

# Democracy Watch

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## EDITORIAL TEAM

### Editors-in-chief

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### Members

- Kwadwo Appiaggyei-Atua
- Audrey Gadzekpo
- Kojo Pumpuni Asante
- Kojo Pumpuni Asante

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## IN THE ANNALS OF GOVERNANCE

### Ghana International Airlines saga: mismanaging the corporate business of the state?

**G**hana International Airlines (GIA), the start-up airline that was organized to replace the bankrupt national carrier, is already embroiled in a corporate governance crisis reportedly involving the Government and GIA's other equity investors and managers. On April 7, 2006, the Accra office of GIA was the scene of high drama, as armed policemen, ostensibly acting on "higher orders," forced their way into the company's offices to eject the executives of the company who were said to have been summarily dismissed earlier that day on the orders of the President's Chief of Staff and Minister for Presidential Affairs, who, at the time, also "doubled" (or tripled) as Minister responsible for aviation. The ensuing scuffles brought in consular officers from the US Embassy to protect GIA's American executives, while New Patriotic Party (NPP) operatives came in to defend the Regional Chairman of NPP, an officer of the company also affected by the sack order.

This action was accompanied by an announcement from the Office of Chief of Staff that an interim board had been appointed to take over the affairs of GIA. The dramatic development at GIA reportedly followed a tension-charged meeting held earlier in the day

between the management of GIA and the Chief of Staff.

The GIA incident raises important issues about the state of corporate governance in Ghana, specifically relating to the business and commercial interests of the state. The episode highlights the consequences and implications of the Government's failure to heed calls for **transparency** in handling certain issues and transactions of public interest. Following the bankruptcy of Ghana Airways, one would have expected the Government to institute an investigation, even if belatedly, into the reasons for the failure of the national airline. Without giving itself or the Ghanaian public the satisfaction of knowing "what went wrong" with Ghana Airways, the Government rushed to invest scarce public resources in a new airline venture. As if that was not bad enough, the entire GIA deal has been attended, from the very outset, by an inattention to the dictates of transparency and full disclosure. The details of the GIA deal, including the governance and capital structure, are matters known to insiders and others privy to the agreement but not to the Ghanaian public. This is especially troubling in light of reports that the Government's equity contribution was borrowed without prior parliamentary approval from pension funds held in trust for Ghanaian workers by the Social Security and National Insurance Trust (SSNIT).

The GIA episode demonstrates the utter failure of the NPP administration to

change the dysfunctional model of **corporate governance** that has long characterised the state-owned corporate sector. Having pronounced a “Golden Age of Business,” the Kufuor administration should have designed and implemented policy reforms to change the nature of corporate governance in state commercial enterprises by promoting a system of management of public enterprises characterized by professionalism, meritocracy and proper accountability to institutions of state such as Parliament and the Auditor General. Instead, what we see is a deepening of the same old dysfunctional culture in which politicians routinely intrude into the day-to-day management of state commercial enterprises, with disastrous consequences for profitability and effective public accountability.

**“... (neo) patrimonial governance has proved consistently inimical to sustained democratic and economic development in Ghana and elsewhere”**

The episode also reveals the imprudence of trying to fix every imaginable public problem by appointing a minister or creating a ministry to be in charge of it. What is the point of separating out the aviation portfolio from the Transportation Ministry and putting at the head of it the President’s Chief of Staff and Minister of Presidential Affairs? The unfortunate reality is that once you have a minister in charge of Aviation he or she will be inclined to find something to do. And given our kind of political and corporate governance culture, the tendency would be, as we have witnessed, for the minister to inject himself directly into the operations of the airline carrier.

The GIA saga also calls into question the depth of the Government’s commitment to a rule of law ethic. Even with the after-the-fact attempt to assign responsibility for the announced management changes to the Board of GIA, the incident still leaves disturbing marks of decision-making based on ad hoc and personality-related considerations, rather than in accordance with pre-determined rules and procedures. At this stage in Ghana’s democratic and constitutional evolution, one would have expected that such exercise of “personal rule” and “management by crisis” would be a thing of the past, giving way to the rule of law and more deliberate and thoughtful planning.

The recent turn of events at GIA further reveals the persistent failure of Parliament to assert its proper oversight role in the area of state enterprises and the governance costs of Parliament’s inaction in this area. There is, under Parliament’s Standing Orders, a Committee charged

specifically with oversight of state enterprises. Yet, in all of the problems we have experienced with state enterprises (from the bankruptcy and collapse of Ghana Airways to the debt problems of Tema Oil Refinery) not once have we heard the Parliamentary Committee on State Enterprises, which has powers of investigation, play any role in trying to get to the bottom of the costly failures in the state commercial sector. Curiously, Members of Parliament (MPs), who are supposed to hold these state enterprises and the Executive accountable for the judicious use of public funds, often join the public chorus in calling on “Government” to take this or that action, suggesting that the MPs do not deem themselves empowered to act on their own initiative.

Lastly, the reported open involvement of ruling party operatives in the Chief of Staff/GIA saga – ranging from the corporate affairs vice-president of the airlines who doubles also as a regional executive of the NPP to other NPP executives – raises disturbing questions about the lack of separation of the business of the state/government from the business of the ruling party and some of its leading personalities. It highlights the persistence in Ghana’s Fourth Republic of a form of (neo) patrimonial governance that has proved consistently inimical to sustained democratic and economic development in Ghana and elsewhere. ■■

## The enigmatic 2006 ministerial reshuffle

**R**umours of an impending reshuffle have been rife as far back as September of 2005. As with reshuffles in the past and generally in picking or dispensing with his ministerial team, the President has always kept his cards close to the chest, even while the press continues to speculate as to who is staying, leaving or coming in. Eventually, when the first batch of substantive ministers and new portfolio designation were announced in early May, it presented a highly mixed picture of governance progress and stagnation under the Kufuor administration.

