

YEAR 2021 IN REVIEW

Introduction

The COVID-19 pandemic constituted significant challenges to our way of life nationally and globally. In Ghana, the pandemic heightened and further exposed the gaps in our economic and political structures. The conduct of the December 2020 general elections, which saw the election of the NPP administration for a second term and an evenly-split Parliament, was threatened by a cloud of uncertainty but our collective efforts ensured its relative success. Government's efforts to contain the spread of the COVID-19 virus while commendable, exposed the persistent gaps in various sectors of the economy. The management of public resources as part of government's response to the pandemic also woefully exposed weaknesses in public accountability systems. The highhandedness of security agencies during and after the general elections continue to undermine internal security efforts and the constitutional rights of citizens as a culture of complete disregard for the law and due process creeps into the operations of these security agencies.

This special edition of Democracy Watch captures some of the significant events and occurrences in the annals of our democracy in 2021, assesses their implications for good governance in Ghana and makes recommendations for policy makers to consider.

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THE RULE OF MEN CONTINUES TO WEAKEN THE RULE OF LAW AND JUSTICE

Ministry of National Security's actions following the armed invasion of CITI FM and the 'arrest' and assault of its reporter, Caleb Kudah

On Tuesday, May 11, 2021, a reporter of CITI FM, an Accra-based radio station, Mr. Caleb Kudah, was arrested by operatives of the National Security Ministry. Mr. Kudah was arrested for allegedly taking 'unauthorized' pictures and videos of vehicles procured with state funds but reportedly abandoned for a long period of time and parked within the premises of the National Security Ministry. On the same day, armed operatives of the National Security Ministry invaded the premises of CITI FM in 'rambo style' in an attempt to arrest another reporter, Ms. Zoe Abu-Baidoo, for allegedly receiving the pictures and videos taken by her colleague, Mr. Kudah. Ms. Abu-Baidoo was released after a few hours, while her colleague Mr. Kudah was released later on the same day.

Following widespread public anger and condemnation by civil society groups, the Ministry of National Security announced its intentions to commission an internal investigation into the incident and take appropriate action.

On Thursday, May 20, 2021, the Ministry announced certain steps it had taken following its internal investigations. The Ministry found that its operatives

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acted inappropriately in contravention of 'standard operating procedures'. The Ministry accordingly revoked the secondment to the National Security Secretariat of certain personnel of the Ghana Armed Forces and the Ghana Police Service who were found to have been involved in or responsible for the incident, including Lt. Col. Frank Agyemang, Director of Operations at the National Security Secretariat. The Ministry advised that the Ghana Armed Forces and Ghana Police Service take further disciplinary action against the officers involved. The Ministry also found that Mr. Caleb Kudah's presence on the National Security Ministry's premises on the day of the incident was 'unlawful' and 'unauthorized'.

CDD-Ghana acknowledges the swift action taken by the Minister of National Security. We also note that this is one of the rare occasions that the National Security outfit has admitted publicly that some of its operatives had acted "inappropriately" in an encounter with citizens and also announced administrative or disciplinary actions against the culpable officers. However, the Ministry sought to minimize the misconduct of its operatives by describing the criminal assault against the person of Mr. Kudah as merely 'inappropriate'. This is regrettable, as it does not send the right signal as deterrence to officers of the National Security apparatus. The Center also awaits the speedy conclusion of the National Media Commission's investigations into the complaint filed by CITI FM on this matter. The Center would like to entreat the Government and the Minister of National Security to seize upon this incident as an opportunity to pursue more far-reaching reforms in the National Security apparatus and its operations, as the problems highlighted by the Kudah/CITI FM case has been longstanding, recurring and systemic.

This latest incident once again brings into focus, the importance of taking seriously the observations and recommendations of the Emile Short Commission. Among other things, the Emile Short Commission recommended that, "***operatives of the National Security Council should be trained to internalize human rights rules including the provisions on the fundamental human rights of the Constitution within their Standard Operating Procedures (SOPs).***" It is clear from both the incidents at the National Security compound involving Mr. Kudah

and on the CITI FM premises, including the attempt to "arrest" Ms. Zoe Abu-Baidoo of CITI FM, that the admonition and recommendations of the Short Commission, including in the area of recruitment and training, have not been heeded to or implemented by the relevant authorities. In addition to the proposed change in orientation, it is our view that the current architecture of National Security, including the lines of accountability, authority, command, and responsibility needs a re-look. While the Security and Intelligence Act, 2020 (Act 1030) sought to answer some of the pre-existing structural and functional challenges, it does not appear to have gone far enough. Interagency and interpersonal turf battles evidently persist. With the designation and appointment of a Minister in charge of National Security (both under this President and former President Kufuor) it was expected that the "national security" function and apparatus would be both better streamlined and brought under firmer civilian political control, including from Parliament. Unfortunately, these formal organizational changes have not translated into visible change in the way "National Security" operates or in the way citizens perceive and experience "National Security". Indeed, it appears that the Minister for National Security has no proper or effective oversight of the operations of the so-called National Security "Secretariat". Moreover, Act 1030 does not make clear what oversight Parliament has or should exercise over the Minister, Ministry or the National Security Secretariat.

The Center appreciates the enormous and critical national security challenges the country faces, including security threats and developments in our immediate neighborhood. What this calls for, however, is enhanced trust, understanding and cooperation between citizens and the personnel and agencies entrusted with frontline responsibility for protecting the nation against credible and emerging threats to our security and cohesion. This goal is not advanced by unprofessional personnel in the name of "National Security" that either tarnish the professional reputation and credibility of the various national security agencies or alienates them from important sections of the national community, including the media. Effective national security calls for a "whole-of-society" approach, not an "us" versus "them" mindset or posture that has a tendency to alienate certain groups of citizens or segments of

society or cause citizens to doubt the professionalism or integrity of persons acting in the name of national security.

We call on Parliament to assume its rightful place as the mouthpiece of the citizenry and the principal governmental oversight body to ensure that the country has a National Security system that is fit for purpose. A good place to start is to revisit the Emile Short Commission report and get Government to commit to credible reforms both in the way National Security personnel are recruited and trained and in the way National Security goes about performing its mandate.

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The elevation of Lt. Col. Frank Agyemang

Among the steps taken by the Ministry of National Security and announced on Thursday, May 20, 2021, was the revocation of the secondment to the National Security Secretariat of Lt. Col. Frank Agyemang, Director of Operations at the National Security Secretariat. The Ministry had requested the Chief of Defence Staff to conduct further investigation into the involvement of Lt. Col. Agyemang and adopt appropriate action.

Contrary to expectations that the Chief of Defence Staff, would act in accordance with the Ministry's request, a memo from the Ghana Armed Forces leaked to the media on Monday, May 24, 2021, revealed that the implicated officer, Lt. Col. Frank Agyemang, has been elevated to the position of Commanding Officer of the 64 Infantry Regiment of the Ghana Armed Forces.

The elevation of Lt. Col. Agyemang to this high-ranking position given his involvement in the CITI FM/ Caleb Kudah case is as surprising as it is disappointing. His elevation completely disregards

the preliminary steps announced by the National Security Ministry. It impliedly, in our opinion, endorses his conduct and demonstrates the failure of the Chief of Defence Staff to recognize the gravity and far-reaching implications of the case.

It also sends the wrong signal to members of the security agencies that they can disregard the law and 'standard operating procedures' and get away with it. It dwindles public confidence in the integrity of the armed forces and undermines institutional efforts aimed at holding recalcitrant members of the security agencies accountable. His elevation equally encourages the growing culture of impunity amongst state actors who ought to be held to the highest professional standards.

Postscript:

Following the assault on its reporter and the subsequent invasion of its premises by operatives of the National Security Ministry, the management of CITI FM and CITI TV petitioned the National Media Commission (NMC). The NMC in its report released on or about June 3, 2021, determined that the treatment meted out to Mr. Caleb Kudah by the Ministry of National Security operatives and the subsequent invasion of CITI FM/CITI TV premises on May 11, 2021, was wrongful. The NMC took the view that all institutions in a democratic state must act within the law and adopt approaches that reflect democratic values.

The undemocratic exercise of police powers in respect of civic protests

The #FixTheCountry movement—an activist group which started with vigorous social media campaigns—has been repeatedly prevented from embarking on its long-planned demonstration by the police administration.

The group has for months been campaigning for structural reforms in Ghana's economy which is plagued with rising public debt, increasing youth unemployment, systemic corruption, poor public healthcare, pollution of water bodies occasioned by illegal mining, power cuts, rising rents and fuel prices among others.

A demonstration in Accra planned by the movement for May 9, 2021, was blocked by the police and the Attorney-General with an 'indefinite' injunction secured from the High Court. The Court presided over by Justice Ruby Aryeetey in granting the ex parte injunction application restrained the conveners of the #FixTheCountry movement "from embarking on the planned demonstration slated for Sunday, May 9, 2021, or any other date until the restriction on public gathering is lifted."

The group got the Supreme Court to quash the High Court order on June 8, 2021. In a unanimous decision, the Supreme Court held that 'for the trial judge to order the Applicants [#FixTheCountry conveners] and their assigns be prohibited from embarking on a demonstration on the 9th of May, 2021 or any other date until the Restriction on Public Gatherings is lifted by the appropriate authority, the trial Court clearly exceeded its jurisdiction.' The Court reasoned that an ex parte injunction application granted by a High Court cannot remain in force for more than ten (10) days, according to Order 25, Rule 1(9) of the High Court Civil Procedure Rules, 2004 (C.I.47).

