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*Ten years of promoting democracy
and good governance in Africa*

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IN THE ANNALS OF GOVERNANCE

Reforming Ghana's ineffective public office-holder asset disclosure regime

The inadequacies and ineffectiveness of the existing public officeholder "asset declaration" regime has been the subject of commentary in past issues of *Democracy Watch* (*Democracy Watch No. 14*, December 2003). In July 2007, the Ghana Integrity Initiative (GII), the local chapter of Transparency International, partnered with the Audit Service of Ghana in a workshop to explore ways to reform the current law and practice relating to public office-holder financial disclosure in Ghana. The workshop, which attracted a fair amount of media coverage, briefly re-ignited the debate over the failure of successive governments to enact a credible regime of financial disclosure by public officers. A number of former and current ministers and members of Parliament interviewed by a JOY FM reporter revealed that they had not fully complied with the existing asset disclosure law during their tenure as public office holders. Reacting to the JOY FM report, Government and Opposition party politicians added their voices to calls for reform and strengthening of the existing legal regime. Almost a year later, however, nothing new or different has happened; nor is reform in the offing. Like the governments before it, the Kufuor

administration is about to end its two terms in office without reforming the current ineffective asset disclosure regime or setting a higher standard on by its own example in terms of financial disclosure.

The first attempt to codify a public office holder "asset declaration" requirement in Ghana was contained in the 1969 (Second Republic) Constitution. Inspired by the post-regime revelations and findings of massive corruption in the Nkrumah government, the 1969 Constitution required the Prime Minister and his Ministers to disclose their net worth upon assumption of office. The Busia government came under criticism, notably from ex-NLC member General Ocran, for its failure to conform its conduct in the area of asset declaration to the letter and spirit of the 1969 Constitution. Successive constitutions, including the current 1992 Constitution, have followed the 1969 constitutional precedent by requiring certain office holders to file asset (net worth) declaration forms upon entering public office.

PNDC Law 280, enacted in 1992 in anticipation of the country's return to multi-party politics, imposed asset declaration requirements on certain categories of politicians and public office holders. This law was, however, superseded by the Public Office Holders (Declaration of Assets and Disqualifications) Act, which was enacted in 1998. Unlike the predecessor PNDC law, which required

the Auditor General to gazette all asset declarations within 14 days of their filing, the new legislation did not go beyond the minimum and limited disclosure obligations imposed on certain public office holders by the 1992 Constitution. Treating the constitutional requirements as though they defined a ceiling (i.e., the maximum allowed) rather than a floor (the minimum required), the ruling party at the time (NDC) defeated attempts by Opposition party members of Parliament to make the asset disclosures publicly verifiable. There was, however, broad bi-partisan consensus for retaining another loophole in the law, namely the exclusion of spouses and children from the asset declaration regime.

Since assuming office in 2001, the Kufuor-led NPP administration, despite fielding many of the same persons who were once passionate advocates of public access to asset declaration information during the tenure of the NDC, has not shown much interest in reforming the existing law or practice. Thus, Ghana's public office holder financial disclosure regime remains deficient in terms of scope (spouses and children are excluded), frequency of declarations (declarations are required only when entering office), access (only the courts, commissions of inquiry and CHRAJ are authorized to access the information under limited circumstances) and worst of all, verifiability (even the Auditor-General to whom the declarations are made deems itself unauthorized to examine them). Moreover, it is not possible to know or ascertain the degree of compliance or noncompliance with even the existing minimal requirements. Curiously, given the contentious nature of contemporary Ghanaian politics, no party has tried to gain an electoral edge over its rivals by making robust reform of the existing law a campaign issue. When it comes to office holder financial disclosure, there appears to be a stable "multiparty" consensus on keeping the status quo undisturbed.

