

GHANA

A CASE STUDY

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Excerpts from a case study prepared for the New Anti-Corruption Governments Meeting Co-organized by the Government of Kenya, TI-Kenya and TI Secretariat held in Nairobi, Kenya, in October 2004. The full case study will be sent to participants after the meeting.

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 January 7, 2001. The new administration declared a commitment to fight corruption among its main priorities. It has fulfilled few of its anticorruption

promises: repeal of criminal libel, greater accessibility to media and tolerance of media scrutiny and hence improved official transparency, incorporated anti-corruption reforms into poverty reduction strategies, passed a new transparency enhancing public procurement legislation, adopted new measures to improve budget transparency, etc. However, very little substantial change has occurred: flaws in the law and Constitution fostering political patronage and inhibiting checks and balances remain, public institutions remain dysfunctional and the political and popular culture of corruption and weak demand for accountability remains.

2. Summary

(a) Overall outcomes and current status

Ghana has made considerable progress in democratizing its politics and institutionalizing good governance since 1992. However, this experiment in democratic and good governance faces several crucial challenges including entrenched neo-patrimonialism, culture of political patronage and public corruption. The historic political turnover in 2001 appeared to signal an end to the patronage culture as long-term patronage networks and niches were thrown asunder and the new government 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 since. It is noticeable that most of the positive moves promised by the government to address corruption have failed to materialize - with the exception of repeal of criminal libel law, greater openness to the media, passage of the largely donor-driven and yet to be fully functional Public Procurement Act and Board, and 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 highly nebulous and difficult to operationalize problem of indiscipline.

(b) Current Challenges

„Xfn Flaws in the 1992 Constitution which reinforce political patronage - such as those that foster a "hegemonic presidency" by granting the president monopoly control over the public purse, vast appointing powers, monopoly control over the public purse (with no ceiling on the number of appointments he can make to the Supreme Court and the number of ministers he can appoint, and has near) and ability to keep heads of key institutions such as Serious Fraud Office (SFO) and Auditor General's Department unconfirmed. "

„Xfn The actual ability of the constitutional, legal and political orders to promote national integrity and the control of corruption is undermined severely by factors such as lack of operational and financial independence on the part of Parliament and the Judiciary and executive/presidential dominance over those institutions; and dependence of integrity

bodies such as Commission on Human Rights and Administrative Justice (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 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 declaration).

„Xfn Failure to elaborate and promulgate credible code of conduct for public officials, reform and improve the weak public official asset declaration regulations, corporate governance

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and conflict of interest avoidance rules - which means that Ghana is pursuing anticorruption 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 very independent of the executive branch. Thus, the declarations fail the vital test of easy verifiability and monitoring.

„Xfn Weak parliamentary independence; weak judiciary; technically and politically weak civil society; weak main opposition party - with weak anti-corruption credentials and credibility

„Xfn General environmental challenges such as the prevailing economy of hardships, low incomes, high dependency ratios; and culture of weak popular expectations of public officials and tax-payer funded agencies as well as generally low standards for measuring political conduct and performance

„Xfn Lack of sustained pressure and demand for action on the part of public and unofficial watchdog agencies as well as development partners;

„Xfn Ghanaian civil society enthusiasm for public accountability and anti-corruption agenda undermined by internal weaknesses, lack of inter-organizational cohesion, and vulnerability to manipulation and cooptation by government.

„Xfn Huge gaps in levels of media professionalism and integrity; disturbing but credible reports of an emerging practice of media practitioner shake-down/blackmail and “pocket book” journalism.

„Xfn Inconsistency and or declining development partner interest in anti-corruption, sometimes driven by lack of institutional memory (especially when there is turnover of key officers), and opportunistic desire to carry favor with the 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).

„Xfn Persistence of a political culture of patronage vitiates many otherwise well designed governance and corruption control structures and institutional arrangements. As political leaders, officials in key oversight bodies, media, civil society, there is a pronounced tendency to carry favor, take the spoils of office, peddle influence and exploit the huge system loopholes.

(c) Evaluation and lessons learnt

„Xfn Positive signals from the political leadership are central. The anti-corruption reform agenda was promising in the first year and half of 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 action to back words; and the encouragement from civil society and donors provided positive feedback.

„Xfn Good intentions by our leaders are not enough 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 sustained supply of anti corruption reforms must be backed by demand for official transparency and accountability.

„Xfn The government was more receptive to pressure and encouragement to undertake anticorruption

reforms in its first year than subsequent ones. Better strategizing and prioritization on the part of reforms would have delivered better results.

„Xfn Development partner support and tactical application of leverage are vital to anticorruption

reforms, but they are also volatile commodities.

„Xfn It is difficult if not impossible to sustain anti-corruption reforms without reform of dysfunctional public institutions and effective public/civic education. In the meantime, the culture of political patronage and sharing of the spoils of office are asserting themselves; entrenched rent-seeking interests are re-establishing themselves, and ability to resist the pressure to make up for the long years in the political wilderness and nearly 20 years under PNDC/NDC monopolistic regimes and construct a pro-NPP patronage network is weakening.

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(d) Recommendations

„Xfn Reform administrative procedures and policies and elaborate administrative law/ streamline procedures, make them fully transparent, reduce official discretion; deepen administrative and political decentralization, simplify rules

„Xfn Develop equitable and meaningful wage policies

„Xfn Implement the new public procurement law credibly; 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;

„Xfn 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;

„Xfn Pass a 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.

„Xfn Strengthen the independence and capacity of constitutional and statutory oversight bodies;

strengthening Parliament’s ability play a proactive role in combating corruption by strengthening the technical capacity of the Public Accounts Committees and institutionalize the practice of parliamentary public hearing and other enquiries;

„Xfn 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; strengthening law enforcement mechanisms, which in turn requires strengthening the independence and credibility of the judiciary;

„Xfn Promulgate and enforce credible asset declaration regulations, especially ones that conform to international best practices (such as easy verifiability and easy monitoring);

„Xfn Enhance media professionalism and integrity. Averting media loss of focus on anticorruption,

helping NMC and Ghana Journalists Association (GJA) to articulate a philosophy of media regulation that strikes a balance between censorship and license;

„Xfn Reduce CHRAJ loss of focus, instability in leadership, high staff turnover; mandate clarification, especially as between CHRAJ and SFO;

„Xfn Enhance enforcement of CHRAJ decisions

„Xfn Strengthen SFO independence, corporate governance, and resources;

„Xfn Strengthen civil society commitment and technical to do anti-corruption research and advocacy; reconfiguring the Ghana Anti-Corruption Coalition (GACC) and protect its independence from the Executive branch;

„Xfn Strengthen the links between the main opposition National Democratic Congress (NDC), Office of the Minority Leader and the anti-corruption movement

„Xfn Initiate public service reforms with a view to redressing the culture of secrecy and

formulating a credible wage policy; and fixing the flaws in the 1992 Constitution that reinforce the status quo of neo-patrimonialism.