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EFFECTIVE PARLIAMENTARY OVERSIGHT: MISSION IMPOSSIBLE?

by

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Summary

Ghana's recent discovery of oil and the anticipated petroleum revenue flows has raised expectations about the future economic development of the country. Yet Ghana's poor record in the area of public financial management, as demonstrated by many of the Auditor-General's reports, raises serious doubts about the ability of government revenues to be used effectively. One of the key problems is the limited capacity of Parliament and, in particular, its Public Accounts Committee (PAC), to effectively prosecute its oversight role. This is demonstrated by examples of Parliament failing to insist on budget estimates when approving spending and in the PAC's frustrated, albeit laudable, attempts to encourage effective financial management at the district level. This paper makes three recommendations to improve the oversight of public finances in Ghana. First, it recommends that the financial and technical capacity of PAC be enhanced. This could be complemented by providing adequate and independent financing to the Audit Service, on whose reports the Committee bases its actions. Second, dedicated units within government departments should be created to implement both external and internal audits. Finally, amendments to the *Financial Administration Act 2003* should be made to remove any obstacles to the creation of the Financial Administration Tribunal, a body that would complement the work of the PAC in enforcing recommendations relating to the Auditor-General's reports.

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INTRODUCTION

The Auditor-General's reports in Ghana are both predictable and gloomy. The predictability of the reports lie in the fact that, year-on-year, identical cases of misappropriation of public funds are documented, often within the same government departments and District Assemblies (DAs). The amounts siphoned from public revenues paints a gloomy picture for the country's long term economic development.

Ghana's recent discovery of oil is expected to provide government with average annual revenues of about US\$1 billion over the next two decades. The projected revenue inflows could potentially endow Ghana with substantial economic development. The recent parliamentary approval of the Petroleum Revenue Management legislation is an indication of the efforts to effectively manage these revenues at the macro level. However, stronger oversight downstream is required if misappropriations are not to undercut the expectations of economic development. In this respect, oversight structures are pivotal to ensuring that future resources allocated are utilised as planned. In fact this is a key area where parliamentary oversight and accountability will be crucial.

By law, audit reports are presented to Parliament for scrutiny. The House is also empowered to recommend necessary corrective action. The recurrence of identical financial malpractices, however, suggests that it is impossible for Parliament to respond effectively to the issues raised in audit reports. What does this tell us about parliamentary oversight? What are the constraints to effective enforcement of remedial measures?

Ghana has elaborate legislation to ensure sound financial management within the public sector, yet one of the deep-rooted governance problems the country faces is the lack of effective public financial management. Indeed, recent audit reports confirm that perennial issues of malfeasance are a significant drain on public finances.

This paper evaluates the issue of parliamentary oversight of appropriated public funds. Drawing on recent evidence, we first investigate Parliament's capacity to hold public officers accountable for losses incurred. Second, the paper attempts to examine some of the factors behind the recurring financial malpractices. Finally reform proposals are put forward, taking into consideration the fact that the effectiveness of Parliament's work also depends on other entities such as enforcement bodies. We begin by providing a brief overview of the legal framework underpinning parliamentary oversight of public finances.

LEGAL FRAMEWORK

The mandate of the Auditor-General is spelt out under Article 187 of the 1992 Constitution and the *Audit Service Act, 2000* (Act 584). As head of Ghana's Audit Service, the Auditor-General is granted statutory independence by reporting only to Parliament and enjoying security of tenure. As the government's auditor, the Auditor-General is charged with reviewing the accounts and management of public offices such as government Ministries, Departments and Agencies (MDAs), and public boards and corporations. In carrying out this function, the Auditor-General undertakes annual audits of

government accounts and, when necessary, performs additional 'special audits'. Among the key aims of audits are (i) to provide an assessment of how public funds have been utilized (ii) to ensure that procedures and processes have been followed and (iii) to certify that effective checks and balances are in place to prevent abuse of public resources. By law, annual audit reports are to be laid before Parliament not later than six months after the financial year has ended. Besides ensuring that public funds are properly accounted for, audit reports also include recommendations to stem the recurrence of mismanagement and fraud. The Audit Service does not have the authority to enforce these proposals.¹

Ghana's 1992 Constitution also provides Parliament with extensive oversight powers in relation to public finances. This includes authorising spending, approving loans and monitoring expenditure of public funds. For the purposes of this analysis, we focus mostly on the role of the Public Accounts Committee of Parliament (PAC) which is supposed to perform most of the oversight issues raised in this paper.²

The PAC comprises 25 members and is chaired by a Member of Parliament (MP) who does not belong to the party controlling the executive branch of government. The Committee's primary responsibility is to scrutinize the audited public accounts presented to Parliament by the Auditor-General. In carrying out this task, the PAC holds

hearings and takes evidence by summoning officials to explain matters raised in the audit reports that involve their institutions. The Committee must then propose remedial measures and report back to the House.

