INTRODUCTION

Manifestos are increasingly becoming an important political contract in Ghana's highly competitive electoral politics. The preparation of manifestos offers citizens and civil society organizations (CSOs) a unique opportunity to mobilize and unite behind critical socio-economic and governance issues, and compel political parties to prescribe reforms or proposals to them, with the view of implementing such proposals when voted into office. The expectation is that following this process, citizens and CSOs, working closely with the media, will hold political parties to account for their proposed reforms to these issues. In line with this, the Ghana Center for Democratic Development (CDD-Ghana) ahead of the 2020 general elections, embarked on The Manifesto Project with the view of highlighting critical problem areas in ten (10) sectors that hinder national development and progress and prescribe solutions for political parties to comprise in their respective manifestos. The issues were captured in a report titled 'The Manifesto Project: Promoting responsive and responsible manifestos for inclusive development'. As a new government has been formed in 2021 following the outcome of the 2020 elections, it is our expectation that government will take steps towards addressing the key sector-specific issues highlighted.

In the area of governance, some perennial challenges and gaps persist. This policy brief outlines the key issues identified as constituting critical problem areas and gaps in Ghana’s efforts towards ensuring good governance, with a view to informing and influencing agenda-setting and policy for inclusive development.

METHODOLOGY

The issues highlighted in CDD-Ghana’s Manifesto Project report were synthesized data from (i) a desk study of various international, regional and national instruments the Government of Ghana has subscribed to and from which politically binding policy commitments and obligations could be inferred, (ii) a desk study of various government policy and planning documents and reports, notably the report of the Constitution Review Commission, (iii) Afrobarometer survey data which flags issues highlighted by Ghanaians as principal concerns, (iv) the manifestos of the New Patriotic Party (NPP) and the National Democratic Congress (NDC) for elections 2008, 2012 and 2016, (v) reports of commissioned legal policy and governance experts who used
publicly available data and their expert knowledge to identify and describe the gaps and challenges in the area of governance, and (vii) opinions gathered through moderated discussions involving members of the media, civil society, politicians, among others.

**KEY ISSUES IN THE GOVERNANCE SECTOR**

A. Renewing the constitutional reform agenda

The Constitutional Review Commission (CRC) tasked by government in 2010 to consult the people of Ghana on the operation of the 1992 Constitution made a number of proposals for constitutional changes. Among the issues highlighted by the CRC in its 2011 report were the excessive appointing powers of the President, the requirement for the President to appoint a number of his ministers from Parliament without a cap, the absence of a cap on the number of Supreme Court Justices, etc. Following the CRC's work, the constitutional reform agenda has dominated discussions in the media and among civil society groups. Efforts made by the Akufo-Addo government in its first term to build consensus towards the amendment of constitutional provisions relating to the participation of political parties in local government was terminated without the much-needed constitutional amendment.

Some legal policy and governance experts recommend a complete overhaul of the 1992 Constitution because in their view, the Constitution is not fit for purpose in terms of ensuring good governance, inclusive development, constitutionalism and public accountability. However, for some Ghanaians, the 1992 Constitution, despite its seemingly apparent gaps has proved useful in sustaining democratic governance in the 4th Republic and should be maintained with some amendments. The challenge with this view is that handpicking a few clauses in the Constitution for amendment hardly addresses the key gaps identified as mitigating against good governance. In addition, taking on too many problematic clauses (some of which are entrenched clauses) for amendment delays the amendment process because of the need to build bi-partisan consensus around such amendments. In essence, it would be more useful to build nationwide bi-partisan consensus towards the enactment of a new Constitution.

