



GHANA

CAPITAL: Accra

POPULATION: 23.8 million

GNI PER CAPITA (PPP): \$1,430

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	5.34
CIVIL LIBERTIES:	N/A	5.33
RULE OF LAW:	N/A	4.64
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.85

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

E. Gyimah-Boadi

INTRODUCTION

The conduct of Ghana's December 2008 elections won universal praise and helped to challenge the prevailing pessimism about African democratization in the wake of electoral debacles in states including Nigeria, Kenya, and Zimbabwe. Indeed, since returning to constitutional rule with the foundation of the Fourth Republic in 1992, Ghana has remained politically stable through five presidential and parliamentary elections (1992, 1996, 2000, 2004, and 2008), and each poll has generally been an improvement on the previous one. Ghana has also undergone two electoral transfers of power from one party to another (2000 and 2008), making it almost unique among African democracies.

This achievement is all the more impressive in light of Ghana's chronic political instability prior to 1992. Although the country had a liberal democratic constitution and multiparty democracy in 1957, when it became the first European colony in sub-Saharan Africa to obtain independence, the Convention People's Party (CPP) government led by Kwame Nkrumah had jettisoned this system and declared a one-party state by 1964. Nkrumah's 1966 ouster by the army began a cycle of military coups and regimes punctuated by brief periods of constitutional multiparty government.¹

In the early 1990s, the governing military junta known as the Provisional National Defence Council (PNDC) began the process of returning the country to constitutional rule. In 1992, PNDC chairman Jerry Rawlings won a multi-party presidential election as the candidate of the National Democratic Congress

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(NDC), a party formed by the PNDC to contest the poll. He was reelected in 1996 but was constitutionally barred from seeking a third term in 2000. His vice president, John Atta Mills, ran as the NDC candidate, losing narrowly to John Kufuor of the New Patriotic Party (NPP) in elections that were widely hailed as free and fair. The NPP also won a slim majority in Parliament that year. In the 2004 elections, Kufuor again defeated Atta Mills and the NDC, securing a much larger parliamentary majority for the NPP.

However, the ruling party entered the 2008 elections with some significant liabilities. The government was dogged by perceptions of corruption, insufficient ethnic inclusion, and elitism. Prominent human rights campaigner Nana Akufo-Addo, who had served as attorney general and foreign minister under Kufuor, ultimately won the NPP presidential primary, but the vote featured 17 candidates, acrimonious infighting, and lavish spending. There was also a significant rise in intraparty disputes at the constituency level, which resulted in bitterly fought parliamentary primaries. A number of the losing candidates then ran as independents, further weakening the NPP's base of support. Reports of extravagant government spending on a new presidential office complex and the purchase of two presidential jets in the face of economic hardship also aroused popular resentment.

Despite relative macroeconomic stability and generally prudent management by the NPP, Ghana remains a poor country. Gross national income per capita in 2008 was US\$670.² Results from the 2008 Afrobarometer survey suggest that unemployment may be as high as 42 percent, and only 12 percent of Ghanaians have access to running water in their homes. Furthermore, 48 percent of the population consider their personal living conditions to be "bad or fairly bad," and despite the NPP's efforts, 42 percent see the country's general macroeconomic conditions as "bad or fairly bad."³

Nevertheless, the NPP's record of good governance and its protection of civil liberties (as shown by largely positive assessments by the African Peer Review Mechanism Report and the Ibrahim Index of African Governance),⁴ along with the introduction of popular social programs such as the National Health Insurance Scheme and the School Feeding Program, suggested that the 2008 elections would be extremely close. In fact, it turned out to be the closest election in Ghanaian history, with Atta Mills of the NDC beating Akufo-Addo by less than half a percentage point in a runoff. The Atta Mills government, with a narrow NDC majority in the new Parliament, was sworn in on January 7, 2009.⁵

The closeness of the vote has contributed to what were already high levels of political polarization and mistrust between Ghana's major parties. The NDC has its roots in the populist "revolution" and military juntas of the late 1970s and 1980s and claims a left-of-center political ideology. The NPP, meanwhile, is more market oriented and conservative, and many of its members were victims of the military juntas. And as discussed in greater detail later, the winner-take-all nature of Ghana's constitution has made state capture (or more specifically, the capture of the executive branch) the overwhelming objective of both political

parties; control of the presidency provides the ruling party with overwhelming financial, political, and ethnic patronage advantages.

After a rancorous transition in which the NDC accused the NPP of corruption and economic mismanagement, and the NPP accused the NDC of engaging in a political witch-hunt, the NDC is now trying to settle into the task of governing the country. It faces particular challenges from an economy that has been thrown out of balance by the NPP's election-year profligacy and the global financial crisis.

It is against this backdrop that recent trends in accountability, civil liberties, the rule of law, and anticorruption efforts should be viewed.

ACCOUNTABILITY AND PUBLIC VOICE	5.34
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.50
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.75
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	5.43

The 2008 elections provided further evidence of the strength and increasing consolidation of democracy in Ghana, while at the same time illuminating some of its weaknesses. The country's elections are generally considered free and fair, and a clear majority of Ghanaians believe that they live in a democracy.⁶ The constitutional and statutory injunctions designed to protect the electoral process have been largely successful; universal adult suffrage and ballot secrecy are guaranteed. Both Ghanaians and international observers view the Electoral Commission of Ghana (EC) as independent, and the commission's members are routinely asked to lend their expertise to elections all over Africa.