There is, of course, no hard and fast rule as to when it might be best to reshuffle the President’s ministerial team. As with the decision to appoint or sack a particular minister, the timing and scale of such reshuffles is entirely the prerogative of the President, at whose sole pleasure all ministers serve. Still, because ministerial appointments or firings have significance for the quality of governance and the direction of the Government’s policy priorities, they are bound to attract a fair amount of public interest and comment when they are announced. The recent ministerial reshuffle is no exception.

On a positive note, the realignment and merger of some ministerial portfolios, leading to a net decrease in the total number of ministerial positions, is commendable, if long overdue, effort to downsize a bloated Executive. The President has also injected new blood and energy into his administration with his newly named appointments to the Cabinet rank positions of Attorney General and Minister for Local Government, Rural Development and Environment. Further, the disappearance from the Ministerial list of seasoned NPP parliamentarians like the Hon. Mr. J H Mensah, Hon. Mr. Osafo Maafo and Hon. Dr. Kofi Apraku, while shocking to many observers, may well help to reinvigorate Parliament, assuming these former ministers refocused their attention on their legislative, deliberative and oversight roles and gave the House the full benefit of their experiences gained in the Executive branch.

***“Viewing the Diaspora strictly from the prism of Tourism betrays a lack of understanding of the significance of the African Diaspora and also misses an opportunity to mainstream the increasingly influential Ghanaian-born Diaspora in the national development process and discourse”***

The merger of the Regional Integration and New Economic Partnership for African Development (NEPAD) portfolios with Foreign Affairs is a sensible move toward rationalizing overlapping functions, as is the assignment of the Private Sector Development portfolio to the Ministry of Trade, Industry and Presidential Special Initiatives. However, the continued decoupling of the Aviation and the Ports and Railways portfolios from the Ministry of Transport remains lacking in justification. In particular, the designation of a Minister of State for Aviation makes little sense for a portfolio that has in its inventory of assets only a troubled start-up airline — with one aircraft. Again, the Government’s move to give due recognition to Ghana’s relationship with the African Diaspora by re-designating the former Ministry of Tourism and Modernization of the Capital City as the Ministry of Tourism and Diaspora Relations is a welcome signal of a global perspective taking hold in the halls of government. But the Diaspora portfolio would seem to be functionally better placed with the Foreign Ministry rather than the Ministry of Tourism. The current pairing of Diaspora affairs with tourism betrays a rather narrow conception of the Diaspora. Viewing the Diaspora strictly from the prism of Tourism betrays a lack of understanding of the significance of the African Diaspora and also misses an opportunity to mainstream the increasingly influential Ghanaian-born Diaspora in the national development process and discourse.

The reshuffle also re-designated the Ministry of Information as the Ministry of Information and National Orientation.

***“Governments teach best not by recourse to preachy slogans and exhortations but by example and the fair and effective enforcement of known laws and regulations”***

The retention of a ministry of information in a twenty-first century democracy with liberalized airwaves and robustly free print media is problematic enough. Such a ministry is also redundant in the face of the presence of information and public affairs units in the various ministries and a Presidential Spokesperson at the Castle. Adding to this Ministry, a newly-minted National Orientation portfolio compounds the problem. Besides, the idea of a Minister responsible for National Orientation has a frighteningly Orwellian sound to it and harkens back to the heyday of government propaganda agencies and officials. It reflects, yet again, the tendency, particularly pronounced with the Kufuor administration, to “address” every imaginable problem or selected priority by naming or designating a new minister or ministry to take charge of it.

Further, it highlights the tendency of Ghanaian officialdom to rely on moral exhortations and labels to deal with pressing national problems. If, as the designated Minister has explained, National Orientation is intended to signal a need for a reorientation of citizens attitudes across a wide spectrum of concerns, it causes one to wonder what happened to the much publicised “Vice President’s Campaign Against Indiscipline.” It also recalls to the memory equally ill-fated predecessors like the NRC’s “Redemption Charter” and the PNDC’s “31<sup>st</sup> December Man.” Naming a Minister responsible for National Orientation cannot substitute for the institutional reforms, effective enforcement of laws, and transparent and exemplary leadership that are needed to remould the attitudes and behaviour of Ghanaians in a manner deemed desirable by the government. Governments teach best not by recourse to preachy slogans and exhortations but by example and the fair and effective enforcement of known laws and regulations.

Viewing the ministerial reshuffle from another, slightly different governance perspective, it is not easy to discern what role, if any, competence (or record of performance) or “cleanness” (reputation for integrity) played in the retention or sacking of particular ministers. Certain ministers known to be dogged by scandal or allegations of questionable conduct were dropped. But others with similar or worse clouds over their heads remain at post.

Similarly, certain weak performers have been retained as Ministers in existing or new portfolios, while some of their peers known to be better performers have been shown the exit.

