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In this issue

IN THE ANNALS OF GOVERNANCE

The One Billion Dollar "IFC" Loan: What Happened to "Checks and Balances"?

In June, it was announced that the Government was about to raise from international private sources a "loan" of one billion U.S. dollars to finance development projects in the country. In furtherance of this and in compliance with the provisions of article 181 of the Constitution (providing for prior parliamentary approval of all loan agreements), Government laid before Parliament on June 8, 2002, a document described as a "loan agreement" between the Government of Ghana and the International Financial Consortium ("IFC") for an initial amount of US$350 million, being the first of three tranches of loan disbursements totaling $1 billion. Parliament subsequently referred the document to its Finance Committee. By a majority vote, with all members of the Opposition dissenting, the Finance Committee recommended the proposed loan agreement for the approval of Parliament. Parliament accordingly approved the loan.

The matter of the "IFC" loan raises many serious concerns about the quality of democratic and economic governance in Ghana. The Government did the constitutionally proper thing in placing the terms and conditions of the loan agreement before Parliament for its review and prior approval.

...the unprecedented size of the loan amount, the professionally unsatisfactory and inadequate form and content of the six-page document presented to Parliament as the "loan agreement" ... and the intense controversy surrounding the entire matter, including doubts about the bona fides and identities of the lenders, should have caused Parliament to subject this loan agreement to the most stringent due diligence possible.

Parliament, however, did not discharge its constitutional obligation responsibly in this matter. The loan, representing the single largest indebtedness to be incurred by Ghana in its history, was approved by Parliament, on a strictly party line vote, within a matter of a few weeks, while several aspects of the agreement were still sharply contested both in the House and among the general public. Worse still, Parliament did not appear to have exercised the required "due diligence" in this matter.

Serious concerns had been raised by the Opposition and within the media about the bona fides and identities of the

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lenders, including justifiable suspicion arising from the lenders' use of a name whose abbreviation ("IFC") caused many to confuse the "IFC" in this case with the better known IFC (International Finance Corporation) of the World Bank Group. In addition, although the agreement had been described as a "loan" backed by the sovereign guarantee of the government of Ghana issued in favour of the consortium, the terms of the agreement suggested that proceeds from the loan were to be managed jointly by a trust company comprising nominees of the government and the consortium. The "joint venture" would use the "loan" proceeds to implement an unidentified number of infrastructure and public works projects in the country. The joint venture would be entitled to certain tax exemptions, including exemption from corporate income tax for an initial period of 10 years and additional reduced levels of exemption during the remainder of the term of the loan. The loan would have an amortization period of 25 years with a 3 year grace period. Interest on the principal would be 2.5%, to be paid half-yearly, plus a one-time transaction fee equal to 3.5% of the loan amount (to be taken off the first disbursement). The arranger of the deal and leader of the consortium was named as Chemac Inc., a company located in New Jersey, U.S.A. The agreement was to be governed by English law.

Besides the confusion arising from the abbreviated name of the lenders, the substantive terms raised several additional concerns. Was the consortium "making a loan" to Ghana or was it seeking to "invest equity" in certain specific projects on a project-finance basis? If the transaction was an outright "loan" backed by sovereign guarantee, why the additional provision for a joint venture between the government and the lenders to manage the use of the funds? Would the "lenders" be entitled to dividends from the operations of the joint venture, in addition to their guaranteed interest payments and principal repayment under the loan? On what specific public works projects would the proceeds of this loan be spent? Had any study or financial analysis been done to ascertain the payback periods of these (unidentified) projects and their capacity to generate the cash flows required to service interest payments on the loan after the grace period? What are the exact identities of the lenders and how would they raise the funds for the loan? Into which specific (domestic and oversea) accounts of the government of Ghana would loan disbursements be paid? What was the timetable for the receipt of such disbursements? Since the agreement was to be governed by English law, had the Government of Ghana obtained the opinion of English counsel on the enforceability of the agreement under English law? What was the track record of the consortium and of its lead

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arranger (Chemac Inc.) in international financings of this scale? Where and when was the Closing supposed to take place?

At first blush, the "loan," especially for a HIPC without a sovereign credit rating, would appear like a bargain for Ghana, that is, if one fixates only on the relatively low nominal interest rate. However, the unprecedented size of the loan amount, the professionally unsatisfactory and inadequate form and content of the six-page document presented to Parliament as the "loan agreement" (including the absence of definitions, covenants, representations and warranties, and other such features of standard international loan agreements), and the intense controversy surrounding the entire matter, including doubts about the bona fides and identities of the lenders, should have caused Parliament to subject this loan agreement to the most stringent due diligence possible. Instead, Parliament "fast tracked" the approval process, in partisan acquiescence to the wishes of an executive that did not appear to have the patience or tolerance for too many probing but necessary questions.

Parliament is, of course, constituted by MPs elected predominantly on the tickets of competing political parties. It is therefore not possible, nor is it necessarily desirable always, to expunge partisanship from the business of Parliament. However, MPs represent more than their political parties. Like the Government itself, MPs have a primary responsibility to the people of this country. It is indeed fair and legitimate for MPs to factor the interest of the party (and even of the executive) into their deliberations and voting behavior. However, where the public interest in a matter is exceptionally grave (having regard to the issues and facts at hand), the interest of the party must be at least substantially moderated by, if not subordinated to, the overriding national interest. The materiality and magnitude of the issues at stake in this other-IFC/$1 billion loan affair required of Parliament the utmost diligence, seriousness, and regard for the national interest in ensuring that all material questions and doubts were conclusively and satisfactorily answered. Even a cursory search on the Internet will have revealed that the lead arranger and leader of the consortium in this transaction is a distributor of "high pressure equipment and sealing products"—a fact that does little to allay concerns about the bona fides of the consortium.

"Majority rule," after all, does not mean that wisdom necessarily or always resides with the majority—a fact the present majority in Parliament should well appreciate based on their past experience as an opposition party.

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The majority in Parliament must understand that part of its role, even (indeed especially) when its party is in government, is to help supply gaps that may be missing or flaws that may be contained, for one reason or the other, in draft documents (including draft bills and agreements) that are laid before Parliament from time to time by the executive. In doing so, Parliament helps to improve the quality of the final product for the benefit of all, especially the government and people of Ghana. Legislative rubber-stamping of anything and everything the government presents to the House does not serve any useful public interest: it merely reinforces the negative tradition of executive supremacy.