However, the EC approached the 2008 balloting in a somewhat complacent manner, contributing to several avoidable administrative problems that nearly marred the electoral process. The electoral timetable was unnecessarily compressed, leaving insufficient time to correct flaws, and the NDC accused the EC of conspiring with the NPP to inflate the final voter registry. Indeed, mistrust of the EC began at least two years before the elections, with the enactment of legislation that allowed overseas Ghanaians to vote in national elections. Although implementation of this statute was eventually shelved, the NDC saw it as an effort by the NPP—in collusion with the EC—to manipulate the electoral process. In the run-up to the elections, a number of politicized land and chieftaincy disputes led to sporadic incidents of violence throughout the country, particularly in northern Ghana, in a few cases resulting in deaths at campaign rallies.⁷ Police failed to vigorously pursue some of the suspects for what were viewed as political reasons, adding to the existing tensions. The stakes of the balloting were also raised by the recent discovery of offshore oil deposits that could be worth US\$2 billion to US\$3 billion in extra annual revenue.⁸

Ethnic voting is an undeniable part of Ghana's political landscape. Though both major parties campaigned in all regions of the country, they tended to spend an inordinate amount of time in their respective strongholds.⁹ The NPP focused on regions dominated by the Akan ethnic group, particularly the Ashanti, Brong-Ahafo, and Eastern regions. The NDC concentrated its efforts in the non-Akan regions, particularly the Volta, Upper West, Upper East, and Northern regions. The three remaining regions—Greater Accra, Central, and Western—have been “swing regions” in recent elections. However, presidential candidate Atta Mills was born in the Western region and was an indigene of the Central region, and his NDC party was not reticent about exploiting this background and touting the potential economic benefits of voting for an ethnic kinsman. The NDC also sought support from non-Akan migrant communities within the NPP's Akan strongholds, pointing to the continuing dominance of Akans in Ghana's political establishment under the NPP. This led to an increase in election-related violence, even in southern Ghana. On the whole, the campaign strategies used by both parties exacerbated ethnic tensions more than in previous elections.

The electoral playing field was largely level, and despite the occasional violence, the parties were generally able to campaign without hindrance. State broadcasters made some effort to provide equal access and coverage to the major candidates. NPP presidential candidate Akufo-Addo was more visible to the electorate via television advertisements and countless billboards, suggesting that the NPP was better resourced than the NDC. Due to the paucity and inadequate enforcement of campaign finance laws, it is not clear how either party funded its campaign or how much they received or spent. Both parties had been in government long enough to have formed lucrative ties with the Ghanaian business community, and there were some unsubstantiated accusations that parties had been financed by foreign countries or interests. The NDC, for example, was rumored to have received funds from Venezuela and Libya, just as the NPP had been accused of receiving funds from Nigeria during the 2000 elections.

The first round of voting, held on December 7, 2008, did not produce a clear presidential winner. The constitution requires the winning candidate to obtain at least 50 percent of the vote, and Akufo-Addo obtained only 49.1 percent, followed by Atta Mills with 47.8 percent. The parliamentary elections were equally close. The NPP lost its majority, falling from 128 seats to 107, while the NDC increased its share from 94 to 114. Among the other parties with a parliamentary presence, the People's National Convention fell from four to two, and the Convention People's Party won a single seat.

The presidential runoff was scheduled for December 28. In the intervening weeks, the NPP government became notably less subtle about taking advantage of incumbency, reducing fuel prices and quickly releasing commercial drivers who had been jailed for traffic violations. Incendiary statements, violence, and intimidation became routine at party rallies. Former coup leader and longtime president Jerry Rawlings was especially strident in his attacks on the NPP government, exhorting the NDCs supporters to “resist” the NPP's efforts to rig the

election and to be “vigilant” during the runoff. Occasionally, flanked by other retired military officers, he would end NDC campaign rallies with the militaristic religious hymn “Onward Christian Soldiers.”

On voting day, both parties complained of harassment and intimidation of their supporters in the strongholds of their opponents. The EC announced the results of the runoff within 48 hours. The NDC was leading by less than 1 percent, and the outcome would not be known until balloting was conducted in Tain constituency, where it had been delayed due to administrative and security concerns. The NPP, also citing security concerns and perhaps acknowledging the constituency’s consistent support for the NDC, effectively boycotted the Tain voting and attempted an ultimately unsuccessful legal challenge. On January 3, the EC declared victory for the NDC, and Akufo-Addo, defying hawks within his own party, conceded the following day. The EC, to its credit, had rejected an attempt prior to the declaration to alter vote tallies in the Ashanti region, which would have changed the final outcome. The margin of victory in the presidential race was 40,586 votes, a mere 0.46 percent of valid votes cast.

One of Atta Mills’s campaign promises was to review the constitution and address some of Ghana’s governance deficits. The most obvious of these is the relatively unchecked power of the executive branch. Ghana’s 1992 constitution was drafted by the outgoing military regime, and while it is a progressive document in a number of respects, it gives an inordinate amount of authority to the executive. A constitutional provision bars members of Parliament (MPs) from introducing any legislation that will commit the government to spending public funds, effectively preventing the legislature from initiating bills. In addition, a constitutional requirement that the president appoint at least 50 percent of his ministers from Parliament severely handicaps parliamentary oversight responsibilities. Parliament has 230 members, and the president can appoint an unlimited number of ministers. Since 1993, this number has ranged from the mid-70s to the upper 80s. Each Parliament has therefore typically had at least 40 members who served concurrently in the legislature and the executive, and these officials have sought to steer state spending to their constituencies while neglecting their parliamentary duties. Moreover, MPs in the ruling party who aspire to wield such ministerial patronage have an added incentive to curry favor with the executive.