However, days after the Supreme Court ruling, the Police filed another injunction application at the High Court seeking to prevent the group from embarking on its protest.

On June 25, 2021, eleven (11) members of the #FixTheCountry group were arrested, ostensibly for gathering in front of the High Court complex in Accra while the hearing of the injunction application was ongoing. They were later released without charge.

The unlawful arrest of these persons and the persistent efforts by the police administration to prevent the group from embarking on their protest is a yet another manifestation of the undemocratic exercise of police powers in Ghana.

First, merely gathering at a public place such as the High Court Complex is not a crime, especially given the facts of this case which show that these persons had gathered in wait of a decision of the High Court in a case which they were parties to and or had an interest in.

Second, by arresting these persons without any formal charges, the police acted in breach of Article 14(2) of the Constitution and Section 9(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) which impose a duty on the police to immediately inform persons arrested of the reasons for their arrest, restriction or detention.

CDD-Ghana believes strongly in the law as an avenue to facilitate and advance the welfare of the public. The Center finds the recurrent attempts to use the law to repress the rights of the public troubling. In a democratic dispensation such as ours where the rights to protest, assemble and speak freely are guaranteed by the Constitution, it is troubling for the police administration to persistently employ mechanisms to prevent any group of persons from actualizing these rights. The consistent use of ex parte injunction applications to deny the #FixTheCountry group from embarking on its planned demonstration is a repression of the freedoms enshrined in Article 21(1)(d) of the Constitution which assures Ghanaians of the freedom of assembly including freedom to take part in processions and demonstrations.

Such undemocratic use of police powers is even more troubling considering the instrumental role the office of the Attorney-General played in securing the 'indefinite' order from the High Court. The Centre disagrees with the Ghana Police Service in its position that the reasons given by the conveners for the planned demonstration were not compelling. It is not the place of the police administration to determine the propriety or otherwise of a planned demonstration.

Whereas the Center takes very seriously the challenge of the COVID-19 pandemic and the need to observe all necessary preventive protocols, it also takes rigorous cognizance of the fact that the COVID-19 argument advanced by the police as the basis for the injunction applications is problematic. The same police administration preventing a group from embarking on a protest citing COVID-19 restrictions on public gatherings, sat back for a massive funeral (a super spreader event) to be organised for the late former NPP General Secretary and former CEO of the Forestry Commission, Mr. Kwadwo Owusu Afriyie (aka Sir John) in breach of

the COVID-19 restrictions on public gatherings.

The general disposition of the police in handling this case seems to be one of strong-arming and tyranny; an attitude which is at odds with the mandate of the police to maintain law and order.

An obvious need exists to reorient the Ghana Police Service in the execution of their mandate. However, the challenge that is apparent here is the age-old one of government using state apparatus to deny and repress the freedoms of the citizenry. The government needs to be more attuned to the needs of the nation and the demands of the populace.

Unlawful killings at Ejura and matters arising

On Tuesday, June 29, 2021, two (2) persons, identified as Abdul Nasir Yusif and Murtala Mohammed, were reportedly shot and killed by security forces when the youth of Ejura Sekyedumase in the Ashanti Region were protesting the brutal murder of Ibrahim Mohammed alias 'Kaaka', a community activist. Four (4) other persons were also severely injured as a result of the brutal force used by security forces.

A video of the protest captured live and broadcast by the Multimedia Group shows military personnel, upon arrival at the scene, fired warning shots into the air and then took aim at the protesters, firing live rounds into the crowd and reportedly killing the two protesters and injuring four others.

A three-member committee led by Justice George Kingsley Koomson (a Justice of the Court of Appeal) constituted by the Interior Minister to investigate the unfortunate occurrences at Ejura and related matters presented its report to the Interior Minister on July 27, 2021.

Amongst the Committee's findings were that (i) 'the death of "Kaaka" was not directly linked to his social media activism. It [was] more probably a family fued.' (p. 49 of the report); (ii) 'there was no need or justification for the dispatch of a Police Riot Vehicle (water canon) to the cemetery on the morning of the 29th of June...the presence of the Riot Vehicle at the cemetery on June 29 was an act of provocation which incensed an already angry and violent youth, thereby culminating in the attack on the Police Riot

Vehicle.' (p.49 of the report) (pp. 49,50 of the report); (iii) 'there was no proper coordination in the handling of the situation by the Police' (p. 51 of the report). The Committee also found that (iv) 'there was no proper security briefing and intelligence gathering and sharing. From the evidence of the Ashanti Regional Minister who is the Chair of the Regional Security Council (REGSEC), it is obvious that the intelligence information he received caused him to authorize the deployment of the military...if there was a proper sharing of intelligence information among members of REGSEC and their respective organizations this "knee-jerk" approach would not have been adopted in the handling of the situation on the ground...this escalated the situation and thereby provided grounds for the deployment of the Military.' (pp. 51,52 of the report); (v) 'immediately the personnel touched down they started firing the warning shots...we note that although the firing of live ammunition achieved the intended purpose of dispersing the rioters, it left in its trail, unnecessary deaths, pain and suffering of the people of Ejura. This in the view of the Committee could have been prevented if the Police had prepared adequately in terms of personnel and logistics upon receiving the intelligence information prior to the events of June 29, 2021 (pp.52,53 of the report).'

These findings and the conduct of the Committee's work raise a number of concerns.

First, the Committee's finding that 'there was no proper security briefing and intelligence gathering and sharing' among members of REGSEC and their respective organisations; a development which led to the 'knee-jerk approach' in the handling of the incident is deeply worrying. It shows that the REGSEC and the Police administration have to work harder in the management of civic protests. Given the demographics of the country and growing inequality, these types of civic formations and protests are likely to be frequent.

Second, the involvement of the military in internal security matters and the Standard Operating Procedures (SOPs) of the security apparatus in such situations have to be reviewed. The Committee's finding should provide impetus for the national security hierarchy to re-examine the regional security apparatus including the lines of communication, accountability, authority, command, and responsibility to prevent the

reoccurrence of the unfortunate incidents at Ejura.

Finally, though the Committee suffered a credibility crisis during the hearing as it sought to blame the media for the violence in Ejura, its final report was well received except the conclusions drawn on the reasons for the murder of Kaaka and who may have done the killing. Those early lapses were difficult to explain given the composition of the Committee. In the future, it may be useful to provide such committees with stronger technical support and advisors as was successfully done with the Emile Short Commission which investigated the violence that characterized the Ayawaso West Wuogon by-election in 2019.

The continuing struggle against 'galamsey'

Following measures instituted during his first term as President to eliminate the menace of illegal small-scale mining, (aka 'galamsey') which have either had very limited success or outrightly failed, the President, Nana Akufo Addo introduced a set of measures aimed at countering the problem at the start of his second term. Measures taken by the government to counter illegal mining in the past included the use of drone technology, fitting tracking devices in excavators used in mining districts, the deployment of 'Operation Vanguard', 'Galamstop' and the establishment of district mining committees in mining areas across the country. These measures also included a temporal ban on the activities of small-scale miners in March 2017 as part of efforts to sanitise the mining sector and protect the environment. Following the introduction of these measures, recurrent news reports about the destruction of forest reserves and landscapes through illegal mining suggest that the measures have been anything but successful. Attendant to these have been repeated complaints from the Ghana Water Company Limited (GWCL) about the adverse effects of illegal mining activities on their storage and generation capacity. They even sounded repeated warnings of an imminent water crisis should illegal mining activities continue. Illegal mining activities continued, and the unhindered destruction, along with it, despite assurances by the then Chairman of the Inter-Ministerial Task Force on

Illegal mining, Professor Kwabena Frimpong Boateng, of the government's commitment to protecting the environment.

In a renewal of his commitment to the fight against 'galamsey,' the President commissioned 'Operation Halt', a mission against illegal mining that began with 200 men drawn from the Ghana Armed Forces and the Police Service. It has since progressed to include 400 men as at the commencement of the fourth phase where they have been tasked with "removing all persons and logistics involved in mining on water bodies." The distinguishing element in this new drive to tackle the galamsey menace, is that as underscored by the Minister of Defence, Mr. Dominic Nitiwul, unlike in previous attempts to flush out illegal miners from Ghana's water bodies and forest reserves, the government announced that all equipment seized under this new effort to end galamsey will be destroyed on-site. The first leg of the operation, dubbed 'Operation Halt' was undertaken on the Pra river and resulted in the arrest of two Chinese nationals at Anttiekue near Twifo Praso in the Central Region for illegally mining in a forest reserve. On May 7, 2021, the Ghana Armed Forces deployed 400 soldiers of all ranks to begin the second phase of 'Operation Halt' to rid the country's water bodies of illegal miners. On May 11, 2021, the Minister of Defense, Dominic Nitiwul, revealed that some 28 excavators used in illegal mining activities had been destroyed, along with some 218 chanfangs, five canons, eight industrial batteries and 18 water drilling machines.