In terms of local government, articles 55(3) and 243(1), which proscribe the participation of political parties in district assemblies or lower local government unit elections, have practically disenfranchised local communities in the selection of important local political officeholders; Metropolitan, Municipal and District Chief Executives (MMDCEs). The President appoints all mayors as well as 30 percent of District Assembly members. The remaining 70% of assembly members are elected by voters through a 'first past the post' electoral system in which candidates cannot run on the ticket of a political party. In reality, however, many candidates in these local elections maintain close political party affiliations, especially the two dominant parties. Given our highly centralized system of government which leaves very little room for autonomy and maneuvering in municipalities and districts, the appointment of MMDCEs by the President and the bar on political party participation in local elections have stymied effective decentralization, local political accountability, community participation and initiative in local government and development. Allowing political party participation in local elections could promote inclusiveness and reduce winner-takes all syndrome as all parties, major and small, can win power at the local level.
The excessive appointment power of the President enabled by other provisions of the Constitution, including but not limited to article 70, has been identified as a challenge to good governance. The outsized role of the President in the overall constitutional schema, including control over appointments throughout all levels of the public services and state structure and other prerogatives, has retarded the development of independent institutions and credible checks and balances and sustained patronage politics in a winner-takes-all culture. In addition, the exclusive presidential power to fill vacancies in key constitutionally designated non-political offices (Electoral Commission, CHRAJ, Auditor-General, and NCCE) feeds perceptions of partisan or improper executive control of such constitutionally independent offices, creates friction with and undermines effectiveness of such institutions, particularly when there is party turnover in the presidency.

The unlimited and unregulated size of membership of Parliament, Ministers, and the Supreme Court also poses a risk to constitutionalism and opens up branches of government which are supposed to be independent by constitutional architecture, to partisan capture. Given the extent of the gaps identified in these constitutional provisions as being major mitigating factors against good governance and constitutionalism, and the cumbersome amendment procedure for the entrenched provisions (some of which require a referendum), it is perhaps time for a new Constitution.

B. Can Ghana ever win the fight against corruption?

Following the set-up of the Office of the Special Prosecutor in 2017—an office dedicated to the prevention and prosecution of corruption-related cases—by the Akufo Addo government, there were high expectations of a sustained and impactful fight against public corruption in Ghana, particularly involving political-exposed persons. Unfortunately, these expectations have not been met. Ahead of the 2020 general elections, a majority of Ghanaians did not even consider corruption among the key problems mitigating against national development [See CDD Pre-Election Survey 2020 and the Afrobarometer 2020 survey Round 8]. It was disappointing that the issue of anti-corruption was hardly given much attention in the NPP 2020 Manifesto. Nevertheless, corruption in Ghana remains an endemic problem that keeps many citizens poor, leads to poor delivery of public goods, and generally affects democratic governance and accountability in public office. The Auditor General’s annual reports continue to contain many instances of malfeasance by Ministries, Department, Agencies, District Assemblies, and public officials.

A number of factors have been identified as constituting major setbacks to the fight against corruption. They are as follows:

One, the persistent non-implementation and or non-compliance with article 296(c) of the Constitution which requires all State institutions, bodies, departments, agencies (howsoever described) which exercise discretionary power to publish by Constitutional Instrument (C.I.), regulations that govern the exercise of such discretionary power. Unfortunately, the Supreme Court’s interpretation of article 296(c) in *Ransford France v Electoral Commission and*
If the cost of politics rises to unaffordable levels, politics becomes the domain of the elite and wealthy, and incentivizes MPs to move from serving the public to recovering their own investment through various forms of corruption.

Attorney General (2012) that strict compliance with article 296(c) is unsustainable has whittled down the obligation on state entities to exercise their discretion in accordance with due process. The Court's decision has created more confusion and left the exercise of discretion by state entities unregulated; creating widespread opportunities for abuse of office and corruption.

Two, the absence of statutory elaboration and implementation of rules, standards, procedures, and safeguards for addressing issues of public ethics including conflict of interests, nepotism, and use of improper influence in public contracting and other official decision-making poses a significant challenge to the fight against abuse of public office and corruption generally.

Three, the non-existence of any credible statutory regime for regulating and accounting for the sources and spending of money in political campaigns, coupled with high and escalating cost of contestation for political office (both at party and national level), continues to mitigate against anti-graft efforts. According to a study conducted in 2018, by the Westminster Foundation for Democracy (WFD) in collaboration with CDD-Ghana titled 'The cost of politics in Ghana', candidates in party primary elections needed to raise approximately GHS 390,000 (USD 86,000) to successfully secure the nomination of their party and compete in the parliamentary election in their constituency. If the cost of politics rises to unaffordable levels, politics becomes the domain of the elite and wealthy, and incentivizes Members of Parliament (MPs) to move from serving the public to recovering their own investment through various forms of corruption.