As a result, budgets and spending proposals are inadequately debated, and even unpopular bills submitted by the executive, such as a measure authorizing the acquisition of a presidential jet by the Kufuor administration, are invariably passed.¹⁰ Efforts by the parliamentary minority to oversee executive action, for example by obtaining a full accounting of the newly constructed presidential residence and the lavish 50th-anniversary celebrations of the country’s independence, were largely ignored by the Kufuor administration.¹¹

Presidential discretionary authority is used to make politicized appointments throughout Ghana’s public services, evading public and parliamentary scrutiny and undermining security of tenure. The executive’s role in the

ostensibly nonpartisan local government system is particularly symptomatic of this problem. The president appoints 30 percent of the local government assemblies as well as the local government leaders, known as district chief executives. While these appointments are supposed to be based on technical competence, it is clear that partisan considerations play a central role. This was the case under the Kufuor administration, and it has continued under the Atta Mills government.¹²

Ghana's civil service is becoming increasingly politicized, with bureaucrats contesting elections or campaigning for political parties.¹³ The constitutionally independent Public Services Commission, which oversees the civil service, is appointed by the president, and in practice civil service positions are not always filled based on merit. Moreover, the remuneration is unattractive, negatively affecting public servants' morale, performance, and integrity.

Nongovernmental organizations (NGOs) in Ghana are largely free from state pressures and play a major role in highlighting and providing technical support on gender, disability, and other social, governance, and economic issues. Some NGOs have become such fixtures that the government relies on their services to fulfill its mandates. For example, the police's Domestic Violence and Victim Support Unit (DOVVSU) relies on the Women's Initiative for Self-Empowerment (WISE) to provide psychiatric counselling, the International Federation of Women Lawyers (FIDA) to provide legal advice, and various other NGOs to provide victims with shelter and medical attention. NGOs have also helped to draft key pieces of legislation, such as the Whistleblower's Act. However, on some issues there is little opportunity for NGOs to effectively influence government policy. This is particularly true of a budget process that, despite some recent improvements, is still dominated by the executive. There have been several attempts at regulating the NGO sector since 1993, but the NGO community has successfully resisted them so far, insisting that any legislation should reflect its input.

The NGO community and the NPP government negotiated a Draft National Policy for Strategic Partnership with NGOs in 2004. It was agreed that this document should form the basis for national NGO legislation. It stipulated, among other things, that the law should establish an autonomous and independent National Commission on NGOs, grant tax exemptions to NGOs that qualify under the law, and facilitate collaboration between NGOs and district assemblies. However, a cabinet shuffle caused the process to stall, and recent versions of the NGO legislation did not reflect the 2004 agreement in letter or spirit. NGOs have consequently resisted passage of the current bill.

Freedom of expression is enshrined in the constitution, and a criminal libel statute was removed by the NPP government in 2001. The state does not hinder access to the internet. State broadcasters have made some effort to be neutral and routinely provide for a representation of different viewpoints. However, the state television station tends to favor the ruling party. Inequity in coverage by

state media is mitigated by the large number of independent private broadcasters. By 2005, according to figures from the National Media Commission, there were over 100 newspapers; licenses had been granted for 24 television stations, of which six are currently operating; and there were over 80 FM radio stations.¹⁴

The state does not routinely intimidate journalists, nor does it attempt to overtly censor the media, especially in recent years. In the early days of the Fourth Republic, journalists were imprisoned under the criminal libel law, and some antigovernment newspapers were subject to harassment. The government's attitude has grown decidedly more tolerant, but there have been some abuses. These include the dismissal of several journalists from the state television broadcaster for a story on the sale of the national airline that was considered unfavorable to the government and the closure of a radio station in the Volta region after it aired a series of stories that the government considered embarrassing. In 2007, journalist Samuel Enin was killed in a suspected contract murder. This crime is being investigated by the police, and it is not clear whether the motive was political. In 2009, the director general of the state television broadcaster abruptly halted a talk-show program because the government view was insufficiently represented, eliciting shock and universal condemnation. There is also some self-censorship by the media on political and corruption issues, and the government favors some media houses with greater access (particularly during presidential trips abroad) and state-sponsored advertising.

Though the media are generally free, many newspapers and radio stations are openly partisan. Radio Gold, for example, is viewed as an NDC station, while Oman Radio is seen as an NPP station.¹⁵ Despite this polarization, there are some outlets, such as the Joy FM radio station and the *Public Agenda* newspaper, that attempt to report more objectively.

CIVIL LIBERTIES

5.33

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	4.00
GENDER EQUITY	5.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	5.25
FREEDOM OF CONSCIENCE AND BELIEF	6.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.75

Chapter 5 of the constitution provides protection for almost all fundamental human rights, including the rights to life and personal liberty, guarantees against slavery and forced labor, equality and freedom from discrimination, free speech, freedom of thought, religious freedom, freedom of assembly, the right to information, and freedom of movement. Though there are constitutional prohibitions on torture and physical abuse, there have been cases in which detainees suspected of violent crimes have reportedly been assaulted in police

custody. This has increased in recent years, and the perpetrators are rarely held accountable.

Ghana's prisons are severely overcrowded. In 2008, the country's prisons had an official capacity of some 8,000 inmates but actually housed over 14,000.¹⁶ Ghana's Commission on Human Rights and Administrative Justice (CHRAJ) reported that prisoners' rights in terms of bedding and medical care were being violated.¹⁷ Few steps have been taken to address the overcrowding issue beyond occasional blanket pardons of prisoners; one of the last acts of the Kufuor government was to grant pardons to 500 inmates. The sentencing of juvenile offenders to long prison sentences is commonplace, and while judges often have the option of imposing noncustodial sentences, they rarely do so. Another reason for the overcrowding is the large number of pretrial detainees, who often remain in remand for several years despite a rule requiring that they be tried within a "reasonable time." Pretrial detainees made up approximately 29.7 percent of the prison population as of October 2008, an increase from an estimated 22 percent in 2003.¹⁸

According to a survey conducted as part of the African Peer Review Mechanism (APRM) in 2005, 62 percent of Ghanaians felt safer from crime than they did in 1999.¹⁹ However, most Ghanaians living in urban areas consider crime a serious concern. There are daily reports of home invasions in the newspapers, and law enforcement agencies are generally seen as ineffective. There is also a perception that the recent change in government has been accompanied by a spike in crime, as was reportedly the case during the previous power transfer in 2000. The government has responded by increasing the number of police checkpoints, particularly in urban areas.