Lastly, the frequent and apparently random choice of nomenclature for ministerial positions is a worrying trend that must be checked before it becomes habitual. Re-designating and merging or decoupling ministries and departments is an exercise that brings in its trails both financial and adjustment costs. In particular, when such portfolio shifts and new ministries are announced in the middle of the fiscal year, it distorts the national budget and existing appropriations. Parliament must take another look at the Civil Service Amendment Act, 2001, and consider whether it would not make better governance sense to subject to prior legislative approval the decision of a president to create or designate new ministries and to require, instead, that new ministries be created only pursuant to specific enabling legislation. ■■

## CHRAJ Report on 'Hotel Kufuor'

On May 4, 2006, the Acting Commissioner of the Commission for Human Rights and Administrative Justice (CHRAJ), Ms. Anna Bossman, released a preliminary report of investigations her office conducted into the alleged \$3 million purchase by the President of a building located near his residence and popularly known as "Hotel Kufuor." The probe focused on whether the President was involved in corruption and conflict of interest based on the allegation that he used his son as a front to secure the sale of the said property and used arm-twisting tactics to coerce the original owner of the building to sell the property to the President's son.

The CHRAJ decision to investigate the matter was heartily welcomed by sections of the population, but the Opposition reflexively dismissed the move as an effort on the part of the Commission to whitewash the scandal. Pro-government media commentators made misleading claims that it was the President who voluntarily submitted himself to investigation by CHRAJ, while the Minority questioned CHRAJ's independence and competence to handle the matter and called for the setting up of a Parliamentary Committee to probe the allegations. Did CHRAJ have the right to initiate investigation of the President on its own; was it appropriate for CHRAJ to undertake the investigation (instead of Parliament), and what exactly were the precedents set by this probe? These are some of the significant legal, constitutional and governance issues raised

by the CHRAJ investigations and report as well as the controversies they generated.

To be sure, it is admirable of the President that he cooperated with the investigation and did not impede it. But it must also be pointed out that it is not the President who submitted himself voluntarily to CHRAJ. CHRAJ was able to undertake the investigations by virtue of the powers vested in it under the Constitution and the CHRAJ Act, 1993 (Act 456). For example, Article 218 empowers CHRAJ to investigate any public officer and/or to ask any public officer to come before the Commission to testify. Article 286(5) of the Constitution specifically mentions the President, the Vice-President, the Speaker of Parliament and others as public office holders who could be called to appear before the Commission. Sections 14 and 15 of Act 456 also lend support. The only limitation placed on CHRAJ is where the information likely to be disclosed is considered an official secret. The issues that CHRAJ is mandated to investigate touch on, among others, conflict of interest, abuse of office, violations of human rights, corruption, etc. It is important to contrast that with Article 57 which provides immunity for the President against any action in any court relating to the performance of his functions as President and in relation to any civil or criminal wrong he may have committed while in office. A person can only bring an action against the President three years after having left office.

It is also important to note that this is not the first time that the President has 'submitted himself' to CHRAJ. Before "Hotel Kufuor" and during the first term of his administration, the President cooperated with an earlier investigation by CHRAJ. The investigations related to a petition brought by the Minority Leader in Parliament on behalf of the NDC party on allegations of corruption and conflict of interest relating to the renovation of the President's private residence in Accra. The investigations, however, were discontinued by the petitioner.

Not surprisingly, the release of the report of the CHRAJ investigation into the "Hotel Kufuor" saga and especially the exoneration of the President provoked the same excitement and controversy generated when the story initially broke. Among the significant issues that the media and the public raised were:

- Whether the investigations were independently conducted and the report not tweaked or influenced "from above;"
- Whether CHRAJ had the mandate to make the report available to the public and whether it would have done so if adverse findings were made against the President;

- Whether the CHRAJ investigation and ensuing report was too mechanical.

*Democracy Watch* deems the first issue irrelevant. The credibility of CHRAJ cannot be doubted. While it has its faults and weaknesses, it has worked against major odds to prove itself an effective and reliable institution of governance in Africa. We doubt if it would allow this image to be dragged into the mud by seeking to please the President. For such perceptions of bias to dissipate from the minds of the people, it is important for the opposition to lay partisanship aside and support, respect and have confidence in the institutions of governance. We cannot attack CHRAJ for reaching conclusions solely on the basis of the facts at its disposal. Neither can anyone be justified in assailing CHRAJ solely or largely because they may disagree with the verdict. CHRAJ cannot engage in “trial by media.” What is important in a democracy is not the outcomes of judicial and or quasi-judicial inquiries but that at the end of the day, rule of law was respected and due process was followed.

***“What is important in a democracy is not the outcomes of judicial and or quasi-judicial inquiries but that at the end of the day, rule of law was respected and due process was followed”***

The second issue is equally critical, and in this, CHRAJ has set an important precedent as well. During the NDC era, CHRAJ responded to a request by then President Rawlings for an investigation to be conducted into allegations of corruption, conflict of interest and misappropriation of funds by some members of his administration. The findings were submitted to the President but also put in the public domain, which triggered the issuance of a “White Paper” to override CHRAJ’s decision and vindicate the respondents. However, this act was condemned by CHRAJ and the general public as unconstitutional and lacking any legal backing. In so doing, CHRAJ set itself apart from an ordinary commission of inquiry which the government can set up under Article 278. Also, it developed the precedent of making public release of its findings on ministers of state without the need to seek prior governmental approval. This precedent was followed in the “Hotel Kufuor” case. Thus, CHRAJ’s entry into the area of releasing a report on a presidential investigation seems to break new ground and affirms an important precedent set earlier that CHRAJ should be able to publish findings of presidential/ministerial investigations on its own initiative whether they are favourable or adverse. It is therefore hoped that the

precedent that is set, in which both adverse and positive findings are reported by CHRAJ, will be respected and maintained.

It is equally important to note - in the spirit of promoting good governance and strengthening the rule of law - that in the “Hotel Kufuor” case, CHRAJ took a further step forward by conducting investigations on its own initiative. This approach of investigating presidential corruption, abuse of office and conflict of interest appears to be new. It breaks important new ground by asserting the rule of law over presidential privilege.