It is worth highlighting that a raft of legislation was enacted in 2003 with the primary aim of enhancing accountability and transparency in public financial management. These are the *Financial Administrative Act, 2003* (Act 654), the *Internal Audit Act, 2003* (Act 658) and the *Public Procurement Act, 2003* (Act 663). Subsidiary legislation enacted under these laws have also streamlined the process of accountability in public office. For example, the *Financial Administration Regulations, 2004* (LI 1802) requires heads of government departments to investigate losses, institute disciplinary measures and introduce measures to recover losses. It must be emphasised that investigations and disciplinary measures do not preclude action by the Police in the case of a criminal offence.

In spite of the legal framework, massive fraud exists in the public sector. Thus the Auditor-General in Ghana appears to be on a fire-fighting mission in relation to the burning issue of financial malpractice. This creates very little scope for evaluating value for money as part of the audit process. The next section examines some of the recurrent issues raised in the reports and attempts to analyze the underlying constraints to effective parliamentary oversight.

¹ Article 187 (7) (b) of the Constitution, nonetheless, grants the Auditor-General power to 'surcharge' – effectively, the authority to disallow any expense and charge individuals “responsible for incurring or authorising [that] expenditure” (Republic of Ghana 1992: 125).

² The Finance Committee in Parliament also plays a major role in some financially related inquiries.

LEGISLATIVE OVERSIGHT: TALKING SHOP OR ROAD SHOW?

[S]ince 1994 this Parliament has gone through the annual rituals of reading and debating the Public Accounts Committee's reports only for the reports to end up on shelves to gather dust or in some cases some of them find their way into the hands of groundnut and roasted plantain sellers and nothing is done about them...[W]hat are we going to achieve if in the year 2001 we are presenting a report on an institution dating back to 1997?...I do not remember any occasion on which Government or Parliament has taken action on these reports.

Kosi Kedom NDC (MP) - Hohoe South.
Parliamentary Debates, 23 October 2001

The above statement by Kosi Kedom portrays Parliament as a talking shop, owing to the lack of compliance with the PAC's recommendations. In an attempt to inject urgency into its oversight functions, the PAC recently initiated attempts to bring the administration of accountability to the doorstep of public bodies. A big source of concern for the leadership of the PAC has been the open neglect of rules and regulations, particularly, at the District Assembly level. In this vein the Committee has recently taken to the road to hold public sittings outside Parliament. During these sittings, officials cited in audit reports, District Chief Executives and heads of public bodies are invited to give evidence to the Committee. Key stakeholders and traditional rulers are also generally invited, in order to sensitize the local population on how officials have handled public funds earmarked for their areas.³

At the Committee's sitting in Koforidua in September 2010, for example, ten Municipal and District Chief Executives (MDCEs) from the Eastern Region appeared before it to explain various financial malpractices documented in the Auditor-General's reports.⁴ These ranged from circumventing procedures and processes in the award of contracts, unauthorised payments and misappropriation of revenue. What is clear from the offences detailed is that internal control mechanisms remain particularly weak at the local government level with minimal checks and balances in place. However, holding MDCEs and departmental heads accountable has been a challenge.

The Committee's probe into malpractices has usually elicited a now familiar response from incumbent officials that they were not in office when the offences were committed. Similarly, in September 2010, at a PAC sitting in Takoradi to examine DA finances in the Central and Western regions for the period 2000-2004, the Central Regional Minister, Ama Benyiwa-Doe, appeared before the Committee to answer question on the sole sourcing procurement by the Regional Coordinating Council (RCC) contrary to the Public Procurement Act. The Minister, however, simply echoed the response that she was not in office when the offences were committed.⁵ In most cases, incumbents accept the offences have indeed been committed but lay the blame on their predecessors. This highlights another important

³ The sittings have sometimes been broadcast on television with the aim of sending a strong signal that Parliament is determined to hold individuals accountable for offences relating to public finances.