The rights of people living in mining communities have been increasingly abused in the last five years. The government has reported that roughly 30 percent of the country's territory is currently held under concession by gold mining firms, and mining has been steadily displacing farming activity. One mining concession granted in 2006 resulted in the clearing of 3,000 hectares of land for gold production and the displacement of some 10,000 farmers.²⁰ Small-scale miners are routinely abused by private security companies hired by mining firms to protect their concessions. This often happens with the compliance or assistance of the state security agencies and, occasionally, local government and traditional authorities.²¹ Mining communities have also been plagued with environmental degradation, poisoned water supplies, destruction of crops, and an unusually high incidence of diseases such as cholera and tuberculosis.

The International Labour Organisation (ILO) and its International Programme on the Elimination of Child Labour (IPEC) have raised concerns about human trafficking, particularly child trafficking, in some farming and fishing communities in Ghana. The government has responded by setting up a human trafficking task force to coordinate antitrafficking efforts, and the Human Trafficking Act (Act 694) was promulgated in 2005 to help combat the problem. Current initiatives include an effort by the Ministry of Justice to

create a registry of children who live with relatives other than their parents, and designating the offense of “causing or encouraging the seduction or prostitution of a child under the age of sixteen” as a second-degree felony rather than a misdemeanor.

The High Court has original jurisdiction in human rights matters, but the CHRAJ is the primary organ for redress of human rights violations in Ghana. The commission, whose leaders are appointed by the president, is authorized by Article 218 of the constitution to investigate complaints but not to prosecute offenders. Instead, it refers cases to the Attorney General’s Department for prosecution, and because the attorney general is part of the executive branch and typically a leading member of the ruling party, there is a risk of conflict when the CHRAJ looks into abuses linked to the executive. For example, the commission recently investigated the propriety of the purchase of a hotel by Kufuor’s son, and if it had recommended prosecution, it seems unlikely that the attorney general would have pursued the case.²²

It is generally agreed that the CHRAJ has vigorously investigated corruption and human rights abuses, but there is also universal acknowledgment that the commission’s work is hampered by sometimes serious financial and logistical constraints. Its multiple mandates—anticorruption, human rights protection, and administrative justice—tend to overstretch its limited capacity. In addition, there is some doubt about the commission’s legal authority to launch investigations on its own initiative. For instance, a finding of impropriety against a leading member of the NPP, Richard Anane, was quashed by the Supreme Court on the grounds that the CHRAJ could not initiate such an investigation without a complainant.²³ Despite these constraints, the CHRAJ has acquired a reputation for investigative independence, especially in comparison with other anticorruption agencies such as the Serious Fraud Office and the police’s Criminal Investigation Department. The commission has brought actions that have led to the reinstatement of workers in both the public and the private sectors, investigated the president on conflict of interest charges in connection the multimillion-dollar hotel acquired by his son, and published groundbreaking reports on the human rights abuses in the mining sector.

Recently, Ghana has shown increasing sensitivity toward gender issues. The NPP government in 2001 established a Ministry for Women and Children’s Affairs (MOWAC), which assumed jurisdiction over two existing government agencies, the National Council on Women and Development and the National Commission on Children. The new Atta Mills government has also demonstrated an awareness of the importance of gender issues and has committed itself to appointing women to 40 percent of government positions. However, it is highly doubtful that this target will be met. Moreover, the number of women in Parliament dropped from 23 to 20 after the 2008 elections.

The constitution protects economic rights, women and children’s rights, and the rights of the disabled. The criminal code addresses rape, defilement, incest, abduction, and forced marriage. However, the Domestic Violence Act is

still not properly enforced, and DOVVSU does not receive adequate resources. In addition, women in some areas are still subjected to harmful traditional practices, including infringements on widows' rights and female genital mutilation (FGM). While FGM has been criminalized and is not as widespread thanks to a multiyear campaign to end the practice, it is still a part of the culture in some communities in northern Ghana.²⁴ There is little evidence that legal and constitutional protections against the exploitation of children's labor are being enforced, including with respect to forms of ritual servitude such as *trokosi*, in which female children are sent to live in "voodoo" shrines.

Both the NPP and NDC administrations have shown some commitment to addressing disability issues. The NPP government passed the Persons with Disabilities Act (Act 715) in 2006, though it was sluggish in implementing some of the law's key provisions, such as staffing and finding an appropriate site for the secretariat of the National Disability Council. The NDC government subsequently inaugurated the council.

Freedom of conscience and worship is largely respected in Ghana. Religious groups are among the most vigorous of the country's civil society organizations. There are no government restrictions on the operation and membership of religious groups and faith-based associations.²⁵ However, Ghana is a predominantly Christian country, and political power is concentrated in the hands of a southern Christian elite. Islam, the faith of 18 percent of the population, is stereotyped as the religion of the poor and the marginalized. It is also associated with the less-developed north of Ghana, though migration has made Islam as common in the south as in the north.²⁶ A north-south divide is evident in income disparities as well as access to services and economic opportunities. Three of Ghana's four poorest regions are in the north.²⁷ Successive governments have sought to address this problem with poverty-reduction and development programs focusing on the northern areas. Despite being a multiethnic country, Ghana features almost no instances of discrimination based solely on ethnicity. However, as noted previously, local disputes over land use and chieftaincy sometimes lead to ethnically tinged violence, and the political exploitation of ethnicity has given some election-related clashes an ethnic character.