In the wake of the new measures to tackle illegal mining, grave concerns have been expressed about the practice of burning excavators and other mining equipment and its legality. The General Secretary of the Small-Scale Miners Association, Godwin Armah, said the current law only mandates state authorities to seize such equipment and not burn them as being done by the military task force deployed to fight the menace. In Parliament on May 28, 2021, the Member of Parliament for Tamale South Haruna Iddrisu, questioned the legality of the directive to burn mining equipment upon their seizure. In response to a statement by the President endorsing the burning of excavators, Mr. Haruna Iddrisu begged to know which law in the Constitution that the President had sworn an oath to protect and be guided by, permitted the burning of mining equipment upon their seizure. The majority leader and Member of Parliament for the Suame

constituency, Osei Kyei Mensah Bonsu responded by saying that in instances where operators of illegal mining equipment were arrested alongside the seizure of their equipment, mining equipment were not burnt. But in situations where illegal miners absconded, rendering excavators immovable by removing the vital cog, Operation Halt II agents were left with little option other than to 'cause further immobilisation' of the excavator by burning it.

Responding to the issue of the legality of the practice in questions filed by the Member of Parliament for North Tongu, Samuel Okudzeto Ablakwa, the Minister for Lands and Natural Resources, citing Article 36(9) of the Constitution which mandates the state to "take appropriate measures needed to protect and safeguard the national environment for posterity", stated that the government and the anti-galamsey task force were well within their rights to burn excavators found at illegal mining sites. The manner of decommissioning and demobilization was at the discretion of officials, he said. Addressing concerns raised about how the burning of mining equipment could attract judgement debts to the state, the Minister of Information, Kojo Opong Nkrumah, said no court was going to grant a judgement debt to an illegal miner whose mining equipment were seized and burnt by the government.

A general observation by CDD-Ghana regarding the current fight against illegal mining, is that there seems to be too much emphasis on the nuisance that mining equipment constitute and not enough energy in arresting, prosecuting and incarcerating the kingpins and illegal miners deploying the equipment. CDD-Ghana finds the disparity between the resources being sunk into the destruction of equipment seized and the effort being put in the prosecution of illegal miners arrested despairingly wide. The Centre holds the view that the fight against illegal mining in the country has been ongoing for far too long for successive administrations that have tackled it to not have made arrests of any of the key players involved in the menace. This view is in line with views expressed by His Majesty Otumfour Nana Osei Tutu II at the Regional Consultative Dialogue on Small Scale Mining in the Ashanti Region on May 12, 2021. Addressing the people gathered at the function, he said, "When we divide the audience in this room into ten, 30 percent of them will know those involved in galamsey...If you are not truthful, we will keep deceiving ourselves and be organizing conferences such as this."

It is a regrettable observation to make that the state

of the environment has only seemed to worsen with time regardless of the effort invested by government in the fight against illegal mining. The Center here, takes particular cognizance of the looming water crisis which Ghana Water Company Limited (GWCL) continually sounds an alarm about amid recurrent complaints of the adverse effects of illegal mining activities on their storage and generation capacity. The Center also takes particular note of reports of how the EU, alarmed by satellite images showing the level of degradation to Ghana's forest areas in recent years, has threatened to restrict cocoa from Ghana. The EU, is said to constitute the market for about 80% of Ghana's cocoa, and that is why it is worrisome little concern is shown considering the rate of destruction of our water bodies and forest reserves.

It begs questions about our commitment to the fight against illegal mining, how four Chinese nationals, Shi Li Wen, Huang Shen Jun, Li DeHao and Lan Hai Song who on June 3, 2021, were found guilty of illegally mining a 40-acre land in Obuasi, were slapped with deportation instead of being imprisoned. It is the view of the Center that success in the fight against illegal mining cannot materialize until the war being waged on mining equipment is directed at the individuals undertaking the illegal activity and the appropriate penalties and sanctions, meted out to parties determined by the law courts to be in breach of the regulations governing small-scale mining. Particularly, the Center would implore the judiciary to expedite action on the prosecution of suspects arrested for illegal mining and also to be measured in granting leniency.

A significant challenge that has to be noted about the effectiveness of the exercises conducted to clamp down on illegal mining has been how centralized they are. Communities plagued by illegal mining are rife with reports of illegal miners returning upon the conclusion of anti-illegal mining drives commissioned by the government. The discretionary manner of these exercises as against their sheer costs give the Center some concerns about their sustainability over the long-term. It is the view of the Center that a collaborative effort between the government and the various chiefs and district heads will deliver better results. The Center therefore advocates the decentralization of efforts in the fight against illegal mining in the country. It is the position of the Center that the devolvement of the fight to the lower echelons of administration will make not only for more

sustainable and effective outcomes but is also more likely to constitute less of a drain on the state's coffers. The Center also believes this is the only guaranteed way to ensure that areas that have been rid of illegal miners continue to stay free of illegal miners instead of yielding to this vicious cycle where illegal mining activities spring up again the moment security forces sent to clamp down on the menace vacate the site of the illegal mining.

GHANA'S COMMITMENT TO FUNDAMENTAL HUMAN RIGHTS BEING TESTED

The arrest and prosecution of LGBT+ activists and matters arising

On May 20, 2021, the Volta Regional Police Command arrested 21 young alleged Lesbian Gay Bisexual and Transgender (LGBT) activists in Ho. The accused persons, comprising 16 women and 5 men, were arrested after Police invaded a hotel where a conference on human rights was ongoing. On May 21, 2021, the accused persons were brought before the Circuit Court, Ho, on the charge of unlawful assembly under Section 202 of the Criminal Offences Act, 1960 (Act 29). Their bail application was denied by His Honour Felix Datsomor on grounds that the Police required more time to investigate the matter. The accused persons were remanded in police custody. Counsel for the accused persons appealed the decision on the bail application at the High Court but this appeal was also refused on grounds that the accused persons were a flight risk.

On June 4, 2021, the Prosecutor, Chief Superintendent Ayamga, told the Circuit Court, Ho, that the matter had been referred to the Attorney-General for advice. A second application for bail made by counsel for the accused persons was unopposed by the prosecutor. The Circuit Court Judge, His Honour Felix Datsomor, adjourned the case to June 8, 2021 to consider the arguments made by counsel. The accused persons were once again, remanded in police custody. When the court reconvened on June 8, 2021, the Circuit Court judge refused the bail application again on grounds that a High Court had already decided on the matter and

the Circuit Court was unwilling to deviate from it. The accused persons continue to remain in police custody.

CDD-Ghana is appalled at how the Courts and the State have handled this matter and have allowed these young Ghanaians to be incarcerated for 19 days and counting.

First, it is clear that gathering to educate people at a hotel venue on LGBT+ issues is not a criminal act or crime under the Constitution or any statute. At the time of their arrest, the arrestees were not engaged in or found to have engaged in any unlawful act or in possession of any unlawful or prohibited items. Their arrest and subsequent mistreatment are, therefore, a clear violation of their constitutional right to freedom of assembly and association. Second, given the charge that has been preferred against them, which is, at worst, a misdemeanor, and the facts of the case (facts which hardly support the charge), the inferior court judge ought to have been guided by the prevailing law on the determination of bail applications. The circuit court's refusal to grant bail on three (3) different occasions unfairly prejudices the accused persons even before their trial. This is at variance with the Supreme Court decision in *Martin Kpebu v Attorney-General* (2016), Section 96 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) and the Practice Direction for the Determination of Bail and Consequential Matters issued by the Chief Justice in 2019.

The occasional use of archaic colonial legal relics like Section 202 of Act 29 by the police to undermine constitutional rights, particularly the right to assemble, exposes the stagnation we continue to experience in efforts to promote and protect human rights in Ghana.

In a democratic dispensation where the rights of all persons, including social minorities, are guaranteed under the Constitution, targeting and singling out LGBT+ persons for such harsh and unfair treatment, merely for associating and assembling with each other for noncriminal purposes, including to plan advocacy for better treatment under the law, further marginalizes and victimizes them and sets a dangerous precedent for the treatment of

unpopular minorities in general. The Constitution does not prohibit any group of citizens from banding together to advocate for better treatment under the law, including for reform of the law or of law enforcement to enhance their lives as equal citizens. The Center calls on the Attorney-General who is clothed with the State's exclusive prosecutorial power under the Constitution to intervene in this matter and stop the needless continuing harassment and violation of the constitutional rights of these 21 compatriots.

The Center also calls on the Commission on Human Rights and Administrative Justice (CHRAJ) to take proactive steps, including public education, to ensure that all citizens, regardless of social approval or disapproval of their personal choices and preferences in purely private matters, are able to exercise and enjoy the rights guaranteed equally to all persons under the Constitution without social or official harassment.

Postscript

On August 5, 2021, the case against the 21 LGBTQ+ activists arrested in Ho and charged with the offence of 'unlawful assembly' was dismissed by the Court. Chief Supt. Akolgo Yakubu Ayamga, a police prosecutor, said the Attorney-General had advised there was insufficient evidence to continue with the prosecution of the activists.

This is welcoming news. However, the ordeal of these LGBTQ+ activists at the hands of the Police and many such cases in the recent past bring into sharp focus Ghana's commitment to fulfilling its international human rights obligations. Some of the 21 LGBTQ+ activists arrested and detained in Ho were subjected to harsh detention conditions, according to Human Rights Watch. While some were brutally arrested by the police and detained in dungeon-like cells with woeful ventilation, others were tortured while in police custody. One activist disclosed to Human Rights Watch that she was detained in a cell together with males for a day because the police insisted she is not female.