Sometimes, ideas for improving a draft agreement or bill will come from an opposition party or from civil society or the public (including persons with professional expertise in the matter). And in the case of this loan agreement, some helpful questions were indeed raised by the minority in Parliament, albeit with undue partisan coloration and grandstanding outside of Parliament. Whatever the source, Parliament has an obligation to take and evaluate such contributions in good faith and be willing to incorporate those that would help improve the end result. Parliamentary majorities should not, as if by reflex, dismiss any and every objection raised by the minority on a given matter as unmeritorious or ill-intentioned. "Majority rule," after all, does not mean that wisdom necessarily or always resides with the majority—a fact the present majority in Parliament should well appreciate based on their past experience as an opposition party. On its part, the Government's handling of this matter did little to help its ambivalent image in the area of transparency and professionalism, the rhetoric of "zero tolerance for corruption" notwithstanding.

On a broader note, the $1 billion loan affair raises questions about the direction of economic governance in Ghana. Firstly, one wonders what specific and concrete plans government has for this loan, even if it were to materialize. No such project plans were submitted to Parliament. There is a real risk of a substantial portion of the loan being abused or misused, unless the uses to which it is to be put are identified in advance and with sufficient specificity and detail. Secondly, this whole affair highlights Ghana's continuing unhealthy love affair with external borrowing, at the expense of internal revenue generation. The country's development needs are indeed legion and substantial. Some external assistance and occasional supplemental borrowing may be unavoidable. But we do not seem willing or able to do what we can to develop the capacity of the state to raise revenue domestically. With the right prioritization of resource allocation, including appropriate incentives, to enhance the collection and enforcement capacities of the country's tax agencies (especially the IRS), the country should be able to generate substantially more funds from domestic sources (at existing tax rates) than has been the case so far and, thereby, reduce substantially the need for external borrowing. Tax evasion, especially among self-employed professionals and businesses, is known to be endemic in Ghana, with the income tax burden falling disproportionately on the wage-earning population and tro-tro and taxi operators, while persons and businesses deriving substantial (sometimes foreign-exchange denominated) incomes from a wide range of transactions (including transfers of commercial and residential real estate) escape the tax net.

Ghana cannot borrow or beg her way out of underdevelopment. Instead of always looking "out" for funds to finance our development, we must first look "in" by plugging the leakages in our public expenditures (in the form of corruption, waste, and fraud) and by allocating resources to develop and sustain the capacity of our tax agencies to enforce effectively the tax laws of this country. ◘◘

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'Sodom and Gomorra': A Test of Governmental Responsibility in a Democracy

In May this year, a suit was brought before an Accra High Court on behalf of a community of squatters living in and around the area close to the banks of the Korle Lagoon called (rather ill-fatedly) Sodom and Gomorra. According to an Environmental and Social Impact Statement prepared by an international environmental consulting firm, the squatters in Sodom and Gomorra, conservatively estimated at 30,000, live in the most precarious conditions in the city of Accra.

The relative absence of pro bono legal representation for the poor and marginalized in our society, particularly in the area of fundamental rights, has meant that the protection of the law has historically not been extended to cover the most vulnerable of our citizens.

The suit was brought in response to an eviction notice served on the squatters by the Accra Metropolitan Assembly (AMA). The AMA requires the land for the second phase of the Korle Lagoon Ecological Restoration Project. The

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eviction notice contained no reference to any plans to resettle or relocate the squatters, though this was one of the key recommendations of the impact statement referred to above.

The squatters sought an injunction to restrain the AMA and the government from effecting the eviction, and a declaration to the effect that their constitutional rights would be violated if the eviction were allowed to proceed in the manner contemplated by the authorities. The High Court refused the squatters' request for a restraining order but the substantive declaratory relief sought by them was still pending before the same Court at the time this publication went to the printer's.

The plaintiffs case is not about property rights, as they concede that they have no ownership rights to the land. The crux of their case is that their planned eviction from the land is unjust if prior and adequate provision is not made for their relocation and for the payment of compensation--not for the land but for destruction of business and living structures thereon and consequent displacement. The plaintiffs fear that they would be rendered homeless and destitute and without any means of livelihood if the AMA were allowed to carry out the eviction in the manner planned. They, therefore, invoked provisions of the Ghana Constitution and international human right instruments, such as the International Covenant on Economic, Social and Cultural Rights, to assert that their rights to life (which includes the right to livelihood), housing, and human dignity as well as the educational and health rights of their dependents and children would be violated by the eviction order.

In refusing plaintiffs' application for an injunction, the High Court held that no fundamental rights of the plaintiffs would be violated by the eviction order. The Court took the view that because the plaintiffs' occupation of the land was without lawful warrant, they had engaged in lawlessness and could not therefore procure the assistance of the Court in furtherance of their unlawful conduct. Applying a traditional "landlord rights" framework, the High Court held that the eviction order was proper since an owner does not infringe any law by asking "trespassers" to vacate land within a specified period.

The fact that the people being displaced are the very poor and marginalized should place a greater onus on government to make provision for their protection, especially having regard to the country's obligations under international human rights conventions.

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The Sodom and Gomorra litigation raises a number of important issues. On the positive side, the team of lawyers at the Center for Public Interest Law (CEPIL), which is representing the plaintiffs in this case, must be commended for taking up the cause of the residents in Sodom and Gomorra. Public interest litigation of the kind undertaken by CEPIL in this case is rare and woefully lacking in Ghana, despite the pioneering example of the John Mensa Sarbahs (in the late nineteenth century) in representing and protecting the rights of our customary landowning communities against the designs of the then incipient colonial power. The relative absence of pro bono legal representation for the poor and marginalized in our society, particularly in the area of fundamental rights, has meant that the protection of the law has historically not been extended to cover the most vulnerable of our citizens. The promise of article 2 of the Constitution--which eliminates the traditional rules of "standing" in constitutional cases--will remain confined to a tiny segment of the population if the longstanding deficit in public interest litigation in Ghana (especially on behalf of marginalized communities) persists. CEPIL has blazed the trail; it is for the rest of the Ghanaian legal community to rise to the challenge.

