



NEW ANTI-CORRUPTION GOVERNMENTS: THE CHALLENGE OF DELIVERY

GHANA

A CASE STUDY

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Paper commissioned for the Kenya Meeting on New Governments, co-organised by the Government of Kenya, TI-Kenya and Transparency International, held in Nairobi, Kenya, in October 2004.

Ghana

1. Executive Summary

Popular desire for change swept the John Kufuor-New Patriotic Party (NPP) to election victory in December 2000 and to power on 7 January 2001. The new administration declared a commitment to fighting corruption as one of its main priorities. It has, however, fulfilled few of its anti-corruption promises. The repeal of criminal libel and greater accessibility to media and tolerance of media scrutiny have improved official transparency; anti-corruption reforms have been incorporated into poverty reduction strategies; new transparency-enhancing public procurement legislation has been passed; new measures to improve budget transparency have been adopted etc. However, very little substantial change has occurred: flaws in the law and Constitution that foster political patronage and inhibit checks and balances remain, public institutions are dysfunctional and the political and popular culture of corruption and weak demand for accountability remains.

2. Country overview and transition process

2.a. Country overview

The 1992 Constitution set the parameters for Ghana's political governance. A classic liberal document, it makes provisions for a whole range of civil liberties including associational and media freedoms.

It provides for a directly elected president and parliament. Executive powers rest in the hands of the president (elected every 4 years) and legislative powers are shared between the president and a 200- member legislature (to be increased to 230 from 2005) elected (every four years at the same time as the president) on behalf of political parties or independently from single-member constituencies.

There is a constitutionally independent judiciary, whose members have tenure, and a system of public services comprising the civil service, police force, armed forces, public boards and corporations and other public services. These are separate and partially autonomous (they have either governed councils or commissions), but come broadly under the term executive branch, especially in terms of the appointment of their top executives.

The Constitution establishes several other important institutions of horizontal accountability and oversight such as the Judicial Commission, the Electoral Commission (EC), the Commission on Human Rights and Administrative Justice (CHRAJ), the National

Commission for Civic Education (NCCE), and the National Media Commission, and grants them constitutional independence.

There is also the Council of State (a cross between an upper house and council of elders), which acts in an advisory and consultative role to the President, especially in the area of public appointments, even though the president is not obliged to take its advice.

Administratively, Ghana is styled as a unitary state, with administrative decentralisation at the district level. Local government is organised around a 110 District Assemblies (and Unit Committees), which are composed of two-thirds directly elected representatives and one-third presidential appointees. The DAs are headed by District Chief Executives who are appointed by the President and his appointment is approved of and ratified by the district assembly.

There are nine registered parties, but two (the majority NPP and the National Democratic Congress - (NDC)) have substantial representation in Parliament and national following.

2.b. Transition conditions

The formal transition to democratic rule in Ghana under the Fourth Republic (1992 Constitution) began at the start of the 1990s. It started with a partial liberalisation of the political system in the early 1990s - after nearly one decade of quasi-authoritarian rule under Flt. Lieutenant J. J. Rawlings and the Provisional National Defence Council (PNDC). The formal preparations for a return to constitutional rule in that period highlighted regional consultative forums collating opinions on the merits and demerits of multi-party democracy under the auspices of the government-controlled National Commission for Democracy (NCD). These preparations included: the setting up of a committee of experts in 1991 to make proposals for a future constitution; the convening in 1991 of a partially and indirectly elected assembly to draft a new constitution for Ghana; the holding of a national referendum in April 1992 to approve the draft constitution; the lifting of the eleven-year ban on party politics, which opened the way for presidential and parliamentary elections in November and December 1992 and culminated in the formal inauguration on 7 January 1993 of an elected government led by Flt. Lieutenant J. J. Rawlings and the National Democratic Congress (NDC).

The transition was criticised with some justification, however, as ‘transition without change’, in view of the fact that it saw the military PNDC administration transform itself into an elected NDC administration, with J .J Rawlings as an elected president in a government comprising members of the erstwhile military government as ministers. In addition, the NDC had an overwhelming dominance in the new parliament, which

guaranteed that almost all executive initiatives would be routinely approved by the legislature.

In the light of the above, the December 2000 elections and the inauguration of the Kufuor administration on January 7 2001 should be seen as marking the final phase of Ghana's transition to multi-party democracy. Among other things, it brought into office a right-of-centre liberal democratic group, an administration with no military history -in place of the left-of-centre populist NDC with its military background. The Kufuor New Patriotic Party (NPP) administration also represented a clear alternative to the ruling NDC administration, whose officials had become perceived as corrupt and which had lost its record of sound economic management.

Indeed official corruption and abuse of power were two of the main opposition campaign themes in the December elections. Corruption and the need to address it had been very high on the public agenda since the mid 1990s, following the dramatic CHRAJ investigations into alleged corruption among top officials in the NDC government and the subsequent resignations of some of the ministers implicated in the scandals.

The pre-election period was also characterised by public frustration with macroeconomic management some of which was blamed, rightly or wrongly, on corruption. At the same time the main opposition NPP and its candidate, John Kufuor, promised to address forcefully the problem of corruption.

2.c. Preparations for the transition

Preparations for the final phase of the transition to democratic rule included the transformation of the Interim National Electoral Commission (INEC), which oversaw the 1992 elections, into a relatively and increasingly independent and credible election authority in Ghana presiding over increasingly competitive elections. The Electoral Commission, with the support of the International Foundation for Electoral Systems (IFES) and other donors, initiated major reforms in the electoral process in response to credible opposition complaints about unfair electoral arrangements and an abuse of incumbency in the first transition elections. For example, it introduced transparent ballot boxes and allowed accredited agents of the political parties and independent election observers to be present at the polling station. It also established an inter-party advisory mechanism to provide a forum for redressing complaints during the electoral process.

The transition period saw the emergence of a vibrant media. Thus, from a pre-transition situation of exclusive state control over electronic media (Ghana Broadcasting Corporation owned both the only TV station and radio stations in the country) and national dailies,

Ghana had come to have three TV stations, two of which were private and many private newspapers and tabloids devoted to politics, entertainment and culture, lottery and sport.

