

# Democracy Watch

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## IN THE ANNALS OF GOVERNANCE

### In this issue

- ☛ ...of Poodles and Free Speech ..... Page 1
- ☛ NMC and Regulating the Media ..... Page 2
- ☛ The Women's Ministry to Launch "Akatesia Designs" ..... Page 11
- ☛ What Number of Ministers is Too Large? ..... Page 13

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### ...of Poodles and Free Speech

Last December the depth of popular and elite commitment to free expression was put to the test when the *Statesman* (Tuesday, December 3, 2002), in a cartoon accompanying a story with the headline "Why Mills is a Poodle," showed the face of former Vice-President John Evans Atta Mills sitting on the body of a poodle. The story, which sought to portray Mills as a puppet of the Rawlings faction of the NDC, was in reaction to a public statement by Mills in which he called for the resignation of certain members of the Kufuor Administration for their supposed role in the \$1bn "IFC" loan fiasco. The pro-Government *Statesman* suggested that, in calling for the resignation of the government officials allegedly associated with the "IFC" affair, Mills, who was then contesting the NDC presidential primaries against Dr. Kwesi Botchwey, was merely acting at the urging and prompting of his NDC handlers, who wanted him to show some toughness in his speech and style.

The characterization of Mills as a puppet of a certain wing of his party is a perception that predates the *Statesman* publication depicting the

former Vice President as a poodle. It is a perception that had dogged his presidential bid since the run-up to the 2000 elections, when, at the party congress at which he was nominated as presidential candidate of the NDC, he declared that, if elected president, he would consult his predecessor; President Jerry Rawlings, "morning, noon and night." Mills' opponents seized on this public declaration to paint him as a person who was not, and could not be, his own man--a characterization and a perception that continued throughout his contest against now-President Kufuor and resurfaced in his race against Botchwey for the NDC presidential slot last December.

**...the appreciation of cartoon and caricature as an integral part of political discourse and commentary is still in its nascent stages in Ghana**

Sections of the public and media, as well as Mills' campaign handlers, the National Media Commission, and the Ethics Committee of the Ghana Journalists Association, condemned the *Statesman's* depiction of Mills as a poodle. The use of the animal metaphor, with its accompanying verbal exegesis, was described variously as "odious," "derogatory," "discourteous," "in bad taste," "against Ghanaian cultural norms," and highly offensive to Mills' lofty pedigree as a one-time vice president of the country. In a barrage of

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Continued on page 2 ☛

rejoinders, outraged protestors demanded that the *Statesman* immediately withdraw the “offensive” depiction of Mills as a poodle and publish an apology to the “august professor.” The *Statesman*, however, stood its ground, defending the cartoon as an expression of free speech that was neither defamatory nor culturally improper.

The incident was an ironic twist to the greater freedoms the press was savoring under the Kufuor administration (typified by the abolition of the criminal libel law) and the vehemence with which the media and public had fended off attempts to undermine the rights to free expression in the recent past. Yet the uproar was understandable, for whereas public sensibilities have grown used to acerbic slurs, diatribe and vituperative by politicians, media practitioners, and others, the appreciation of cartoon and caricature as an integral part of political discourse and commentary is still in its nascent stages in Ghana. In addition, Ghanaian mass media discourse is still heavily constrained by socio-cultural norms that allocate respect and deference on the basis of age, position, and title, whether ascribed or achieved. In this scheme of things, the former vice-president and one-time professor of law at the nation’s premier university, was an unacceptable target for such public “show of disrespect.” Unlike elsewhere, where public figures would be entitled to less protection from the irreverent political press, entrenched cultural hierarchies in Ghana would accord such persons of authority and means more, not less, protection and immunity from journalistic “disrespect.” The public uproar over the poodle metaphor was thus, in a certain sense, an attempt to protect the Ghanaian status quo from being “tainted” by the forces of globalization.

***Like the proverbial chief who chooses to play the game of dami with the commoners and thereby opens himself and his elevated station to public ridicule and humiliation, Ghanaian politicians must learn to take some occasional taunting and unflattering humour as a harmless occupational hazard in the world of competitive politics.***

From a different perspective however, the very cultural norms to which protestors of the poodle metaphor have appealed, leave ample room for the artistic juxtaposition of man and beast as exemplified by the myth-based representation, in Ghanaian customary or traditional contexts, of family lineages by totemic animals. Ghanaian culture does not frown on using animal images to illustrate negative or positive human attributes, as can be seen from African tales and proverbs. Such animals as the chameleon,

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lion, and porcupine are widely used. And often the political spider has been drawn on as a metaphor for the perceived cunning of the typical African politician-trickster, blamed for the continent’s political woes. Nana Ampadu, the local philosopher and musician, deftly wove such political fables for over thirty years, and was spared any form of censorship even under military dictatorships.

It was salutary then that Prof. Mills himself did not initially take the poodle story too personally, but considered it as an “occupational hazard” in the arena of partisan politics. “As a politician, you must accommodate and tolerate the hazards,” he reasoned. “It is tolerance that makes democracy work.” Ghanaian politicians and public figures are frequently the beneficiaries of all manner of effusive praise singing, hero-worshipping, and grandiose appellations. As long as the characterization is flattering, albeit downright inaccurate or even blasphemous, it is unlikely to attract private or public protestation and uproar. Yet, exaggeratedly positive depictions of persons in public life could easily affect the choices people make about their fitness and suitability for high public office. If, then, politicians and their supporters savor and appropriate to political advantage, such idolized, albeit inaccurate, depictions and representations, they should not complain too loudly when their political opponents or critics substitute ridicule and caricature for lionization and sycophancy.

Public figures must learn to take the “bitter” along with the “sweet.” Like the proverbial chief who chooses to play the game of *drafts* with the commoners and thereby opens himself and his elevated station to public ridicule and humiliation, Ghanaian politicians must learn to take some occasional taunting and unflattering humor as a harmless occupational hazard in the world of competitive politics. The laws of defamation leave room for opinionated journalistic irreverence, even if it is calculated to deflate and ridicule the high and mighty in politics. ■

## NMC and Regulating the Media

Controversy arose in late October over the National Media Commission’s proposed regulations on broadcasting standards, newspaper registration, and rejoinders. The proposed legislative instruments came under fire, not only because they attempted to define the content of media broadcasts, but also because they raised questions of whether the NMC had the authority to make the regulations in the first place. The issue has also served to shine a light

*Continued on page 3* ➤

on the process by which subsidiary legislation is made in this country.

The *National Media Commission Act, 1993*, in which Parliament gave the Commission power to make regulations about its complaints procedure and “any other matter that may be necessary for the efficient discharge of its functions,” obviously gives the NMC the authority to make *some* regulations. The problem with the three legislative instruments, however, is that they sought to do more than is necessary for the discharge of the Commission’s functions.

The Newspaper Registration regulation required that all publications register with the Commission after paying a 100,000 cedi fee; that newspapers file quarterly updates, and that they apply to renew their registration annually. The penalty for non-compliance with the regulation was the possibility of 12 months in jail.

The Rejoinder regulation sought to codify existing guidelines on the publishing of rejoinders that the Commission previously drew up, but again with the addition of a penalty for non-compliance. The requirement to issue a rejoinder written by a person who is aggrieved by a publication or report is provided for in the Constitution.

The Broadcasting Standards regulation attempted to turn into law the Broadcasting Standards Guidelines previously developed by the Commission in consultation with a group of experts (mostly field operators in the sector) to govern broadcasting practice in Ghana. The regulation addressed a multitude of issues, including national identity in programming, accuracy, objectivity and fairness, good taste and decency, language, authenticity, morality and social values. It also dealt with children’s programs, religious programs, quiz programs, news and current affairs programs, advertising, and political broadcasts and sought to enforce these standards with pecuniary penalties.

Content regulations are not unusual in other jurisdictions. For instance, Canada, the United Kingdom and Jamaica all have broadcasting content standards. However, content regulations in other jurisdictions tend to be issued by the body with statutory or constitutional authority to issue licenses to broadcast operators and are, in essence, a condition for the issuance and continued use of such licenses. It is of note that the National Communications Authority, and not the NMC, is the statutorily-designated licensing body for communications system operators in Ghana.