In response to the third issue, we believe that CHRAJ narrowed its mandate unduly and was thus too mechanical, legalistic and narrow in the way it approached the matter. Having taken the lead in seeking to establish conflict of interest guidelines one would have expected CHRAJ to have taken the opportunity to take a tougher stance on the issue of “conflict of interest,” by broadening its conception of the problem to include matters that raise “appearance” problems. It should at least have commented adversely on Gizelle Yazji’s participation in the transaction involving the President’s son and the very troubling “appearance” problems that it creates, given that she was officially an advisor to the President. CHRAJ could also have sounded a stern note of caution to First Families to understand that, even though not public officers, they become “public figures” when their spouse or parent is elected President and that even their “private matters” assume public import. Thus, they must carry about in a transparent fashion and not involve themselves in deals that raise troubling appearance problems. In short, CHRAJ could have gone beyond the merely legalistic, as these are also matters of public ethics.

We also recommend that CHRAJ take a proactive stance in such situations, by issuing principles, rules, and guidelines regarding how it will approach conflict of interest cases, and not just wait to adjudicate complaints or cases. ■■

## Probing the CJ: Issues arising

**T**he President, acting in response to a petition presented by an Accra-based lawyer, set up a five-person committee in April 2006 to investigate allegations of “stated misbehaviour” brought against the Chief Justice. Under Article 146(6) of the Constitution, the President, in consultation with the Council of State, is apparently required to appoint such a committee whenever he receives a petition asking for the removal of the Chief Justice for stated misbehaviour, incompetence or mental and physical incapacity. This being the first time that Article 146(6) has been invoked, the move has focused public attention for

the first time on the constitutional scheme for the removal of the Chief Justice, the President's role in this matter, and their implications for judicial independence. The picture that emerges highlights one of the troubling "design defects" of the 1992 Constitution.

The Chief Justice is appointed by the President in consultation with the Council of State and with the approval of Parliament. Once in office, the Constitution guarantees the Chief Justice and all other justices of the superior courts robust independence in the performance of their judicial functions. Like other justices of the Supreme Court and the Court of Appeal, the Chief Justice must retire or vacate his office upon attaining the age of 70. Barring mandatory retirement or voluntary resignation, the Chief Justice, like all other justices of the superior court, cannot be removed from office except on the grounds specified in Article 146(1).

The process for removing a Chief Justice begins with the submission to the President of a petition calling for such removal and stating the grounds and allegations upon which the petition is based. What follows the President's receipt of the petition is a matter of some disagreement. On one reading of Article 146(6), the President is constitutionally obligated, under receiving the relevant petition, to appoint a five-person committee, comprising two justices of the Supreme Court and three other persons who may not be lawyers or MPs or members of the Council of State. The other view suggests that the receipt of a removal petition does not automatically compel the President to appoint an investigating committee. Rather, according to this alternative reading of Article 146(6), the President shall appoint an investigating committee only if that is the decision reached after his consultation with the Council of State or only where the President is satisfied that a *prima facie* case has been made.

From a plain reading of Article 146(6), it would appear that the former view, requiring automatic referral by the President, though the least desirable of the two, is the one most consistent with the letter of the Constitution. As written, Article 146(6) does not give the President discretion in how he might respond to a removal petition. Only with regard to the composition of the investigating committee is the President required to act in consultation with the Council of State. It is also because of the Council's role in constituting the investigating committee that members of the Council of State are expressly disqualified from serving on that committee. Article 146(6) does not grant the President a "gatekeeping" function in dealing with removal petitions; he must refer the petition to the appropriate committee appointed by him.

The committee appointed by the President is required to investigate the grounds and allegations contained in the removal petition, using *in camera* proceedings that must guarantee the Chief Justice the appropriate due process safeguards, including a right to be represented by counsel. During the course of the committee's investigation, the President may suspend the Chief Justice if the Council of State so advises. Upon completing its investigation, the committee shall recommend to the President whether the Chief Justice must be removed from office, and the President is required to act in accordance with the committee's recommendations.

The process outlined above grants the President disproportionate power and influence in the matter of the removal of a Chief Justice and thus undercuts the security of tenure of a Chief Justice. The Constitution places no limitation or qualification on the persons who might initiate or submit a petition for the removal of a Chief Justice or a set of circumstances that might give rise to such a petition. This open-ended right to petition the President for the removal of a Chief Justice is vulnerable to abuse by persons who might be out to cause mischief or undermine the effectiveness of a Chief Justice. More ominously, the process is one that could easily be used to give a willing President the opportunity to remove a disfavoured Chief Justice. A president's ability to engineer this outcome is made easier still by the fact that it is the president who determines the composition of the investigating committee that must make the final binding ruling on the merits of the petition. While the president must consult with the Council of State in constituting the investigating committee, the Council's role in this regard is, at best, to render nonbinding advice to the president. Curiously, the Constitution reserves no role whatsoever for the Judicial Council or for Parliament in the matter of the removal of the Chief Justice. For all practical purposes, only the President matters in this regard.

At least the Judicial Council, and preferably Parliament too, must be involved in the process of removal of the Chief Justice, so as to safeguard the independence of the judiciary and countervail the power of the President in this area. At a minimum, the Judicial Council, possibly in conjunction with a bipartisan committee of Parliament or the Council of State, should be the body authorized to appoint the members of the committee to which the petition for removal of the Chief Justice must be referred for investigation.