The Sodom and Gomorra case also raises concerns about how successive governments have exercised the power of eminent domain--the power that allows a government to compulsorily acquire land for a "public purpose" or in the "public interest" and pay the previous owners appropriate compensation. By the use of this power the government of Ghana has, over the course of many decades, come to own large estates of public lands in many parts of the country, especially in and around Accra, including the land that is the subject of this litigation. In many instances, government has failed to pay the necessary compensation in respect of such acquisitions. Yet, under existing law, the non-payment of compensation means only that the government incurs an outstanding liability; non-payment of compensation apparently does not invalidate the acquisition. This lack of effective "checks and balances" in the exercise of the power of eminent domain has led in the past to an excessive use of such power, with the result that government appears to have acquired far more land than it needs.

Government has compounded the problem by failing to police and secure the lands that it has acquired. Too many public lands have been left to lie fallow and unsecured for so long that it has invited encroachment by squatters hungry for a place to live and make a living, especially in land-scarce Accra. Then, years after such open encroachments have developed into "townships" sheltering many families

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and businesses, government steps in to claim its "property rights." This is an irresponsible exercise of state power. Unfortunately, Sodom and Gomorra is only the most notorious example of government's failure to prevent the growth of squatters' communities by its failure to protect and secure public lands against encroachment. Other heavily-populated communities in Accra that have sprung up over the last two decades or so are known to sit on land that has been acquired and designated by government for certain public purposes. With encroachment on public lands so widespread, the selective enforcement at this stage of an eviction order against the residents of Sodom and Gomorra raises troubling questions about discriminatory and unfair application of the law.

At any rate, merely because government must enforce its property rights does not mean that it can proceed in any manner that it chooses. In an age when even the "environment" is deemed to have cognizable rights that state and non-state actors alike are expected to take into account in the implementation of public works projects (and justifiably so), government should not so easily displace and dispense with people simply because such people are called "squatters." There are competing interests at stake here and government must not be allowed to visit the full consequences of its past negligence and irresponsibility on the residents of Sodom and Gomorra. At the very least, the people of Sodom and Gomorra should be counted as part of the "environment" whose interests must be taken account of in the implementation of the Korle Lagoon Ecological Restoration Project.

It is significant that many of the Sodom and Gomorra squatters are migrants displaced from other parts of the country who may be trying to eke out a living in the nation's capital. It would be unfortunate for government to further displace its own people, and thereby create a problem of internally displaced persons, when in recent times Ghana has been fairly receptive to waves of refugees from other West African countries. The fact that the people being displaced are the very poor and marginalized should place a greater onus on government to make provision for their protection, especially having regard to the country's obligations under international human rights conventions. On its part, the Ghanaian judiciary must begin to infuse its reading and interpretation of the provisions of the 1992 Constitution with contemporary notions of human rights and allow its constitutional jurisprudence to be informed by progressive precedents from modern democracies like South Africa and India. The liberal-democratic promise of our Constitution cannot be realized as long as our courts remain wedded to a conception of rights that is limited in scope only to what the colonial English common law would recognize as such.

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EnGendering District Assembly Elections

Through a combination of commercials, media appearances, sensitization campaigns, and workshops, a loose coalition of domestic activist groups, notably the Federation of International Women Lawyers (FIDA), Network for Women's Rights (Netright), Center for the Development of People (CEDEP), as well as the Ministry of Women and Children's Affairs, was successful in getting nearly a thousand women throughout the country to register and contest as candidates in the recent nationwide local government elections. At the end of the day, a total of 341 women were elected to membership of district assemblies across the country.

Active participation of women in local assemblies is indeed crucial for the success and effectiveness of democracy at the grassroots.

On the surface, the yield appears meagre. Considering a total of 13,590 candidates contested the elections nationwide, the 965 female contenders represented a mere 7.1 percent of the total, and the 341 candidates who eventually won seats make up only 7.4 percent of the 4,582 newly elected members of the country's district and metropolitan assemblies. There is a slight chance that these figures may improve after elections in the outstanding six districts in the Northern Region are held (once the state of emergency imposed in the Dagbon area is lifted). Still, analysts and gender advocates point out that the new landscape is a vast improvement over the outcomes of the two previous district assembly elections.

In terms of regional distribution, Ashanti Region fielded the most women candidates (214) and, correspondingly, ended up with the largest number of elected assemblywomen (69). Eastern Region produced 58 elected assemblywomen, Volta Region 48, Central Region 39, Brong Ahafo Region 37, Western Region 29, and 26 for Greater Accra Region. In the Upper West Region, almost half of the women who contested (16 out of 35) got elected. The Upper East Region, where (like the Upper West) women are especially disadvantaged socially and economically, registered an equally impressive success rate, with 15 out of the 42 women candidates being elected. In the Northern Region, however, only four out of the 47 female candidates who ran were elected.

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In the run-up to the elections, FIDA and other activist groups, with material support from the donor community, notably DANIDA, organized training workshops, seminars, and counseling and coaching sessions for women candidates and potential candidates to enhance their political and campaign skills. Celebrity ads on television, featuring prominent women politicians (past and present), reinforced the case for women's participation in the local government elections. Showing leadership by example, FIDA's Executive Secretary, Ms. Gloria Ofori-Boadu, contested and eventually won the Gbentaa-Na Electoral Area seat (serving Adenta and Frafraha) on the Tema Municipal Assembly.

As the Ministry of Women's Affairs noted in one of its campaign messages, local assemblies are a pivotal component of the structures of democratic representation and decision-making in contemporary Ghana. District assemblies provide and influence allocation of essential services such as water, sanitation, health, and education to communities and households. Statistics show that women are particularly disadvantaged when it comes to accessing these services and so it makes sense to have more women elected and appointed to offices where their voices would be influential in the setting of priorities and the allocation and management of scarce resources. Active participation of women in local assemblies is indeed crucial for the success and effectiveness of democracy at the grassroots.

Despite the obvious need for women to be sufficiently represented in the corridors of power, gender advocates have identified a number of reasons why so few Ghanaian women contest national or local elections: socialized "division of labor" between the sexes; culturally-rooted inhibitions; the burden of household responsibilities; a lack of education and low awareness of rights; lack of funds; lack of support and encouragement from significant others; and the unflattering perception of politics as a "rough and dirty game."

It is important to emphasize, however, that being a woman does not automatically guarantee that one would be sensitive to the concerns of women or of women in different socio-economic classes.