Ghana has a vibrant associational life, and the right to freedoms of association and assembly are respected. Business and political organizations abound, and there are few impediments to joining trade unions, though some obstacles have been placed in the way of the creation of new unions.²⁸ Unions are still important actors, but their power is tempered by statutory provisions that require labor disputes to be heard by the Labor Commission prior to the declaration of a strike.

The right to protest is protected by the constitution. The Public Order Act stipulates that persons wishing to demonstrate must first inform the police, but the police cannot stop a demonstration without going to court for an injunction. This is rarely necessary, as protests are still rare and the police typically

raise no objection or negotiate demonstration times with protest organizers. Political parties have attempted to circumvent the Public Order Act by giving innocuous labels, such as “fitness marches,” to campaign activities that are essentially demonstrations. The treatment of large, spontaneous political gatherings is not uniform. During the 2008 election campaign, presidential candidates attracted such assemblies as they arrived in or passed through towns, eliciting varied responses from the police (see Accountability and Public Voice).

RULE OF LAW

4.64

INDEPENDENT JUDICIARY	4.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.75
PROTECTION OF PROPERTY RIGHTS	5.00

The constitution grants judicial power exclusively to the judiciary within a system of three separate but ostensibly equal branches of government. The constitution also grants the Supreme Court the power to strike down laws and executive actions that it deems unconstitutional. Judges in Ghana have security of tenure once appointed, and it is commonly believed that they have sufficient autonomy.²⁹ However, the executive influences the judicial system in a number of ways.

The president is influential in the appointment of all the superior court judges, including the chief justice, whom the president names in consultation with the Council of State (also largely appointed by the president) and with the approval of Parliament (where the president’s party typically has a majority). Supreme Court judges are appointed by the president on the advice of the Judicial Council and in consultation with the Council of State. Also, because the constitution stipulates the minimum but not the maximum number of Supreme Court judges, the president could theoretically “pack” the court with as many judges as he wished, though this has not occurred in practice. More troubling is the fact that a panel of the Supreme Court to hear a given case is “duly constituted for its work by not less than five Supreme Court Justices” out of the constitutional minimum of nine.³⁰ The constitution is silent on who selects the judges for each case, and by convention it has become the exclusive preserve of the chief justice. It is therefore possible in theory for a chief justice to determine the outcome of a particular case by selecting a panel based on the political and judicial leanings of the other justices, and indeed for a president to do so indirectly by appointing a sympathetic chief justice. There have been unconfirmed reports of executive interference in cases via pressure exerted through executive-friendly judges and of the chief justice influencing the decisions of trial court judges.³¹

In the 2008 Afrobarometer survey, 79 percent of Ghanaians expressed the opinion that the judiciary was corrupt. However, this does not seem to deter litigants from swamping the courts at all levels. The level of judicial competence has improved in recent years. Continuing legal education in a wide number of fields, from judgment writing to human rights, is becoming increasingly institutionalized. A Judicial Training Institute regularly holds seminars, courses, and programs for incoming and existing judges. In addition, commercial, tax, and other specialized courts have been established.

Criminal suspects are presumed innocent, even though there have been reports of suspects being assaulted in police custody and uninvestigated and unprosecuted cases of vigilante justice. Indeed, a growing number of “self-help” youth groups have assumed responsibility for protecting their neighborhoods against crime. According to a recent report sponsored by the Ministry of Interior, more than 1,000 cases of vigilante-style justice were recorded countrywide in 2007.³² These trends have been attributed to the perceived ineffectiveness of the security services in combating violent crime, as well as deficiencies in the property ownership documentation system that lead to the extralegal resolution of land disputes. Though there have been some prosecutions of people engaged in lynching, the perpetrators far too often go unpunished.³³

The right to counsel is guaranteed by the constitution. However, its effect is muted by the cost of hiring an attorney, the limited capacity and resources of Ghana’s legal aid system, inadequate information about the availability of legal aid, and a shortage of lawyers in many districts.

The fact that the attorney general is both the chief legal adviser to the executive and the head of the prosecution service has raised doubts about the independence of prosecutions, with opposition politicians frequently accusing the government of “selective justice.” The attorney general has the discretion to launch or end a given prosecution without explanation. The Kufuor administration prosecuted a number of leading NDC politicians on corruption charges, and many remained criminal defendants for the duration of Kufuor’s presidency. Although the charges appeared legitimate, no such prosecutions were pursued against the several NPP party members who were also accused of corruption.

Since the return to democratic rule, the military’s political role has declined markedly, and the risk of another military takeover has diminished. There are clear rules in place to ensure democratic control of the security forces. The president, who is considered the commander in chief of the security forces under the constitution, appoints the chief of defense staff and the service chiefs on the advice of the Council of State. He appoints other senior commanders on the advice of the Armed Forces Council and the service councils, and in consultation with the Council of State. Members of all of these councils are also named by the president. These institutional structures, along with the clear and deepening popular aversion to military rule, have helped reshape the relationship between the security services and the state. The military has no noteworthy economic

interests. However, it does continue to receive some deference on the management of its internal affairs and has successfully resisted efforts by the auditor general to review its accounts as required by statute. The security services ostensibly respect human rights, especially those of educated urban dwellers, but they have by no means internalized human rights values and routinely engage in abusive conduct when dealing with opponents of the government or ordinary citizens. The military has been deployed to provide support to the police in domestic law enforcement, particularly in the context of elections. This has occasionally led to the detention of civilians and, on one occasion in 2004, the death of an opposition politician while in military custody.