To many of its critics the proposed regulations seemed an

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attempt by the NMC to expand its powers. Of major concern was the fact that the Commission appeared to be attempting to carve out a licensing function for itself by requiring annual “registration” of publications in the newspaper registration regulation and imposing stiff punitive sanctions for non-compliance. The attachment of a quasi-criminal penalty component to the scheme for the “registration” of newspapers would make such registration more like a licensing scheme.

According to the Constitution, the Commission’s functions are primarily to promote and ensure the freedom and independence of the media, to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media, and to insulate the state-owned media from Governmental control.

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It is not supposed to be a censor.**

Article 167(d) of the Constitution explicitly defines the Commission’s regulatory power. This power is limited to regulations for the registration of newspapers and other publications. But “registration of newspapers” need not invite criminal penalties for non-compliance. For example, the NMC can deny the benefits of its mediation and other alternative dispute resolution to persons whose newspapers have not registered with it. The Commission can also prevail on the GJA and other associations of journalists and newspapers to exclude from their membership newspapers that have not been registered with the NMC. To attach criminal penalties for non-registration, however, would turn the registration scheme into a licensing scheme, which, of course, would be a clear violation of article 162(3) of the Constitution.

Outside the newspaper registration area, the Constitution does not grant the NMC power to make “regulations” of any other kind. The National Media Commission Act is, of course, an additional source of authority for the NMC. But any power exercised by the NMC pursuant to its enabling Act must not be inconsistent with the Constitution. More importantly, the NMC’s role is to “protect” and ensure the emergence of a truly independent media. It is not supposed to be a censor. The combined effect of the regulations that the NMC tried to introduce, however, would have turned the NMC into a censor; a “foe” of the media, instead of an ally in the cause of democracy.

*Continued on page 4* ▶

**Journalistic Standards or Cultural Standards?** The *National Media Commission Act*, repeating the provisions of article 167(b), provides that the NMC may take “appropriate measures” to ensure the establishment and maintenance of the highest journalistic standards in the mass media. Arguably, such “appropriate measures” could include “regulations,” but only such regulations as are “appropriate” to ensuring the establishment and maintenance of high journalistic standards. It is instructive that article 167(b) does not command or authorize the NMC itself to establish and maintain high standards of professionalism in the mass media; the NMC is only asked to take measures that would “ensure” the establishment and maintenance of such standards--presumably by the media houses themselves, subject, of course, to the existing laws.

In any case, the NMC broadcast standards regulations, as initially proposed, sought to do far more than just adopt measures to ensure the establishment and maintenance of high standards of professionalism in the mass media. The NMC sought to legislate and impose cultural standards of its own choosing. The suggestion that protection of “national identity of programs” is somehow to be equated with “journalistic standards” is untenable. It is not within the purview of the NMC to promulgate and impose on the mass media some monolithic “cultural” standards, in the name of “national identity” or otherwise, particularly as Ghana has no discernible cultural policy. Other stipulations in the proposed regulations, such as “upholding the sanctity of marriage,” have nothing to do with journalistic standards at all.

Article 167(b) gives the NMC an example of the kind of measures that would be appropriate to take in order to ensure professionalism in the mass media. The Commission’s role as arbiter of complaints against or by the media provides it with the avenue to develop the kind of standards and codes of behavior that would raise professional and journalist standards in the Ghanaian mass media. The NMC should not take article 167(b) as giving it a license to turn itself into a censor or a cultural policeman over the mass media.

***Media independence must also be understood to include independence from all unnecessary intrusion and meddling by the NMC in the operational affairs of media operators.***

It is true that under Article 34 of the Constitution there are directive principles of state policy that guide state agencies in their constitutional mandate. Some of these are cultural objectives. If the Commission calls these directives to its

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defense it must be noted that the stated values are to be *encouraged*, rather than *compelled* by punitive penalty or otherwise. There is a distinction to be made between promoting the establishment and maintenance of standards and requiring such standards in law of a penal nature--i.e. having a code of conduct versus enforcing standards with punitive sanctions.

The Constitution’s commitment to the guarantees of freedom of expression and of the media cannot lightly be set aside. The proposed NMC regulations attempt to impact upon the independence of the media by dictating content and imposing a sanction in the form of unspecified penalties or imprisonment for non-compliance with the regulations. This is a serious infringement, given the constitutional call and mandate to the Commission to uphold media freedom and independence. Media independence must also be understood to include independence from all unnecessary intrusion and meddling *by the NMC* in the operational affairs of media operators. The Constitution guarantees the mass media not just independence from government--but independence--period.

The NMC’s proposed regulations would replace the emerging pluralism and diversity in the broadcast media landscape with a monolithic programming regime, thus denying Ghanaians their freedom to choose such basic things as how much “foreign” music they would want to listen to on a given FM station or how much news they would like to hear from a particular station. Ghanaians themselves should be trusted to make the choice as to which broadcasting operator or program to patronize and which to shun for content-based reasons.

**Existing Mechanisms for Ensuring Journalistic Standards:** There are several mechanisms currently in place for ensuring journalistic integrity and ethics in the media. As already mentioned, the Commission has drawn up broadcasting standards guidelines that are enforceable through the Commission’s complaints process. In addition, the constitutional requirement of publication of rejoinders (which is a self-executing provision) attempts to ensure a fair playing field in terms of airspace or print space and may assist in decreasing resort to the courts by aggrieved persons. The NMC also has *guidelines* covering the publication of rejoinders in order to promote the proper use of this tool.

The Complaints Settlement Committee, when ruling on a complaint, may make orders for the publication of corrections, apologies, rejoinders, or may order “direct disciplinary action for breach of code of ethics,” and presumably this may refer to the Commission’s broadcasting

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standards. The Ghana Journalists Association and the Ghana Advertisers and Marketing Association also have codes of ethics that the Commission may rely upon when adjudicating public complaints. Accordingly, the Commission may already enforce these standards using the complaints mechanism and order-making powers granted to it by the Act.

Where this process is exhausted and a satisfactory result is not achieved, complainants have recourse to the courts where they may sue for damages for civil defamation (libel and slander).

In addition to these formal mechanisms, informal mechanisms of ensuring journalistic standards include media education on ethics (such as seminars on media accountability organized by the Commission, GJA, etc.). Public education about the complaints process is also an important informal mechanism. Media outlets should ensure that they are meeting the codes of conduct and journalistic standards that they themselves have created. It is preferable to have self-regulation by the media than to have regulations imposed upon them.

If the problem the Commission faces is enforcement of Complaints Settlement Committee orders, Parliament could amend the *National Media Commission Act* to enable orders to be filed with the courts and thereby become enforceable in the same manner as court orders. This would be the appropriate manner in which to address the problem, rather than attempting to increase the Commission's powers through legislative instrument.

After the regulations were released the Ghana Journalists Association met with the NMC and the Attorney General, resulting in the broadcasting standards regulation being withdrawn and the newspaper registration and rejoinder regulations being redrafted. Indeed, a revised newspaper registration regulation has been issued, relaxing the requirement for quarterly returns (they now require annual returns) and abandoning the requirement for annual re-registration. The penalty for non-compliance of imprisonment has also been removed.

**New Process for Subsidiary Legislation Needed:** The controversy over the NMC's proposed legislative instruments could have been avoided if a standard and transparent process of consultation existed for creating subsidiary legislation. No such process is, however, required under current law and practice. The modern trend in the area of subsidiary legislation in common law jurisdictions is to require public notification and time for comments and input from stakeholders and interested

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members of the public prior to the proposed regulations going to Parliament.

Currently, there is no such process required for proposed subsidiary legislation in Ghana. Instead, subsidiary legislation is made by a process that is closed and does not allow for much, if any, public or stakeholder scrutiny of the proposed regulation. The only check is a "back-end" role for Parliament, which must approve the proposed legislation before it can become law. However, as a matter of practice, Parliament's role in this regard is generally limited.

In general, statutes set out broad legislative policy but do not enumerate every detail of policy implementation. A statute would typically leave some discretion to the implementing agency or official to issue more detailed rules and regulations to give effect to the purposes and goals of the statute. These rules and regulations, which are collectively called subsidiary legislation, also have the force of law, even though they are not passed into law in the same way as an Act of Parliament. Subsidiary legislation should not, however, create new policy; it must only implement policy that has already been approved by Parliament in the enabling legislation.