The finality or binding effect attached to the investigating committee decision is also problematic. At best, the committee, established to inquire into the allegations and grounds stated in the petition, must make no more than findings of fact. Since the entire membership of the committee is selected by the President, to require that the

President subsequently treat the committee's recommendations as binding is, in effect, to cede to the President the power to determine whether a Chief Justice would be removed. The nature of the President's power and influence in this area undermines the independence of the Chief Justice.

The alleged circumstances surrounding the recent invocation of Article 146(6) also bring to the fore the seemingly unbridled administrative power possessed by the Chief Justice. As reported by the Chronicle, the petition submitted to the President alleges that the Chief Justice interfered with the impartial administration of justice by causing a case to be removed from a court of competent jurisdiction to another court empanelled by the Chief Justice. The petition reportedly further alleges that the Chief Justice victimized certain judges "for refusing to take instructions concerning cases before them" and for refusing "to rule in a particular way."

Whether or not the petition has merit is a matter for the committee to determine. However, regardless of how the committee rules on the matter, there are larger institutional questions concerning the administrative discretion and managerial powers of the Chief Justice. The Chief Justice of Ghana combines both judicial and administrative functions. As a justice, the Chief Justice serves on and presides over the Supreme Court when it sits to adjudicate cases. The Chief Justice is, at the same time, the supervising justice of the Court of Appeal and of the High Court with power, in each case, to constitute the court that must hear particular cases. In fact, this court-empanelling power of the Chief Justice has been extended to the Supreme Court, even though, unlike the Court of Appeal and High Court, there is no express constitutional authority for the Chief Justice's unilateral and routine selection of five justices of the Supreme Court to hear any given case. To grant or allow a Chief Justice the power to single-handedly and at his sole discretion constitute any court, whether it is the Supreme Court, Court of Appeal, or High Court, is deeply problematic, as it essentially empowers the Chief Justice to engage in "forum shopping" and thus manipulate the decisional independence of other judges.

The powers of the Chief Justice indeed go far beyond his constitutional power to empanel the High Court and Court of Appeal and his "conventional" (but not expressly or impliedly constitutional) power to empanel the Supreme Court. Ghanaian chief justices have traditionally also been activist administrators or managers of the judiciary, micromanaging a wide range of routine administrative matters, such as allocation of housing, judicial transfers, and assignment or reassignment of judges to cases. The performance by the Chief Justice of these purely

administrative functions leaves the door wide open for the Chief Justice to be accused, truthfully or falsely, of top-down interference in the trial and adjudication of cases that are not yet before him or the Supreme Court. Once a Chief Justice becomes involved in assigning certain cases to or transferring pending cases from particular judges, it becomes easy to blame a Chief Justice for engineering a particular outcome in a case by his earlier decision to assign or reassign the case. Although this practice and exercise of power by a Chief Justice may have decades of tradition and convention behind it, it is at variance with contemporary best practices and out of place in a constitutional democracy committed to the rule of law (not of men) and accountability in the use of public power.

Given the current Chief Justice's declared commitment to reform of the judiciary, especially to eliminate those factors that fuel widespread perception of corruption in the administration of justice in Ghana, it is hoped that this unprecedented invocation of Article 146(6) will cause the Chief Justice and the Judicial Council to subject the Chief Justice's own administrative powers to objective reflection and scrutiny with a view to enacting and implementing appropriate reforms. In the long run, constitutional reform may be the only enduring remedy for the institutional defects and omissions outlined in this commentary. ■■

### Making the most of presidential briefings

**A** week after the President gave his State of the Nation address to Parliament on January 31<sup>st</sup>, 2006, he was on the road to Cape Coast to fulfil another type of accountability obligation consistent with the government's platform of open government - the People's Assembly. By maintaining the tradition of an annual open forum that allows ordinary Ghanaians direct access to question their President, the Kufuor-NPP government is in effect encouraging the process of people's participation in the art of governance.

The President used the two occasions – the State of the Nation address and the People's Assembly – to render account to the people of Ghana on how his government was trying to meet the promises for which they had been given the mandate to govern. The President's speeches focused on four thematic areas: the role of the budget in moving the economy forward; the current stage of development in the country; the government's role in the implementation of programs and policies, and the main challenges to accelerated growth. Overall, the President has to be applauded for staying on message and maintaining the critical focus on growth and progress.

In his State of the Nation address he indicated that his “main growth strategy” was to improve the management of the governance system. Therefore, the announcement that Ministry of Public Sector Reform has now been formally established was welcome news. Similarly welcome was the decision to streamline the Office of the President. However, it was not clear how reform in the public sector was to take place, especially as the sector has been under reform since the 1980’s. It was also unclear how such reform would lead to better management in the government and ultimately translate into growth and prosperity for Ghanaians.

Again, it would have been helpful for the speech to have given an outline of the plan for restructuring the Office of the President. For example, how will the awkward role of the Office of Accountability be addressed? It is strongly recommended that the blueprint, the plan, and the organizational chart for the restructuring of this crucial office be published.