In cases of security sector human rights abuses, impunity remains a problem. The Police Intelligence and Professional Standards Unit (PIPS) receives and investigates complaints of abuses. While the PIPS is considered to be more effective than previous police accountability mechanisms, collusion between police and judges has hindered the justice process, frequently resulting in the prolonged adjournment of cases.³⁴ While corruption is common within the police force, investigation by the CHRAJ or the Serious Fraud Office remains unlikely.³⁵ Military abuses may also go unpunished or languish in the attorney general's office for months or years before going to trial. A high-profile case in which three soldiers allegedly killed 21-year old Evans Kusi after he disobeyed their orders in March 2007 was eventually ordered to court after media efforts to raise public awareness about the case thwarted attempts to quietly settle the case out of court. Nevertheless, two of the soldiers were released on bail, and the attorney general continued to delay the trial throughout 2008.³⁶

While the constitution guarantees property rights, Article 20(1) implicitly reserves the government's authority to seize private property for a stated public use. Under Article 20(2), eminent domain must be accompanied by "prompt payment" to the dispossessed party of "fair and adequate compensation," and the seizure must be necessary in the interest of public defense, public safety, public order, public health, town and country planning, or to promote "the public benefit." It is not clear whether these conditions have always been adhered to. In recent times, land that was acquired for a public purpose early in the country's history or in the colonial era has been sold to private developers and even to government officials. This became a major issue in the 2008 electoral campaign, with the indigenous population of Accra, the Ga, requesting the return of land that the state had acquired for a "public purpose" but was unable to develop.³⁷ Lawsuits and nativist demonstrations have become key features of the movement for the return of Ga land. The NDC made the return of Ga land one of its campaign promises, though it remains to be seen whether the pledge will be honored. The Ga assertion of property rights has occasionally resulted in violence, and there have been several reported cases of violence perpetrated by "landguards"—individuals hired by private landowners or traditional authorities to protect their land from encroachers.

ANTICORRUPTION AND TRANSPARENCY 3.85

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	4.00
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	4.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	4.25
GOVERNMENTAL TRANSPARENCY	3.17

Ghana remains the easiest place to do business in West Africa and has been ranked as one of the top 10 economies in Africa for doing business. However, the business environment still faces major challenges, including excessive regulatory obstructions and widespread corruption that stems in part from the poor remuneration of public employees. A World Bank 2007 Enterprise Survey found that 39 percent of firms expected to pay informal payments to public officials to get things done, 23 percent expected to give gifts to get an operating license, 18 percent expected to give gifts in meetings with tax officials, and 61 percent expected to give gifts to secure a government contract.³⁸

International indicators suggest that Ghana has made some strides in combating corruption. Its score on the Transparency International Corruption Perceptions Index (CPI) rose from 3.3 to 3.9 between 2003 and 2008. On the basis of the 2008 score, Ghana is now ranked 67th out of 180 countries globally and 6th in sub-Saharan Africa. However, most Ghanaians view corruption as a very serious problem that holds back the country's development. The Ghana Integrity Initiative Survey of 2005 indicated that 92.5 percent of urban households in southern Ghana believed corruption to be prevalent in the country, and 90 percent considered corruption to be a serious problem. Contrary to CPI evidence, 60 percent of the sample believed corruption was getting worse rather than better.³⁹ This is not surprising given the pervasiveness and acceptance of patronage in the public sector and state-owned enterprises in particular. One of the first acts of successive governments has been to dissolve the boards of state-controlled enterprises such as the Ghana Commercial Bank, and state agencies like the Serious Fraud Office and the Ghana Law Reform Commission, so as to appoint their own loyalists to those positions. Moreover, incompetence on these boards is rarely punished by any government. The politicized turnover also causes disruptions in the formulation and implementation of policies and programs.

There are no formal conflict of interest rules, although the CHRAJ has published some nonbinding guidelines. Public officeholders are legally required to declare their assets, but the rules do not stipulate that the declarations must be made public. The Atta Mills government indicated that it would require its members to declare their assets publicly, but ministers have yet to comply.

Anticorruption enforcement efforts are conducted primarily by the Serious Fraud Office (SFO) and the CHRAJ. Both organizations face challenges in the performance of their functions. CHRAJ, as noted above, cannot prosecute

offenders and must refer investigations to the attorney general for prosecution. In addition, it is poorly funded and has to contend with a high rate of staff attrition. The work of the SFO, established by statute to fight corruption and prevent “serious financial or economic loss to the state,” is hampered by structural and logistical constraints. It may also be subjected to political pressure, as its director and much of its board are appointed by the executive and report to the attorney general. A similar situation can be found, to varying degrees, at the Internal Audit Agency, which is charged with auditing ministries, departments, and agencies as well as local government bodies;⁴⁰ the Public Procurement Authority (PPA), entrusted with ensuring transparency and competition in the awarding of government contracts;⁴¹ and the CHRAJ. The boards and executives of all these entities are essentially appointed by executive. The practice of creating such watchdog agencies and then giving the executive unfettered discretion to appoint their leaders and control their funding has been criticized by civil society as perverse and self-defeating.

Politicization is often alleged in the corruption prosecutions that do occur. During the Kufuor administration, former officials from the NDC were prosecuted, while corruption scandals that implicated Kufuor administration officials generally led to resignations rather than prosecutions. Thus far, no member of former president Kufuor’s government has been prosecuted under the Atta Mills administration.

While the constitution created the position of an “independent” auditor general, the office nevertheless became a political tool during the recent transition when the auditor complied with a government directive to investigate certain activities of the outgoing NPP government.