Four, reliance on traditional, restrictive anti-corruption approaches and sanctions (principally criminal investigation and prosecution) to the exclusion of more effective modern tools like unexplained wealth legislation, non-conviction-based asset recovery remedies, and private civil actions (i.e., private right to initiate and prosecute a civil suit to recover corruption proceeds with a right to retain portion of recoveries) used in other democracies.

Five, lack of investment in sustained civic anti-corruption campaign and public education on the social, economic, human, and moral costs and impact of corruption. Chronic under-resourcing and marginalization of NCCE.

C. Improving the performance of State-Owned Enterprises (SOEs)
A number of factors have been identified as accounting for the relatively poor performance of most State-Owned Enterprises (SOEs). They include the political model of SOE corporate governance, notably non-competitive, non-transparent recruitment and removal of officers by the President on the basis of non-objective criteria. This continues to distort fiduciary accountability and entity performance. Two, the practice of appointing MPs to chair boards of SOEs distorts the oversight role of MPs and Parliament and interferes with management prerogatives.
D. International contracting and agreements

Agreements initiated by and entered into by the State and or its agents have become a sore point for many years. The poor manner with which these agreements are negotiated or managed, the manifestly disadvantageous terms for the country, the complete lack of due diligence by State officials or government agencies through whom negotiations are conducted, the lack of transparency in the process, and poor record-keeping are justifiable grounds for concern.

The State has frequently been forced to defend costly suits in international arbitration, risking or paying huge judgment awards for alleged breaches of contract. In 2012, government set up the Judgment Debt Commission to inquire into factors accounting for judgment debts. Almost a decade after the Commission's work, the country has still not figured out a way to deal with the perennial issue of judgment debts and issues relating to public agreements. Most recently, the International Court of Arbitration (ICC) ordered the government of Ghana (GoG) to pay USD137.9 million to the Ghana Power Generation Company (GPGC), an independent power producer (IPP), for wrongfully terminating a power purchase agreement (PPA) between the two parties in 2018.

The absence of a standard statutory regime for making and approving international commercial contracts has been identified as a significant gap. In addition, the contracting process is largely ad hoc; driven and led disproportionately by political officeholders, with little independent technical preview, due diligence, review and advice. This heightens suspicion of political self-dealing and the risk of breach of contract in event of regime change. The problem is further compounded by the non-existence of accountability for improper breaches of contract. All these issues and gaps injure the country's reputation for fidelity to contract and raises the cost of contracts.

RESPONSIVENESS OF THE NPP 2020 MANIFESTO TO THE KEY GOVERNANCE ISSUES HIGHLIGHTED

The NPP in its 2020 Manifesto hinted at its readiness to address some of the critical governance issues highlighted. The NPP promised to build consensus towards the amendment of articles 55(3) and 243 of the Constitution and other consequential laws to allow for the direct, popular election of MMDCEs on a partisan basis and to devolve more powers to local authorities. The party also promised to improve the financing of governance and anti-corruption State agencies like the Ministry of Justice and Office of the Attorney General, Office of the Special Prosecutor, Office of the Auditor-General, NCCE, CHRAJ, and EOCO, to enable them recruit, continue to train, and retain dedicated staff to support the fight against corruption.

While resourcing ant-corruption institutions is a step in the right direction, the records show that in spite of the resources, the outcome of their work is hardly impactful. The annual Auditor-General’s report and reports of some investigative journalists continue to show many cases of a pervasive system of corruption. In addition, the persistent lack of cooperation among investigative bodies and anti-corruption institutions remains a significant challenge to an impactful fight against corruption.
The NPP’s 2020 Manifesto also fails to address a number of the issues highlighted in this paper including, (i) the outsized role of the President in making appointments throughout all levels of the public services and the State structure, (ii) the unlimited and unregulated size of the membership of Parliament, Ministers, and the Supreme Court; (iii) the non-existence of a credible statutory regime for regulating political party financing; (iv) the non-compliance with article 296(c) by state entities, (v) the absence of statutory framework for regulating issues of public ethics including conflict of interests, nepotism, and improper use of public office, and (vi) absence of a statutory regime for making and approving international commercial contracts.

CONCLUSION

In the interest of promoting good governance and inclusive development, it is imperative for government, political parties, the media and civil society groups to work more closely towards building consensus to address the gaps and perennial issues highlighted.

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