These incidents and the grotesque circumstances under which persons suspected of being members of the LGBTQ+ community are treated highlight the need for the State to take the necessary action to

protect citizens who on mere suspicion of being gay, have been harassed and abused by individuals, usually acting in concert with officials of security services.

Achimota School's refusal to enroll Rastafarian students, High Court decision and matters arising

On March 19, 2021, Tyrone Marghuy and Oheneba Kwaku Nkrabea, both young Rastafarian students were refused enrolment after having gained admission to Achimota School, a second cycle educational institution. Achimota School claimed the hairstyle of the two students; 'dreadlocks'—a highly regarded emblem amongst members of the Rastafari community—was against the rules and regulations of the institution. Authorities of the school insisted both boys would have to shave their dreadlocks to be enrolled.

Given widespread media backlash on Achimota's decision, the Ghana Education Service (GES) ordered the school to enroll both boys but the school blatantly defied the order. Amid mixed reaction from the public, a number of the school's affiliates, including the Parent Teacher Association (PTA) of the school, the Old Achimota Association (OAA), an association of alumni and former staff of the school, the National Association of Graduate Teachers (NAGRAT) and the Ghana National Association of Teachers (GNAT) either came out to support or re-echo the school's stance on the matter. A statement by the PTA cited Section H (General Appearance) Item 3 of the Achimota School's revised rules and regulations (August 2020) which states that: "Students must keep their hair low, simple and natural. (Students' hair should not go through any chemical process). The scalp must not show."

In a baffling about-turn, the GES reversed its position, calling for a meeting between the parents of the Rastafarian teenagers and the authorities of the school, at which it tried to compel the Rastafarians to yield to the demands of the school. On March 31, 2021, Tyron Iras Marhgy (acting through his father, Tereo Marhgy) sued Achimota School's Board of Governors and the Attorney-General at the High Court, Accra, asking the Court to declare that the refusal of the First Respondent –

being the Board of Governors of the Achimota School – to enroll the Applicant on the basis of his Rastafarian beliefs as expressed in his dreadlocks, is a violation of his fundamental human rights and freedoms guaranteed under Articles 12(1), 23, 21(1)(b)(c) of the 1992 Constitution. On May 31, 2021, the Court ruled in favour of the Rastafarian student. The Court reasoned that the fundamental human rights of the Rastafarians cannot be limited by the rules and regulations of the school.

CDD-Ghana welcomes the decision of the High Court on this matter. The Center also commends the learned trial judge, Justice Gifty Agyei Addo, for conducting the case expeditiously in order to protect the rights of the affected students. The Centre condemns Achimota School's initial failure to enroll the two students as an infringement on the rights and freedoms of the students provided for under articles 12(1), 23, and 21(1)(b)(c) of the 1992 Constitution. The growing wanton disregard and abuse of the rights of persons, particularly minority groups by public institutions have assumed worrying proportions recently. A noted instance of grave concern, with striking similarities to the case of the Rastafarian boys is the incident at Wesley Girls Senior High School where Muslim students have been prevented from observing several customs demanded by their religion, with fasting during the Ramadan prominent among them. The Centre notes that the conduct of Wesley Girls High School is in clear breach of the rights of its Muslim student population. It is the expectation of the Centre that the Court's decision in the case of the Rastafarian students brings to an end the troubling affinity for discriminating against minority groups in public institutions.

Apart from the fact that the denial of enrolment to the two Rastafarian boys was in violation of their fundamental human rights, a salient feature of the case is how foreign or non-African students at the very same institution are routinely allowed to keep hair that is in clear contradiction with the stipulated rules and regulations of the school, despite how sacred we are made to believe the school holds its rules and regulations. For a population that is predominantly black, it is disturbing how this mirrors the racial undertones apparent in cases of discrimination in a country like South Africa involving black hair. It is a good thing that the case called attention to the issue of hairstyles in public spaces in the country and opened a vital conversation in the country in light of all the contention going on in

some African countries about appropriate school and workplace hairstyles and the progressive regulations being enacted and enforced. It is worthy to note, as a country way ahead of Ghana in adopting progressive and more inclusive attitudes towards hairstyles in schools, South Africa still contends with intermittent scandals involving the violation of human rights in relation to hairstyles in schools.

The Center is however concerned with the manner in which clear directives issued by state regulatory institutions (in this case the GES), were casually disregarded by the school. The Center is equally concerned about public statements made by persons occupying high profile positions of public trust (including the First Deputy Speaker of Parliament and MP for Bekwai, Joe Osei-Wusu) endorsing the unconstitutional position of Achimota school. What strikes the Centre as equally mortifying is the way the GES changed its initial stance to support the school, as though it were taking instructions from the school when by statutory design Achimota ought to comply with GES directives.

The Center however acknowledges, that whereas the victory of the two Rastafarian boys at the court and their subsequent enrolment at Achimota School will not spell doom as has been suggested in certain quarters, there is the need for consultative deliberation among stakeholders to determine some fundamental rules to which students must conform in high schools.

Ghana has just embarked on a journey on which others have far advanced, adopting progressive measures in establishing a secure environment conducive to the rights and the freedoms of one and all. It is a journey that should permit us all to discard old prejudices, learn and grow.

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CHALLENGES WITH PUBLIC ACCOUNTABILITY AND TRANSPARENCY IN THE AFFAIRS OF THE STATE PERSIST

The outcome of the Sputnik-V vaccine scandal and its implications for public accountability and the rule of law

On March 6, 2021, the Norwegian news outlet Vergens Gan released a story detailing the involvement of Ghanaian health authorities in a vaccine deal with Sheikh Ahmed Dalmook Al Maktoum, an agent of the sub-distributors of the RDIF's Sputnik-V in Ghana and second cousin to the ruler of Dubai. On March 9, 2021, an agreement was signed by Sheik Ahmed Dalmook Al Maktoum with the Ministry of Health for the sale of 3.4 million doses of the Russian Sputnik-V vaccine to Ghana at \$19 per dose while a dose was going for \$10 on the international market. According to the agreement, the first 300,000 of these doses were to be delivered within the first two weeks following the agreement. A week following this agreement, on March 16, 2021, another agreement was signed with S. L. Global for 5 million doses at \$18.5 a dose.

After an alarm was raised by two MPs of the National Democratic Congress, Haruna Iddrisu and Kwabena Mintah Akandoh, it came to light at the sitting of an ad hoc committee set up to investigate the matter, that Honourable Kwaku Agyeman-Manu, the Minister of Health who acted on behalf of the Government of Ghana ('GoG'), failed to obtain parliamentary approval. This was glaringly an international agreement which required Parliamentary scrutiny and approval in accordance with article 181 of the 1992 Constitution ('the Constitution'). It was also revealed that the minister failed to obtain the approval of the Public Procurement Authority for the two agreements signed in relation to the deal and that although the minister swore under oath that no money has been paid, almost \$2.85 million, being half the contract sum of \$5.7 million for the 300,000 doses, had been paid. A day prior to his appearance before the nine-member ad hoc committee of Parliament, the Minister of Health announced the cancellation of the contract. On August 12, 2021 Deputy Majority

Leader in Parliament, Alexander Afenyo Markin, confirmed that Sheikh Ahmed Dalmook Al Maktoum had refunded the sum of \$2.47 million to government.

Despite the disaffection of the Minority in Parliament and the public uproar surrounding these irregularities, these action by the Minister and government represent a long-established pattern of disregard for regulation and propriety in government procurement that stretches further back than the very first dealings involving the Sheikh. The decision by the Minister of Health to resort to middle men with an established record of questionable dealings with the country, especially when he knew he could contact the Russian authorities directly and had the means to do so, does not paint his intentions in a positive light, despite his claims to the contrary.

The claim by the Minister that he hit a diplomatic wall in his attempt to contact Russian authorities or that he opted to deal with the sheikh out of a desire to "deal with entities that demonstrated the availability and capacity to deliver vaccines with acceptable efficacy and safety standards," woefully comes up short. Following the development of the Sputnik vaccine for the new coronavirus, Russian manufacturers were eager to engage partners. Details on the Sputnik-V website indicated that the manufacturers were already in business with 14 countries producing their vaccine abroad, including India, China, Brazil, Mexico, Egypt, Iran, Italy, South Korea, Argentina, Kazakhstan, the Republic of Belarus, Serbia, Turkey, Vietnam and were "looking forward to new partners willing to join this initiative and help save lives."

The onset of the COVID-19 pandemic triggered a legion of responses from both government and non-governmental agencies in a range of efforts to combat the pandemic. The result was collaboration among agencies at various levels in the private sector and also within the government, where the initiatives like the Coronavirus Alleviation Programme, managed by the National Board for Small Scale Industries, strived to augment the Presidential Inter-ministerial Taskforce, a joint effort between several ministries and government agencies, frontline staff and the ministry of health, to find out the best ways to blend regular

administration with strategies to tackle the pandemic. This cooperation was the outcome of the realization that combined efforts by various state institutions and agencies was the only way to mount an effective front against the disease. It therefore raises questions as to how come decisions involving the choice and procurement of vaccines, a salient strategy in the fight against the pandemic, could essentially be left to one person's discretion. It is quite unsettling that the impression was created that in the heat of such a critical health crisis, the government had no reservations about putting significant sections of his population at risk, by procuring such sensitive articles as vaccines from a business entity with no business line or record of handling vaccines. It is inconsistent with due process and the mandate of the Ministry of Finance that action on such a questionable deal by the ministry was pursued and expedited to such terminal degree, and even on the blindside of the Minister of Health, the originator of the deal, despite a prior prompt by the Attorney-General regarding several clauses in the agreements and an instructive caution by the same office that the agreements amounted to international agreements and as such required parliamentary approval.