Given these odds as well as the low numbers of women politicians in the country and the dismal performance of women candidates in the 2000 parliamentary elections (where only 18 of the 95 female candidates who contested won parliamentary seats), well-timed and targeted campaigns to get women to enter competitive politics must continue. These efforts must, however, be supplemented by affirmative action policies designed to increase the participation of women in national and local politics. For example, in order to increase the numbers of women in the district assemblies, the Ministry of Women and Children's Affairs is proposing for the adoption of cabinet a policy to reserve for women appointees 50% of the one-third of local assembly seats that are by law reserved for nominees of the President.

It is important to emphasize, however, that being a woman does not automatically guarantee that one would be sensitive to the concerns of women or of women in different socioeconomic classes. Thus, it is important that would-be assemblywomen and other women politicians be sensitized to gender issues and assisted to articulate a clear vision of what and how they could contribute meaningfully to the welfare of their broader constituents and communities.

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Is Ghana in a "Golden Age of Holidays"?

Early this year African heads of state pronounced May 25, Africa Unity Day. To immortalize the day they also asked nations to declare it a public holiday. May 25 marks the anniversary of the founding of the Organization of African Unity (OAU), the predecessor to the recently created African Union.

The government of Ghana recognized the day by declaring Saturday, May 25 2002 a public holiday. It also instructed that those offices that work regularly on Saturdays, such as wedding registries, be closed on that day in observance of the holiday. But a statement was later issued by the Deputy Minister of Interior indicating that because May 25 had fallen on a Saturday, the President had by executive instrument, declared Monday May 27, 2002 a public holiday. Still, a flag-raising ceremony, presided over by the Minister of Foreign Affairs, and attended by the usual dignitaries as part of official celebrations, was held that Saturday.

On the face of it there is no reason to quibble about the declaration of one additional off-work holiday. And no one can disagree with the reasons assigned for the holiday by Foreign Minister Hackman Owusu-Agyemang --that the holiday celebrates the life and achievements of the OAU and the tremendous sacrifices of Africa's founding fathers.

Indeed, the decision to declare a holiday at such short notice was a particularly ill-considered move for a government that has repeatedly expressed a commitment to enhancing worker productivity and helping businesses grow.

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Still, the episode highlights deeper problems with national decision-making and implementation. The unanticipated holiday was foisted on Ghanaians in a frivolous manner and with little prior notice. It is noteworthy that workplaces, businesses, factories, schools, and the government offices were given only a couple of days to plan and prepare for a day off work. Indeed, the decision to declare a holiday at such short notice was a particularly ill-considered move for a government that has repeatedly expressed a commitment to enhancing worker productivity and helping businesses grow. Governments, both past and present have said that they want to increase worker productivity in order to boost the economy and transform the nation into a middle-income country by the year 2020. Poor planning, particularly unplanned days off, is certainly not the way to do it.

The public silence of the business community over this obvious imposition and official flip-flop was also striking. It raises questions about the degree of "voice" that the private sector in general and employers in particular (the most direct victims of such loss of "man-days") possess or care to assert in national policy making.

The episode underscores the absence of and the need for a sensible framework for declaring and observing national holidays. We need to build flexibility in our system of celebrating significant national events. The kind of disruption that occurred could have been avoided by maintaining the original date of the holiday, considering that the holiday had not been anticipated at the beginning of the year, and that it fell incidentally on a Saturday. The old practice of marking statutory holidays on the day of the calendar on which they would naturally fall, and without regard to whether they were working or off-work days, seemed more sensible. It is unfortunate that that practice was abandoned in the first place.

The "golden age of business," unless it means business as usual, cannot be compatible with our seemingly insatiable appetite for national holidays.

We must also consider putting a cap on the maximum number of national and non-work holidays we can afford to have within the year instead of increasing the number of national holidays ad infinitum. We can declare some holidays as work holidays, and/or substitute existing holidays for new and more compelling ones. This would mean, for example, that instead of taking a statutory holiday on July 1 (anniversary of the *First* Republic), we might consider dropping it in order to make room for May 25, Africa Day. Alternatively we may give employers and employees a choice as to which of the two to take off in any given year. Whatever we do, we must have a holiday policy that reflects a sense of national purpose. The "golden age of business," unless it means business as usual, cannot be compatible with our seemingly insatiable appetite for national holidays. ◘◘

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Watching Over the Public Purse: the Auditor General's Report and Renovation of Official Bungalows

The recent audit of the Special Project Account of the Ministry of Works and Housing exposed critical lapses in public financial and expenditure management that needs to be addressed. If the explanations offered by the Ministry of Works and Housing in the press conference reported by the print media on July 6, 2002 are allowed to rest the matter without any attempt at institutional or bureaucratic reform, a real opportunity to address some of these lapses will have been lost.

The Auditor General's Interim Audit Report reviewed an expenditure of over 13 billion cedis allocated for renovation and rehabilitation works at the Castle and on selected government bungalows, flood control drainage, construction of new offices for the Ministry of Private Sector Development, and fees for related professional services, among others. Several payments were cited as irregular, unauthorized and in contravention of existing rules. "Mobilization advances" were not secured, while non-executed and non-certified works as well as non-authorized cost overruns had been paid for. According to the report, a lack of coordination, inadequate controls, and poor supervision resulted in a loss to the state of over half a billion cedis.

The report illustrates the uncertainty and confusion that can arise from a lack of clarity in the delineation of the respective roles of ministers and other political heads, on the one hand, and civil service bureaucrats, on the other, in matters of procurement and departmental spending.

Instead of responding to the genuine institutional and administrative gaps exposed by the audit, the Ministry's riposte, laced with innuendos of political mischief, blamed procedural mishandling of the report. It is true that the report was indeed an interim one, which meant there was still some cross checking, reconciliation, and finalizing to

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do between the Auditor General's Office and the concerned officials before it could be properly put in the public domain via Parliament through the Public Accounts Committee. Nonetheless, the draft report revealed that weak institutional coordination, poor enforcement of procurement guidelines, and inadequate project oversight continue to bleed public coffers. It also highlighted the need for stricter adherence to the existing rules and regulations as well as possible strengthening of the institutional framework for public financial management and internal accountability.