Victims of corruption can pursue their rights by submitting complaints to the CHRAJ, the SFO, and the police, though the quality of the investigations varies widely. The police have established an internal anticorruption unit called the Police Intelligence and Professional Standards Bureau (PIPS). In addition, a Whistleblowers Act was recently passed, but it has some significant operational limitations.

There is considerable corruption in the secondary school and college education process, with regular reports of leaked examination papers ahead of the annual national exams taken by secondary school students. A highly popular pilot school feeding program has been dogged by allegations of corruption.

Stories of corruption are widely discussed in Ghana’s news media. The Richard Anane case noted previously captured headlines for months, as did the scandal over the acquisition of a hotel by the president’s son. There is a significant amount of investigative reporting by the media, but it is rarely thorough, and in some cases it is abused for partisan political purposes.

Ghana scored 49 percent on the 2008 Open Budget Index, with reports (and the results from previous years) suggesting an increasing but still insufficient degree of transparency in the budget process.⁴² NGOs and even Parliament have little opportunity to make substantive contributions to the process, which

begins too late in the year for detailed analysis. There is no budget office to review the budget submissions from the Ministry of Finance, and Parliament lacks the resources and technical capacity it would need for any critical oversight. It has one research department to handle all parliamentary research requests and only one committee room. As a result, parliamentary scrutiny tends to be “hurried, superficial and partisan.”⁴³ A recent attempt by private accounting firms, including KPMG and PricewaterhouseCoopers, to provide pro bono technical support to enhance Parliament’s capacity in this area received only lukewarm support from lawmakers.

The constitution guarantees the right to information, and while Ghana still lacks a freedom of information law, a bill was being drafted as of mid-2009. All major political parties have expressed a commitment to pass such legislation.

The PPA, created by the Public Procurement Act of 2003, has established a committee to receive and investigate complaints from individuals and institutions concerning public procurement. It has also set up entity tender committees and review boards within government ministries, departments, and agencies. However, despite these advances, a recent report by the World Bank suggested that only 37 percent of government purchases were subjected to competitive bidding. There are still widespread abuses in the award of contracts, particularly at the local government level.

The distribution of foreign aid is equally opaque. The capacity of state agencies—such as the Audit Service and the Controller and Accountant General’s Department—to track and monitor government expenditures of any kind, including foreign aid, is limited by inadequate technical resources and funding. Civil society groups face similar constraints in their own efforts to monitor state spending. They also struggle with an official culture that combines poor recordkeeping with a reluctance to release even the most basic government data. Foreign aid is not normally viewed as a potential source for personal enrichment, but it has been frequently deployed for political and ethnic mobilization.

RECOMMENDATIONS

- Increase the independence of appointees to anticorruption and watchdog agencies and their operational autonomy in order to remove executive discretion over investigations and prosecutions.
- Review the electoral process prior to the next elections, ensuring an adequate timeline for the Electoral Commission to address deficiencies in the voter registry.
- Initiate a program of consensus building on questions of national development and rights to repair damage to national unity stemming from the ethnic and regional tensions unleashed during the 2008 elections.
- Media accountability, competence, and capacity should be addressed, including clarification of the National Media Commission’s role in media

oversight and prioritized passage of a broadcasting bill and the right to information bill.

- Address the insufficient capacity of the legislature to oversee executive action by amending the constitution to allow Parliament to introduce legislation that requires spending, while providing sufficient resources for legislators to analyze government budget submissions.
- Continue the emphasis on mainstreaming both gender and disability issues, including by adopting quotas for women's participation in Parliament and executive-appointed positions.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

- ¹ The military governments were the National Liberation Council (1966–69), the National Redemption Council (1971–75), Supreme Military Councils I and II (1975–79), the Armed Forces Revolutionary Council (June–September, 1979), and the Provisional National Defence Council (1981–93). The short-lived civilian administrations were led by Prime Minister Kofi Abrefa Busia of the Progress Party (1969–72) and President Hilla Limann of the People's National Party (1979–81).
- ² World Bank, "Data & Statistics: Quick Reference Tables."
- ³ Afrobarometer, "Popular Attitudes to Democracy in Ghana, 2008," Afrobarometer Briefing Paper No. 51, June 2008.
- ⁴ African Peer Review Mechanism (APRM), *Country Review Report of the Republic of Ghana* (Midrand, South Africa: APRM Secretariat, June 2005); Ghana ranked 7th out of 48 countries in the 2008 Ibrahim Index of African Governance; see Robert I. Rotberg and Rachel M. Gisselquist, *Strengthening African Governance—Ibrahim Index of African Governance: Results and Rankings, 2008* (Cambridge, Mass.: Kennedy School of Government, October 2008), 15.
- ⁵ For a detailed account of Ghana's 2008 elections, see E. Gyimah-Boadi, "Another Step Forward for Ghana," *Journal of Democracy* 20, no. 2 (April 2009): 138–152. For accounts of earlier elections, see E. Gyimah-Boadi, "A Peaceful Turnover in Ghana," *Journal of Democracy* 12, no. 2 (April 2001): 103–17; and E. Gyimah-Boadi, "Ghana's Encouraging Elections: The Challenges Ahead," *Journal of Democracy* 8, no. 2 (April 1997): 78–91.
- ⁶ Afrobarometer, "Poverty Reduction, Economic Growth and Democratization in Sub-Saharan Africa," Afrobarometer Briefing Paper No. 68, May 2009.
- ⁷ Ghana Center for Democratic Development, "Worrisome Developments in the 2008 Polls," *Democracy Watch* 8, no. 2 (May 2009).
- ⁸ Based on projections of 120,000 barrels per day by 2010 and 250,000 by 2012, at US\$100 per barrel in March 2008, with the government receiving a 50 percent cut negotiated by the Ghana National Petroleum Corporation, the discovery was expected to yield about US\$3 billion in revenue per year during the first term of the new administration. See Anna Cavnar, *Case Studies in Oil Governance: What Ghana Can Learn About Oil Revenue Management from the Rest of the World*, Critical Perspectives no. 23 (Accra: Ghana Center for Democratic Development, October 2008).
- ⁹ The presidential election was also contested by a number of minor parties—the Convention People's Party, the Democratic Freedom Party, the Democratic People's

Party, the People's National Convention, and the Reformed Patriotic Democrats—and one independent presidential candidate.