In light of our prevailing circumstances, measures must be put in place to enable the country prepare adequately for unforeseen occurrences of this nature in the future. Any sustainable or meaningful effort in this regard will however call for a new dynamic in which regulations that guide our government and state institutions are not flouted with such flagrant and reckless abandon by the very agents meant to exemplify duty and deference to our state institutions, including parliament. The sheer urgency of this is found in the utter lack of regard for the public mandate exhibited by the failure of the Ministry of Finance to notice the several procurement regulations that the letters of credit issued for this deal were in breach of. It is further accentuated by the utter lack of transparency or commitment to accountability exhibited in how despite the effort and public resources expended on the institutions implicated, the Ghanaian public would very likely have never been privy to the breach of public trust and the breach of the constitution were it not for the Norwegian newspaper.

Following from the facts of this debacle, it goes strictly against the principles of good governance for the Deputy Majority Leader in Parliament, Afenyo Markin, to state in his role as chairman of the committee that investigated the matter, that the “matter must come to a finality and we have to move on as a country,” essentially implying that the Minister of Health should not be brought to account for his failure to comply with due process. In what other instance does one invoke the rule of law if such glaring violations of administrative procedure are allowed to transpire without consequence? How, by failing to ensure that appropriate punitive measures are rendered to faulting individuals, do we ensure that such violations do not happen again?

There is the need to ensure that state resources are used judiciously, even during a pandemic. Despite the increased degree to which countries have been compelled to work together in tackling the COVID-19 outbreak, collaborating and sharing data and resources, the uncertainty surrounding the pandemic, with respect to what new form it will take or when or if it will ever end, still places individual countries under serious obligation to protect and maintain the health of their citizens and also to be frugal in their management of economic resources. In the case of Ghana, it brings to the fore the need to revamp our health facilities, and enhance our capacity for research and innovation. Essentials for the treatment of COVID-19 patients were initially limited to facilities like Noguchi Memorial Institute for Medical Research. Mortality rates in the country for COVID-19 at the time could have been greatly reduced if health facilities across the country were adequately equipped with such equipment as personal protective equipment (PPEs), oxygen cylinders, etc. There are even at the present, considerable challenges for the country in the procurement and distribution of an adequate number of vaccine doses for the entire population. Available stocks are nowhere near the quantities required to protect the entire country. Upholding the rule of law in this case may not merely be in the interest of democracy or good governance but also a desperate matter of survival.

**Conflict of interest allegations against
Minister of State at the Finance Ministry,
Charles Adu Boahen Col. Frank Agyemang**

On June 2, 2021, the Minister of State-designate at the Finance Ministry (now Minister), Mr. Charles Adu Boahen, was vetted by Parliament's Appointments Committee. Prior to the vetting, the Member of Parliament (MP) for Bolgatanga Central constituency, Mr. Isaac Adongo, had called on the Appointments Committee to reject Mr. Adu Boahen; accusing him of conflict of interest given the involvement of his company, Black Star Brokerage (a bond market specialist), in the issuance of bonds by the Ministry of Finance.

Appearing before the Appointments Committee, Mr. Adu Boahen confirmed that his firm, Black Star Brokerage, was selected as one of the Bond Market Specialists to the Finance Ministry. Mr. Adu Boahen also told the committee that he resigned from the Board of Black Star Brokerage in 2017; years before the company was selected by the Finance Ministry as an advisor to the international markets program. He also indicated that despite the company's selection by the Finance Ministry following a 'merit-based selection process', the company did not participate in the Eurobond issuance. As such, the company was not paid any fees by the government. On June 16, 2021, Parliament approved the nomination of Mr. Adu Boahen as Minister of State at the Finance Ministry.

Although the Appointments Committee did not thoroughly probe this matter to ascertain the veracity or otherwise of the claims, this allegation, coming on the back of several other conflict of interest scandals involving senior public officials, demonstrate that conflict of interest is rife in public office. In fact, many of the corruption cases that the Commission on Human Rights and Administrative Justice (CHRAJ) has investigated in the recent past—including the 'contracts for sale' case involving the former CEO of the Public Procurement Authority (PPA), James Boateng—arose because of conflicts between the public interest and private, professional or commercial interest. These cases highlight the need for the country to strengthen regulations on the conduct of public officers,

particularly in the area of conflict of interest. Chapter 24 of the 1992 Constitution (articles 284-288) provides a code of conduct for public officials. Article 284 of the Constitution generally proscribes conflict of interest situations in public office. This is because public office is a trust and every public official must serve in the interest of the public. It is a reasonable expectation of the citizenry that public officials perform their duties with integrity, in a fair and unbiased manner and not allow their private interests and affiliations to compromise official decision-making.

Article 287 of the Constitution mandates the Commission on Human Rights and Administrative Justice (CHRAJ) to investigate the allegations of non-compliance with Chapter 24 of the Constitution. However, the absence of any detailed definition of the situations which constitute conflict of interest and/or a unified code of conduct for public officials makes the processing of such allegations by CHRAJ difficult.

In a bid to provide a general framework for determining conflict of interest situations, CHRAJ in 2006 published 'Guidelines on Conflict of Interest'. According to the guidelines, conflict of interest refers to a situation where a public official's personal interest conflicts with or is likely to conflict with the performance of the functions of his/her office. Put differently, conflict of interest occurs when a public official attempts to promote or promotes a private or personal interest for himself/herself or for some other person and the promotion of the private interest then results or is intended to result or appears to be or has the potential to result in (i) an interference with the objective exercise of the person's duties; and or confers (ii) an improper benefit or an advantage by virtue of his/her position.

Conflict of interest as a behavior is difficult to regulate. In some cases, it can be managed with early disclosure and recusal actions. The officer concerned must take all appropriate steps to extricate himself/herself from a conflict of interest situation as soon as it is foreseeable. The officer must then report the conflicting situation and disclose the circumstances to his/her superior and remove himself/herself from any deliberations or decisions on the matter.

However, there are cases where management of a conflict of interest situation is neither adequate nor prudent and cannot be allowed at all. For example, in some jurisdictions, a member of the Superior Courts cannot operate a law firm while serving on the bench.

In the instant case, the fundamental question is whether Mr. Adu Boahen in his capacity as Deputy Finance Minister had or is likely to have had any influence on the decision of the Finance Ministry to engage Black Star Brokerage by virtue of his position. Even though he claims to have resigned from the Board of the company in 2017 and had no dealings with the company at the time the Finance Ministry took the decision to engage the company, the mere appearance of a potential conflict of interest situation is one which should have been avoided completely given his position at the Finance Ministry. The appearance of his direct or indirect involvement in government's engagement of the company alone sends the wrong signal to the rest of society that it is okay for a senior public official to have a private company do business with government and whitewash any allegations of conflict of interest by claiming to have resigned from the company before the company was engaged even though he still has ownership interest in it. Such cases dwindle the already depleting public confidence in the management of public offices.

Given the seriousness of the allegations against Mr. Adu Boahen, the Appointments Committee ought to have referred the matter to CHRAJ to launch full-scale investigations pursuant to CHRAJ's mandate under article 287 of the Constitution.

This case also highlights the urgent need for Parliament to pass a credible Conduct of Public Officers law to regulate matters such as conflict of interest situations and the general conduct of public officials.

The Conduct of Public Officers Bill, 2018, which was put before Parliament last year presented a fine opportunity for us to adopt rules to regulate conflict of interest situations. Unfortunately, it contained some problematic clauses which the

Center highlighted in its memo to the Committee on Constitutional, Legal and Parliamentary Affairs on June 8, 2020. For instance, Clause 23 of the bill if not amended would operate to exonerate any public officer caught in a conflict of interest situation so long as he or she adheres to the disclosure and recusal remedies for managing conflicts of interests. Its effect renders the entire bill a charade given how rife conflict of interest is in public office. This is because in a corruption case it is easy for the recipient of disclosed information (usually a superior officer) and the declarant to collude to act in ways that confer an advantage on the declarant even if he or she has recused himself or herself. Going forward, a more effective approach is for any such clause to be deleted and an express provision made in the bill that there are certain conflict of interest situations which cannot be managed by disclosure and or recusal actions. In such cases, the officer in question must seek clearance from CHRAJ.

Allowances for presidential spouses

On July 6, 2021, the Minister of Information, Kojo Opong Nkrumah, confirmed that there had been an increment in allowances paid to the spouses of the President and the Vice-President, Mrs Rebecca Akufo-Addo and Mrs Samira Bawumia respectively. Mr. Opong Nkrumah however noted that these allowances were approved by the Seventh Parliament based on the recommendation of the Presidential Committee on Emoluments for Article 71 Office Holders (January, 2017-December, 2020). The Center has taken note of the raging public debate in respect of the purported Parliamentary approval of a recommendation by the Presidential Committee on Emoluments for Article 71 Office Holders (January, 2017-December, 2020) for the spouses of Presidents and Vice Presidents to be paid allowances and extended certain privileges.