Most significantly, an independent media and an independent-minded media with a zeal for investigative journalism had emerged, with the *Chronicle* and the *Independent* making history by exposing the corruption scandals that triggered the CHRAJ investigations and led to the resignation of the affected NDC officials in 1996.

The period also spawned an increasingly vibrant civil society, with several NGO's dedicated to the protection and promotion of fundamental human rights, civil liberties, and fighting corruption. Civil society grew active and strong enough to initiate proposals for transparency-enhancing bills. For instance, the Institute of Economic Affairs (IEA) initiated a draft freedom of information act (FOIA) and "whistle-blower protection" legislation, and the Ghana Centre for Democratic Development (CDD-Ghana) (formerly Centre for Democracy and Development) conducted a nationwide study into perceptions of corruption in the delivery of health and education services in 1998 and a nationwide diagnostic and empirical study into corruption in Ghana in 2000.

Another crucial development during this period was the emergence of the practice of building multi-stakeholder coalitions to fight corruption. For example, a civil society and state agency group planned and organised Ghana's first National Integrity Workshop in 1998 under CHRAJ auspices and the formation, in 2000, of the Ghana Anti-Corruption Coalition (GACC), brought together public, private sector and civil society organisations to fight corruption. Its crowning glory was to have provided institutional cover for the World Bank-led donor-sponsored governance and anti-corruption diagnostic survey mentioned above, which helped considerably to put the anti-corruption agenda on Ghana's political map.

The above developments helped to make public corruption one of the key themes in the 2000 election campaign. Together, they helped to create the context that led the president to make the commitment to rid government of corruption, to voluntarily make a publicly disclosure of his personal assets, to promulgate a code of conduct for public officials and executive appointees, to establish an office of accountability within the executive branch, and to pass freedom of information and whistle-blower protection legislation. The anti-corruption and transitional justice initiatives in the final phase of Ghana's transition to democracy and the 2000 election campaign also led to the NPP opposition's promise to establish a South African-style truth commission. Indeed, the promise to pursue a policy of zero tolerance for corruption in the inaugural address of President Kufuor generated considerable optimism for the prospect of anti-corruption reforms and clean government in Ghana.

3. Initiatives taken by the Kufuor government

Anti-corruption initiatives include the decision to discontinue the criminal trial of some journalists charged with libelling public officers and to repeal the criminal libel law, which had been used by the previous administration to harass and prosecute journalists and others accused of libelling public officials. The regime also opened itself up to the media in an unprecedented manner - there were frequent appearances by ministers and other top level government officials from the new government on radio, and television, and other public forums to answer questions, as well as increased use of official advertisements and announcements, press conferences, people's assemblies and other initiatives to directly respond to public concerns. There also appeared to be willingness on the part of the new government, particularly in the first year and a half, to engage with anti-corruption advocacy groups such as the GACC, Ghana Integrity Initiative (GII), and CDD-Ghana. Indeed, the new government promised to accede to a standing request for presidential level representation on the GACC and to provide an official contact point to serve as a link between the government and the anti-corruption coalition.

The government also made initial moves to promulgate the code of conduct for executive employees and to develop the concept of an office of accountability within the executive branch and to operationalise it. Even more importantly, the new government embarked on the rigorous prosecution of former officials in the legitimate judicial forums, leading to the conviction and imprisonment of ex-finance minister Victor Selormey for wilfully causing financial loss to the state and the unprecedented trial and conviction of the first NPP minister for youth and sports, Mallam Issah, for embezzlement.

More substantially, as part of its desire to qualify for relief as a Highly Indebted Poor Country (HIPC), the administration has highlighted improved governance and anti-corruption among its priorities to reduce poverty in the 2002-2004 period.

3.a. Designing a realistic plan of action.

How to determine sequencing: There was no evidence of systematic planning and realistic analysis of the anti-corruption initiatives emanating from the presidential/political executive levels of the new government. There were only episodic statements and actions that seemed to capture the prevailing public mood against corruption and reflected the good intentions as well as the relative innocence of the new administration in the context of a general political honeymoon. Where anti-corruption reform intentions have been captured in action plans, such as the Poverty Reduction Strategy Paper (PRSP) and Budget Preparation and Expenditure Management Systems (PBEMS), they appear to be either fully donor-driven or driven predominantly by the need to meet donor "conditionalities".

GACC, however, did have an action plan, even though it was chiefly designed to address the problem of corruption under the previous administration and reflected a wish list of actions sought by civil society to combat corruption in Ghana. Moreover, it lacked systematic prioritisation based on an assessment of the institutional terrain and political will, and ownership of the action plan was largely confined to GACC, other civil society activists and development partners. Nonetheless, some of the items in the GACC Action Plan have been incorporated into the anti-corruption and governance programmes under the PRSP.

CDD-Ghana GII, in collaboration with USAID and with technical support from Transparency International (TI), coordinated the development and adoption by the new government of a credible code of conduct for executive employees - encouraged by an earlier invitation from the government for GACC representatives (specifically the National Governance Program (NGP), CHRAJ, and CDD-Ghana) to canvass an anti-corruption agenda for the new government. But the initiative foundered, partly because it lacked a realistic strategy for overcoming the fears of the new government that it was giving away too much too soon to non-state agencies, and/or mobilising public support.

Getting some quick wins versus longer-term action: There was considerable focus on 'quick wins' versus longer-term gains on the part of non-state anti-corruption advocacy groups and media as well as the government. The government and the media focused on the repeal of the transparency-inhibiting and repressive criminal libel law and the suspension of on-going prosecutions against journalists under the same law were widely applauded. The jailing of Minister Mallam Issah reinforced this sense of quick and early victories in the fight against corruption in Ghana.

It became increasingly clear, however, that the new administration preferred flexibility to clear rules. It countered appeals for clear anti-corruption standards and benchmarks with statements such as not wanting government to become 'more Catholic than the Pope,' and expressed a preference for a so-called 'Ivorian model', under which President Houphuet Boigny reportedly sponsored individual wealth generation among his ministers and cadres. Fears were also expressed that opponents of the government would use high anti-corruption standards as a weapon to attack the new government.

