7
 - Article 14 (b), 7
 - Article 162 (1), 14
 - Article 162 (2), 15
 - Article 162 (3), 15
 - Article 162 (4), 14
 - Article 162 (5), 14
 - Article 164, 14
 - Article 168, 8
 - Article 178, 6
 - Article 179, 6
 - Article 179 (8), 6
 - Article 187 (11), 8
 - Article 187 (13), 8
 - Article 187 (15), 8
 - Article 187 (2), 8
 - Article 187 (5), 8
 - Article 187 (7) (a), 8
 - Article 191, 9
 - Article 194, 9
 - Article 196, 9
 - Article 198, 9
 - Article 2, 8
 - Article 2 (3), 4
 - Article 2 (4), 4
 - Article 202, 10
 - Article 21 (f), 16
 - Article 218, 4
 - Article 218 B, 9
 - Article 225, 13
 - Article 284, 4
 - Article 285, 4, 5
 - Article 286, 4
 - Article 287, 4
 - Article 293, 4
 - Article 296, 5
 - Article 297, 10
 - Article 297 (a), 14
 - Article 33, 4, 8
 - Article 35, 16
 - Article 43, 7
 - Article 46, 7
 - Article 54, 7
 - Article 55 (14), 7
 - Article 55 (15), 7
 - Article 70 (2), 7

- Article 88 (3), 10
- Article 98 (2) (b), 6
- Corrupt Practices (Prevention) Act, 1964 (Act 230), 11
 - Section 2 (e), 5
- Criminal Code, 1960 (Act 29), 11
 - Section 240-43, 5
- Criminal Procedure Code, 1960 (Act 30), 11
 - Section 54, 10
- Electoral Commission Act, 1993 (Act 451), 7
- Ghana Supply Commission Law, 1990 (PNDCL 245)
 - Section 11 (5), 11, 12
 - Section 9, 12
- Gold Coast General Orders (1951), 5
- Local Government (District Tender Boards) (Establishment) Regulations, 1995 (LI 1606), 12
- Local Government Act, 1993 (Act 462)
 - Section 39, 11
 - Section 39 (3), 12
- Police Service Act, 1970 (Act 350)
 - Section 23, 11
- Political Parties Act, 2000 (Act 574)
 - Section 13, 7
 - Section 13 (2), 7
 - Section 13 (5), 7
 - Section 13 (6) (b), 7
 - Section 14, 7
 - Section 14 (2), 7
 - Section 14 (4) (b), 7
 - Section 22, 7
 - Section 24, 7
 - Section 25, 7
- Public Office Holders (Declaration of assets and disqualification) Act, 1998 (Act 550), 4
 - Section 8, 4, 10
- Public Records and Archives Administration Act, 1997 (Act 535)
 - Section 14 (2), 16
- Revenue Agencies (Governing) Board Act, 1998 (Act 558)
 - Section 7, 4
- Serious Fraud Office Act, 1993 (Act 466), 14
 - Section 20, 10
 - Section 4, 14
- Social Security Law, 1991 (PNDCL 247)
 - Section 7 (8), 4
- State Proceedings Act, 1998 (Act 555), 4
- State Secrets Act, 1962 (Act 101), 5
 - Section 14, 16
 - Section 3, 16
- Legislature, **6–7**
 - Effectiveness, 3
 - Independence, 3
 - Rules and procedures, 6
 - Sanctions, 6
- Libel, 14, 15
- Local government, 17
- Local Government (District Tender Boards) (Establishment) Regulations, 1995 (LI 1606), 12
- M**
- Media, **14–16**
 - Impartiality, 15
 - Journalists, 15
 - Licensing, 15
 - Ownership, 3, 15
 - Restrictions, 14
 - Sanctions, 15, 16
- Metro TV, 3
- Monitoring of assets, 3, 4, 7, 12
- Monitoring of lifestyles, 12
- Muslim Council, 16
- N**
- Names of individuals, Ghana
 - Agbemor, Kofi, librarian of parliament, 6
 - Kufour, John, President, 2001-, 17
- National anti-corruption strategy. *See* Government anti-corruption strategy
- National Democratic Congress (NDC), 3, 13
- National integrity systems, discussion of, **3**
- National Media Commission, 8, 15
- Nepotism, 9, 12
- New Patriotic Party (NPP), 3, 17
- Newspapers. *See* Media
- NGOs. *See* Civil society
- O**