The Professor Yaa Ntiamoah-Baidu-led Committee in its report noted that '[t]he administration of President Kufour introduced the extension of courtesies, including the payment of monthly allowances, to spouses of former Heads of State/Presidents/Vice Presidents. Subsequent administrations have continued the gesture and even extended them to incumbent First and Second

Ladies. The gesture remains purely humanitarian, to support, and in some cases, rehabilitate former First Ladies who were evidently struggling to subsist. However, there is no legal basis for this support. Thus, the Committee recommends that the support extended to spouses of Presidents/former Presidents/Vice Presidents/former Vice Presidents be regularized and included in the privileges of Presidents/former Presidents/Vice Presidents/former Vice Presidents. We have, accordingly, included these allowances at same level as currently pertains, in Table 7.3 (A & B) on privileges, benefits and facilities for the President/Vice President.'

There is no justification whatsoever in the Committee's recommendation and the purported parliamentary approval of same for spouses of sitting Presidents/Vice Presidents to be paid allowances or extended certain privileges by the State.

First, the mandate of an article 71 emoluments committee such as the Professor Yaa Ntiamoah-Baidu-led Committee is limited to recommending the salaries and other benefits and privileges of office holders specified in article 71(1) and (2) of the 1992 Constitution ('Constitution'). Therefore, by making a recommendation for spouses of Presidents/Vice Presidents—persons not specified in article 71—to be paid allowances or emoluments, the Committee acted outside its scope of authority.

Second, making provision for compensation for the surviving spouses (especially widows) of past Heads of State/Heads of Government which is done on compassionate or humanitarian grounds is quite distinct from the idea of paying allowances/monthly stipends/pension to spouses of sitting Presidents or Vice Presidents. There is no humanitarian or compassionate case to be made for paying allowances to the spouses of sitting Presidents/Vice Presidents.

Third, by constitutional design, Parliament cannot, on its own accord, initiate or purport to approve payment of any allowances/monthly stipends/emoluments based on the recommendation of an Article 71 committee. If government seeks to compensate the spouses of sitting Presidents/Vice Presidents for the ceremonial roles they play, government ought to introduce a bill in Parliament to that effect. Without any such bill/law, articles 108 and 178 of the Constitution operate to bar Parliament from seeking to initiate

and or approve a recommendation from an article 71 Committee for the payment of allowances/emoluments to the spouses of Presidents/Vice Presidents.

The Center, therefore, calls on government to refrain from making any such payments based on a recommendation and or purported parliamentary approval, which clearly has no constitutional basis.

Bank of Ghana wins arbitration against Sibton Switch Limited

On July 28, 2021, an arbitral tribunal constituted under the auspices of the London International Court of Arbitration (LCIA) dismissed all claims brought against the Bank of Ghana ('BoG') by Sibton Switch Systems Limited ('Sibton Switch'). Sibton Switch's request for arbitration with the LCIA in April 2018 followed BoG's termination of the Master Agreement for the Ghana Retail Payment Systems Infrastructure in 2017. Sibton had argued that by its termination, BoG had breached the Master Agreement for the Ghana Retail Payment Systems Infrastructure entered into by the two parties and sought relief of USD 478 million from the respondent, BoG. In addition to dismissing all claims by Sibton Switch, the arbitral tribunal also ordered Sibton Switch to pay BoG's legal fees and the costs of the arbitration.

The agreement dealt with the grant of exclusive rights to Sibton Switch to build, operate and own the Ghana Retail Payment Systems Infrastructure. It was reviewed by the new management of BoG following their appointment after the 2016 elections. In reviewing the contract, the new management reached the conclusion that Sibton had neither acquired the license nor fulfilled the condition precedent for the effectiveness of the rights and obligations of the parties. The BoG management also concluded that the contract awarded to Sibton Switch was disadvantageous to BoG's interests as it was one-sided in favour of Sibton Switch. For instance, BoG's maximum liability originally approved by the Public Procurement Authority (PPA) was to be GH¢300,000. However, contrary to this approval, the contract with Sibton Switch provided

that BoG had a huge potential liability of USD \$478 million (GH¢2.6 billion). In addition, the tender price of Sibton Switch was 33 times more expensive than the next most expensive bid, according to BoG. On September 13, 2019, BoG dismissed an official of the bank, Mr. Gilbert Addy, for gross misconduct in relation to corrupt transactions and for accepting bribes in connection with the award of the Sibton Switch contract. BoG statements revealed that secret and corrupt payments of GH¢410,000.00 were made by Sibton Switch and its parent company Sibton Communications Limited to Mr. Addy at BoG through a shelf company GIB JUST Systems Limited, which was owned by him.

Following the termination of the contract with Sibton Switch in 2017, the Bank of Ghana's subsidiary, Ghana Interbank Payment and Settlement Systems Limited (GhIPSS), was able to deliver mobile payment systems interoperability at a small fraction of the cost, saving the country billions of cedis.

While BoG's win at the arbitral tribunal is commendable, this Sibton Switch contract and its disadvantageous terms highlight a perennial problem the country faces with respect to the negotiation of major public agreements. The poor manner with which these agreements are negotiated or managed; the manifestly disadvantageous terms for the country; the complete lack of due diligence by State officials or government agencies through whom negotiations are conducted; the lack of transparency in the process and poor record-keeping are justifiable grounds for concern. In some cases, these agreements are signed by the executive or state corporations with such needless haste, often with complete disregard for due process.

“ The poor manner with which government contracts and agreements are negotiated or managed; the manifestly disadvantageous terms for the country; the complete lack of due diligence by State officials or government agencies through whom negotiations are conducted; the lack of transparency in the process and poor record-keeping are justifiable grounds for concern. In some cases, these agreements are signed by the executive or state corporations with such needless haste, often with complete disregard for due process. ”

In many instances such as the terminated Sibton Switch contract, its disadvantageous terms are discovered by a new administration after the execution of the contract. If the country is to benefit from public agreements, we need a robust system that conducts rigorous due diligence and ensures that the country gets value for money. Post-facto reviews and corrections are usually costly and time-consuming and can be avoided if transactions are well-scrutinised from the outset. Our institutions and administrators must be awake to the growing concerns about the manner in which public agreements are entered into and ensure strict compliance to established constitutional and administrative mechanisms.

In the case of international business transactions as contemplated by article 181 of the Constitution, Parliament must wake up to the role of subjecting international commercial agreements to diligent and independent scrutiny.

In the case of independent government agencies and state corporations, the Supreme Court has ruled that their international business transactions need not go through Parliamentary scrutiny because state corporations and independent government agencies are not within the meaning of the word 'government' as used in article 181(5) of the Constitutions. In the case of such independent institutions and state corporations, the Court has held that ministerial supervision is adequate and that subjecting their public agreements to Parliament would overburden Parliament. (See

Klomega (No2) v Attorney-General & Ghana Ports and Harbours Authority & Others (No2) [2013-2014 SCGLC 581]; The Attorney-General v Faroe Atlantic Co. Ltd. [2005-2006] SCGLR 271 and The Attorney-General v Balkan Energy Ghana Ltd. 2 Ors. Unreported, May 16, 2012).

The challenge with the Supreme Court's reasoning is that ministerial supervision cannot be a substitute for parliamentary oversight. Substituting parliamentary oversight for ministerial (executive) supervision is counterproductive given the fundamental purpose of article 181; which is to ensure transparency and openness. Further, the fact of ministerial supervision itself clearly shows the controlling hand of GoG; even more reason to subject the international business transactions of statutory or public corporations to parliamentary scrutiny.

Going forward, Parliament must clarify in statute the types of international commercial agreements which must be subjected to parliamentary scrutiny and approval.

Presidential plane saga and matters arising

On May 27, 2021, Samuel Okudzeto Ablakwa, the Member of Parliament for the North Tongu constituency in the Volta Region, made a post on Facebook in which he accused President Akufo-Addo of spending in excess of GHC 2.8 million, on less than 24 hours of accumulated flight travel on a private G-KELT Airbus ACJ320neo. According to him, aviation experts had estimated that the journey would have cost the country less than 15% of the GHC 2.8 million spent had the President opted for the presidential jet. This claim was curious because the MP also indicated that as at the time of the President's travel, the presidential jet was not only available, but was also in 'pristine condition'. The accusations levelled were striking, if nothing at all, for the fact that the first stop of this private jet on its journey to France, Belgium, South Africa and then back, was Paris, where the President's reported mission was to plead with French President Macron, to forgive Ghana's debts to France.

The MP filed an urgent question in Parliament in a bid to hold the Akufo-Addo administration accountable on this issue. When the Finance Minister, Ken Ofori-Atta was summoned to provide answers to Parliament on Wednesday, July 21, 2021, he indicated that the right Ministry to provide details regarding the cost of the president's recent travel to Europe was the National Security Ministry. The Minister for Defence, Dominic Nitiwul, also appeared before Parliament in respect of this matter but equally said the National Security Minister was the most suitable government official to answer the question. On Friday, December 17, 2021, the National Security Minister, Albert Kan Dapaah, told Parliament in response to questions from the North Tongu MP that he is unable to provide the required details in respect of the President's recent official travels to Europe given confidentiality and national security considerations.