Start up difficulties: Planning realistic actions to combat corruption was far less important to the new government than celebrating its victory, enjoying a prolonged political honeymoon, and concentrating on taking over the machinery of government from the previous administration. The novelty of the transition (the first political turnover through the ballot) and the absence of a blueprint for the transfer of government machinery caused the new government to be too distracted to design a realistic anti-corruption plan. In addition, the ability of GACC and other anti-corruption civic bodies to push a systematic

anti-corruption agenda onto the new government was significantly blunted by internal weaknesses of the non-state anti-corruption groups, especially the highly uneven levels of commitment among GACC members, and severe and debilitating internal crises within some member organization of GACC, notably the Serious Fraud Office (SFO) in the critical early months of the administration.

3.b. Keeping up the reform momentum

Creating and sustaining the political will: The political will for combating corruption was largely created before the inauguration of the Kufuor-NPP administration. The credit goes at least in part to the liberal 1992 Constitution for:

- Its attempts to formalise separation of powers, impose checks and balances, promote the independence of the judiciary, provide for media freedoms, (specifically enjoining the media to help promote transparency, expose official corruption and foster the emergence of a vibrant independent media with a well-developed taste for exposing official corruption);
- Constitutional provisions establishing CHRAJ - with a specific mandate to investigate allegations of official corruption;
- An increasingly independent and credible election authority and competitive elections that helped to enhance the prospects for vertical accountability; an increasingly vibrant civil society, with some NGO's dedicated to corruption-fighting (such as GII);
- A civil society active enough to help develop transparency-enhancing bills such as the draft freedom of information and whistle-blower legislations and to conduct nation-wide diagnostic and empirical studies of the problem of corruption in Ghana, as well as the disparate efforts of Ghana Journalists Association (GJA), Commonwealth Human Rights Initiative (CHRI), CDD-Ghana and others to keep the transparency and anti-corruption agenda thriving and to bring it into the 2000 election campaign;
- The emerging practice of coalition and broad constituency-building in the fight against corruption (represented by the fledgling GACC which brings together public, private sector and civil society organisations) to promote access to information; and
- A high level of donor/international development partner interest in the national anti-corruption agenda, coupled with the reasonably significant material and moral support they gave to local anti-corruption efforts, as well as limited but extremely influential prodding and indirect pressure they applied on our government and tactical support from the TI secretariat.

High expectations for an anti-corruption focus and the emergence of political will to fight corruption under the Kufuor administration (at least in the first year) were also shaped by the prominence of the theme of corruption among officials in the 2004 election campaign, and the widespread perception that the outcome of Election 2000 was at least in part a protest vote against the perceived corruption and impunity enjoyed by NDC officials, and NPP desire to demonstrate qualitative post Rawlings-NDC "positive change." These

historical developments helped to induce anti-corruption promises and actions. Several of these appeared to portend a new anti-corruption era: the voluntary presidential pledge to pursue a policy of zero tolerance for corruption (ZTFC), to promulgate a code of conduct for executive employees, and to establish an office of accountability within the executive branch; the indirect promises to pass freedom of information legislation; the unprecedented openness to the media and a palpable reduction in official hostility to media; and the growing practice of open government. Political will to combat corruption was also expressed in the promise to accede to a standing request for an Executive/presidential representation on the GACC and/or provide an official contact point/person to the anti-corruption lobby; and especially the vigorous prosecution of former officials in the 'fast track' courts and other judicial forums (leading to the conviction of former NDC Minister Selormey for fraud).

Indicators of diminishing political will to fight corruption/retreat from the policy of zero tolerance for corruption from about the first quarter of 2002 include:

- Failure to promulgate a code of conduct; failure to redeem a pledge to reform the existing weak and ineffective public officers' asset declaration law;
- Failure to articulate open, transparent and meritocratic procedures for executive appointments to key public institutions or to depart from the existing non-transparent practices in making executive appointments by executive directive;
- Failure to raise the bar on existing conflict of interest and corporate governance practices;
- Failure to provide a high level executive branch/presidential link to GACC;
- Failure to proactively resource and bolster the confidence of CHRAJ and other official anti-corruption agencies;
- Failure to resolve the jurisdictional conflicts between CHRAJ and SFO, and a clear preference for post-facto as opposed to preventive measures for fighting corruption.

Mobilising public support: The government scarcely did anything to mobilise public support for anti-corruption policies. It failed to interest the leadership and rank and file of the party in a corruption reform agenda.

It was the GACC and NGP that spearheaded much of the efforts to mobilise public support for the anti-corruption programs under the new administration. With backing from the UNDP, the two institutions held well-attended and well-publicised forums in the regional capitals of the country, aimed at popularising and securing validation of the Ghana Governance and Anti-Corruption Survey and associated Action Plan. In addition to

presentations on the main findings of the study, each forum was given a chance to review and deliberate on the Action Plan and recommend adoption. The IEA also attempted to rekindle public and official interest in the draft FOI and whistle-blower protection legislation and to secure the commitment of new government and parliament to pass the two laws.

The above civil society initiatives to mobilise public support for the various anti-corruption programs suffered from the limited involvement of parliament (reflecting the widely perceived limited relevance of parliament in the Ghanaian legislative and policy-making process) and the private sector. Engagement with the media was highly inadequate, especially in view of the fact that, after the early gains, the media appeared to be distracted from, and lost its focus on, the anti-corruption agenda.

The role of political leadership: It was extremely beneficial to the cause of the anti-corruption agenda that the president and officials of his government repeatedly espoused a commitment to the policy of zero tolerance for corruption in 2001/ 2002, even if they did not articulate the content of the policy or systematically elaborate programmes associated with it. The decision to prosecute and eventually convict and imprison a government minister, Mallam Issah, for stealing public funds, as well as the prosecution of some officials of the former NDC administration on the charge of causing financial loss to the state, underscored the importance of political leadership in anti-corruption programs.