**“...maintaining the tradition of an annual open forum that allows ordinary Ghanaians direct access to question their President, ...is in effect encouraging the process of people’s participation in the art of governance”**

Two other important announcements perhaps required even more critical focus. The country has been sounded out for months on the impending debt relief as well as accessing the Millennium Challenge Account (MCA). While we celebrate with the President the vast and total cancellation of debt that the country has been granted with a possible savings of US\$7 billion over two years, very little insight was provided to show how these funds were going to be managed. Bearing in mind that these concerns resonate deeply with Ghanaians as well as donors, it would have been important for the President to address these key questions. For example, how will the monies saved be used and how will the government ensure that they are used properly? How are they to be accounted for and who will decide on their utility? If the process and seeming outcome surrounding the recent desire to take out a multi-million dollar US loan from the Indian Government, part of which is to be used to build a presidential “compound” is any indication, more transparency and accountability is needed with regard to the government’s handling of vast sums of public resources. ■■

## Mass demonstrations against the extension of democratic rights: the anti-ROPAB opposition and Ghanaian democratization

Ghana’s Fourth Republic is by now used to the strange spectacle of minority Members of Parliament boycotting parliamentary proceedings to express symbolic opposition to matters being deliberated upon on the floor of the House. It was therefore not too surprising to see minority party MPs, those from the main opposition NDC, embark on a week-long boycott of the House. The MPs then played prominent roles in the street protests in Accra to press their opposition to the bill meant to extend the enjoyment of the constitutional right to vote to Ghanaians living outside the country. But the so-called anti-ROPAB (Representation of the People Amendment Bill) demonstrations in the first quarter of 2006, including the participation of minority parliamentarians, must be analysed carefully and appropriate lessons learnt.

We concede that that is a normal part of the democratic process, especially when used sparingly. However, the practice of MPs boycotting parliamentary proceedings and joining in or leading street protests against bills being considered in Parliament has undoubtedly dubious democratic validity. In fact, it is deeply subversive of the institution of Parliament and the entire process of representative government. Worse still, it could wittingly or unwittingly play into the hands of longstanding enemies of parliamentary government and encourage them to subvert the entire project of multi-party representative democracy.

**“...the practice of MPs boycotting parliamentary proceedings and joining in or leading street protests against bills being considered in Parliament has undoubtedly dubious democratic validity...it is deeply subversive of the institution of Parliament and the entire process of representative government”**

The active and tacit support the demonstrations enjoyed among many ordinary Ghanaians and some of the reasons provided to justify their opposition to the bill reveal some ugly facts about contemporary Ghanaian society and raise doubts about the depth of its commitment to democracy. On the face of it, Ghanaians appear to be so proud of and place such a premium on sons and daughters who live abroad that they regularly feature them in obituary notices,



providing details of which part of the globe various sons and daughters are located and sometimes which prestigious institutions they work for. At the same time, Ghanaians including some who profess to be democrats, find it necessary and appropriate to oppose the extension of franchise or rights enjoyed locally to their sons and daughters abroad.

**“It is ...fallacious to compare a legislative action to remove obstacles to the enjoyment of fundamental freedoms with actions to impose restrictions on the enjoyment of fundamental rights.”**

The episode also raises disturbing questions about why anybody would go on demonstrations to oppose extension of franchise to our brethren living outside the country. It is profoundly anti-democratic for our people, especially where they see themselves as democrats, to seek to prevent others from enjoying equal rights. In this sense, the behaviour of the anti-ROPAB demonstrators is analogous to racist Americans making violent demonstrations in the mid-1960s to protest the passage of the Civil Rights Act, which, among other things, outlawed discriminatory acts that prevented black Americans from exercising their right to vote.

Another disturbing aspect of this episode was the rather spurious and invidious comparison between ROPAB and the gerrymandering and manipulation of elections in Cote d'Ivoire which declared Mr. Ouattara and other Ivoirien citizens of foreign ancestry and dual citizenship ineligible to stand for political office and to vote in elections. It is simply fallacious to compare a legislative action to remove obstacles to the enjoyment of fundamental freedoms with actions to impose restrictions on the enjoyment of fundamental rights. Adopting constitutional provisions and or passing legislation to bar Alasane Ouattara from contesting elections in Cote d'Ivoire belongs to the category of breaching democratic rights; opening the way for Ghanaians abroad to be able to exercise their franchise was affirming the right of all Ghanaians to enjoy basic civil and political rights. An analogous situation to the so called anti-ROPAB demonstrations would be free blacks protesting the abolition of slavery.

Of course, the strident opposition to ROPAB highlighted the negative legacy of extreme polarisation in the politics of Ghana in the Fourth Republic. It confirms the persistently high levels of mutual suspicion between the NPP and the NDC. This calls for urgent measures to be taken to reduce mistrust and build mutual confidence and consensus.

Unfortunately, there's no easy remedy to the persistent

problem of extreme polarization in contemporary Ghanaian politics. But it is extremely important that the government and policymakers take due notice of this and do their best to abate it or at least prevent its escalation. Ghanaian policy makers would do well to adopt a convention that postpones the effective date for the implementation of politically controversial legislation and policy measures to the future. In the case of the Representation of the People Amendment Act (ROPAA), passed by Parliament in 2005 and given Presidential assent in the same year, the effective implementation date would have been set for a later date - say January 8 2009 - when a new administration would have been sworn in.

This would have helped to reduce undue suspicion over the intentions of the NPP administration. Such a convention would be particularly appropriate for a polity like Ghana where all kinds of good legislation have been bedevilled by anaemic implementation. Administrative agencies would be given some time to prepare for implementation of the legislation, including the development of appropriate administrative procedures. It would also obviate the need to leave the discretion for complying with laws in the hands of administrative agencies such as the Electoral Commission in the case of the ROPAA. The practice also has the advantage of assuaging concerns that a particular law or policy has been motivated solely by a desire to serve the partisan interest of the policymaker or a desire to reap unfair advantages on the part of the government initiating those measures.

In the meantime, *Democracy Watch* hopes that the National Commission on Civic Education (NCCE) and other civic and democracy education agencies in Ghana would take note of the democratic deficit revealed by the anti-ROPAB demonstrations and educate Ghanaians to understand that the expansion of the enjoyment of fundamental rights to others does not diminish the enjoyment of the same rights by those who already enjoy them. It rather enhances and secures the enjoyment of the same rights by all.