⁴ *Daily Graphic*, 13 September 2010 p. 12

⁵ *The Chronicle*, 2 September 2010 p. 1 & 15

issue which Kedem's statement emphasises: the consequence of late audit reports. In fact this has resulted in scenarios whereby those who commit financial malpractices would have left public office by the time the Auditor-General's reports are presented to Parliament. This poses serious problems in terms of accountability. All the same, getting traditional leaders and local people to sit in on hearings where the DA hierarchy is hauled before the PAC to account for misappropriations has created some local awareness. Overall, while the sittings outside Parliament are laudable, its long term impact will only be realised if the Auditor-General has the capacity to undertake follow-up audits and PAC is in a position to continue such regional hearings.

Another endemic problem raised repeatedly by the Auditor-General is public payroll fraud. Despite numerous investigations and the establishment of a special payroll unit within the Audit Service, the problem has persisted. The fraud in this area involves salary overpayments; payments to 'ghost' employees (non-existent staff); payments to staff who have left government employment etc... Lags in administrative procedure, for example delays in deleting names off the government payroll as a result of retirement or death, also accounts for some of the losses incurred. In other instances delays have been deliberate, owing to collusion between officials of the Controller and Accountant General's Department (CAGD), the government paymaster and respective government agencies.⁶

The scope of the problem is perhaps best understood from one major reform attempt. In 2001, the Minister of Education set up a task force to "exorcise" ghost names from the Ghana Education Service payroll.⁷ This resulted in about 10,000 (out of an estimated 30,000) names being removed from the education pay register. Reliable estimates also indicate that, between 2000 and 2002, salaries paid to about 2,000 'ghost employees' on the civil service payroll alone cost taxpayers US\$20 million (Global Integrity, 2006).

It cannot be concluded that the recurrence of payroll fraud implies the lack of effective parliamentary oversight. *The Financial Management Regulations* (LI 802), for example, outlines clear procedures and processes to tackle public payroll fraud. Section 305 of LI 1802 places the responsibility for certifying salary payment vouchers on heads of departments. Departmental heads are also required to ensure that any overpayments are not made; when they occur, heads of department are to ensure full recovery is made. The regulation is unambiguous in that non-compliance could lead to surcharging a head of department for losses the state incurs. Thus Parliament's oversight role, to some extent, is dependent on the commitment of other institutions to enforce stipulated regulations.

On the other hand there is evidence to suggest Parliament has failed, in the first place, to sufficiently scrutinize funds appropriated by the House, which in the long run undermines its

⁶ Amoako-Tuffour (2002:9) paints the picture of those involved in payroll fraud being a "closely knit syndicate" aware of the "net positive payoff"; this, he argues, is due to the low risk of detection and, in the unlikely case of conviction, the accompanying trivial punishment.

⁷ *The Ghanaian Chronicle*, 15 October 2001 (available at: <http://allafrica.com/stories/200110150453.html>)

oversight responsibility. A case in point is that of funds the House allocated for Ghana's 50th independence anniversary celebrations (Ghana@50). The Auditor-General's report on the accounts of the Ghana@50 Secretariat (the unit which organised the anniversary activities) indicates Parliament approved a total of US\$31.8 million for use by the Secretariat without accompanying budget estimates on how the funds would be spent. This omission by the House, by glossing over the budget process, is contrary to laid down provisions in Ghana's 1992 Constitution. Consequently, due to the lack of a budget, the Auditor-General could not effectively ascertain whether the funds had been applied as appropriated. Nonetheless, the audit revealed some of the funds allocated could not be accounted for, while a significant amount had been mismanaged. Most of this may have been avoided if parliamentary scrutiny was effective to begin with. It must however be noted that limited capacity to rigorously scrutinize budgets is an issue. It is along this line that the next section outlines reform proposals to enhance Parliament's oversight capacity.

REFORM PROPOSALS: TRIPLE ACTION

First, concentrated efforts should be made to build the financial and technical capacity of Parliament and the Audit Service. Indeed, building the capacity of PAC members in particular has to be taken up as an issue of priority. While the diversity of talents on the PAC is valuable, senior Parliamentarians accept that members of the Committee require the technical ability to rigorously analyse financial statements. The proposed Parliamentary Budget Office could also provide relevant technical expertise to

support the oversight work of Committees in Parliament and needs to be given timely consideration. The Committee also lacks adequate financial and logistical capacity to carry out its responsibilities. Attempts have been made by donors such as the World Bank to address this funding gap; the German Technical Cooperation (GTZ) has also funded the Committee's public sittings outside Parliament. Yet the fact that the PAC is allocated the same amount of funds as other Committees of the House is tricky, as this does not take into account its extensive responsibility. We suggest that this be reconsidered.

