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GHANA'S PRESIDENTIAL TRANSITION BILL: A TIMELY OPPORTUNITY FOR INSTITUTIONAL REFORM

by

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Summary

The Presidential Transition Bill provides a framework for managing the political transfer of power from an out-going democratically elected President to an incoming President. This article evaluates key attributes of the proposed legislation. First, it examines the accountability provisions in the Bill which includes a detailed inventory of executive assets. Second, the institutional framework introduced in the draft law to resolve transitional disagreements is assessed. Third, the structured time frame the Bill establishes to guide the transition process is considered. The article also investigates the transition issues that are not addressed by the proposed law. Overall, it is argued that the Presidential Transition Bill remains integral to the enhancement of good governance in Ghana. Urgency in its consideration, however, is paramount if the office is to make a meaningful contribution in the aftermath of the 2012 election - whether or not regime change occurs.

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INTRODUCTION

Successive free and fair elections, especially in an African setting, have contributed significantly to Ghana's current standing as an African success story. However, the transfer of political power from one democratically elected President to another, which occurred in 2001 and 2009, was characterised by administrative lapses and controversy. In fact, the 2001 transition was the first time in Ghana's history when power was transferred from one political party to another party through the electoral process. The absence of a transition blueprint played a part in the resulting confusion. Among the political elite who experienced the sharp end of the transitional process, such as forced evictions from official residences and ad hoc car seizures, the bad memories are still raw. From the year 2007, the Institute of Economic Affairs (IEA) and the Ghana Political Parties Programme (GPPP), a group comprising the political parties with representation in Parliament, collaborated to draft a Transition Bill as a measure to address some of the issues which emerged in Ghana's 2001 transition process.¹ Indeed, building an institutional framework to guide the political transfer of power is integral to the enhancement of democracy and good governance in Ghana.

On 28 October 2010, Parliament referred the Presidential (Transition) Bill, 2010 to the Committee on Constitutional, Legal and Parliamentary Affairs. This is a step in the right direction. Primarily, the

proposed law provides a framework, and an integrated approach, for managing the political transfer of administration from an outgoing democratically elected President to an incoming President. Importantly, the Bill stipulates, among others, the following: timelines for vacating official accommodation; a mechanism to safeguard government assets through an inventory system; time limits for the submission of handing-over notes; and appointees whose tenure ends with that of an outgoing President. The evidence from the 2001 and 2009 transitions indicate that the above areas constituted major spheres of disagreement. The Bill attempts to address these issues. The initial draft of the Bill served as a guide for the 2009 transition but, as it lacked the force of law, it was applied selectively. All the same, the 2009 transition provided further lessons which were incorporated into the draft legislation. The final draft of the Bill has benefited from a wide consultation process and several amendments to include the concerns raised by political parties and civil society organisations.

It is worth noting that the dearth of literature on the administrative and political aspect of transitions has been observed by a number of scholars (Rainey and Wechsler, 1988; Sherwood and Chackerian, 1988; Bynander and t'Hart, 2006). All the same, available research evidence indicates that even though executive-level transition is integral to effective public sector management, the process is often beset by inadequate preparation and orientation (Rainey and Wechsler, 1988). This article will attempt to

¹The parties that make up the GPPP are the New Patriotic Party (NPP), National Democratic Congress (NDC), Peoples National Convention (PNC) and Convention Peoples Party (CPP)

underline the central attributes of the proposed law and, also, highlight some of the potential challenges in its implementation and thus make a contribution to the governance policy debate.