However, other developments, even in the early period, also gave contradictory signals of political commitment to an anti-corruption agenda. For instance, some highly questionable presidential nominees for ministerial appointments (including the soon-to-be-disgraced Mallam Issah) were railroaded through parliament; media reports alleged unauthorized use of public resources to renovate the president's private residence (which also doubled as his official residence). At any rate, there was very little evidence of systematic planning in presidential anti-corruption initiatives, and some of the initiatives and anti-corruption pronouncements appeared to be driven largely by a desire to court cheap popularity and, arguably, to take revenge on members of the former government or at least discredit them.

The role of reform drivers within and outside government: It was not clear who within the new administration was driving the anti-corruption agenda. Even though it was enshrined in the party's manifesto, repeatedly mentioned in the election campaign, and asserted in the inaugural address and afterwards by the president and his vice-president and to a lesser degree by the Attorney General, anti-corruption reform seemed to be largely a presidential - as opposed to a party - project.

Key public anti-corruption agencies have been going through their own traumas. The leadership of key oversight agencies, notably the Auditor- General and the Executive Director of the Serious Fraud Office, were under siege in the new order and fought the clumsy attempts of the new administration to oust them from office, while new leaders tried to find their feet; Meanwhile, CHRAJ appeared to have tired and became inactive on the anti-corruption front.

The emergence of a strong opposition presence in Parliament in 1996 substantially boosted Ghana's anti-corruption agenda. The NPP opposition mounted a highly effective effort to keep the ruling NDC government on its toes, and to draw public attention to official wrongdoing and suspected corruption. Under the chairmanship of the NPP minority, the Public Accounts Committee proved very effective in highlighting lapses in the government accounting, and the minority leader J.H. Mensah displayed considerable tactical savvy, effectively linking the Public Accounts Committee and the minority group, to the media, civil society, and other pressure groups. Unfortunately, the current NDC opposition enjoys less prestige, is afflicted with severe internal problems and lacks credibility. Given its own dismal performance in the area of probity and accountability when in office, it is politically vulnerable in the face of the threat of prosecution of its leading officials. Thus, parliament has not been an active driver of change in fight against corruption.

Ghanaian media and civil society have been important catalysts for change in the 4th Republic. As noted, excellent investigative work by some of the new independent newspapers helped to put corruption on top of the public agenda; CDD-Ghana, GII, GACC were instrumental in mobilising domestic public and international support for anti-corruption reforms, IEA initiated the development of draft FOIA and whistle-blower protection legislation. However, both civil society and the media appear to have lost their focus on anti-corruption reforms under the current administration. The effectiveness of the media in the promotion of public accountability and anti-corruption in Ghana is severely hampered by low levels of professionalism and integrity among some media practitioners and disturbing but credible reports of emerging practices of media practitioner shake-down/blackmail and "pocket book" journalism. Civil society generally has proved weak, divided and vulnerable to manipulation and cooptation by government. Moreover, civil society organisations suffer moral credibility problems arising from their own weak transparency and accountability.

Growing international interest and support has been crucial for the anti-corruption process in Ghana. Development partners have proactively protected and defended journalists persecuted by the authorities: they have given hefty material support efforts to ensure clean elections and considerable support to national anti-corruption efforts between the mid 1990s and 2000. Examples include: DANIDA and USAID support for the first national

integrity workshop, organised under the auspices of CHRAJ, which included the DANIDA-sponsored pioneering empirical study of corruption in the delivery of health and education services in Ghana; DANIDA and USAID funding for Ghanaian multi-stakeholder participation in several international anti-corruption workshops and conferences in Malaysia, Durban, the Hague, Prague, etc.; a World Bank-led consortium of development partners funding the first comprehensive diagnostic survey on governance and anti-corruption in Ghana in 2000, conducted by CDD-Ghana, under the auspices of GACC; the World Bank hosting meetings that culminated in the creation of the Ghana Anti-Corruption Coalition; the convening of the donor thematic group on governance; and TI Secretariat and DFID support of GII (as a focal point for civil society anti-corruption initiatives).

Likewise, international development partners continue to be important reform drivers under the current administration - albeit by default. Examples include the World Bank's instrumental role in pushing the Budget and Public Expenditure Management System (BPEMS) and new public procurement reforms and other instruments for enhancing transparency in public financial management; DFID sponsorship of the Ghana chapter of TI-GII, USAID funding for parliament and CDD-Ghana to conduct well patronised public hearings on corruption in the administration of justice; and the German Technical Cooperation's (GTZ) growing role as leader and focal point for the multi-donor group supporting the anti-corruption and good governance component of 'triggers' under the multi-donor budget support (MDBS) system. However, there has been a relative decline in emphasis on anti-corruption reforms among donors, who appear to be preoccupied with trying to figure out the new administration and how to engage it. Weakening development partner interest has accordingly weakened the general domestic anti-corruption reform drive.

Dealing with resistance and counter reforms: There appeared to be considerable discomfort with the policy of zero-tolerance among members of the new government and the party hierarchy, who regarded it as a form of unilateral disarmament likely to impair their recovery of campaign debts, reward supporters and loyalists, and build individual and party fortunes. Similarly, the financiers and others who invested in Nap's bid for power in the hope of reaping patronage rewards have regarded the talk of zero tolerance for corruption as a threat to their interests. Moreover, the administration itself appeared to favour more cautious and post-facto - as opposed to proactive - preventive anti-corruption measures. Kufuor anti-corruption orientations have also encountered considerable suspicion and hostility from members of the former ruling party. They have tended to perceive the anti-corruption agenda as a form of political witch-hunting and an effort to discredit their regime.

Surviving while reforming; dealing with islands of integrity:

The quasi-military origins of the elected Rawlings/NDC government and Rawlings' own background as the initiator of a series of coups d'état, as well as its relative political inexperience, made the Kufuor administration extremely paranoid about security. The need to impose order on a relatively chaotic process of handing over the machinery of government, gaining control over the security situation, and indeed, consolidating its position, was challenging enough to distract the new administration from pursuing positive reforms.