- Ombudsman, **13**
 - Effectiveness, 3
 - Independence, 13
 - Prosecutions, 3
 - Reporting, 13
 - Rules and procedures, 13
- Organisations, Ghana
 - Accra Sports Stadium, 12
 - Armed Forces Revolutionary Council, 13
 - Ashanti Goldfields Company, 4
 - Bureau of National Investigations (BNI), 15
 - Business Committee, 6
 - Catholic Bishops Conference, 16
 - Christian Council, 16
 - Commission on Human Rights and Administrative Justice (CHRAJ), 3, 4, 5, 9, 11, 13
 - Committee of Privileges, 6
 - Convention Peoples Party (CPP), 3
 - Council of State, 3, 8, 10
 - Electoral commission (EC), 7
 - Finance Committee of Parliament, 6
 - Frequency Allocation Board, 15
 - Ghana Airways, 4
 - Ghana Bar Association, 9, 17
 - Ghana Center for Democratic Development (CDD-Ghana), 7, 16, 17
 - Ghana Integrity Initiative, 17

- Ghana National Petroleum Company, 5
- Ghana Television, 3
- Ghanaian Chronicle, 5, 14
- Ghanaian Times, The, 5
- Institute of Economic Affairs, 17
- Integrated Social and Community Development, 16
- Judicial Council, 9
- Kumasi Sports Stadium, 12
- Metro TV, 3
- Muslim Council, 16
- National Democratic Congress (NDC), 3, 13
- National Media Commission, 8, 15
- New Patriotic Party (NPP), 3, 17
- Parliamentary Committee on Legal and Constitutional Affairs, 17
- Peoples National Convention (PNC), 3
- Pronet, 16
- Provisional National Defense Council, 13
- Public Accounts Committee, 6, 8
- Public Services Commission, 9
- Serious Fraud Office (SFO), 3, 11, 12, 14
- Supreme Court, 4, 8
- TV3, 3
- Organisations, international
 - European Union (EU), 8
 - International Federation of Electoral Systems (IFES), 7
 - Research International, 7
 - Transparency International (TI), 17
 - World Bank (WB), 5
- Overview, country, 3
- P**
 - Parliament. *See* Legislature
 - Parliamentary Committee on Legal and Constitutional Affairs, 17
 - Peoples National Convention (PNC), 3
 - Police and prosecutors, **10–11**
 - Independence, 3, 10
 - Prosecutions, 11
 - Political parties. *See* Politics, Political parties
 - Political party funding, **7**
 - Reporting, 7
 - Rules and procedures, 7
 - Politics
 - Partisan politics, 10
 - Political parties, 3
 - Post employment restrictions, 10
 - Private Sector Participation (PSP), 5
 - Pronet, 16
 - Provisional National Defense Council, 13
 - Public Accounts Committee, 6, 8
 - Public procurement, **11–12**
 - Rules and procedures, 11
 - Public sector, **9–10**
 - Independence, 3, 9
 - Recruitment and career development, 9
 - Reforms, 5
 - Rules and procedures, 4, 5, 9, 10
 - Sanctions, 5, 9
 - Public sector reform, 5
 - Public service. *See* Public sector
 - Public Services Commission, 9
 - R**
 - References, 18
 - Registers. *See* Disclosure provisions; Conflict of interest
 - Research International, 7
 - S**
 - Serious Fraud Office (SFO), 3, 11, 12, 14
 - Service delivery, 16
 - Standards of conduct. *See* Codes of conduct
 - Supreme audit institution, **8**
 - Effectiveness, 3
 - Independence, 8
 - Reporting, 8
 - Rules and procedures, 4, 8
 - Supreme Court, 4, 8
 - Surveys, 7, 10, 11, 12, 16
 - T**
 - Transparency International (TI), 17
 - TV3, 3
 - W**
 - Whistle-blowing, 10, 11, 14
 - White collar crime. *See* Economic crime
 - Workshops, 17
 - World Bank, 5