TRANSPARENCY AND ACCOUNTABILITY

The 2001 and 2009 transitions were characterised by claims that the outgoing administrations had 'illegally' acquired state assets, including cars, real estate and household goods. This sparked a considerable amount of public anger. The combination of suspicion with the lack of a clear government inventory resulted in the seizure of bona fide assets of some members of the outgoing administrations. The resulting effect was a poisoned relationship between members of the Transition Team, ensuing in confrontation instead of cooperation. While the Presidential Transition Bill will by no means solve all the problems relating to the political transfer of power, a fundamental attribute of the Bill is its in-built mechanism which aims to strengthen transparency and accountability. Along this line, the Bill stipulates periodic stocktaking and a detailed inventory of executive assets. This may help limit expropriation of state assets which, allegedly, occurred during the two transitions in Ghana's Fourth Republic. Section 9 (1) of the proposed legislation requires that a 'national register' be prepared to cover lands vested in the President and other official assets. In fact state assets in both the official and private residence of

members of government - ranging from the President, Vice-President and Ministers - are covered by this requirement. In addition to engendering effective stewardship of government assets, this requirement has the added benefit of squeezing out inefficiencies and, overall, enhancing governance in Ghana. On the whole, it must be noted that executive level transition, besides regime change, may also occur within a continuing administration as a result of a cabinet reshuffle. The Bill has clear procedures to steer such transitional processes with the aim of improving accountability.

INSTITUTIONAL CLARITY

One of the key attributes of the Presidential (Transition) Bill, 2010 is the institutional framework it provides for resolving transitional disagreements. This is through the establishment of an 'Advisory Council' which comprises three eminent citizens. The outgoing President and the incoming President each appoint one representative; these two representatives (eminent citizens) appoint the third individual, who also serves as chairperson of the Council. Decisions on disagreements referred to the Advisory Council are binding on the Transition Team or any of its sub-committees which refer issues to the Council for resolution. Indeed, as the Transition Team works by consensus, the independent Advisory Council may serve as a practical approach to resolving disputes, which often tend to be politicised.²

²During the 2001 transition, the absence of an enforceable mechanism to resolve transitional disagreements resulted in the boycott of the latter part of the transitional process by the members of the outgoing NPP administration who felt particularly aggrieved (see *Daily Graphic*, 19 June 2009 pp.1 & 2).

Another important aspect of the proposed law is the clarity it provides in detailing the list of public office holders whose tenure ends with that of an outgoing President. This is noted in the schedule of the Bill and brings clarity to what has been a grey area. While the tenure of appointees such as non-career Ambassadors and High Commissioners has not been an issue of controversy, the status of individuals appointed by the President or Ministers to State Boards and Corporations has sometimes generated intense debate during, and well after, the transitional period. The evidence underscoring the contentious nature of this area lies in the fact that this section of the Bill has been amended several times in earlier drafts of the proposed legislation and may be reviewed, yet again, as part of the Parliamentary consideration. All the same, detailing the list of officers whose tenure ends when a new President assumes office will help to neutralize potential accusations of political witch-hunt that have accompanied earlier transitions.

The Bill also makes provisions for the establishment of a Presidential Estates Unit (PEU) which is charged with keeping an inventory of executive assets of the State in addition to the maintenance of those properties.³ The Unit is headed by an independent Administrator-General, who is appointed by the President on the advice of the Council of State. The security of tenure of the Administrator-General is guaranteed, as the terms and conditions of that office are

equated with that of a Justice of the Court of Appeal. The duties of the Administrator are clearly spelt out and this has strong potential to facilitate the transitional process. For example, the Administrator-General is charged with making recommendations for budgetary allocations, in an election year, to cover a possible transfer of power to a new administration. Given the accusations centring on the cost of transitions, the independent financial management of this process will serve to depoliticise one controversial area.⁴

The Administrator-General is also given the responsibility as custodian of comprehensive handing-over notes from an incumbent administration which are to be made available to a new government. These briefing notes, which cover the activities of the office of the President, ministries, departments and agencies, among others, are to be presented to the Administrator-General at least thirty days before presidential elections. Writing this requirement into the draft law, and charging the Administrator-General with compliance, may guarantee that a new administration will have the essential background knowledge to undertake its programme for government. Overall, the institutional framework prescribed by the draft legislation such as the Administrator-General's role could potentially address the recent experience whereby state facilities have been used by individuals who did not qualify for such entitlement. In this respect, the independent nature of the role may

³It is worth pointing out that section 8(1) (a) of the Bill clarifies that the government inventory, kept by Presidential Estates Unit, shall exclude properties vested in the Lands Commission established under article 258 of the Constitution. The drafters of the legislation clarify that the executive assets of the state under the control of the PEU includes "official and residential accommodation, country homes, Presidential aircraft, Presidential vehicles" (IEA and GPPP 2009:4).