In practice, a great deal of the law that regulates our lives as citizens is in the form of subsidiary legislation (mostly in the form of legislative instruments or L.I.s, by-laws and ordinances). Yet, these laws receive little scrutiny, not only from the public but also from Parliament itself. Parliament, through its Committee on Subsidiary Legislation, must keep a keen eye on the exercise of the power to make subsidiary legislation, in order to ensure that the officials and bodies that hold such power exercise them transparently and strictly within the limits permitted under the enabling legislation and the Constitution.

More importantly, Parliament must reform the process by which subsidiary legislation is made. While article 11(7) of the Constitution regulates how subsidiary legislation must be treated from the time it is placed before Parliament until it becomes law, it leaves Parliament free to regulate the process *before* proposed subsidiary legislation is placed before Parliament. There is an urgent need for a statute to reform this pre-legislative stage in the making of subsidiary legislation. The process for making L.I.s and other forms of subsidiary legislation must be procedurally transparent and consultative, allowing for the maximum possible input and comment from the public and from those who would be most directly affected by a proposed regulation. Because a proposed L.I. or regulation becomes law within a very short amount of time after it is placed before Parliament, this notice, comment, and public consultation process should

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be required *before* the proposed regulation is laid before Parliament. ■

## The Parliamentary Committee Hearings on Perceived Corruption in the Judiciary: An Interference with Judicial Independence?

During the last quarter of the year the Parliamentary Committee on the Judiciary held nationwide hearings on the perception of corruption in the judiciary. These hearings, the first of its kind in the country's history, provoked objections and criticism from certain influential quarters, both in and outside the bench, as an interference with judicial independence.

Undoubtedly judicial independence is a value of immense importance to Ghana's democratic and constitutional development. Several provisions of the Constitution, notably articles 125 and 127, affirm this fact. Without an independent judiciary, the rule of law and the protection of constitutional rights will be a mirage.

But judicial independence means more than just independence from government or political parties. Judicial independence also means that judges must be free from improper influence from the litigants and lawyers who appear before them. In short, judicial independence means, above all, that judges must be free from all forms of corruption. Judges must decide the cases that come before them *solely* on the basis of the facts and evidence established in open court and by applying the existing law relevant to the case.

Judicial independence is, therefore, not an end in itself. Nor is it designed for the personal comfort of the members of the bench. Judicial independence is important because it promotes *impartiality* and *fairness* in the administration of justice and, by so doing, upholds the rule of law. For this reason, it is a curious paradox that "judicial independence" should be invoked in an attempt to prevent Parliament from weighing in on a matter of such grave national importance and public interest.

Although there are a host of provisions in the Constitution affirming the independence of the judiciary, none of those provisions should be understood to mean that the judiciary is beyond accountability. Nor must it be supposed that the concept of "separation of powers" (of which judicial independence is a part) is absolute. In the context of the

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judiciary, separation of powers means that only the judiciary can exercise "final judicial power" and the legislature or the executive cannot overturn judgments reached by judges in specific cases. Separation of powers does not mean that Parliament cannot comment or deliberate upon matters at the heart of the administration of justice. In fact, Parliament's power to hold public hearings into judicial corruption is predicated on a number of provisions of the Constitution.

First, article 115 makes it clear that proceedings in Parliament, which includes committee hearings, are not limited to certain matters only and are not subject to judicial review. "There shall be freedom of speech, debate and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament." That provision means exactly what it says: that, the elected representatives of the people of Ghana cannot be prevented or stopped from deliberating on any matter. The only limitation is that which Parliament itself might impose through its rules on privilege.

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Second, and perhaps more important, Parliament is granted legislative power under article 93 of the Constitution. Except where a matter is specifically excluded from the legislative reach of Parliament (e.g., under articles 3, 56, and 107), Parliament has the power to legislate on any matter. And many of the matters on which Parliament has legislated in the past are matters affecting the administration of justice. Thus, the existing laws of Ghana include such statutes as the *Courts Act*, the *Interpretation Act*, the *Criminal Procedure Act*, etc. All of these statutes, passed by the legislature, affect and regulate the work of the courts and judges. In addition, laws dealing with corruption in Ghana, whether contained in the *Criminal Code* or in other laws like the *Public Office Holders (Declaration of Assets and Disqualification) Act*, apply to judges. Moreover, Parliament has power under the Constitution to establish (and abolish) inferior courts, and any proposed amendment to the Constitution, whether it involves an entrenched or ordinary clause, must begin as a "bill" in Parliament. This means that, even the provisions of the Constitution dealing with the judiciary can be amended, and the initiative for doing that resides with Parliament. If Parliament has the constitutional power to consider and legislate on all these

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matters and many others affecting the administration of justice and judges in Ghana, how then could it be argued that Parliament or a committee designated by Parliament lacks the power to deliberate and hold public hearings on judicial corruption?

Under the Constitution, “where a power is given to a person or authority to do or enforce the doing of an act or a thing, all such powers shall be deemed to be also given as are necessary to enable that person or authority to do or enforce the doing of the act or thing.” This provision, found in article 297(d) of the Constitution, means, in the case of Parliament, that the legislative power granted to Parliament comes along with other “implied” powers. The most important implied power that comes with Parliament’s legislative power is the power to gather information to inform Parliament about the dimensions of a given problem or the feasibility of certain proposed solutions. Thus, if Parliament can pass laws on corruption and on various aspects of the administration of justice, then it certainly has the power to undertake measures, including public hearings, that would help it get a better and fuller understanding of the issue at stake. The activities of the Judiciary Committee of Parliament, in holding public hearings on the subject of judicial corruption, therefore falls squarely within the constitutional powers of Parliament.

***The judiciary is a public resource whose health is inextricably linked to the health of Ghana’s democratic, constitutional and socio-economic development. The nation cannot afford to allow corruption or a perception of corruption to destroy public and investor confidence in the judiciary.***

Finally, article 154 of the Constitution provides that the functions of the Judicial Council include proposing, “for the consideration of Government, judicial reforms to improve the level of administration of justice and efficiency in the judiciary.” Article 154 clearly anticipates that from time to time, the judiciary may require reform or assistance in order to ensure the proper administration of justice. Moreover, it also recognizes that “Government” -- and not the judiciary alone -- must be involved in reforming the judiciary.

The judiciary is a public resource whose health is inextricably linked to the health of Ghana’s democratic, constitutional and socio-economic development. The nation cannot afford to allow corruption or a perception of corruption to destroy public and investor confidence in the judiciary. The Judiciary Committee of Parliament must be commended, not

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condemned, for responding in a responsible and controlled manner to such an important matter of public concern. Among other things, the hearings provided the public with a rare opportunity to not only express its opinion about the administration of justice in Ghana, but also to better understand the nature of the judicial process and the problems facing the delivery and administration of justice. No attempt was made at these hearings, either by the Committee or any of the persons testifying publicly before it, to comment on any case before any judge or to influence the outcomes of any specific cases before the courts. In fact, no judge was referred to by name in the proceedings of the Committee.

It is hoped that the report of the Committee will assist the Chief Justice and the judiciary in their efforts to ensure integrity, professionalism, and public trust in the administration of justice in Ghana. On their part, Parliament and the Executive must also take appropriate measures to help enhance the image and capacity of the judiciary, including allocating to the judiciary the level of resources necessary to support its work and make judges less vulnerable to corrupting influences. ■

## The Chief and Accountability: Customary Law Versus the Constitution

In the last quarter of 2002, a Sunyani High Court presided over by Justice G.E. Twum ruled that citizens of Nkoranza had the right to question whether and how monies accruing to the stool and the traditional authority have been used by the Nkoranza Traditional Council for the development of the area.

Some legal minds were quick to point out some problems with the judgment. Reference was made specifically to Article 136(5) of the Constitution. The relevant portion of that constitutional provision states, “all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law.” By this measure, the learned High Court Judge, it was argued, had rendered a judgment contrary to law because he had failed to follow an existing Court of Appeal decision on precisely the same point of law.

The Court of Appeal precedent to which reference was made is *Gyamfi v Owusu* [1981] GLR 612. In that case, the government had compulsorily acquired land on the Afram Plains in the Ashanti Region and paid certain monies

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to the customary owners of the land, namely the Omanhene of the Kumawu Traditional Area and three others, as compensation for the acquisition. The plaintiffs in that case sued “for themselves and also on behalf of the Oman of Kumawu.” They contended that the lands in question were stool lands, not private property, therefore the proceeds were for the benefit of the citizens and not the chief and his courtiers in their individual capacities. The plaintiffs added that the defendants were trustees. The trial judge found for the plaintiffs.