Elite resistance to credible reform, such as public access to asset declaration information, is usually framed around the notion of protecting office holders' "right to privacy". The privacy argument was, in fact, considered by the Constituent Assembly that deliberated on the 1979 Constitution. The Constituent Assembly recognized that there was a need to balance the public office holder's privacy interests against the public interest in ensuring that public office does not become a license for self-enrichment and corruption. However, on the issue of making public office holders' financial disclosures credible and verifiable through public access to the information, the Assembly, while acknowledging the need for some amount of transparency and verifiability, was of the view that the public office holder's privacy interest was paramount.

The privacy argument against making asset declarations open for public verification is often backed up by certain social and "cultural" claims. For example, it is claimed that, within the context of our extended family system with its custom of one-sided financial obligations on well-to-do relatives, making public office holders' finances public would make them vulnerable to undue harassment and excessive demands for financial support from needy relatives. (This argument assumes, of course, that such disclosures would invariably show the public officer to be wealthy or at least wealthier than otherwise known. The contrary possibility, that such public disclosures might reveal an office holder to be worth far less than might have been presumed, inexplicably ignored.) Some also argue that such financial information, if made known to the public, will make the declarants targets and victims of criminal elements, including armed robbers. Yet another common claim is that publicizing the financial information of holders of high public office will deter "good" persons from entering public service.

These arguments are mostly red herring. In a society and culture where politicians and other elites are themselves given to needless displays of ostentation and self-importance, mainly as a way of establishing their "big man" credentials and reputation as "patrons," it is rather disingenuous for these same elites to resist the idea of publicly accessible office holder financial disclosures on the ground that it would give undue publicity to the private wealth of office holders. The related argument, that publicly verifiable asset declarations will make public service unattractive, too easily undervalues the importance of ensuring that public office is treated as a trust and that public servants are seen and respected as true servants and trustees of the public interest. For too long, Ghanaians have come to regard public office as a ticket to personal enrichment and public office holders as using their positions for private profit. This perception, which has some anecdotal validity to it, itself deters many virtuous citizens from public service. Changing the negative image of public service and restoring public confidence in the integrity of office holders, such as by giving the public reasonable opportunity to verify public office holders' financial disclosure information, will go a long way toward making public service attractive to the right caliber of professionals and citizens devoted to the public interest. Claims of "privacy" have too often been used by the Ghanaian political class to avoid necessary and reasonable accountability. For example, although Ghana's Fourth republican democracy is in its second decade, Parliament and the Executive, relying on spurious "privacy" arguments, have persisted in their refusal to yield to the public's demand to know the salaries and other official benefits—in other words, the amount of taxpayers' money received by the president, ministers, members of parliament, and other key office holders.

The way forward

It is encouraging that the Auditor-General's Department and the Attorney General's Office are collaborating with the Commission on Human Rights and Administrative Justice, the Ghana Integrity Initiative and CDD-Ghana to examine the current legislation on asset declaration with an eye toward reform to enhance public verifiability. Elite self-interest suggests, however, that the political class cannot be relied upon to push through the necessary reform without intensive and sustained pressure from the public, media, and civil society. This being an election year, *Democracy Watch* sees an opportunity to press the parties and candidates on this issue and secure from them firm commitments to introduce and implement, if elected, credible reform of the currently ineffective regime of public office holders' financial disclosure. Perhaps one of the leading presidential contenders in the upcoming elections would like to show the way and demonstrate exemplary and transformative leadership by voluntarily disclosing his net worth publicly during this campaign season and challenging his rivals to follow suit. Is this too much to ask of persons who have asked to be trusted with the highest office in the land? ■■

The Public Accounts Committee and the Annual Audit Reports - a plus for democratic governance in Ghana

The Public Accounts Committee (PAC) has made heroic efforts, during the current term of Parliament, to demand and enforce accountability in the administration of public funds allocated to Ministries, Departments and Agencies (MDAs) of the state. Quite apart from the initiative, the Committee discharged its mandate with a commendable degree of non-partisanship and professionalism. *Democracy Watch* hopes that the PAC's initiative, including its precedent-setting public hearings, will become institutionalized and that Parliament's sector committees will follow the lead of the PAC and begin to take their mandates seriously. We also urge the Full House to approach the PAC and other future committee reports in a spirit of non-partisanship and with the national interest, not partisan advantage, as the overriding concern. The country loses when good faith and responsible attempts by the PAC or some other parliamentary committee to expose waste and corruption in the use of public funds in the MDAs become politicized along party lines.