⁴The transparent, and arguably detailed, breakdown of expenses relating to the 2009 transition still led to accusations which had political undertones that the government had been extravagant.

provide limited scope for strong-arming and this can ensure that only public office holders with the proper entitlement are, for example, allocated state accommodation.

However there are daunting challenges for the office of Administrator-General. First, the broad mandate of the PEU requires, at the outset, an administrative manifesto which will spell out detailed procedures and implementation plans to cover the transitional duties conferred on the office. Indeed some procedures and processes may call for subsidiary legislation in the form of a Legislative Instrument. Thus, adequate time will be required to set up the office. Given the limited time frame to the next election, even if the Bill were to be passed in January 2011, the office will still have to undertake a herculean task. This is because other pertinent issues such as the appointment of the first Administrator-General will need to be concluded. Time is also required for the Administrator-General to study best practices of the transition process in other countries, which may be beneficial to the Ghanaian setting. Second, there is the small matter of conducting the initial executive assets inventory, which will be a logistical challenge. Adequate time will be required for liaison with the Works and Housing Ministry, as some of the official accommodation under that Ministry's control would have to be transferred to the PEU's portfolio. Finally, getting the right person for the Administrator-General's position will be integral to the Unit's effectiveness, if it is to help ameliorate some of the transitional challenges, and establish the PEU as an independent body.

STRUCTURED TIME FRAME

The proposed law provides a structured time frame in three important areas of transition. The first is in the area of official accommodation. Crick (2007) tells us that "Ted Heath [former British Prime Minister] was so unprepared for being turfed out of Downing Street in 1974 that he didn't even have anywhere else to live – and had to borrow a flat from his parliamentary aide Tom Kitson". This anecdote underlines the fact that the tricky issue of transitional time frames is not peculiar to Ghana alone. In fact the transfer of power in 2001 led to dramatic scenes of what amounted to forced eviction of ex-public officials from their official residences. The outgoing administration argued that this was a political witch-hunt, thus ensuing in accusations and counter-accusations. The Bill attempts to address such issues. The draft law is very clear that an incumbent President and Vice-President are required to vacate their official residences prior to the presidential inauguration day. All the same, to avert the likelihood of the British scenario noted above being played out in Ghana, the proposed law makes provisions for an outgoing President and Vice-President to be temporarily accommodated in alternate official residences, which have to be vacated within six months. Similarly, the clear timeline (three months after the presidential inauguration) for outgoing Ministers and other political appointees to vacate their official residence is an orderly approach to a thorny issue.

The second key area in which a structured time frame is provided for by the draft legislation is the specified time

limit (twenty-four hours) for appointments to be made to the Transition Team after the Electoral Commission has declared the President-elect. The Team is also required by section 3 (1) of the Bill to meet within forty-eight hours. This, essentially, is intended to limit any slowdown in government machinery.

Finally, the Bill has the potential of improving the timing of Presidential Inaugurations. Over the course of the Fourth Republic, Parliament has been sworn in on the same day as the Presidential Inauguration. This has led to delays, logistical challenges and lapses in protocol. Section 11 of the Bill amends this process and requires that the Speaker and Members of Parliament be sworn in within forty-eight hours after the declaration of the general election results. Thus 7 January will be solely for the Presidential Inauguration.

UNANSWERED QUESTIONS

There are a few grey areas relating to transitions that remain unaddressed. One challenge is that, as the Administrator-General's role lies in uncharted territory, it would be helpful if the proposed legislation outlines the enforcement powers of the office. The Bill is silent on this point, which can be considered as essential for the office to be effective. The finer details of enforcement powers, covering issues such as surcharging officials for missing items could subsequently be spelt out in subsidiary legislation.