On appeal, Justices Crabbe, Archer and Mensa-Boison held unanimously that the settled law in Ghana is that an occupant of a stool cannot be called upon by his subjects to render account during his reign as chief. Indeed, Justice Mensa-Boison argued in his judgment that the Court of Appeal was itself bound by an earlier decision of the same court.

Following this logic and the constitutional reference cited above, it would appear that the recent ruling by the Sunyani High Court, though progressive, was reached *per incuriam*, that is to say, the matter was wrongly decided because the judge was ill-informed about the applicable law. In his judgment, Justice Twum made reference to Article 267(1) of the Constitution, which states that, “all stool lands in Ghana shall vest in the appropriate stool on behalf of the stool in accordance with customary law and usage.” According to a report in the *Daily Graphic*, in interpreting this constitutional provision the learned judge stated, “it is in my view therefore that if citizens or subjects have any reasonable ground that stool revenue is being frittered away against the interest of the subjects then they have every right to call for an account.” In so saying, he echoed the sentiments of the trial judge in *Gyamfi v Owusu* whose reform-minded judgment was nonetheless overturned on the grounds that it failed to take due cognizance of binding customary and case law.

Legal critics of the High Court ruling argue that Justice Twum appeared to have glossed over the second part of the same article 267(1), which says “in accordance with customary law and usage.” That indeed was the crux of the Court of Appeal’s position in *Gyamfi v Owusu*: customary law and usage in Ghana do not allow the subject to call the chief to account during the latter’s reign. Upon further scrutiny, however, Justice Twum’s position seems squarely in consonance with the letter and spirit of the current Constitution of Ghana, which, after all, is the supreme law of the land and therefore displaces inconsistent customary and case law.

Article 36(8) of the Constitution provides that “the State

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shall recognize that ownership and possession of land carry a social obligation to serve the larger community and in particular, the State shall recognize that *the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard*” (emphasis added). Article 36(8) forms part of the Directive Principles of State Policy and, under article 34(1), judges (among others) are supposed to be guided by provisions like article 36(8) in “applying or interpreting [the] Constitution *or any other law . . .*” (emphasis added).

It is indeed instructive that article 36(8) describes chiefs and other customary custodians of stool lands as “managers” and “fiduciaries” who must discharge their duties “for the benefit... of the people” of the stool or skin concerned. It specifically states that such customary custodians of stool or skin lands (as well as family lands) “are accountable as fiduciaries in this regard.” Clearly, this provision of the Constitution empowers subjects of a stool to call their chiefs to account for the use of stool land proceeds (in whatever form they may come).

***The Constitution clearly sets out to prevent chiefs and other custodians of customary lands from appropriating stool lands and the proceeds of stool lands for their private benefit.***

Once upon a time, family heads too could not be called upon to render account. This position was affirmed in the 1946 case of *Abude v Onano* and as recently as 1987 in *Hansen v Ankrah*. The latter, a decision of the Supreme Court, is what led the government at the time to enact the *Head of Family Accountability Law* (PNDC Law 114). PNDC Law 114 requires the family head to prepare an inventory of family property and confers on members of the family who have or claim a beneficial interest in certain family property the right to bring an action for account against the head of family after they have exhausted the remedies available to them at the level of the family. Article 36(8) has effectively constitutionalized PNDC Law 114 and, more significantly, extended the principle embedded in that statute to stool and skin lands.

As far back as 1959, when a head of family could not be called upon to account, a bold decision was made in the case of *Kwan v Nyieni*, which provided three exceptions to the customary law rule. The family head could be held to account (1) where the family property was in danger of being lost to the family and it was established that the head of family,

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either out of personal interest or for some other reason, would not make a move to save or preserve the property; (2) where, owing to a division in the family, the head of family and some of the principal members would not take any step; and (3) where the head and the principal members were deliberately disposing of family property in their personal interest and to the detriment of the family as a whole. When the Court of Appeal in *Gyamfi v Owusu* was called upon to extend the exceptions delineated in *Kwan v Nyieni* to stool lands, the court declined, arguing that family property could not “safely” be equated to stool property.

The 1981 decision of the Court of Appeal in *Gyamfi v Owusu*, while an accurate statement of the law at the time, cannot easily be reconciled with the plain letter and spirit of article 36(8) of the current Constitution. As Justice Mensa-Boison explained in his judgment in *Gyamfi v Owusu*, “the reforming zeal of the court below founders [because] . . . a Court of Appeal is by law bound by its previous decisions, and it is impotent in the instant case to depart from precedent. The remedy if any lies with a higher court than this, or with the legislature.”

The Constitution has finally stepped in to provide the solution and the remedy the Court of Appeal in *Gyamfi v Owusu*, in obedience to the binding law at the time, deemed itself impotent to provide. Article 36(8) of the current Constitution clearly sets out to prevent chiefs and other custodians of customary lands from appropriating stool lands and the proceeds of stool lands for their private benefit. For now, one could only wish that the decision of the Sunyani High Court had come from the highest court of the land. ■

## Coming to Terms with Gender Violence: The Domestic Violence Bill

The Ministry of Justice has initiated consultations in different parts of the country on a draft Domestic Violence Bill aimed at introducing legislation that will respond to the various experiences of violence that women and children endure in domestic relationships.

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

The first consultation on the proposed Domestic Violence Bill was held on November 11, 2002 at Novotel hotel and  
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was attended by several representatives of women’s activist and human rights groups. The Ministry of Justice, the convener of the forum, and the Ministry of Women and Children’s Affairs represented the Government.

In his address the Attorney General provided some insights into the government’s reasons for sponsoring the domestic violence legislation: Ghana’s commitments under various international protocols and conventions; the demands imposed by the letter and spirit of the Constitution; research findings on the prevalence of violence against women; the recent spate of female murder; the activism of women’s organizations; and the gaps and inadequacies in the existing legal and institutional regime for dealing with the issue of domestic violence.

Records from the Women and Juvenile Unit (WAJU) of the Ghana Police point to a troubling increase in abuse cases reported to WAJU over previous years. Statistics quoted in the *Daily Graphic* (January 27, 2003) for 2002 indicate 134 rape cases, compared with 58 in 2001; 533 defilement cases, compared with 204 in 2001; 1,456 spousal assaults, compared with 232 in 2001; 652 threats, compared with 60 in 2001, and 40 cases of causing harm, compared with 7 in 2001. Last year WAJU also recorded 69 cases of indecent assault, including nonconsensual oral sex, 16 cases of incest, 80 cases of abduction, 142 cases of non-maintenance by men of their families and 1,899 child non-maintenance cases.

While the increase in reporting can be attributed to the impact of an increased education and awareness campaign by WAJU, the numbers suggest the prevalence of violence and abuse in homes and the need to make more concerted efforts to address the problem.

Ghana is a signatory to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), which, as the Attorney General explained, obliges the Government to transform the obligations into municipal law. Act 29 of the *Criminal Code* 1960 was cited as the section of the *Code* that should have addressed the different forms of domestic violence, namely assault and battery, rape, defilement and incest. However, the existing law is grossly inadequate to the task. Without directly referring to the discrimination that women face in the application of these laws when reporting experiences of violence, the AG acknowledged the inadequacy of police response by noting that the police had “turned over a new leaf with the introduction of WAJU.”

Over the years, particularly in the period immediately leading

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up to the UN Women's Conference in Beijing in 1995, the *Criminal Code* has been amended to address some of the gaps relating to violence against women. The focus, however, has tended to be on customary practices such as widowhood rites, female genital mutilation, customary servitude (Trokosi) and early marriage. The 1998 *Indecent Assault Amendment* (Section 554) attempted to address some of the gaps within the *Code*, by extending the criminal law to such offenses as attempted rape, touching, rubbing, oral and anal rape. But section 554 is considered too vague and open to subjective interpretation in many important respects, which, in practice, tends to disadvantage women.

None of these recent legislative remedies, however, addressed the issue of domestic violence in a comprehensive way; nor did they explicitly criminalize acts of domestic violence as the proposed bill seeks to do. These two factors, along with the explicit recognition that domestic violence is not a "private affair" and that the state had a duty to protect its citizens even in the domestic environment, fuelled government support for the Bill.