#### **The way forward:**

As important as it may be, the passage of the law resolves only a minor part of the problem. It must now be implemented. This is where statecraft and effective administration are required to address the legitimate concerns of opponents of the law, such as the possibility that it might become an instrument for rigging polls.

The time has also come to revive the Inter-Party Advisory Committee (IPAC) that has been so effective in resolving previous conflicts over electoral fairness and transparency. A reconfigured IPAC, bringing in a broad-based non-partisan civil society body such as the inter-faith Forum

for Religious Bodies as an independent observer, should be put to work to determine an appropriate commencement date for implementing the legislation, ensure reasonably equal access to voting facilities for Diaspora Ghanaians, and adopt measures for monitoring overseas voting, including the counting validation of votes counted. ■■

**“ ... the expansion of the enjoyment of fundamental rights to others does not diminish the enjoyment of the same rights by those who already enjoy them. It rather enhances and secures the enjoyment of the same rights by all ”**

## Who is the Leader of the House?

The question, “Who is the Leader of the House,” has been a source of recurring disagreement between the Majority and the Minority parties in Parliament. The Majority has generally taken the position that the Majority Leader, not the Speaker, is the Leader of the House, while the Minority has supported the contrary position. This apparent disagreement over titles or nomenclature would be inconsequential but for the fact that it has created some acrimony in the House and occasionally even paralyzed the business of Parliament.

The issue first came before the House in December 1998 during the Speakership of The Rt. Hon. Justice D.F. Annan. After Mr. J.H. Owusu-Acheampong was replaced as Majority Leader and Minister for Parliamentary Affairs by Dr. Kwabena Agyei, the former referred to his successor as the “Leader of the House.” This reference provoked an objection from the then NPP minority. After a brief debate on the matter, the Speaker issued a ruling that the Leader of the House is the Majority Leader in Parliament.

Speaker Annan’s 1998 ruling has apparently not brought finality to this issue. The question was resurrected during the Speakership of The Rt. Hon. Mr. Ala Adjetey. This time, the disagreement involved the Speaker himself. The Majority Leader at the time, Hon. Felix Owusu Agyapong, consistent with Speaker Annan’s ruling in 1998, maintained that he was the Leader of the House. Speaker Adjetey, however, believed himself to be the Leader of the House, a view that was supported by the Minority side.

The continuing disagreement over this issue arises, in part, from the hybrid nature of our constitutional arrangements – a mix of the Republican and Parliamentary systems of governance – and the fact that the Constitution names the Speaker, who is the presiding officer of Parliament, the third officer in the order of precedence, coming after the President and Vice President and designated to act as President in the absence of both the President and the Vice President.

The position of “Leader of the House” is not a position created by the 1992 Constitution. The only officers of Parliament known to the Constitution are the Speaker and Deputy Speakers of Parliament. The Standing Orders of Parliament, however, defines the Majority Leader as “Member of Parliament designated by the Party or Parties holding majority seats in the house as recognised leader in the house.” The designation “Leader of the House” appears in the Parliamentary Service Act, 1993 (Act 460). Section 11 of Act 460 states that, “The Minister responsible for Parliamentary Affairs or the Leader of the House shall liaise between Parliament, the Office of the President, Cabinet and the Service on any matters that relate to the institutions.”

In the organization of Parliament, the role of the Majority Leader is to chair the Business Committee of Parliament. Considering that the bulk of the legislative business of the House is Government business, the Majority Leader, as chair of the Business Committee of Parliament, may be regarded as the Leader of Government Business in the House. Had the 1992 Constitution made provision for a Prime Minister who would be leader of the majority party in Parliament, as the Committee of Experts had originally proposed, the holder of that position would also be the Leader of Government Business in the House. The absence of a formal position of Prime Minister coupled with the fact that the President, who is not a member of Parliament, must appoint a majority of his Ministers from Parliament, appears to have generated a need for a President to designate from among his Ministers in Parliament one person of Cabinet rank who would coordinate the Government’s business in the House. The Minister for Parliamentary Affairs has become that person.

Act 460 does not require that the position of Minister responsible for Parliamentary Affairs and the Majority Leader be fused in the same person. In the experience of the Fourth Republic, however, each President has appointed as Minister responsible for Parliamentary Affairs the member of the majority party elected by the majority as Majority Leader. In fact, it appears that the parliamentary majority has typically confirmed as Majority Leader the person whom the President designates as his Minister for Parliamentary Affairs.

The fusion of the positions of Minister for Parliamentary Affairs and Majority Leader has been made possible by the fact that each president elected in the Fourth Republic has been elected along with a parliamentary majority made up of members of his party. However, the positions of Minister for Parliamentary Affairs and Majority Leader will have to be decoupled in the event a President and the Majority in the House belong to rival political parties. Indeed, that appears to be the logic underlying Act 460's designation of either a Minister for Parliamentary Affairs or the Leader of the House as the liaison between the Executive and the House. Designating a member of the President's party in the House as Minister for Parliamentary Affairs makes more sense where the Majority Leader belongs to a rival party. But where the President and the Majority in the House are both of the same party, the Majority Leader can be put in charge of the Government's business in the House, as the Standing Order contemplates, without having to be formally appointed and designated additionally as Minister for Parliamentary Affairs. Particularly where, as appears to be the evolving convention in the Fourth Republic, the President's nominee for Minister of Parliamentary Affairs is automatically confirmed by his party colleagues in Parliament as Majority Leader, the routine appointment of a Minister for Parliamentary Affairs, whose loyalty and support is pre-committed to the Executive, merely reinforces the culture of presidential dominance over the legislature.