- ¹⁰ "NDC Demands Accountability from NPP," Ghana News Agency, July 15, 2008.
- ¹¹ "Presidential Jet: How the Loan Was Debated," *Ghanaian Chronicle*, March 22, 2008,
- ¹² "Oda NDC Chairman Calls for Probe into Rejection of Nominee," Ghana News Agency, May 13, 2009.
- ¹³ Civil servants are prohibited by law from taking part in "active" party politics, but there is a lack of clarity about the meaning of this term.
- ¹⁴ Audrey Gadzekpo, "Guardians of Democracy: The Media," in *Ghana: Governance in the Fourth Republic*, ed. B. Agyeman-Duah (Accra: Digibooks, 2008), 195–215.
- ¹⁵ See Gyimah-Boadi, "Another Step Forward for Ghana" and Gadzekpo, "Guardians of Democracy."
- ¹⁶ See International Centre for Prison Studies, "World Prison Brief: Ghana," King's College, London; Daily Graphic/Ghana, "Congestion in Prisons Worsens," Joy Online, August 14, 2009.
- ¹⁷ Commission on Human Rights and Administrative Justice (CHRAJ), *CHRAJ Submission of UPR Report to the UNHCR* (Accra: CHRAJ, 2008).
- ¹⁸ International Centre for Prison Studies, "World Prison Brief: Ghana"; CHRAJ, *Ninth Annual Report* (Accra: CHRAJ, 2006).
- ¹⁹ APRM, *Country Review Report*.
- ²⁰ "Ghana: Favouring Gold over Farmers," Integrated Regional Information Networks, January 28, 2009.
- ²¹ Selorm Amevor, "CHRAJ Indicts Mining Companies of Human Rights Abuses," *Public Agenda*, June 27, 2008.
- ²² See Ghana Center for Democratic Development, "The 'Hotel Kufuor' Affair: The High Cost of Disregarding Appearances," *Democracy Watch* 6, no. 2 (June 2005); Ghana Center for Democratic Development, "The CHRAJ Report on 'Hotel Kufuor,'" *Democracy Watch* 7, no. 1 (March 2006).
- ²³ Ghana Center for Democratic Development, "The CHRAJ Findings against Dr. Richard Anane and Aftermath," *Democracy Watch* 7, no. 2 (June–November 2006).
- ²⁴ APRM, *Country Review Report*, 38–41.
- ²⁵ Richard Crook, *The Role of Faith-Based Associations in Political Change and Development*, Ghana Center for Democratic Development/Overseas Development Institute Policy Brief No. 5 (Accra: CDD–Ghana, November 2005).
- ²⁶ *Ibid.*
- ²⁷ Ghana Statistical Service, *Pattern and Trends of Poverty in Ghana: 1991–2006* (Accra: Ghana Statistical Service, 2007).
- ²⁸ The National Association of Graduate Students, for example, has faced serious obstacles in obtaining a bargaining certificate that would allow it to negotiate with the government for salaries independently of the teachers' union.
- ²⁹ AfriMAP, Open Society Initiative for West Africa, and the Institute for Democratic Governance, *Ghana: Justice Sector and the Rule of Law* (Dakar, Senegal: Open Society Initiative for West Africa, 2007).
- ³⁰ On the very rare occasions when it sits to review its own earlier decisions, a minimum of seven justices is required (Constitution, Article 133).
- ³¹ K. Premph, "The Challenge of Constitutionalism," in *Ghana: Governance in the Fourth Republic*, ed. B. Agyeman-Duah (Accra: Digibooks, 2008), 97.
- ³² "Ghana: Vigilante Groups Fill Security Vacuum," IRIN, June 23, 2008.
- ³³ "Suspected Thief Lynched," *Daily Graphic*, February 23, 2006.

- ³⁴ Commonwealth Human Rights Initiative, *The Police, the People, the Politics: Police Accountability in Ghana* (New Delhi: Commonwealth Human Rights Initiative, 2007), 57.
- ³⁵ Business Anti-Corruption Portal, “Ghana Country Profile: Police.”
- ³⁶ “Family of Victim of Military Brutality Expresses Gratitude to Public Agenda,” *Africa News*, January 25, 2008.
- ³⁷ “Ga Mantse Comments on Ga Lands Issue,” Ghana News Agency, March 25, 2009.
- ³⁸ World Bank, “Featured Snapshot Report: Ghana,” in *2007 Enterprise Surveys* (Washington, D.C.: World Bank, 2007).
- ³⁹ Ghana Integrity Initiative, “*Voice of the People*” Survey (*Southern Ghana*): Project Completion Report (Accra: Ghana Integrity Initiative, July 2005).
- ⁴⁰ Internal Audit Agency Act, 2003, sections 5, 9.
- ⁴¹ Public Procurement Act, 2003, Act 663, section 4.
- ⁴² Open Budget Initiative, “Ghana,” in *Open Budget Index 2008* (Washington, D.C.: Open Budget Initiative, 2008).
- ⁴³ E. Gyimah-Boadi et al., *What Are the Drivers of Change in Ghana?*, Ghana Center for Democratic Development/Overseas Development Institute Policy Brief No. 1 (Accra: CDD-Ghana, November 2005).