In the main the draft bill aims at addressing six questions:

1. What constitutes domestic violence?
2. Who perpetrates domestic violence?
3. How does the victim get redress?
  1. What type of redress will be made available?
5. What are the processes for redress?
6. What sanctions do we need to consider to minimize the incidence of domestic violence?

The formulation of question six assumes that domestic violence needs only to be minimized and not eradicated and perhaps explains why sanctions in the draft Bill are much lighter than in the corresponding acts in the *Criminal code*, a problem that has been pointed out in some of the consultative meetings of the Bill.

Also, comments made by both the Attorney General and the Minister for Women and Children's Affairs indicate that the Bill may not have unqualified support. The Attorney General described the Bill as "radical legislation that requires close scrutiny," and opined that "a realistic touch needs to be considered in the Bill" as it was drafted by "the most liberal spirits."

And in what appeared to have been a certain distancing of the Women's Ministry from the Bill, the Minister for Women's Affairs noted that her Ministry does "not formulate policy or legislation." This narrowing of the Ministry's mandate has significant implications for both wider gender inequality issues in the country and the perceived role of the Ministry in transforming the draft

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Domestic Violence Bill into legislation. One can infer from the Minister's comments that her Ministry may make little effort to have a deeper and broader reflection on the issues of gender inequality and to formulate them into policy. Yet, as the member of government responsible for women's and children's affairs, it is the Women's Minister who must assume primary responsibility for championing women's issues, in this case the issue of domestic violence, in both Cabinet and Parliament.

It is not clear which aspects of the Bill the Attorney General thinks need a "realistic touch" and "close scrutiny." If public comment on the Bill is anything to go by, however, it appears that the marital rape clause in the Bill is viewed as the most controversial aspect of the Bill. The marital rape clause recognizes the dangers of marital rape and gives visibility to a behavior and practice that continues to harm and damage many women emotionally and physically. It recognizes that the marriage pact does not include the right of the man to have nonconsensual sex on demand with his wife and that the dignity and autonomy of the woman must be respected and preserved even in marriage.

**... the Domestic Violence Bill is necessary to address gaps in the Criminal Code that have enabled many acts of violence occurring in familial and intimate settings to go unrecognized, unnamed and unpunished**

Recent newspaper articles in which husbands have perpetrated heinous acts on their wives (in one case acid was poured, in another nails were pushed into the woman's genitals) as punishment for their refusal to have sex on demand, underscore the need for such a clause. Indeed, in a nationwide survey undertaken by the Gender Studies and Human Rights Documentation Center in Accra, as much as 28 per cent of women indicated that their husbands sometimes forced them to have sex. A law on domestic violence would be grossly inadequate and incomplete if it gave no voice and no remedy to such women trapped in abusive relationships.

The Ministries of Justice and Women and Children's Affairs should consider it one of their duties to defend and explain to the Ghanaian public the need and rationale for the marital rape clause. Media discussions and other public comments suggest that many people are grossly uninformed and misinformed about the purpose of the Domestic Violence Bill in general and the marital rape clause in particular. Together with gender activists the ministries that have responsibility for women and children's welfare must affirm the fact that the Domestic Violence Bill is necessary to address gaps in the *Criminal Code* that have enabled many

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acts of violence occurring in familial and intimate settings to go unrecognized, unnamed and unpunished in Ghana. ■

## Blaming the Victim: The Women's Ministry to Launch "Akatesia Designs?"

In her maiden address as Minister for Women and Children's Affairs, Mrs. Gladys Asmah said the establishment of her Ministry by the highest level of Government was a landmark in the development of Ghana. Indeed it was the first time that a whole cabinet-level Ministry had been devoted to issues relating to women and children.

Mrs. Asmah promised that her Ministry would make significant contributions towards advancing gender equality both directly within Government and indirectly in the wider society. These laudable remarks make it all the more confounding that the Minister was reported as saying at an Accra workshop on Mother-to-Child HIV/AIDS transmission in December, 2002, that women and girls who wear "revealing dresses" provoke sexual assaults upon themselves.

The Minister's remarks are as unfortunate as they are improper. Suggesting that it is women--the victims and targets of rape--who must adjust their lawful choices and conduct in order ostensibly to prevent rape is an affront to their personal liberty and clearly unacceptable in a democracy. It also amounts to giving in to "criminal blackmail"--giving the rapist a convenient excuse for an inexcusable criminal act. That a Minister of Women's Affairs would think it proper to even suggest such a thing publicly bespeaks a gross "gender" deficit within the corridors of power. It also highlights the point that merely naming a Minister or Ministry for Women does not discharge the government of its obligation to advance the cause of women in the country.

The Minister's remarks perpetuate the myth that a woman who wears a short skirt is somehow inviting rape or implying consent to rape. When a woman is raped, there should be by definition an absence of consent. There is no defense of implied consent arising from the kind of a dress a woman wears. Dresses are a matter of personal taste and self-expression; they do not constitute an invitation of any kind to any person. A person who commits rape commits a crime, and nothing should be done or said, especially by responsible public officials, to excuse such pathology on

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the grounds that the victim ought to have conformed her dress to somebody else's idea of what is proper.

Mrs. Asmah also reportedly stated that her Ministry plans to collaborate with a known fashion designer to introduce "Akatesia Designs," which she claims would check the provocative dress styles worn by young women. Mrs. Asmah appears to place the burden of behavioral change on women rather than on the men who commit, or might entertain thoughts of committing, rape. Rape occurs across cultures, and it occurs regardless of the fashions generally worn by women of the various cultures. Girls and toddlers who often have no control over their choice of clothing also get raped. And women in the northern hemisphere, even when they are wrapped in layers of thick clothing to guard against freezing temperatures, still get raped. It is, therefore, overly simplistic, and for a Minister of Women and Children's Affairs rather inexcusable, to suggest that the kind of clothing a woman wears is what might entice a man to rape her. The Ministry of Women and Children's Affairs should be empowering women to become equal members of society, and challenging men to take responsibility for their actions, rather than attempting to solve a growing societal problem through fashion design, with the victims, and not the perpetrators, being singled out for blame and behavior reform.

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Ghana is a party to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which requires respect for and observance of the human rights of women. Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. These human rights are protected by articles 12, 15 and 17 of the 1992 Constitution and their violation in the form of rape constitutes an offence under the sexual assault provisions of Ghana's *Criminal Code*.

On February 23, 1994, the U.N. General Assembly adopted the *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, U.N. Doc. A/48/49 (1993). Although not a binding treaty, it sets out a common international standard that U.N. members states are invited to follow. Article 4 of the Declaration provides:

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States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should...

Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.

**....merely naming a Minister or Ministry for Women does not discharge the government of its obligation to advance the cause of women in the country**

At a time when a bill to protect women against violence is being considered, intensive public education is required to eradicate the myths and stereotypes that perpetuate the inequalities women suffer in our society. Sexual crimes are crimes deserving punishment like any other serious crimes, and the victims are no more at fault than the victims of any other crimes. The Minister of Women's Affairs must be spearheading this educational campaign, rather than making remarks that entrench archaic views and perpetuate them to society's detriment. ■

## The Cocoa Anti-Smuggling Initiative

**B**etween January and June 2002, Ghana lost an estimated 60,000 tons of cocoa, worth \$132 million, to smuggling across its borders. Eager to combat the perennial problem of cocoa smuggling that continues to hamper the country's foremost foreign exchange earner, and to profit from a 17-year high in cocoa prices, the Government instituted a series of policy initiatives aimed at enhancing the industry. Despite these well-intentioned measures, official attitude to the cocoa smuggling problem is only a partial solution to a deep-rooted and persistent problem.

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Cocoa smuggling is driven by the relatively low producer price paid by the Ghanaian Government to Ghanaian cocoa farmers. The Government insists on its policy of advance producer pricing for cocoa because this ensures money for the commodity on the commodity futures market. However, the Government has typically been slow to adjust the producer price of cocoa to reflect world market trends in the best interest of farmers.

Cocoa prices in Cote d'Ivoire and Togo are determined on the spot and better reflect the market value of the commodity. In Cote d'Ivoire, for example, a bag of cocoa beans fetches about €900,000 while in Ghana, it sells for around €535,250. The difference between the two prices is clearly a large and tempting one for many farmers, regardless of the price paid to them in Ghana. Consequently, smuggling to these countries has become rampant. Ghana's cocoa is mainly smuggled to Cote d'Ivoire through Sefwi Kaase, Sefwi Debiso and the Juabeso-Bia District of the Western Region. In the Volta region also the produce is smuggled to Togo from Ayoma and Baika in the Jasikan District and Likpe in the Hohoe District.