NPP dealings with "islands of integrity" have been cautious at best: distrustful of the opposition NDC and afraid that it would use its sizable numbers (nearly half) to frustrate government legislative initiatives, the new administration has focused on building up its dominance over Parliament, rather than helping it to build institutional capacity: CHRAJ has been largely neglected and under-funded, and SFO is in limbo, with no governing board or confirmed chief executive; the Judiciary has been kept largely pliant, the media has been substantially co-opted, and civil society has been kept at bay.

3.c. Reforming dysfunctional institutions.

Addressing political corruption: The new government sought to address the problem of political corruption mainly through rhetorical moves: often repeating its commitment to provide clean government and pursue zero tolerance for corruption. But perhaps the strongest and most direct demonstration of a serious commitment to addressing political corruption was the trial and fraud conviction of a sitting Minister of State. (Although it should be noted that the convicted minister was not a member of the majority NPP). The government did announce the creation of an Office of Accountability in the third quarter of 2003, but the Office does not appear to be operational, more than a year later.

Reshaping and de-politicising the civil service: The NPP administration inherited a highly demoralised, under-paid and over-politicised civil service. The lines between government and the ruling party had become blurred and organs of the Jerry John revolution(s), the ruling NDC, operated actively and openly in public service agencies, and some senior technocrats doubled as politicians, with some contesting for parliamentary seats on the ticket of the ruling party. To complicate matters, hardly any of these politically compromised public servants appeared willing to resign voluntarily, which then provoked a series of forced resignations dubbed "proceed on leave," - beginning with those that had passed their official retirement age by asking them to 'proceed on leave'. The administration also appeared to favour the creation of parallel public service structures in some agencies as a way to get around the difficulty. Ministers in the new administration appointed "special assistants" who informally performed both political aide and technocratic functions. It also initiated forensic audits into the operations of key public

agencies such as the Ghana Water Company and Social Security and National Insurance Trust, but the integrity of some of the audits have come into question and the frequent unofficial leakage of incomplete audit reports have triggered suspicions of political motives.

Not surprisingly, victims and supporters of the former government have tended to see these clean-up efforts as political vendettas and witch-hunting. In one prominent instance, the incumbent head of the civil service (who was already past his statutory retirement age) filed a court injunction to challenge his removal on the grounds that it was unconstitutional. The reconstitution of the Public Services Commission (the body that has the constitutional mandate to handle recruitment, promotion and sanctions within the civil service) and its involvement in making key decisions regarding public service reforms is helping to assuage concerns of extreme politicisation. However, the recruitment of a significant number of top positions in the public service continues to be made on a political, as opposed to an openly competitive, basis and the culture of politicisation remains entrenched. In addition, efforts to reshape the service have also been frustrated by a shortage of the necessary technocratic resources - auditors, accountants, lawyers, and criminal investigators.

Reforming the judiciary: Consistent with the general liberalisation of politics in the Fourth Republic and thanks to the provision of the 1992 constitution, the Ghanaian judiciary began to recover some of its former independence under the NDC administration. Indeed, the judiciary handed down some landmark decisions that were clearly unfavourable to the NDC government. Nevertheless, the institution suffered serious credibility problems: partisan political considerations influenced judicial appointments, and the Judiciary was widely perceived to be incompetent and corrupt, leading Parliament to task its Judiciary Committee to hold public hearings to investigate the nature, scope and impact of the allegations in 2002. Nationwide public hearings organized by this committee, in collaboration with CDD-Ghana and funded by USAID, confirmed much of this negative perception).

The Kufuor government adopted and accelerated the pace of some of the initiatives started by the previous government, notably court computerisation, and the so-called fast track court system. The former initiative sponsored by USAID sought to replace the manual processes of recording court proceedings with electronic ones. The adjudication of cases of public corruption through the fast track court system and other regular courts represented a sharp departure from the past practice of post-regime accountability through inquisitorial special courts, and confirmed the new government's respect for the rule of law. Most significantly, it was also consistent with the new policy of zero tolerance for corruption as some of the most important corruption and fraud cases involving politicians were tried in

those courts. The opposition NDC and its supporters, however, denigrated the trials as a political witch-hunt against members of the former regime. The fast track court system also had a cloud over it because it seemed to be the government's forum-of-choice for trying high profile cases involving officials of the former government - especially since there are no clear guidelines for determining which cases should automatically go to the fast track court and which ones should go to the regular courts. Furthermore, the government's appointment of additional Supreme Court judges, after it had requested that the Supreme Court review an earlier ruling that the fast-track division of the high courts was unconstitutional, fostered the impression of presidential manipulation of the judiciary. And the court subsequently overruled the earlier decision.

In the meantime, the judiciary continues to face severe problems of capacity and integrity: it is woefully under-resourced, has difficulty attracting young lawyers, and judges remain poorly remunerated. The current Chief Justice has declared anti-corruption as a top issue on his agenda and, accordingly, has fired some judges for alleged corruption. The overall impact of this initiative, however, remains to be seen.

Addressing corruption in the police: Corruption remains a significant problem within the Ghanaian police service. Survey data have often placed the police at the top or close to the top on the league table of the most corrupt public institutions or officials. For example, nearly two-thirds of respondents in a mid-2002 CDD survey on the police, and in another survey in late 2002, expressed the belief that extortion and bribery occurred frequently in the Ghanaian police service.

The Kufuor administration has taken several important steps to address the problems of the Ghanaian police service. For instance, it has tried to expand recruitment to improve the police/population ratio; it has bought a new fleet of operational vehicles and other equipment for the service and begun to improve salaries. However the service remains seriously under-staffed (the current police to population ratio stands at approximately 1 to 1400), under-resourced and poorly trained. Above all, they continue to be underpaid, earning about \$50 a month, which makes it doubtful whether they will be able to resist the temptation to augment their salary by taking bribes.

Not much has been done thus far to directly address the problem of corruption within the police but there have been indirect measures. The government has introduced a system of on-the-spot fines to address the problem of roadside extortion, and the leadership of the institution has been proactive in encouraging the public to file their complaints about police malfeasance, but it has not done anything to guarantee action or sanctions against offending police officers.