The resource constraints the Audit Service faces also affects the effectiveness of parliamentary scrutiny. The lack of adequate resources partly explains the late publication of audit reports, which have led to instances whereby PAC Chairs have presided over their own party's term in office. This scenario negates the rationale underlying the selection of the Committee chair. Devising a formula to provide independent funding to the Audit Service may be required to strengthen its independence, limit the potential of political manipulation in the allocation of funds and improve the timely submission of audit reports.

The second proposal involves Audit Report Implementation Committees (ARICs) - intra-departmental units charged with enforcing the Auditor-General's proposals. Section 16 (8) of the *Internal Audit Agency Act, 2003* (Act 658) also mandates ARICs to implement internal audit recommendations. Yet they are non-existent in a significant number of MDAs and DAs.⁸ Consequently, the findings and

⁸ The establishment of ARICs are a requirement under section 30 of the *Audit Service Act, 2000* (Act 584).

recommendations from external and internal audit are not implemented. Consideration should be given to punitive measures, including withholding allocations meant for public offices which have not established ARICs or failed to implement audit recommendations.

Third, we propose an amendment to the *Financial Administration Act, 2003* (Act 654) to ensure that the Financial Administration Tribunal (FAT) is established. Section 66 (1) of Act 654 stipulates the establishment of the FAT - an independent body with responsibility to enforce Parliament's recommendations on the Auditor-General's reports; in theory this is to complement the work of ARICs.⁹ The FAT also has powers to make orders for the recovery of monies or other assets owed to the state. The Tribunal, which is granted the enforcement powers of a High Court, comprises a Justice of the High Court (chairperson); a chartered accountant; and a management accountant or professional valuer. Act 654, however, hands the responsibility for nominating the Tribunal members to the Chief Justice, with the President appointing.¹⁰ More than seven years after Act 654 was enacted, the Tribunal has not been established. A key reason for this delay owes to the fact that the Judiciary is loath to exercising the power to nominate the Tribunal members, as it considers that to be a 'non-judicial' authority. We strongly recommend that the House amend the Financial Administration law to remove the judicial link. Parliament could take up the responsibility of nominating the Tribunal members; this is a

proposal some senior Parliamentarians welcome. Overall, the FAT could make a significant contribution in the important area of public financial management. Thus its establishment should be a matter of priority.

CONCLUSION

This paper attempted to evaluate the issue of parliamentary oversight of public funds. The depressing scenario of recurrent malpractices, which have become a predictable feature of annual audit reports, suggests it is impossible for Parliament to respond effectively to such issues. All the same, the above analysis clearly shows that Ghana has extensive legislation covering public financial management. We argue that weak internal controls in the public sector, and the failure to enforce corrective measures, explains a significant number of the irregularities relating to public funds. The constraints to effective enforcement of remedial measures include legal and resource issues. Parliament's oversight function should not be confused with that of implementation, as that remains the collective responsibility of a range of institutions such as ARICs and the FAT. In fact it cannot be concluded that the recurrence of the payroll fraud, for example, implies the lack of effective parliamentary oversight.

On the other hand, as argued above, Parliament bears some level of responsibility for the weaknesses observed. Indeed, there is evidence to suggest that Parliament has failed to sufficiently scrutinize some funds appropriated

⁹ The Financial Administration Regulations, 2004 (LI 1802) enacted under the Financial Administration Act also outlines detailed procedures and processes for the implementation of Parliament's recommendations.

¹⁰ The Chief Justice is to nominate the Tribunal members in consultation with the Judicial Council.

by the House. Enhancing the capacity of MPs, establishing the proposed Parliamentary Budget office, together with a well-resourced Auditor-General, can all facilitate the oversight of public finances. At present, the Auditor-General for the most part focuses on irregularities in the public sector due to the scale and recurrent nature of the problem. It should not be so. Effective enforcement mechanisms, for example through FAT, may help limit recurrence and enable a move towards value for money audits as that could potentially provide Ghana with significant efficiency savings. Whilst the demands on the public purse are inevitably great, an investment in institutions that enhance the system of public

financial management will provide the Government, and all Ghanaians, with significant dividends.

The lack of accountability in public sector financial management undermines public trust and this is a pressing issue. Ghanaians have pinned their hopes on the expected oil revenues as a bridge to improved standards of living. Yet the evidence of the effects of the current oversight framework remains a real threat to dashing these hopes. It is time for our political leaders to seize the initiative and implement reforms to improve public financial management.

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