The NPP Government in its 2000 manifesto committed itself to improving and sustaining the cocoa industry through increased farmer incomes and farm maintenance, among others. Since assuming office about 21 months ago, the NPP Government has increased cocoa prices three times. The producer price of cocoa paid to farmers on May 1 2000, was 3.87 million cedis per ton, representing 75.9 per cent of the then world market price of 5.1 million cedis (850 dollars per ton at 6,000 cedis to the dollar). A year later, the adjust producer price of Government was 4,384,000 cedis, representing 69.6 per cent of the world market price of 6,300,000 cedis per ton (900 dollars per ton at 7,000 cedis to the dollar), which was a significant drop compared with the proportion paid to farmers in 2000.

The percentage price to farmers slipped even further by May 2002, when the producer price was fixed at 6,200,000 cedis per ton, representing only 46 per cent of the world market price of 13,475,000 (1,750 dollars per ton at 7,700 to the dollar). The Ghana Government may have increased the amount of money they pay to farmers, but clearly farmers are getting a lesser share of the actual world-market price for their produce.

Realizing the deficit, the Government gave approval on October 11, 2002 for the producer price of cocoa to be increased from €6.2 million per ton to 8.5 million cedis per ton with effect from the 2002/2003 main crop season, which began on October 11, 2002, representing an increase of 37 per cent over the last producer price. In addition to

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these increases in the producer price of cocoa, the Government earmarked ₵242 billion for a disease and pest control program in all the six cocoa growing regions to provide support to cocoa farmers to improve farm husbandry and increase productivity. The Government also authorized the immediate payment of a pre-season bonus of ₵50 billion to dedicated farmers in appreciation of their work in the past season and allocated ₵82 billion to the rehabilitation of the decrepit transportation infrastructure in the Western Region.

Nevertheless, these measures have not prevented Ghana from failing to meet its projected production target for cocoa in the last season as announced in the 2002 budget. Ghana managed to produce only 340,000 out of the projected production of 490,000 tons and consequently lost its position as the world's second largest cocoa producer to Indonesia, which now produces more than 450,000 tons. Moreover, the appalling road system in cocoa growing areas, especially in the Western Region, continues to act as a disincentive to many farmers from transporting their produce to designated buying posts where they reason they will not even get a fair price.

In desperation the Government has appointed various security agencies to patrol the borders and various cocoa-growing areas to deter smugglers. The Ghana Armed Forces, Ghana Immigration Service and Customs Excise and Preventive Service have all been tasked to aid the Ghana Cocoa Board in the 'Cocoa Anti-Smuggling Initiative.' Government has demonstrated its consternation further by authorizing the seizure of farms of suspected cocoa smugglers in the Ashanti, Western, Central and Eastern regions, and has sanctioned a bounty system to deter smuggling by offering cash incentives to those who apprehend smugglers.

These measures are counter-productive and clearly not well considered in the given context because they do not address the core factors that encourage smuggling. The energies of security agencies could be put to better use elsewhere, for obviously, the cost of all this manpower and the ill-will generated among indignant farmers is likely to far outweigh whatever smuggling is curtailed and is likely to prove more expensive than an upward revision in the producer price of cocoa by the Government.

Perhaps the most effective way to deal with the problem is to transfer a fair share of world market prices to cocoa farmers in order to spur production and reduce smuggling. A sliding scale for the producer price, which fixes prices at the bottom and not at the top, would generate a less taxing effect on the economy while ensuring that the producer price paid by Government remains sustainable should world market prices for cocoa suffer a reversal of fortunes.

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In addition to introducing a more flexible pricing policy Government's capital-mobilization, aimed at reinvigorating the country's cocoa industry, should be well-planned, transparent and efficiently executed after consultation with cocoa farmers. Low producer prices is only one problem that encourages smuggling; the others are the poor transportation infrastructure in the cocoa-growing areas, a lack of technological advancement in the cocoa industry and the delay in payments to cocoa farmers for their produce. Together, these factors frustrate farmers who understandably wish to profit from their labor, which forms the backbone of the Ghanaian economy.

The NPP Government has moved in the right direction with its recent attempt to revitalize the industry, but the conscription of security agencies to combat smuggling represents an old-style view of smuggling as a "criminal" or law-enforcement problem.

A holistic and thorough approach to the underlying cause of cocoa smuggling, one which takes into account all stakeholders, is necessary to counteract the damage to the economy, strengthen the industry and stem the seepage of Ghanaian cocoa into neighboring countries. Granted the economy lost 60,000 tons of cocoa due to smuggling, but a well-defined and full assessment of the challenges facing the industry should make it unnecessary to trample on the rights of cocoa farmers to earn a fair amount for their travail. ■

## What Number of Ministers is Too Large?

**A**t his press conference held on Thursday October 3, President John Agyekum Kufuor touched on a number of important public interest matters. While the President is to be commended for institutionalizing such open meetings with the media and the general public, one opinion he advanced and roundly defended at that press briefing gives cause for concern. In a move probably calculated to disarm his political opponents, President Kufuor said he was "wrong" while in Opposition to have criticized the former government for having too large a ministerial team. The President then suggested that there was still room in his administration for additional ministries and ministers. He mentioned, for example, that the Ministry of Lands and Forestry could easily be two separate ministries, and suggested that it would not be imprudent to have a separate ministry for tertiary education and even for aviation.

That the President would love to expand his power of  
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patronage is no surprise. Given the opportunity, many, if not most, presidents would create as many ministries and appoint as many ministers, deputy ministers, advisors and special assistants, as their political appetites would allow. But just as we all must learn to live without many of the things on our wish lists, so our presidents must come to terms with the fact that the country cannot afford to provide them with all the things and personnel they think they might need to govern the country. What scarce resources invite is not a longer wish list; it is priorities and judicious use and allocation of the scarce resources.

***The Constitution, of course, does not place a numerical ceiling on the size of the President's ministerial pool. But neither does it compel any President to appoint an unwieldy number of ministers.***

Already, and by any objective and comparative measure, Ghana has too many ministers, deputy ministers, special assistants, and presidential staffers. Although the current administration has fewer ministers and deputy ministers than its predecessor, the difference is not substantial. Moreover, the Kufuor Administration, apparently preferring the "political campaign" route to executive office, has appointed far more Members of Parliament as ministers and deputy ministers than the predecessor government. This has often produced negative repercussions, including occasional discontinuance for want of quorum, in the conduct of Parliament's business.

The Constitution, of course, does not place a numerical ceiling on the size of the President's ministerial pool. But neither does it *compel* any President to appoint an unwieldy number of ministers. It is indeed instructive that that article 76(1) puts the number of ministers who must be in the President's cabinet at no more than 19. Although this provision says nothing about non-cabinet ministers, the ceiling of 19 placed on the number of cabinet ministers should serve as a rough guide to determining what number of ministers might be considered too many. Otherwise, why did the framers of the Constitution pick the number 19? A ministerial team that is no more than twice the size of cabinet (allowing each cabinet minister one deputy) *plus* ten regional ministers, for an absolute total of 48, should be *more than* sufficient to run a country and economy the size of Ghana's. After all, in addition to ministers and deputy ministers, there are a number of non-ministerial appointees who make up the Office of the President and who are assigned various executive-branch roles by the President. Then, of course, there is the 25-member Council of State, on whom the President can also fall for advice, a 13-person National Security Council, a 6-person National

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Development Planning Commission, a 10-member Police Council, a 13-member Prison Service Council, a 9-member Armed Forces Council, a 19-member Lands Commission (plus 10 regional lands commissions), a National Commission on Culture, as well as several other commissions, authorities, boards and appointees (including 110 DCEs) assigned specific tasks.

If, despite the already large number of ministers and deputy ministers, the President believes he is not getting the kind of results he expects, he must seek the solution not in even larger numbers, but in a more efficient and effective deployment of the available resources and, indeed, in smaller numbers, as "too many cooks" may in fact be "spoiling the broth." Also, the government should take a keen and critical look at the civil service and find ways to ensure that ministers get the maximum possible value and professional advice from the chief directors and directors at their disposal. A more professional, effective and accountable civil service might obviate the need for an excessively large pool of ministers, deputy ministers, and special assistants. As it is, too many ministers, deputy ministers and special assistants are known to be performing tasks and roles that might properly be performed by senior civil servants. If the problem lies with the nature and quality of civil servants, the solution lies in meaningful civil service reform to enhance professionalism, integrity and accountability in the public bureaucracy; the solution does not lie in appointing more and more ministers and deputies while retaining the civil service in its present form and substance.