Dealing with conflicts of interest: Article 284 of the Constitution forbids public officers from putting themselves in a position where their personal interests are likely to conflict with the performance of their official functions. Most legislation regulating public/private fiduciary appointments insert clauses that require board members to disclose interests in the event of likely conflict. Article 285 also specifically bars serving appointees in public organisations from chairing the boards of such organisations simultaneously. There are also rules that make it a criminal offence to receive a gift in the conduct of public business. Parliamentarians are required to declare their interests to the Speaker and request permission from him to pursue private business interests under Article 104(5) of the constitution. MPs are also obliged to refrain from voting on 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; and 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.

The lack of clarity in the definitions, sanctions and procedures appropriate for dealing with the offence, and the absence of an enabling legislation setting out the parameters of the constitutional prohibitions, has resulted in numerous conflict of interest situations in the performance of public functions. Thus, for instance, MPs serve on boards of public corporations as presidential nominees, including those that come under parliamentary supervision, and heads of some public agencies hold positions in the ruling party. In addition, there are no guidelines on hospitality and treats, and the burden of proof required in criminal prosecutions is difficult to meet in cases of alleged corruption. Hence the adoption of controversial quasi-legal and extra legal methods that partially shift the burden of proof onto the accused have been employed in the past.

The Kufuor administration has done nothing so far to raise the bar on public official conflict of interest. CHRAJ has a constitutional mandate to promote compliance with conflict of interest rules, but it has yet to come up with clear guidelines in spite of belated attempts to do so.

Code of conduct and ethics education: As noted earlier, there are constitutional provisions and legal codes intended to regulate the conduct of Ghanaian public officials, but they are inadequate. Irregularities or non-compliance with the code of conduct provisions of the constitution are to be reported to CHRAJ for investigation and submission to parliament, but CHRAJ has not yet elaborated guidelines for the conflict of interest rules. The statutory public officer asset disclosure regulations are weak. Disclosures are made only to the Auditor-General who lacks the capacity to process them on a timely basis; the public cannot verify them.

The Kufuor administration's promise to promulgate and enforce a credible code of conduct for executive employees has not been fulfilled and has been gradually disappearing from presidential pronouncements altogether. It is true that the Kufuor government has set up an Office of Accountability, apparently along the lines of the US Office of Government Ethics, but its actual job description and terms of reference and jurisdiction remain opaque. And in the absence of an elaborate code of conduct for the senior executive service, the nature of accountability precepts being applied by the new office remain unclear. Moreover, the new office appears to enjoy little public confidence as the president handpicked its members, one of its members has not reported for duty, and it reports only to the president who has the discretion to take or not to take action on the report.

The salary question: Low salaries are a serious problem in Ghana. The official daily minimum wage is about US \$1, but the cost of living is generally high. For instance, a square meal for one person or two bottles of large beer can easily absorb the entire daily minimum wage. There are also severe distortions in public officer salaries, with a huge component (housing, transportation and other perks) un-monetised.

Successive regimes of the 4th Republic have recognised this but failed to fulfil promises to address it as the wage leader, government is afraid of raising salaries for fear of aggravating fiscal imbalance, and has found it politically expedient to enter into side deals on salaries with various pressure groups (such as MPs, doctors, teachers, etc.) only to aggravate existing distortions. Indeed, the Kufuor administration has yet to make good on its promise to initiate a comprehensive national dialogue on salaries.

Implementing institutional change using dysfunctional institutions: The reform zeal of the NPP administration has been confronted with the realities of dysfunctional institutions: an under-resourced, under-paid, and highly-politicised public service, and a shortage of vital technocratic resources for investigating and prosecuting fraud and public corruption. The Attorney General's Office is the focal point for the government's governance and anti-corruption reforms. But the office is severely short of experienced legal staff and it has not been able to appoint a new Solicitor-General in over three years. The practice of combining the political office of the Minister of Justice and the technical office of the Attorney General generates credibility problems for the office.

The presidency has been an important source of anti-corruption initiatives, but the presidential bureaucracy is chronically weak. Key oversight bodies such as the Auditor-General's Department and the SFO also have severe institutional weaknesses. The messy manner in which their leaders were removed at the beginning of the new administration reinforced perceptions of politicisation. The former agency now has a confirmed head, but

the latter agency continues to have an acting chief executive only. Inherited and continuing technical and human resource weaknesses are reflected in the ineffectiveness of the SFO in conducting assessments, and a backlog of audits in the Auditor General's Department, as well as the controversies that have surrounded the latter's outsourcing of forensic audits.

3.d. Financing reform

Public finance reform initiatives under the government include: removing the heads of all the three revenue agencies-- perceived to have been too close to the former government-- and replacing them with new ones; streamlining the collection of taxes on rent income by imposing a flat ten percent tax on rent income in high-class residential areas; and enhancing the collection of tax arrears through forensic audits.

Substantial public finance reform initiatives of the new administration include the implementation in 2001 of the Revenue Agency Board Act (558), passed in 1998, through the establishment of the Revenue Agencies Governing Board. This single board replaced the three different boards that formerly managed the revenue agencies - Internal Revenue Service (IRS), Customs, Excise and Preventive Service (CEPS) and Value Added Tax Service (VATS). The Revenue Agency Board, however, has yet to assume its full functions, three years on. The administration has also passed a new Public Procurement Law (Act 663). The Act, passed largely under pressure from external donors, establishes a Public Procurement Board to make administrative and institutional arrangements for public procurement in a fair, transparent and non-discriminate manner. The new board, inaugurated in August 2004, has yet to commence actual operations. In the meantime, revenue collection efficiency and integrity is hampered by the lack of computerisation in IRS and CEPS.

Notwithstanding efforts to improve budget tracking under the BPEMS, budget transparency remains hugely problematic. Parliament's involvement in the budget review, approval and auditing process is inadequate, the Public Accounts Committee is several years behind in its review of annual audit reports, the annual audit reports are several years in arrears, and government agency expenditure submissions to the Auditor General are patchy and frequently delayed.

3.e. Dealing with the past

The question of amnesties: The issue of amnesty in Ghana's Fourth Republic is extremely delicate and complicated by virtue of the blanket amnesty for officials of the former Rawlings' military regimes (AFRC and PNDC) under the permanent "transition clause" of the 1992 Constitution.