Indeed there are many positive lessons to be drawn from the PAC's recent successes. The disclosures of widespread abuse of funds that emerged from the PAC proceedings confirm the need for parliamentary committees, especially

select and standing committees, to be dutiful and proactive in the exercise of their mandates. Such pro-activity would have helped to keep our MDAs on their toes with respect to the handling of scarce public funds, and would have prevented some of those abuses. The PAC hearings also reaffirms the wisdom of our long-held opinion that Parliament must amend its Standing Orders to require parliamentary committees to sit in public and to reserve "in camera" committee sittings only for those rare occasions when valid national security are at stake.

The PAC disclosures fully underscore the continuing need to strengthen the independence and capacity of the Auditor-General, Parliament, Commission on Human Rights and Administrative Justice (CHRAJ), Serious Fraud Office (SFO), Accountant General's Department and other key agencies of horizontal accountability. The improvements in the capacity of the Audit Service and the independence of the Auditor-General (who has been confirmed since 2003) have, no doubt, helped to improve the PAC's work. These improvements have in turn helped to improve the quality and timeliness of the Auditor General's Reports (which are currently as up to date as 2004 and 2005). All this goes to affirm the importance of improving security of tenure for the heads of key anti-corruption and public protection agencies. It also raises anew, the Center's long standing recommendation for statutory limits to be placed on the length of time the President and other authorities who appoint these key officials are allowed to keep such officials unconfirmed and thus in an indefinite "acting" capacity.

The revelations and disclosures at the PAC public hearings are extremely important. However, it is not and cannot be sufficient for addressing the canker of abuse of public funds in Ghana's MDAs. We therefore call on the Government and law enforcement agencies, including the police, CHRAJ, and SFO to follow-up on these revelations and ensure that laws are enforced to bring to book and retrieve the appropriate funds from those found to have abused public funds. Failure in the past to apply appropriate legal sanctions in response to such abuses has contributed to the pervasive culture of impunity among some public officers and to repeated and flagrant violations of existing public financial management regulations. There is an urgent need to accelerate the implementation of the Internal Audit, Procurement and Financial Administrations laws to begin to curb the prevailing weak culture of accountability in the public services.

Lastly, the PAC hearings and findings are a reminder that the MDAs continue to be plagued by institutional weaknesses and a culture of noncompliance with laws and regulations designed to ensure accountability for the use of public funds. With Ghana poised to receive substantial

inflows of oil-based proceeds in the near future, the country must awaken to the fact that it too, like other oil producers in the African region, risks suffering the "resource curse" (of continued poverty in the midst of plenty) unless sustained measures are taken and implemented to plug the loopholes in the administration of public funds and strengthen the hands of the various agencies of accountability and oversight in the public sector.

Amidst the revelations coming from the PAC hearings, it is curious that certain elements of Ghana's political class had begun to call for the law on willfully causing financial loss to the state to be repealed or watered down. Such a call is palpably misplaced and should provoke civic resistance if pressed further. It is particularly worrisome that politicians who have been seeking public sympathy to draw on the public purse to fund political parties and to get security protection for individual Members of Parliament would place themselves in the forefront of attempts to weaken the already inadequate anti-corruption legal regime. Rather than seek to weaken or repeal it, we must step up enforcement of the law on "willfully causing financial loss to the state" and ensure its timely and even-handed application to the MDAs. ■ ■

Democracy Watch is the official Newsletter of the Ghana Center for Democratic Development. The publication tracks Ghanaian democratization and highlights areas of progress, stagnation and retrogression.

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Established in 1998, the Center for Democratic Development [CDD-Ghana] is an independent non-governmental research-based and policy-oriented institute dedicated to the promotion of democracy, good governance and economic openness in Ghana and Africa. Its core values are independence, non-partisanship, objectivity, accountability, integrity and equal opportunity.

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