The Center observes that in spite of the controversy surrounding the capacity of the presidential jet and the inconvenience of stopovers for refueling in the era of COVID-19, the cost differential between the use of the private jet and the presidential jet, a figure well in the vicinity of £ 7,000, based on quotes by the Minister of Defence and the MP for North Tongu, is quite significant in a period of austerity and immense national debt when the government is appealing to public sector workers to manage their expectations of salary increases.

“ In spite of the controversy surrounding the capacity of the presidential jet and the inconvenience of stopovers for refueling in the era of COVID-19, the cost differential between the use of the private jet and the presidential jet, a figure well in the vicinity of £ 7,000, based on quotes by the Minister of Defence and the MP for North Tongu, is quite significant in a period of austerity and immense national debt when the government is appealing to public sector workers to manage their expectations of salary increases. ”

The Center, in light of prevailing circumstances, is not convinced of the need for a bigger presidential jet for use by government, particularly not when deliberations on the existing presidential jet in parliament preceding its procurement in October, 2010, revealed that it had a minimum life span of 20 years.

The Center, in light of the fact that all expenses for the President's official travels are funded by the taxpayer, finds it rather bizarre for the Minister of National Security to suggest that basic information such as the cost of recent travels by the President cannot be disclosed to Parliament, when it is required that documentation of the operational expenses of the Presidency are routinely presented to Parliament as part of budgetary estimates for approval. The decision by the government to withhold such information, is equally objectionable, especially in view of the fact profligacy surrounding travel by government officials at the expense of the taxpayer, has recurrently sparked public outrage.

The failure of the Government to disclose to parliament the cost of the recent travels by president specified by the MP, is not consistent with what the President said when he signed the Right to Information Act, 2019 (Act 989) into law. According to the President, "The purposes of the Act as set out in its preamble is to provide for the implementation of the constitutional right to information held by any public institution and to foster a culture of transparency and accountability in public affairs." The only explicit reason the NPP offered in its 2016 manifesto promise to pass the Right to Information Bill should it come to power, was an unequivocal statement of commitment to transparency and the protection of the state's resources. The NPP made a declaration in its manifesto that in its commitment to "a transparent, accountable and efficient management of the country's petroleum resources for the benefit of all Ghanaians," it would first and foremost "improve transparency in the management of our oil and gas resources. Our commitment to passing the Right to Information bill will further enhance transparency in the oil and gas sector." The commitment of the government to transparency was not demonstrated in the refusal by the various Ministers to disclose the required figures to parliament. To the extent that it forestalled accountability of the government to the public, as well as the government's duty of protection of state's resources.

The Center is concerned, this is a dangerous precedent of not merely going against a direct order of parliament but of withholding information from the public. This conduct has a potential to encourage a tendency not just to undermine our parliament but the commitment of our democracy and our government to transparency and accountability. When the Member of Parliament for Abetifi and the Chairman of the Foreign Affairs Committee of parliament, Mr. Bryan Acheampong openly admitted to parliament on Tuesday, November 23, 2021, that he had advised the Minister for National Security to keep details of the president's trips abroad a secret, the house should have at the very least enquired from him the national security grounds on which he was recommending such an action. At the minimum that justification should be demanded by Parliament and made available to the Committee on Defence and Interior which should have the necessary clearance to deal with such matters. The same should have been demanded when the Minister of National Security declared that his refusal to provide the details of the cost of the president's travel, was in the interests of confidentiality and national security.

Act 989 provides for exemptions in disclosing information on national security and defence grounds but some of these are specified in the law. Even with those exceptions where a disclosure will be more beneficial to the public interest as compared non-disclosure it should be disclosed. In essence, any Minister seeking to rely on national security grounds must demonstrate how the details of the cost of individual official travels embarked on by the President, would prejudice national security. Section 5 of Act 989 provides that the public is entitled to information regarding the President and more so, that information which contains factual or statistical data is not exempted.

In light of this, the Center holds the view that the National Security Minister's refusal to provide satisfactory responses to the urgent questions posed by the MP for North Tongu is hardly justifiable. Parliament's failure to demand answers from the Minister as it ought to does not send the right signals in terms of public accountability and transparency in governance. A vital pillar of democracy is the rule of law and the rule of law cannot be upheld in the absence of accountability and transparency. Public officers should not use or be seen to be using national security as justification to evade public accountability.

“ A vital pillar of democracy is the rule of law and the rule of law cannot be upheld in the absence of accountability and transparency. Public officers should not use or be seen to be using national security as justification to evade public accountability. ”

UNPARLIAMENTARY CONDUCT AND MP'S IMMUNITY POWER GRAB

Review of events that characterized the dissolution of the 7th Parliament and the inauguration of 8th Parliament

The election of the Speaker in Parliament on the midnight of January 7, 2021, was characterized by chaos quite uncharacteristic of the mode of conducting parliamentary business in Ghana. The scuffle, (in some cases clear incidents of assault) involving MPs from both sides, violated the parliamentary oath of office. In one inglorious incident, MP for Tema West, Carlos Ahenkorah, snatched the ballots during the count when it appeared almost certain that Mr. Alban Bagbin (the opposition National Democratic Congress (NDC) nominee), would emerge winner in the election. Mr. Bagbin reportedly won by 138 votes; defeating Prof. Mike Oquaye, the outgoing Speaker who was the NPP's preferred candidate. Mr. Ahenkorah was upended by Mr. Muntaka Mubarak, MP for Asawase who also landed a few blows on the Tema West MP before he could reach the door of the Chamber. In the chaos, about twenty (20) armed military men stationed outside of the Parliamentary chamber breached the floor of parliament during the election of the Speaker, ostensibly to maintain order in the chamber. The circumstances under which the military came to be deployed to parliament as well as who gave the order for the deployment is still a subject of controversy.

After calm has been restored the NPP and NDC negotiated a settlement that allowed the NPP to fill the positions of 1st Deputy Speaker and 2nd Deputy Speaker with Mr. Joe Osei-Owusu, MP for Bekwai and Mr. Andrew Asiamah Amoako, MP for Fomena.

This paved way for the swearing in of the Speaker and later Deputy Speakers. During his inaugural speech, a week later, on the day of the first sitting of Parliament, the Speaker expressed concern of the “despicable conduct unbecoming of people of honor”. D-Watch takes a walk back to some of the actions and inactions that created the problems and makes proposals for reform.

The Gaps in the Procedure for the Election of Speaker: The Role of the Clerk and the Voting Process

Order 8 (2) of the Standing Orders of Parliament requires a Speaker to be sworn in before Members of Parliament are sworn in during the installation of a new Parliament. The Clerk to Parliament serves as the Chairman of the House during this period. His or her task is to oversee proceedings relating to the election of the Speaker. During the installation of the 8th Parliament, the Clerk was invited as interim Chairman of the House to rule on matters that the Standing Orders do not appear to provide clear answers. For instance, after nominations for the role of Speaker had been made, the Clerk was invited to rule on the eligibility of the MP for Assin North Constituency, James Gyakyey Quayson to participate in the election of the Speaker. Prior to this, the High Court on January 6, 2021, had granted an injunction application by one Michael Ankomah-Nimfah; restraining the MP, James Quayson, from holding himself out as MP-Elect for the Assin North constituency and further presenting himself to be sworn in as MP-Elect until the final determination of the petition filed against him by the applicant.

The invitation to the Clerk to perform this function exposed gaps in the procedure for the election of Speaker. As pseudo electoral commissioner, the Clerk's duties extended to the determination of MPs' eligibility to participate in the election of a Speaker. The Public Elections Regulations, 2020 (C.I. 127) which regulates voting in public elections requires the Electoral Commission to publish in the Gazette the names of MPs-Elect and inform the Clerk of Parliament. At the time the Clerk was called upon to make a determination as to whether James Quayson was on the list submitted to Parliament, he had also been informed of the injunction by the High Court. The Clerk initially took the position that he

could not recognize the MP-Elect in the face of the Court order but after listening to arguments from the NPP and NDC as to whether the MP in question was properly served, the Clerk allowed Mr. Quayson to participate in the election of the Speaker, with a caution that he was risking a contempt of court action.

The matter may have been resolved politically and tactfully by the Clerk but it is unsatisfactory given the precedent it sets. The Standing Orders ought to be amended to provide clarity on the responsibilities of the Chairman of House as it relates to determining who is eligible to vote and the basis on which that is determined. There should also be clear sanctions for violating voting procedures including compliance with the Secret Ballot requirement and other offences like ballot snatching and fraud.

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The Ballot Snatching Incident and Related Matters

Given the reckless conduct of some MPs, including MP for Tema West, Carlos Ahenkorah who snatched a ballot box during the election of the Speaker, there were wide public expectations that the leadership of Parliament would initiate and or cause investigations to be conducted into the unprecedented chaos that characterized the election. A cross section of the public has also called for Mr. Carlos Ahenkorah's criminal prosecution for ballot snatching.