Truth, justice and reconciliation: A major and apparently popular item in the manifesto of the NPP in the 2000 elections was a pledge to establish a South African-style truth

commission. The Kufuor government sought to requite this desire of its people by passing legislation (Act 611) to establish a nine-member National Reconciliation Commission (NRC) with a mandate to investigate and resolve political and other legally recognisable grievances held against past regimes, particularly against the military ones. Inaugurated in May 2002, the Commission, which began its public hearings in January 2003, received over 4000 petitions, covering the period from 1957 to 1992, and heard over 1000 of them in public hearings across all regions of the country by early 2004. It completed public hearings at the end of March 2004 and is expected to present its final report to the government in October this year - within the deadline set in Act 611.

The national reconciliation exercise enjoys several important advantages over previous efforts. It has a firmer legal foundation than any previous efforts of this kind and it has enjoyed significant technical, financial, international, and domestic civil society support - particularly from the Open Society Initiative of West Africa, International Centre for Transitional Justice (ICTJ) and the CDD-Ghana and the Civil Society Coalition on National Reconciliation. Most importantly, through its broad mandate and extensive coverage (of all military and other regimes) and 12 months of nationally-televised public hearings in all regions of the country, the National Reconciliation Commission has offered the best opportunity yet for Ghanaians to uncover the scope and scale of human rights abuses in post-independence Ghana and to prepare to develop comprehensive institutional reforms to redress the legacy of human rights abuses in a lasting manner. Nevertheless, the programme has faced daunting challenges. Not least among these is the continued anxiety among supporters of Jerry Rawlings and his former governing councils (the Armed Forces Revolutionary Council (AFRC), the Provisional National Defence Council (PNDC) and the National Democratic Congress - (NDC)). They appear to believe that the exercise is targeted at them, and that it is deliberately designed to harm them collectively and individually. The difficulty of assuaging their concerns was reflected in the acrimony that dogged the debate on the national reconciliation programme in and outside Parliament and over the passage of the bill, particularly the timeframe for investigation. Thus, while the National Reconciliation Commission Act substantially addressed many of the concerns of the opposition, strident and vociferous arguments have continued to be made over whether or not the concessions over the time period to be covered by the investigations represent a “door” or a “window”. The same group has also trenchantly alleged an anti-NDC/Rawlings bias against on the part of some members of the Commission. And while the manner in which the Commission has conducted its work has tempered many of the initial fears and the cases heard so far hardly betray systematic political bias or selectivity, accusations of bias continue to be made by some NDC politicians. To what extent these suspicions will be laid to rest by the final report and recommendations of the Commission remains to be seen. Above all, these persistent suspicions highlight the nagging question of whether both justice and sustainable national reconciliation will emerge out of the current formal process of

transitional justice (à la ‘truth commission’), particularly since there has scarcely been anything other than self-serving “confessions” and truth-telling by alleged perpetrators, who enjoy immunity from prosecution under the permanent ‘transitional clauses’ of the 1992 Constitution and, arguably, Act 611, but who had to be compelled (by subpoena) to appear before the Commission.

While expectations of restoration, restitution and compensation are understandably high among victims and sympathisers of victims of past human rights abuses, resources for implementing the recommendations of the Commission and undertaking institutional reforms to prevent a recurrence will be hard to find. Thus, the project faces the huge challenge of how to manage expectations of meaningful restitution as well as genuine national healing and reconciliation.

In addition, it remains to be seen whether the Kufuor administration can transcend the bad habits of past administrations, and resist the temptation to doctor the Commission’s report in order to highlight abuses by its political and ideological opponents, cover up offences committed by its political allies, selectively reward its friends and allies, and punish its enemies. It also remains to be seen whether the Kufuor government can resist the temptation to release the Commission’s report in the heat of the campaign for December 2004 and thereby expose the report to partisan political bickering, which will severely compromise the report and prospects for meaningful institutional reforms and the institutionalisation of a culture of human rights in Ghana.

4. Conclusions

4.a. Overall outcome and current status

Ghana has made considerable progress in democratising its politics and institutionalising good governance since 1992. However, this experiment in democratic and good governance faces several crucial challenges including entrenched neo-patrimonialism, a culture of political patronage and public corruption. The political upheaval of 2001 appeared to signal an end to the patronage culture as long-term patronage networks and niches were thrown asunder and the new administration committed itself to ‘clean government.’ But it is also noteworthy that the scramble for patronage jobs began as soon as the December elections produced a clear winner and has been ongoing ever since. It is noticeable that most of the positive moves promised by the government to address corruption have failed to materialise - with the exception of the repeal of the criminal libel law, greater openness towards the media, the passage of the largely donor-driven and still not fully functional Public Procurement Act and Board, and the incorporation of governance and anti-corruption

reforms in PRSP. Indeed, the agenda to pursue a policy of “zero tolerance for corruption” appears to be increasingly subsumed under, and displaced by, the nebulous problem of indiscipline.

4.b. Current Challenges

- ❑ Flaws in the 1992 Constitution reinforce political patronage - such as those that foster a “hegemonic presidency” by granting the president monopoly control over the public purse, vast appointing powers, (with no ceiling on the number of appointments he can make to the Supreme Court and the number of ministers he can appoint,) and the power to leave positions at the head of key institutions such as SFO and the Auditor-General’s Department unconfirmed.
- ❑ The actual ability of the constitutional, legal and political orders to promote national integrity and the control of corruption is undermined severely by several factors. These include: a lack of operational and financial independence on the part of Parliament and the Judiciary and executive/presidential dominance over those institutions; dependence of integrity bodies such as CHRAJ and SFO on the politically partisan Office of the Attorney General (AG) and Minister for Justice for prosecution; absence of 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); and a lack of clarity in the mandates of key anti-corruption bodies such as CHRAJ, SFO and Auditor-General (for example, in terms of who takes primary responsibility for public officers’ asset declarations).
- ❑ There has also been a failure to devise and promulgate a credible code of conduct for public officials, to reform and improve the weak public official asset declaration regulations. Corporate governance and conflict of interest avoidance rules have also been neglected, which means that Ghana is pursuing anti-corruption without vital preventive components. Under present regulations, public office holder assets are infrequently declared once every four years, they are declared behind closed doors, they are not ordinarily accessible to the public, and they are lodged with agencies that are not adequately independent of the executive branch. Thus, the declarations fail the essential tests of ease of verifiability and monitoring.
- ❑ Other problems include: a lack of parliamentary independence; a limited judiciary; a technically and politically weak civil society; a weak main opposition party - lacking in anti-corruption credentials and credibility;
- ❑ There are also general environmental challenges such as the prevailing economy of hardship, low income/high dependency ratios; and a culture of low popular expectation of public officials and tax-payer funded agencies, as well as generally poor standards for measuring political conduct and performance.