***If, despite the already large number of ministers and deputy ministers, the President believes he is not getting the kind of results he expects, he must seek the solution not in even larger numbers, but in a more efficient and effective deployment of the available resources and indeed, in smaller numbers, as "too many cooks" may in fact be spoiling the broth***

Although the Constitution does not place a ceiling on the number of ministers a President can appoint, Parliament can act to restrain presidential appetites in this area. As is the practice in many other countries, the creation or re-designation of new ministries, which always opens up opportunities to appoint another minister and deputies, must not be left to the unfettered discretion of a president. The creation of each new ministry must require new legislation to justify to Parliament and the Ghanaian people why the proposed ministry is needed. It is not a matter that must be left to be decided simply by presidential fiat, as has been the practice in our history. Creating new ministries

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by specific legislation would also make it less likely that a successor government would abolish the new ministry.

Through its Appointments Committee, Parliament could also use the confirmation process to regulate the number of ministers a president would be allowed to appoint. Presidents must be required to justify each new ministerial appointment as “necessary for the efficient running of the States,” as article 78 of the Constitution stipulates. As the body that approve the budgets of all ministries, Parliament must regularly question the purpose of, and continuing justification for, each ministry and inquire whether a particular ministry’s functions cannot be subsumed under other ministries or in some other body. For example, with a National Sports Council (NSC) plus separate publicly supported “associations” for each of the major sports in the country, is there a real need for a separate Ministry for Sports? Many countries without any such ministry have consistently outperformed Ghana at one World Cup and one Olympic Games after another. The NSC can be made to report to the Office of the President or Vice President without any negative effect on sports in the country. Similar rationalization can be pursued in many other ministries.

It is worthy of note that, at the same time as the President was essentially pleading for more ministers, his Defence Minister had been acting simultaneously as Minister for the Interior, while his Private Sector Minister was also carrying the weight of the Ministry of Tourism. In neither case can performance in the affected ministries be said to have suffered. The President no doubt must have many important matters and problems to worry about. But “too few ministers” is most certainly not one of them. Ghana needs fewer, not more, ministers and deputies. ■

## The Mills-Botchway Race to Lead the NDC

December 21<sup>st</sup> 2002 was another major landmark in the history of Ghana’s largest opposition party, the National Democratic Congress. A congress was scheduled to elect the party’s flag bearer for the 2004 elections, a logical sequel to an earlier congress in April that elected a chairman, and began a process of realigning the party’s orientation to constitutional pluralism. At the April event a new chairman, Dr. Obed Asamoah, had been elected in a hotly contested race, which enthroned a reformist who aimed at instituting internal democratic reforms and charting a new path of shedding the vestiges of patronage and dictatorship.

The December Congress sought to consolidate the gains, and did so through an open contest for the position of flag

bearer, a clear departure from election by acclamation, which had typified internal electoral practices at parliamentary and presidential levels. NDC’s consensual politics had undermined leadership potential, nipped the enthusiasm of young Turks nursing leadership ambitions, and reduced leadership hopefuls to a close knit cabal in the good books of party oligarchs. In the run up to the 2000 elections, it had led to massive dissension, and a schism in the party, resulting in the formation of a splinter group, the Ghana Reformed Party, that resented the lack of internal democracy and balked at NDC’s illiberal posturing. That was after Jerry Rawlings’ virtual choice of John Evans Atta Mills, his Vice President, as his successor. At a subsequent Congress in the run up to Election 2000, NDC’s choice of flag bearer was thus a *fait accompli*.

Not so last December. The race for the Party’s presidential ticket for the 2004 elections was beyond prediction by pundits. It was a two-way fight this time, the first in the party’s ten-year history of choice by acclamation. John Atta Mills’ failed attempt to beat J. A. Kufuor in 2000 generated competition from within, and triggered the search for a winnable contestant. The choice then was between Professor Mills with the advantage of ‘incumbency’ and name recognition, and Dr. Kwesi Botchway, Rawling’s former Minister of Finance, who was launching a reformist agenda.

The earlier race for chairmanship won by Dr. Obed Asamoah, had boosted the optimism of party reformists, who considered the December Congress a rare opportunity to consolidate an agenda for change. In more practical terms any coupling of Chairman Asamoah with a flag bearer from the illiberal Rawlings stock was considered capable of undermining harmony within the party’s top hierarchy. Against this background, the announcement of the candidature of Dr. Kwesi Botchway buoyed up hopes for reforms, but also heightened suspense and anxieties. For a Mills-Botchway race could deepen inter-factional feuding, and precipitate a split in the party even before Congress.

One major factor was Jerry Rawlings, founder of the party, whose preference for Mills, and misgivings about Botchway, was no secret. Between Rawlings and Botchway, his longest serving Finance Minister, was a deep-seated grudge that had raged for seven years, and appeared bound for an inevitable climax. In a TV interview months before his declaration of presidential ambitions, Botchway had derogatorily alluded to the NDC as the personal property of the Rawlingses, and had raised doubts about his own allegiance to the party. To return and seek NDC’s presidential nomination then was not only improper, to Botchway’s critics (including Rawlings), but also

provocative. It was interpreted as a brazen attempt to put the party on auction.

Botchwey's loyalty to the party became then a major weapon for pro-Mills campaigners, and set the tone for very bitter rivalry between the two campaign teams.

Significantly, except for a few known faces, party activists that openly declared support for Botchwey were largely anonymous, a fact that bespoke inherent dangers in openly declaring for an anti-Rawlings advocate. Big names behind Botchwey would deny press allegations, not comment, or indulge in surreptitious campaign. It was, however, not unusual for leading members of the NDC to overtly express a pro-Mills inclination.

As expected, rowdy stand offs, fiery exchanges, and caustic remarks on the candidates' private lives characterized the campaign, and frayed tempers. So did anti-Botchwey swipes by Rawlings on public platforms. Equally ominous were well-rehearsed declarations of collective support by various regions for one candidate or the other, sometimes followed by angry disclaimers by dissenters. Would the Founder Jerry Rawlings accept a Kwesi Botchwey win, which could erode or eclipse his dominance in the party? Would Rawlings quit the party he founded if the reformists triumphed? Would NDC survive the most competitive primaries in its ten-year history? Indeed would the very attempt to bolster the party's democratic structures precipitate its decline?

Remarkable, however, were 1) the mutual display of warmth and tolerance by the candidates themselves, who pledged mutual cooperation regardless of the outcome of the primaries; 2) the new life and enthusiasm Botchwey had breathed into the party; and 3) the overt and covert campaigning at the grass roots by the party's top hierarchy, which enhanced participation in the decision making process.

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***... the NDC Congress and the Botchwey electoral freak bolstered the party's yearning for internal democracy***

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The congress itself was a scene of violence. A brutal assault on the Botchwey candidature was launched by Mills' sympathizers, whittling NDC's democratic gains, and restoring deep cracks in its body politic. Botchwey's followers were heckled and jostled. They were booed, battered, and terrorized by organized thugs. Some escaped in shredded clothes; others were rushed to the hospital with bodily injuries. Several pro-Botchwey delegates were compelled to de-robe and conceal their T-shirts for safety sake. Some leading members of his campaign team were clubbed, and their

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cars vandalized. Kwesi Botchwey souvenirs and posters were brazenly cannibalized, and the candidate himself, looking dejected and shocked, was jeered and heckled. The rioting engulfed a journalist, who was battered and his vehicle damaged for suspected anti-NDC leanings.

In the business hall itself, anti-Botchwey slogans and swipes rented the air. A speech by the party's chairman Obed Asamoah, a clandestine Botchwey advocate, was intermittently drowned in boos, cat calls and organized melee. The rupture of official indiscipline peaked when Jerry Rawlings, the party's founder himself, carefully timed his arrival at the Congress to disorient Asamoah's speaking slot. The tumultuous welcome given to Rawlings in the midst of the Chairman's formal address, temporarily halted proceedings and deflated the ego of the party chairman and his.