The report illustrates the uncertainty and confusion that can arise from a lack of clarity in the delineation of the respective roles of ministers and other political heads, on the one hand, and civil service bureaucrats, on the other, in matters of procurement and departmental spending. In this regard, it bears asking whether the control of funds and disbursements relating to public works at the Castle, as well as the monitoring of progress and supervision of such works, are the responsibility of the President's chief of staff or whether that responsibility lies properly with bureaucrats and professionals at the Ministry of Works and Housing (and its related agencies, e.g., the Architectural and Engineering Services Limited and the Public Works Department). Also, what must one make of the inability of both past and serving officials at the Ministry of Works and Housing to state clearly and unequivocally the current ownership status of four bungalows that had benefited from some of the expenditure under special project account? It is still not clear whether the four bungalows were in the state's inventory of properties at the time they were refurbished or whether they had already been sold to private owners. In the light of the confusion over the true status of the four bungalows, one is left to wonder whether Government is even in a position to know at any point in time all of the properties it owns and where they are located.

It appears that the existing legislative and administrative regime governing the workings of ministries and departments needs to be re-examined. Take, for example, the position of chief director. Section 20 of the Civil Service Law, 1993 (PNDCL 327) (as amended) vests authority in the chief director (chief technocrat of a ministry) to provide guidance and leadership in the determination, implementation and coordination of policy and work programs, recommend budgetary disbursements (albeit in line with existing financial regulations), recommend major changes in the organizational structures of implementing agencies, and recommend actions involving the disposal of capital assets. Perhaps, the most sensitive aspect of a chief director's responsibilities under section 20 is the establishment of systems for effective inter-ministerial and sectoral collaboration and cooperation. The effective discharge of this responsibility is key to avoiding duplication, harmonizing programs, developing effective systems of workflow and feedback on activities within the sector, and ensuring the establishment of proper codes of conduct for administrative and financial transactions within the public bureaucracy.

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It appears that the existing legislative and administrative regime governing the workings of ministries and departments needs to be re-examined.

The existing law seems to encourage the development of a diversity of administrative structures and procedures among different ministries, depending on the idiosyncratic preferences of each chief director. Under the present legal framework, each ministry and department under it could end up with its own peculiar internal procedures, which procedures may be changed at the behest of the chief director. The absence of statutory standardization in administrative procedures across ministries appears to negate the express need and desire for inter-ministry coordination, collaboration and harmony required for effective execution of inter-sectoral projects.

In the light of this, there is a strong case for a modern and credible administrative law regime to clarify administrative procedure and practice within the public bureaucracy. Much of the plundering and theft of public resources occurs in part because of an absence of clear, transparent, and uniform administrative procedures and practices that are infused with credible checks and balances. It is hoped that the proposed Public Procurement Bill, which is reportedly on its way to cabinet, will meet contemporary standards of public accountability, transparency and probity.

Government must also rethink the existing policy regarding the housing of government officials and senior civil servants. Despite claims that the state is unable to pay senior government officials and bureaucrats a living wage, billions of cedis of public funds are spent annually to provide prime residential accommodation for top public officials and politicians. What is the rationale behind imposing such uniform lifestyle on public officials when the practice and trend elsewhere is to monetize and consolidate as salary the market value of the housing and other fringe benefits

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uniformly allocated to these "underpaid" officials. The practice of providing government housing and transportation for public officials forces the "take-home" salaries of such officials downward and deprives many of them of the opportunity to decide for themselves what proportion of their salaries they would wish to spend on accommodation or transportation. Moreover, providing large numbers of public officials with government residential housing, instead of paying them a living wage and leaving them to make their own housing choices on the private market, creates a situation where government bungalows are not properly maintained by the occupants or successive occupants feel compelled to order excessive refurbishing of their allotted residences to match their personal taste. According to the interim audit report, the President's former chief of staff rejected over 56 million cedis worth of renovations on the grounds that it did not meet his taste and consequently requested further works worth 140 million cedis. And over 108 million cedis was also said to have been earmarked for landscaping the official residence of the Speaker of Parliament.

Politicians are not the only guilty ones. Very often new occupants of official bungalows and offices also undertake renovations to meet their taste, no matter the state of the property. Given the transient nature of high public office , the budgetary implications of the policy of wholesale housing for this category of officials are enormous and needs review. As has been stated before, paying an all-benefits-included living wage to this class of public officials would cost less in the long run than the existing policy of meager cash salaries plus expensive in-kind accommodation and transport.

Finally, the public release of the interim audit report, despite the controversy that this generated, is a practice worth institutionalizing. The release of an interim report brought the administrative and institutional lapses to light sooner than a final annual audit report would have. The possibility for timely correction is preserved when damage or potential damage is quickly discovered and brought to the attention of the appropriate actors, as this interim report seemed to do. However, the opposition's handling of the report, especially its fixation with scoring partisan points out of the report instead of focusing attention on the institutional and procedural gaps and lapses that the report revealed, inhibited meaningful discussion of the substantive issues raised by the report and deflected attention from resolving entrenched institutional weaknesses in public financial governance and administration in the Ghana. ■■

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NDC's Historic Congress

April 27, 2002 marked a major turning point in the history of Ghana's biggest opposition party, the National Democratic Congress (NDC). A national congress originally scheduled for December 2001 had been postponed to April 2002, ostensibly to give the NDC time to resolve ahead of its congress the internal bickering and factionalism that had become the party's lot following its defeat in the 2000 general elections. The four-month delay in holding the party's congress, however, did little to foster pre-congress unity and cohesion in the party that had ruled Ghana from 1992 to 2000.

... what the NDC needed was a constitutional formula that would limit the influence of Jerry Rawlings in the party and, thereby, create space for internal democracy and for the emergence of practices and structures that would outlast particular personalities.

The congress itself was the NDC's first since it lost power to John Kufuor's New Patriotic Party in the 2000 elections, and was to provide a platform for introspection and self-appraisal towards the sort of transformation that is believed necessary to restore the fortunes of NDC in future elections. The NDC, originally formed as a vehicle for the political survival of protagonists of the Rawlings-led 31st December (1981) coup, needed to recast itself as a party that had now embraced liberal democracy in more than just name and that was willing to shed the tradition of militant authoritarianism that had dogged the party under Jerry Rawlings and is widely believed to have caused the party its defeat at the hands of the NPP.