- ❑ A lack of sustained pressure and demand for action on the part of public and unofficial watchdog agencies as well as development partners is also problematic.
- ❑ Ghanaian civil society enthusiasm for public accountability and anti-corruption agenda is undermined by internal weaknesses, lack of inter-organisational cohesion, and vulnerability to manipulation and cooptation by government.
- ❑ Huge gaps are apparent in levels of media professionalism and integrity. And there are disturbing but credible reports of an emerging practice of media practitioner shake-down/blackmail and “pocket book” journalism.
- ❑ Inconsistency and/or declining development-partner interest in anti-corruption are of concern. This is sometimes driven by a lack of institutional memory (especially when there is turnover of key officers), and an opportunistic desire to curry favour with political authorities in order to gain and expand access and/or to promote home country commercial and diplomatic objectives (to the detriment of the governance agenda in Ghana).
- ❑ The persistence of a political culture of patronage vitiates many otherwise well designed governance and corruption control structures and institutional arrangements. Among political leaders, officials in key oversight bodies, the media and civil society, there is a pronounced tendency to curry favour, take the spoils of office, peddle influence and exploit the huge loopholes in the system.

4.c. Evaluation and lessons learnt

- ❑ Positive signals from the political leadership are crucial. The anti-corruption reform agenda was promising in the first year and a half of the Kufuor administration because the president and key officials repeated it so often that they were beginning to be taken seriously; the jailing of a serving minister signalled that action might back words; and the encouragement from civil society and donors provided positive feedback.
- ❑ The good intentions of our leaders are not sufficient to deliver anti-corruption reforms. Political will to fight corruption is difficult to sustain in the absence of strong and sustained demand from the bottom; and top-down promises and a steady supply of anti-corruption reforms must be backed by demand for official transparency and accountability.
- ❑ The government was more receptive to pressure and encouragement to undertake anti-corruption reforms in its first year than in subsequent ones. Better strategising and prioritisation of reforms would have delivered better results.
- ❑ Development partner support and tactical application of leverage are vital to anti-corruption reforms, but they are also volatile commodities.
- ❑ It is difficult, if not impossible, to sustain anti-corruption reforms without the reform of dysfunctional public institutions and effective public/civic education. In the meantime, a culture of political patronage and the sharing of the spoils of

office is reasserting itself, entrenched rent-seeking interests are re-establishing themselves. There is also diminishing resolve to resist the pressure to construct a pro-NPP patronage network and thereby make up for the long years in the political wilderness and nearly 20 years under PNDC/NDC monopolistic regimes.

4.d. Recommendations

To effectively combat corruption, the Ghanaian government should adopt the following recommendations to:

- ❑ Reform administrative procedures and policies, streamline administrative law, develop administrative procedures to make them fully transparent, and reduce official discretion. There is also a need for the deepening of administrative and political decentralisation, and rules should be simplified;
- ❑ Develop equitable and meaningful wage policies;
- ❑ Implement the new public procurement law in a credible manner; award public contracts strictly on the basis of open tender and recruit for public service jobs strictly on the basis of open advertisement and merit;
- ❑ Undertake corporate governance reforms in both public and private sector along the lines of the King Report of South Africa; elaborate and actively enforce article 284 of the Constitution, which provides that “(a) public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office” together with a directors’ liability law;
- ❑ Pass comprehensive anti corruption legislation - encompassing a “reasonably comprehensive and unambiguous definition of bribery and corruption,” credible access to information and whistle-blower encouragement and protection laws, and elaborate clear guidelines on conflict of interest;
- ❑ Strengthen the independence and capacity of constitutional and statutory anti-corruption bodies; enhance Parliament’s ability to play a proactive role in combating corruption by strengthening the technical capacity of the Public Accounts Committees and institutionalising the practice of parliamentary public hearing and other enquiries;
- ❑ Establish equitable party financing arrangements in order to strengthen multi-party competition, enhance the prospects for opposition party vibrancy, and reduce the rampant corruption associated with multi party elections by enhancing the capacity of the Electoral Commission to carry out its constitutional obligation to audit political party accounts; strengthen law enforcement mechanisms, which in turn requires strengthening the independence and credibility of the judiciary;
- ❑ Promulgate and enforce credible asset declaration regulations, particularly those that conform to international best practices (such as easy verifiability and easy monitoring);

- ❑ Enhance media professionalism and integrity; alert the media to its loss of focus on anti-corruption, helping NMC and GJA to articulate a philosophy of media regulation that strikes a balance between censorship and license;
- ❑ Enable CHRAJ to regain its focus, address instability in its leadership and high staff turnover; provide greater clarification of different mandates, especially between CHRAJ and SFO;
- ❑ Improve enforcement of CHRAJ decisions;
- ❑ Bolster the SFO's independence, corporate governance, and resources;
- ❑ Increase civil society commitment and technical know-how in the areas of anti-corruption research and advocacy; reconfigure the GACC and protect its independence from the Executive branch;
- ❑ Strengthen links between the main opposition NDC, Office of the Minority Leader and the anti-corruption movement;
- ❑ Initiate public service reforms with a view to redressing the culture of secrecy and formulating a credible wage policy, tackle loopholes in the 1992 Constitution that reinforce the status quo of neo-patrimonialism.