Another issue is Ghana's current election date, which is scheduled for 7 December during an election year. This creates only a short time frame within which a transition can be effected, especially if elections results require a run-off poll. For example, during the 2001 transition when power was transferred from the NDC administration to the NPP, the Transitional Team had only four working days to prepare for the transfer of power. In 2009, the Transitional Team met for the first time on January 6 - in this instance one day before the new President took office. If the transitional process is to be effective, then a review of the election date is required taking into consideration a potential Presidential run-off. The draft Bill put forward by the IEA proposed that the general elections be moved to 7 November. This is a pragmatic suggestion which may require a constitutional amendment.

For the 2012 elections, time constraints could also be a major concern. The Administrator-General may, perhaps, consider it prudent to offer orientation and pre-election briefings for political parties on the transition process, in order to assist Presidential aspirants identify specific expertise in the likely event of having to form a government. This also helps political parties to be well prepared ahead of the polling day with a list of nominees for a Transition Team. In this vein, the United States, which has a longer period between presidential elections and inauguration, provides us with instructive transition lessons. In October 2010, the Pre-Election Transition Act of 2010 (S.3196) was signed into law.⁵ Essentially, this piece

of legislation seeks to improve the United States' existing transitional planning arrangements and requires that the principal contenders for the Presidency are provided with specific resources, services and facilities - before the general elections - to prepare them for office. The US General Services Administration (GSA) is, therefore, required to offer eligible candidates with services such as office space and training on their nomination to contest the Presidency. In general what the law seeks to emphasize is the fact that, for government effectiveness, the transitional process starts even before polling day. Generally, early planning and adequate logistics remain central to any transition. In Ghana this should include timely consultations and significant liaison with key government outfits such as State Protocol. Facilitating discussions, through to arranging meeting locations are all background tasks which require careful attention. In fact, senior civil servants may need to be placed on stand-by to advise and/ or clarify issues, procedures and processes for the Transitional Team. Time constraints may also limit the review of best practices from other transitions.

CONCLUSION

The important area of presidential transitions, as a field of public administration, warrants further empirical research owing the limited attention it has so far received in academic literature. Cross-country studies could offer comparative insight

into tested mechanisms across a wide range of political systems. Ghana's Presidential (Transition) Bill, which establishes procedures and conventions to guide the political transfer of power, has several measures that can stem the accusations, counter-accusations and polarisation that have come in the wake of transitions in the country. The role of the autonomous Administrator-General who has the responsibility as facilitator of the transition process, in addition to the important role as custodian of executive assets, fills a long-standing vacuum. Yet, in spite of the Bill's strong attributes, there are major transition issues that remain unanswered. Among these is the feasibility of Ghana's current election date, which seriously impacts the period within which transitions occur. Also, even if the Bill is passed in January 2011, limited time is a major challenge considering the operational arrangements required for setting up the PEU and the preparations for the 2012 elections.

It is certainly a big step forward that the Bill is currently at the Committee stage in Parliament. Urgency in its consideration, however, is paramount if the office is to make a meaningful contribution in the aftermath of the 2012 election - whether not there will be change of government. Indeed, the draft legislation's strong attributes in the area of transparency and accountability remains a useful mechanism regardless of the election cycle. The system developed by the Administrator-General for the effective management of executive assets could well serve as a template for other public

⁷The Pre-Election Transition law amends part of the existing US *Presidential Transition Act of 1963*.

offices, whose assets have served as rich pickings when some of its senior officers leave office. On the whole, the Presidential Transition Bill represents a cross-party effort drawing on the lessons from the Ghana's previous transitions and has been subjected to extensive consultations with stakeholders. The desire by political parties and civil society for an enforceable legislation, as opposed to guidelines, is to be widely applauded and a cause for guarded optimism. However, a more accurate measure of the political commitment to improving the transition process will be reflected in the speedy passage of the draft legislation. The parliamentary consideration provides a window of opportunity to make the unpleasant aspects of an ad hoc transition system history. The clock is ticking.

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