From one perspective, what the NDC needed was a constitutional formula that would limit the influence of Jerry Rawlings in the party and, thereby, create space for internal democracy and for the emergence of practices and structures that would outlast particular personalities. Such a paradigm left little room for the positions of "life chairman," "father of the party," and other honorifics that serve to perpetuate the cult of personality and do not accord with the spirit of the 1992 Constitution (particularly in the light of article 55(5)). A major reference point for the NDC reformists continued to be the famous "Swedru declaration" of 1996, by which President Jerry Rawlings, at the twilight of his presidency, anointed his Vice President, John Evans Atta Mills, as his heir apparent, thereby effectively

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foreclosing any credible competition from within for the party's presidential slot.

The outcome of the NDC congress is one more positive step towards consolidating Ghana's nascent democracy.

The champions of a new and depersonalized NDC had no easy task at the Congress. They were pitted against the defenders of the NDC status quo, for whom the party is inseparable from Jerry Rawlings and any attempt to diminish Rawlings' grip on the party would make the NDC something other than the NDC. The pre-congress politics revealed a battle for dominance between a "Rawlings faction" seeking to maintain the status quo (led by Alhaji Mahama Iddrisu) and the reformist faction advocating an NDC that looks beyond Rawlings (led by Dr. Obed Asamoah). Obed Asamoah had not only spoken out boldly against the Rawlingsization of the NDC, he had also declared his intention to bring back into the NDC fold persons like P.V. Obeng, Kojo Tsikata, Kwesi Botchwey and other supposedly reform-minded types who had fallen out with Rawlings and had consequently gone inactive in the period between 1995 and 2000.

The contest at the April congress, specifically between Iddrisu and Asamoah for the chairmanship of the party, was therefore really a proxy battle between "pro-Rawlings" and "anti-Rawlings" forces for control over the future of the party. Cast in terms of issues, the contest was presented as a choice between (i) maintaining the position of co-chairman or abolishing it in favor of a one-person chairman of the party; and (ii) vesting the "leader" or "founder" of the party with real power or making that position merely titular. The high stakes attached to the congress guaranteed exciting pre-congress inter-factional manoeuvering and rivalry. There were media reports of certain Rawlings loyalists threatening to quit the NDC if Obed Asamoah were to win the contest.

The scene then was set for a major showdown at the April Congress. In the end, Obed Asamoah narrowly won (334 to 332) the battle for the chairmanship of the NDC. The outcome momentarily frayed tempers in the opposing faction and led to a spate of impulsive resignations involving two regional chairmen of the party, and a regional organizing secretary. However, the intervention of top party executives appears to have succeeded in reversing the trend.

Other seemingly important decisions were made at the April congress, reinforcing the party's resolve to build and sustain permanent democratic structures. They include a separation of the positions of "leader" and "founder" (previously consolidated in the person of Rawlings), with the "leader" tag

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reserved for the party's flag bearer in presidential elections while Rawlings is designated only as "founder" of the party; and the abolition of the "co-chairmanship" structure in favor of the single-person chairman (which Obed Asamoah had grabbed at the congress).

The outcome of the NDC congress is one more positive step towards consolidating Ghana's nascent democracy. It brings Ghana's biggest opposition party more in line with the democratic spirit of the Constitution, expands opportunities for creative leadership within the party, and whittles down the vestiges of the cult of personality that have tarnished the democratic credentials of NDC since its inception. Most significantly, alongside the Obed Asamoah victory came the election of dynamic young Turks to the party's executive, thus securing the party's inter-generational survival. The liberal-sounding rhetoric and organizational acumen of this new team are bound to raise the stakes for the ruling NPP and enhance the competitiveness of the 2004 elections. ◘◘

The War Against Indiscipline

The "campaign against indiscipline" launched recently by Vice President Aliu Mahama has been widely hailed as necessary and long overdue. Many civic groups and social commentators have commended the Vice President for his initiative in putting the matter of indiscipline on the national agenda. Over the years, public indiscipline has grown from bad to worse, as evidenced in the widespread nonobservance of basic rules of social conduct and civility. The ensuing climate of disorderliness and lawlessness, especially in the major urban centers, is a blot on our fledging democracy.

... the war against indiscipline must rid itself of its apparent class bias and reverse the sense of impunity with which our political and bureaucratic elites carry about. This, of course, means that the war against indiscipline should target, among other things, corruption.

The Vice President's war against indiscipline is, however, missing two important ingredients. First, it has failed to articulate a broad concept of indiscipline. Indiscipline, within the context of the current campaign, appears limited to petty anti-social behavior and aggravations such as bad driving, disregard for traffic signals, and littering. Accidents due to driver indiscipline and poor sanitation caused by rampant littering are indeed a growing menace in the country. But

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indiscipline must mean more than "street" indiscipline. "Elite" indiscipline too, as reflected in political and bureaucratic misconduct, is problematic. Indeed one can argue that the growing social indiscipline is a reflection of the "I-am-above-the-law" attitude that has been a mark of our political and bureaucratic elites for sometime now. For it to be meaningful, the war against indiscipline must rid itself of its apparent class bias and reverse the sense of impunity with which our political and bureaucratic elites carry about. This, of course, means that the war against indiscipline should target, among other things, corruption. Second, the "war against indiscipline" needs to be put on a "war" footing. Prosecuting a successful war requires an effective campaign. And an effective campaign requires the articulation of a clear mission and mapping out of the strategies and tactics to be employed. Such definitions would help us to determine the necessary timeframe and inform the type of forces and weapons to be deployed. The billion-cedi question is whether the current campaign has adequately addressed these preliminary measures.

It is hard to determine what the mission of the war on indiscipline is, what the tactics are, for how long the war will be waged, the identity of the field commanders and troops and the weapons to be used.

It is hard to determine what the mission of the war on indiscipline is, what the tactics are, for how long the war will be waged, the identity of the field commanders and troops and the weapons to be used. What will determine success? The war appears to be waged largely through media adverts and public exhortations and appeals for good behavior. Such methods have never worked.

Public attitudes are hardly changed by mere appeals to civility and good conscience. For discipline to be entrenched in a society, first, there must be clear laws and regulations. Second, the public must have knowledge of the laws and regulations that they are expected to obey. Third, the laws and regulations must be enforced in a sustained and credible manner. Without clear rules of conduct, effective public education and information, and effective enforcement and exemplary leadership, a disciplined society will simply not happen.