The conduct of the MPs in question constituted an

affront to the dignity of Parliament (Orders 29, 30 and 31 of the Standing Orders of the Parliament of Ghana, 2000) and should be investigated for same. The Speaker, pursuant to a complaint, should refer the matter to the Privileges Committee for investigation under Order 164 of the Standing Orders. The Privileges Committee should conduct thorough investigations into (i) the circumstances of the ballot snatching by Mr. Ahenkorah and the general misconduct of some MPs during the election of the Speaker; and (ii) the breach of the floor of Parliament by about twenty (20) armed military men. The Committee, in exercising of its powers under Order 164 of the Standing Orders, should make recommendations to the House on (i) sanctions for the MPs and all other persons found culpable and (ii) how to prevent a similar incident from occurring in the future.

An inquiry would ensure that some of the gaps in parliamentary procedure that contributed to the chaos and ugly scenes would be identified and corrected.

The cyclical controversy over the limited immunity of parliamentarians

The ongoing impasse between the Ghana Police Service and the Member of Parliament (MP) for Madina Constituency, Mr. Francis Xavier-Sosu, supported by the Speaker of Parliament, over unsuccessful attempts by the Police to invite the MP to assist with investigations relating to a demonstration he is said to have led raises a key constitutional question about the appropriate procedure for serving a criminal process on or arresting an MP.

Mr. Sosu on October 25, 2021, reportedly led youth in his constituency to demonstrate over the poor state of roads in his constituency. During the demonstration which occurred between Ayi Mensah and Amrahia in the Madina Constituency, the youth he had organised reportedly blocked roads and burned tyres and allegedly caused destruction to property. A statement issued by the Ghana Police Service and signed by its Director-General, Public Affairs, ACP Kwesi Ofori, said they

'commenced investigations into certain alleged criminal acts that occurred' following the protest in the Madina Constituency, led by the MP on October 25, and said it was not true the police has attempted to arrest the MP on the said day. According to the police, the MP declined an invitation by the Police service on 'the day of the protest to assist the Police [investigation] for his alleged involvement in the unlawful blockade of a road and the destruction of public property'.

In his refusal to attend to the Police invitation, Mr. Xavier-Sosu invoked parliamentary privilege. In a press release issued on behalf of the Speaker by the Deputy Clerk of Parliament on November 3, 2021, the Speaker rightly acknowledged that MPs are not above the law and that the immunity from civil and criminal processes granted MPs are limited to the performance of parliamentary proceedings. However, he argues that the Police require his clearance in order to execute criminal processes against MPs while Parliament is in session. 'The appropriate procedure is to secure from the Speaker a certificate that the Member in question is not attending to Parliamentary Business. Anything short of this should not be entertained by the House', the press release noted. The Ghana Police Service has now filed criminal summons against Mr. Sosu for 'unlawfully blocking a public road and the destruction of public property' following the demonstration which took place on Sunday, October 31, 2021. Given the cyclical controversy relating to the qualified immunity of MPs under the 1992 Constitution ('Constitution') and the likelihood that this matter may degenerate into unhealthy partisan bickering, it is important to shed some light on the scope of the qualified immunity of MPs for the purposes of public education.

First, the rule of law—one of the cardinal principles of our constitutional democracy—dictates that all persons, irrespective of their social standing, must be treated equally before the law [Article 17(1)]. Despite this principle, the Constitution grants certain categories of public officials limited immunity from civil and criminal processes while in office for good reason. The President, in whom all executive authority of the State is vested, is the only public officer granted absolute immunity from civil and criminal processes while in office [(Article 57

(4)]. This is to enable the President perform the duties of his/her high office without any distractions occasioned by civil and criminal processes. Unlike the absolute immunity granted the President, members of the judicial and legislative arms of government are granted limited immunity from civil or criminal proceedings insofar as such processes relate to judicial and parliamentary proceedings.

In the case of MPs, the qualified immunity accorded them by the Constitution is only applicable so long as MPs are involved in parliamentary proceedings [Articles 117 and 118]. To facilitate the official (not personal) work of MPs, the Constitution provides that 'civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to, the Speaker or member or the Clerk to Parliament while he is "ON HIS WAY TO, ATTENDING AT OR RETURNING FROM, ANY PROCEEDINGS OF PARLIAMENT"' (Article 117) [Emphasis added]. To limit obstructions to their official duties (parliamentary proceedings), the Constitution further provides that MPs 'shall not be compelled, while attending Parliament to appear as a witness in any court or place out of Parliament' (Article 118) [Emphasis added].

The qualified immunity accorded MPs can, therefore, be invoked ONLY under three (3) circumstances:

- (i) Where an MP is 'on his way to' (attending) parliamentary proceedings
- (ii) 'Attending' parliamentary proceedings
- (iii) 'Returning from' parliamentary proceedings

Obviously, an MP cannot be deemed to be performing any of the above-mentioned parliamentary related activities when he is engaged in an unofficial or private activity to warrant the invocation of parliamentary privilege as contemplated by the Constitution. Under such unofficial circumstances, the Police need not seek the prior consent or clearance from the Speaker of Parliament to effect the arrest of an MP or serve a criminal process on him/her.

Second, to fully appreciate the meaning of the relevant constitutional provisions, it is useful to deduce the intention of the framers of the Constitution. The intention of the framers of the Constitution for the above-mentioned

provisions—which were originally introduced in the 1969 Constitution—could be deduced from the Proposals of the Constitutional Commission for a Constitution of Ghana, 1968 ('the 1968 proposals'). The Commission noted as follows:

428. Parliamentary immunities are intended to protect Parliamentarians against the possibility of legal actions being brought against them by either the government or by private citizens for anything they may have done IN THE PERFORMANCE OF THEIR PARLIAMENTARY DUTIES.

429. The history of parliamentary privileges and immunities goes back to the days when the people's representatives were faced with powerful governments which did not spare any efforts to intimidate and harrass them. These days when Parliament has no real cause to fear Executive interference, these privileges and immunities are less justifiable. Nevertheless, they still retain their essential raison d'etre because they are not considered simply as favors granted to Parliamentarians in their personal capacity, but rather as rules designed to secure the complete independence of Parliament.

433. Further, in order to ensure that Members of Parliament are not prevented from participating in the work of the House, they should be granted immunity from arrest and detention while they are travelling to and from Parliament or while they are attending Parliament. THIS IMMUNITY HOWEVER SHOULD NOT BE MADE TO COVER SERIOUS OFFENCES SUCH AS TREASON, SEDITION AND FELONY, NOR APPLY TO OFFENCES in flagrante delicto [to wit, in the very act of committing an offence]' [Emphasis added].

Considering the above-mentioned 1968 proposals and the Constitution, it is sound to reason that parliamentary privilege is meant to facilitate the performance of the official work of MPs. It is personal to an MP ONLY insofar as that MP is on or about the business of Parliament. MPs cannot invoke their limited parliamentary immunity when they are engaged in non-parliamentary work and not travelling to Parliament, attending parliamentary proceedings or returning from Parliament, in order to evade court summons, arrest warrants, search warrants, etc. executed in accordance with police powers granted by the Constitution, the Criminal Procedure Act, 1960 (Act

30) and other relevant law. The Speaker's suggestion that the Police ought to seek his clearance before inviting, searching or executing the arrest of an MP while Parliament is in session would make a mockery of the rule of law.

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Third, this reasoning is consistent with best parliamentary practice in democracies around the world. For instance, the UK Parliament's rules and procedure provide that MPs are protected by privilege only when they are engaged in proceedings in Parliament. UK MPs have no special protection for anything they do outside those proceedings. The rules highlight the fact that not everything that happens in Parliament is a 'proceeding'. This means that the protections of privilege do not apply to some things done by MPs. For example, they do not apply to correspondence with constituents or ministers, social media activities, statements to the press whether on or off the parliamentary premises, and political party meetings. The boundaries of 'proceedings' have been interpreted to the effect that MPs have no immunity from the criminal law. In Canada, the procedure and practice of the House of Commons is that the Speaker, in making a ruling on whether or not to invoke parliamentary immunity, must differentiate between actions which directly affect MPs in the performance of their duties, and actions which affect MPs but do not directly relate to the performance of their functions. For example, if an MP is summoned to court for a traffic violation or his tax return is subject to investigations, the MP could be said to be hampered in the performance of his or her duties at first glance because the MP may have to defend himself or herself in court instead of attending to House or committee duties. However, in these cases, the action brought against an MP is

not initiated as a result of his or her responsibilities as a legislator, but rather as a result of actions taken by the MP as a private individual. In these situations, the protection afforded by parliamentary privilege does not and should not apply.

Conclusion

Considering the intention of the framers of our Constitution in granting MPs limited immunity in respect of their official duties, the ongoing impasse between the Speaker and the Ghana Police Service is needless. Given that the matter is now before the courts, it would be useful for the leadership of these two important state institutions to formally sit and agree on the appropriate procedure to follow in enforcing the criminal law with respect to MPs, given due consideration to best practice around the world and the principles which underpin constitutional governance in this country. The majority and minority caucuses of Parliament should also avoid politicizing this important matter which goes to heart of our constitutional order.

The Supreme Court ought to, at the earlier opportunity (in an article 2 suit), provide clarity on the relevant constitutional provisions in a manner which is progressive and consistent with the principles of rule of law, constitutionalism and best parliamentary practice around the world.

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