The stage then was set for a Mills victory, which was an overwhelming 85%.

A placard inscription displayed by Pro-Mills advocates summed up proceedings at the Congress, NO RAWLINGS NO NDC. It affirmed the successful return of Jerry Rawlings, and the restoration of his grip over the party, but also raised questions on the Party's readiness for internal reformation and its capacity to build enduring democratic structures.

Admittedly though, the NDC Congress and the Botchwey electoral freak bolstered the party's yearning for internal democracy. Thus even if he lost, Botchwey had helped to strengthen the party's fragile democratic foundations. The eruption of violence and orchestrated hooliganism witnessed at the primaries, and lamentably condoned by officialdom, however, reinforced the anarchist perception of the NDC. It portrayed the party, as incurably steeped in hooliganism and intolerance, and entrenched grudge and factionalism in the top party hierarchy.

Indeed regardless of the post-voting signs of cordiality, 1) the open admission of defeat by Botchwey, 2) the post-election pledge of mutual cooperation, 3) the holding of hands by winners and losers; all is not well within the NDC. Breakaway attempts by splinter groups have been reported, so has continued harassment of pro-Botchwey loyalists. In the mean time the principal actors have made no visible overtures; and no intra-party moves towards rapprochement are known.

The party's handicaps in democratic practice will be considered cured only if hugs and embraces move beyond cosmetic posturing, to a bold effort to denounce violence and embrace political tolerance. ■■

**CDD-GHANA DEMOCRACY PROGRAMS FOR THE LAST QUARTER OF 2002**

**September 24:** Dr. David Leonard, dean of International and Area Studies, University of California, Berkeley, USA led a roundtable discussion on the topic 'Africa's Stalled Development: International Causes and Cures'. Over thirty participants drawn from government, independent constitutional bodies, academia, the private business sector and civil society shared views on Africa's economic development. The forum also examined the causes of civil disorder and poor economic performance in Africa, and suggested strategies for recovery. The program was chaired by Professor Cletus Dordunoo, an Accra-based economic consultant.

**October. 3** "Liberty vs. Security: Protecting Human Rights and Public Safety in a Democracy" was the subject for discussion at a roundtable chaired by Dr. Kofi Quarshigah, senior lecturer in law, University of Ghana. Mr. Kwasi Prempeh, Director of Legal Policy and Governance at the Center led the discussion. He observed that in non-democratic regimes the conflict between liberty and security is resolved in favor of security of the regimes but in transitional democracies and post conflict situations there is a tension between regime security and liberty. He suggested however that the security and liberty of the citizen should be of high concern to democratic regimes. More than 50 officials from the public service including the security agencies participated in the program.

**October 7- 23:** In collaboration with GTZ Forum the Center organized three specialized workshops involving 14 Ghanaian and German experts on "Land and Forest Ownership in Ghana". The workshops reviewed an earlier study on collaborative forestry management, the outcome of which was aimed at promoting participatory management of forests between legal owners and fringe communities. Prof. E. Gyimah-Boadi of the Center and Dr. Dan Inkoom, of the Kwame Nkrumah University of Science and Technology took turns to moderate the meetings.

**October 10:** The Center lent support to the Ghana National Association of Poultry Farmers (GNAPF) to organize a roundtable for its members and government officials. The aim was to discuss problems militating against the growth of the poultry sector in Ghana. Under the chairmanship of Prof. Anna Barnes, dean in the faculty of Agriculture, University of Ghana, two presenters, Mr. Kenneth Quartey of the GNAPF and Dr. Oppong Anane, deputy director of Animal Production, Ministry of Food and Agriculture, raised pertinent issues that highlighted the need for further discussion on the issues of government subsidies on imported inputs in the poultry industry. The 47 participants at the roundtable came from civil society, Ministry of Agriculture, Parliamentary committees on agriculture and trade including related departments, agencies and private enterprises.

**October 29:** Dr. Baffour Agyeman-Duah, Associate Executive Director of the Center led a roundtable discussion on "Civil-Military Relations in Ghana's Fourth Republic". Chaired by Lt. Gen. Rtd. Emmanuel Erskine, the roundtable discussed civil-military relations in contemporary Ghana and whether the democratic consolidation in Ghana was firm enough to withstand any turbulence from the military. Fifty-three participants from the security agencies, Parliament, the media, the diplomatic corps and civil society attended the participated in the discussion.

**November 4:** In collaboration with the office of the UNDP the Center organized an in-country review workshop on a draft country report of a study it conducted for the Economic Commission for Africa. Titled "Monitoring Progress Towards Good Governance in Africa" key findings of the report

was presented to governance stakeholders for feedback. More than 20 organizations were represented at the workshop. The Economic Commission for Africa was represented by Dr. Toma Makannah and Dr. Alfred Fawundu, resident representative of UNDP in Ghana chaired the event.

**November 7:** The Center held a roundtable discussion on "US Policy and Prospects of War in the Middle East." The discussion was led by Dr. Bob Anderson, an associate professor from Elon University in North Carolina, USA. The presentation dealt with changes in United States foreign policy following the September 11, 2001 terrorist attacks on the US, examining the specific history and meaning of President Bush's new "National Security Initiative." Participants had the opportunity to discuss alternative or additional foreign policy strategies to America's declared war on terror. A good mix of 56 participants took part in the discussions. Hon. Okerchiri Kwabena Adusa, chairman of the parliamentary select committee on Foreign Affairs, chaired the roundtable.

**November 12:** At a round table held at the Center Professor Joseph R. A. Ayee, the Dean, Faculty of Social Studies, University of Ghana, gave a presentation on the topic "Toward Effective and Accountable Local Government in Ghana." Most of the fifty-three participants invited to the roundtable were from the local government system and they brought their knowledge to bear widely on the discussions generated from the presentations. The objective of the program was to examine the existing framework of local government administration in Ghana, identify the problems and suggest solutions. Professor Sam N. Woode, director of the Institute of Local Government Studies, was in the chair for the discussion.

**November 28:** The Center organized a symposium at the Golden Tulip Hotel on "The Judiciary in the Golden Age of Business." It was attended by more than 70 participants. The program featured a panel of presenters from the bench and bar, they included Justice G. E. Aquah, Justice Yaw Appau and Mr. Kojo Bentsi-Enchill. Another discussant was Dr. Osei Boeh Ocansey, representing the business community. The moderator, Mr. H. Kwasi. Prempeh, Director, Legal Policy and Governance at the Center led the discussion. He raised a number of issues pertaining to the commercial justice system in Ghana, challenges and proposals for action. Some of the issues specifically discussed were civil procedure law; case flow and case management, resources and capacity; professionalism and ethics; cost of litigation; delivery of judgement; case reporting and continuing legal education. Justice Sophia Akuffo of the Supreme Court was in the chair for the program.

**December 6 – 8:** A review workshop on "Perceived Corruption in the Judicial System of Ghana" took place at Ho. This workshop was to give stakeholders an opportunity to review the main issues raised at the public hearings and stakeholder meetings held at seven venues earlier on in the year. It also provided a platform for the Committee on the Judiciary to seek additional views from participants on how to resolve the problems of the Judiciary. Three resource persons presented background papers to an audience drawn from the top echelons of the Judiciary, Parliament, political parties, academia and civil society. The workshop was chaired by Hon. Osei-Prempeh, chairman of the Committee on the Judiciary.

**December. 17:** "The Kufuor and NPP Administration: A midterm Governance Assessment" was the subject of a panel discussion at the Center. As the Center's own independent midterm assessment of the NPP Administration all four presentations at the roundtable were made by officials of the Center: Prof .E. Gyimah Boadi, Dr. Baffour Agyeman-Duah, Mr. H. K. Prempeh and Dr. Audrey Gadzekpo. The areas of the assessment were: rule of law and constitutionalism; accountability and anti-corruption; transparency and government-media relations; and economic management and economic governance. Ninety-eight participants from a broad range of institutions and the diplomatic corps attended the program. ■■■

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- Critical Perspectives Nos.1-10
- Research Papers Nos.1 - 10
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The Ghana Center for Democratic Development, CDD-Ghana is an independent, nonpartisan and nonprofit organization based in Accra, Ghana. It is dedicated to the promotion of democracy, good governance and the development of liberal economic environment in Ghana in particular and Africa in general. In so doing, CDD-Ghana seeks to foster the ideals of society and government based on the rule of law and integrity in public administration.