Ultimately, when it comes to instilling discipline in a society, example is better than precept.

Of course, every Ghanaian has a stake in a disciplined society, a society in which laws and regulations are not flouted with impunity. For that matter the entire society must take an interest in ensuring the success of this war. Schools, churches, public and private sector organizations and civil society should introduce concrete educational programs to effect attitudinal change. It is therefore encouraging that the public has begun to make donations in cash and in kind to advance the cause of this war. But throwing money at the problem is not enough. Indeed, it is disturbing that the Vice President's Office appears to be accepting donations to support the war against indiscipline without establishing appropriate structures for managing and disbursing the funds.

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Ultimately, when it comes to instilling discipline in a society, example is better than precept. Indiscipline is indeed a problem in Ghanaian society today. But it did not emerge overnight, and it did not start with the man or woman in the street. Accordingly, if the situation is to be reversed, the tone and the example must be set from above. Public officials must exhibit discipline in the use of public time, resources (including GV vehicles), and authority. They must show up at meetings and public events on time and prepared, and they must exhibit by their conduct that they indeed are the people's servants. They must obey the same rules that they expect the man or woman in the street to obey. In the end, a disciplined society is one in which the rule of law is more than a mere slogan. And the rule of law means, above all, that those in power must also conform their behavior to the requirements of law and laid down procedure of general application. ■■

Rancor Over Dismissal of GBC Director-General

A progressive action on the part of the National Media Commission (NMC) in appointing Ghana Broadcasting Corporation's first female Director General was overshadowed by controversy over a failure on the part of the NMC to render publicly the reasons for the change at the top of the nation's broadcasting institution.

Ms. Eva Lokko was named the new Director General of GBC effective September 2. Her strong credentials and experience and expertise appear to make her just the right candidate to infuse some innovation and energy to rejuvenate the under-performing national radio and television corporation. An information and communications technology specialist with professional qualifications in management, Lokko first worked as a broadcast engineer at GBC before moving on to management positions at the Institute of Media Training of the UK and the United Nations Development Program (UNDP). Until her appointment to the top position at GBC she was the Regional Programs Coordinator of the UNDP Internet Initiative for Africa.

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However, the NMC's awkward handling of the dismissal of Mrs. Lokko's immediate predecessor cast a shadow over her appointment and left room for needless conspiracy theories. The Ga-Dangbe Council was quick to impute ethnic motives to the NMC's action in firing Mr. Adjetey. The Council appeared to suggest that certain interests or factions in the state-owned broadcast station and, possibly, elements within the corridors of power were unhappy with Mr. Adjetey for fighting to keep the GBC Ga language Obonu-FM station on air.

Obonu-FM has been a source of controversy since it started transmission in August 2001. Sometime last year, a former leading member of the Ga-Dangbe Council, Dr. Nii Josiah Aryeh (now NDC General Secretary), led some 50 *Wulomei* to CHRAJ to file a petition against the NMC over a letter that the NMC had written to Obonu-FM calling attention to complaints from listeners. According to the NMC, certain listeners had complained that Obonu FM was being used by certain elements to "arouse Ga-Dangbe passions." On this occasion, Aryeh charged that the NMC letter amounted to intimidation of both Obonu FM and Ga-Dangbe and an abridgement of the free expression of Ga people. The NMC responded to the accusation of ethnic bias in the dismissal of Mr. Adjetey by issuing a counter-statement in which it emphatically denied any ethnic or other improper motives for the dismissal. The Commission went even further to demonstrate its bona fides on this point by publishing a list of its members and the various interest groups/ organizations they represent. The NMC explained that it had the lawful authority to terminate the appointments of media chief executives if it was dissatisfied with their performance.

It is indeed hard to see any merit in the charges of ethnic discrimination leveled against the NMC by the Ga-Dangbe Council, particularly as Mr. Adjetey's replacement is said to be also Ga or Ga-Dangbe. There is also no denying that the NMC has the constitutional authority to appoint (and thus remove) the chief executives of state-owned media. (See *NMC v. Attorney General*, (2000) 1 SCGLR.)

However, the Commission erred in not assigning and disclosing its reasons for dismissing Mr. Adjetey. By choosing opacity over transparency in the matter of Mr. Adjetey's dismissal and the reasons for that action, the NMC left needless room for speculation and rumor. Some media reports even suggested that Mr. Adjetey had been under investigation for months by both the NMC and the Serious Fraud Office in connection with the award of contracts at GBC, thereby imputing criminal malfeasance to the former CEO. The NMC's refusal to assign and disclose its reasons for dismissing Mr. Adjetey indeed left the field wide open for propaganda and mischief making by all manner of persons and interests.

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But NMC's refusal to give reasons for its administrative action raises other concerns. The NMC is indeed vested with administrative power and discretion in the matter of the appointment and dismissal of CEOs and boards of sate-owned media. However, such discretion is to be exercised in a transparent and accountable fashion, according to the dictates of article 296 of the Constitution. The duty to be "candid," which article 296 imposes on all public bodies and officials vested discretionary power, means, among other things, that such bodies must assign reasons for their exercise of discretion in particular cases. (See *People's Popular Party v. Attorney General*, (1971) 1 GLR 138).

Leaving aside constitutional requirements, the NMC, being an agency created by public law, supported by public funds, and overseeing the management of other taxpayer-funded entities, would have advanced the goal of promoting transparency and accountability in the exercise of public power if it had assigned reasons for its action in replacing Mr. Adjetey at the helm of GBC. In matters of this nature, involving the exercise of public authority by publicly funded entities, the public's right to know ought to be treated as paramount. ◘◘

CDD-GHANA DEMOCRACY PROGRAMS FOR THE SECOND AND THIRD QUARTER OF 2002

May 6

A symposium was organized at the Center to discuss chieftaincy and democratic governance in Ghana. Speakers and participants came from academia, civil society and the chieftaincy institution. The participants analyzed the contradictions and complexities of the chieftaincy institution and its relevance to democratic consolidation in Ghana. The symposium was chaired by Prof. George Hagan, Chairman, National Commission on Culture.

May 6

The CDD-Ghana/Civil Society Coalition on national reconciliation and a delegation from the International Center on Transitional Justice witnessed the swearing-in ceremony of members of the National Reconciliation Commission at the Castle, Osu.