Between the Majority Leader and the Speaker, however, Speaker Annan's 1998 ruling, that the Majority Leader is the Leader of the House, is easily the correct position. The notion of the Speaker as Leader of the House is one that finds no support in either parliamentary law or convention. The confusion lies, perhaps, in the fact of the Speaker being third in the constitutional order of precedence, next after the President and Vice President. Thus, to confer "Leader of the House" status on the Majority Leader appears to challenge the Speaker's pre-eminence as head of Parliament. But, as explained previously, the Leader of the House is simply leader in the sense of managing the Government's legislative business in the House. The Speaker, however, is the ceremonial and administrative head of the *institution* of Parliament; just as the President heads the Executive branch and the Chief Justice the judicial branch. The "House," strictly speaking, comprises only the members of Parliament, with the Speaker its presiding officer. "Parliament," however, consists of more than just the MPs; there is also the non-political permanent staff of Parliament that constitutes the Parliamentary Service. When Parliament is spoken of in this latter institutional sense, outside of its legislative business, it is the Speaker who is appropriately the head or leader of the institution. Thus, the Speaker is the

spokesperson and representative for Parliament on ceremonial and formal occasions. ■■

**CDD-GHANA DEMOCRACY PROGRAMS FOR THE 1st QUARTER OF 2006**

**January 24  
Empowering the Serious Fraud Office**

CDD organized a one-day workshop in Kumasi on January 24. The workshop helped to deepen, and modify the analysis and proposals in the CDD report on strengthening the Serious Fraud Office (SFO) and building support for the implementation of the same proposals. The program, chaired by Mr. Charles Gyamfi Dankwa, Ashanti Regional Director, Commission for Human Rights and Administrative Justice (CHRAJ), was addressed by Mr. Samuel Sarpong, Ashanti Regional Director of the SFO and Mr. Anthony Osei-Poku, Ashanti Regional President of the Ghana Bar Association. Presentations were made by Mr. Charles Ayamdo, Deputy Director, Anti-Corruption Unit, CHRAJ, Dr. Ekow Bondzie-Simpson, Legal Practitioner, and Dr. Appiagyeyi-Atua, Faculty of Law, University of Ghana.

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**January 26  
Round Table Discussion with the National Labor Commission**

The Center collaborated with the National Labor Commission to hold a round table discussion on the theme "Making the Labor Act Work: The Role of Employers and Workers." The discussion focused on the role of the Labor Commission and its social partners in ensuring harmonious industrial relations for national development. The discussion was chaired by Mr. Christian Appiah Agyei, former General Secretary of the TUC. The lead discussants were Dr. Ohene Konadu, Lecturer at the Sociology Dept. University of Ghana, Legon, Mr. Austin Gamey, Labour Consultant and Mr Ayitey.

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**February 20  
Victim Survey Field Research**

CDD conducted a study to collate the views of about a hundred victims who testified before the National Reconciliation Commission. The study interrogated the expectations of victims and the extent to which they were met through the national reconciliation exercise. A team of six field researchers were deployed to the Northern, Western, Ashanti, and Greater Accra regions.

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**March 7 - 9  
CDD/Freedom House Collaboration**

CDD collaborated with Freedom House, USA to organize a meeting to discuss the possibility of establishing an African Institute for Democracy and Rule of Law. Participants were from Nigeria, Mali, Senegal, Benin and Ghana. Prof. Gyimah Boadi, Executive Director, CDD, and Dr. Momar Diop led the deliberations.

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**March 24  
Press Conference on the State of Governance in Ghana**

A press conference was held at the Center to present the Center's views on the state of governance in Ghana in 2005. The press conference, highlighted issues in Ghana's democratic process as documented in *Democracy Watch*, the Center's quarterly newsletter. Prof. Gyimah Boadi led the presentation at the function which was chaired by Dr. Audrey Gadzekpo, Senior Lecturer, School of Communication Studies, University of Ghana, Legon.

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**March 24  
Release on Monitoring of Bye-Elections**

The Center monitored and reported on the Tamale Central Bye-elections. The report consisted of observer reports from both pre-election and Election Day activities. ■■

The Ghana Center for Democratic Development  
(CDD-Ghana)

95 Nortei Ababio Loop, North Airport Residential Area  
P.O. Box LG 404, Legon  
Accra-GHANA

Phone: 233-21 776142/ 763029/ 784293 - 4

Fax: 233 21 763028

e-mail: [cdd@ghana.com](mailto:cdd@ghana.com)

Website: [www.cddghana.org](http://www.cddghana.org)

## CDD-Ghana Publications

- Briefing Paper Vol. 1 Nos 1- 4
- Briefing Paper Vol. 2 Nos 1- 4
- Briefing Paper Vol. 3 Nos 1- 4
- Briefing Paper Vol. 4 Nos 1- 4
- Briefing Paper Vol. 5 Nos 1- 4
- Briefing Paper Vol. 6 Nos 1- 4
- Critical Perspectives Nos 1- 21
- Research Papers Nos.1- 14
- Conference Proceedings

The Ghana Center for Democratic Development (CDD-Ghana) is an independent, nonpartisan, nonprofit and public policy oriented organization based in Accra, Ghana. It is dedicated to the promotion of society and government based on the rule of law and integrity in public administration. The Center's mission is to promote democracy, good governance and the development of a liberal economic environment. In so doing, CDD seeks to foster the ideals of liberty, enterprise and integrity in government and society at large.