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May 30
A delegation of the CDD-Ghana/ Civil Society Coalition on National Reconciliation held its first formal meeting with the chairman and members of the National Reconciliation Commission. In addition to introducing the Coalition to the NRC, the chairman of the Coalition, Justice V.C.R.A.C. Crabbe presented the Coalition's position paper on national reconciliation.

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June 3
Madam Elizabeth Solomon, a member of Ghana's Electoral Commission, chaired a roundtable discussion on the topic, "Managing elections in Africa – the Zimbabwean and Sierra Leonean experience". Providing material for discussion, Hon. George Amoo, MP for Ayawaso West Wuogon and Dr. Baffour Agyeman-Duah of CDD-Ghana presented their election observation reports of the 2002 general elections in Zimbabwe and Sierra Leone respectively.

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June 7-8
As part of its USAID funded capacity-building program for Parliament, the Center organized a workshop at the Volta Hotel (Akosombo) with the Committee on Government Assurances to deliberate on what could be done to strengthen the oversight role of the Committee. The workshop set an agenda for review and definition of mandate and development of the Committee's draft action plan for the consideration of Parliament. Justice V.C.R.A.C Crabbe, Statute Law Revision Commissioner, chaired the program.

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June 13-14
As part of a Swiss Embassy funded program to foster a culture of transparency in the execution of public works, the Center facilitated a working visit for the Parliamentary Committee on Local Government and Rural Development to selected government projects in parts of the Awutu-Effutu-Senya District of the Central region. The project inspection was followed by a durbar of chiefs and opinion leaders to review the achievements and challenges of the district assembly with the Committee members.

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June 14-16
In collaboration with the Ministry of Parliament Affairs and the Friedrich Naumann Foundation, the Center held a symposium at the Elmina Beach Resort to examine the impact of the provisions of the 1992 Constitution that allow for the fusion of the Legislative and the Executive branches of State. The program provided an opportunity for current and past leaders of the two institutions to share experiences and develop interventions for effective legislative and executive relations. The symposium was chaired by Nana Dr. S.K.B. Asante, Chairman of the Committee of Experts that drafted proposals for the 1992 Constitution.

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June 17 – 26
To improve media coverage of the work of the National Reconciliation Commission, the CDD-Ghana/Civil Society Coalition on National Reconciliation organized a series of orientation workshops for different levels of media practitioners. Resource persons for the workshops sponsored by DANIDA/IBIS came from Ghana, Nigeria, South Africa, the U.K and the U.S.A. The workshops exposed participants to the best practices in reporting the proceedings of the national reconciliation process. The resource team also made a presentation on media relations to members of the NRC.

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July 19 – 21
In collaboration with two Parliamentary committees (Constitutional, Legal and Parliamentary Affairs and Subsidiary Legislation) and with USAID funding, the Center conducted a workshop at Akosombo to review the performance of the Commission on Human Rights and Administrative Justice (CHRAJ). The workshop assessed the performance of CHRAJ not only against the background of its constitutional mandate and functions but also in relation to the quality and quantity of material and human resources available to it.

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July 23
Following the Supreme Court review ruling on the status of the Fast Track High Court, the Center (with sponsorship from the Friedrich Naumann Foundation) organized a symposium to examine elements of the ruling and their import for the consolidation of democracy and rule of law. The Attorney General and the Minister of Justice and a panel of distinguished law professionals led the discussions at the symposium which attracted

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lawyers, the media, and civil society organizations. The program was chaired by Mr. Sam Okudzeto, a former President of the Ghana Bar Association.

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July 24

Dr. J. Ofori-Dankwa of Saginaw Valley State University, Michigan, U.S.A. led a roundtable at the Center on the concept of "Diversimilarity" and its implication for nation building and democratic consolidation in Ghana. The roundtable discussed how to manage the diversity and similarity in different sections of Ghanaian society in furtherance of national unity and development. The discussion was chaired by Rev. Dr. A.A. Akrong of Institute of African Studies, Legon.

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August 12

The Center organized a roundtable discussion on the topic "The Corporate Governance Deficit in the Ghanaian Public Sector: Proposals for Reform". Leading the discussion, Mr. H. Kwasi Prempeh of CDD-Ghana examined corporate governance practices in the Ghanaian public sector, noting the deficits and suggesting reforms. The roundtable, sponsored by DANIDA drew participants from management training institutions, state-owned enterprises, civil society and organized labor. The program was chaired by Dr. Boeh Ocansey, Director-General of the Private Enterprise Foundation.

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August 18-September 7

In collaboration with the Parliamentary Select Committee on the Judiciary and with funding from USAID, the Center organized a series of regional public hearings into the perception of corruption in the judicial system of Ghana. Under the chairmanship of Hon. Kwame Osei-Prempeh the Committee held sittings in six selected regions to hear the views of the general public and selected stakeholder groups on the issue of corruption in the Judiciary.

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August 29

In collaboration with the Parliamentary Select Committee on Local Government and Rural Development and USAID funding, the Center organized a one-day public hearing on sanitation in the Accra metropolis. Officials of the Accra Metropolitan Assembly and other agencies connected with sanitation and public health services in Accra and Tema presented papers and answered questions from the Committee and the general public. ■■

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Democracy Watch Vol. 1 Nos 1-4
Democracy Watch Vol. 2 Nos 1-4
Democracy Watch Vol. 3 No 1

"Democracy is a learned behaviour; it is not some natural or genetic trait that is bestowed on some peoples and denied others by divine predestination."

H. Kwasi Prempeh
CDD-Ghana

hana Center for Democratic Development
(CDD-GHANA)
14 Airport West Residential Area
P.O. Box 404, Legon
Accra-GHANA

ne: 233-21 776142/ 763029/ 784293 - 4
Fax: 233 21 763028
e-mail: cdd@ghana.com
Website:www.cdd-ghana.org

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The Ghana Center for Democratic Development (CDD-Ghana) is an independent, nonpartisan and nonprofit research-based think tank based in Accra, Ghana. CDD-Ghana is dedicated to the promotion of democracy and good governance and the development of a liberal political and economic environment in Ghana in particular and Africa in general. In so doing, CDD-Ghana seeks to enhance the democratic content of public policy and to advance the cause of constitutionalism, individual liberty, the rule of law, and integrity in public life.