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IN THE ANNALS OF DEMOCRATIC TRANSITIONS

In his January 7, 2009 inauguration speech, President Mills promised the nation that he would “hit the ground running”. It remains a matter of public debate whether the President has delivered on that first promise. What is beyond debate, however, is that this has been an extraordinarily eventful transition.

Considering the bitter partisan rivalry and incidents of localized violence that nearly marred the 2008/9 elections, the subsequent transition from the New Patriotic Party (NPP) administration to the National Democratic Congress (NDC) administration began on an encouragingly positive note. Ghanaians were treated to the comforting sight of the outgoing President Kufuor giving the incoming President and his Vice President a personal tour of the newly-built presidential office complex. As soon as the elections were over, the outgoing and incoming administrations promptly constituted and announced their transition teams. The NDC transition team was led by Mr. Paul Victor Obeng, a leading figure in the party better known as a technocrat than as a party “hawk”. The NPP team was led by the outgoing Chief of Staff to the president and the supreme gate-keeper for that administration, Mr. Kwadwo Mpiani. The initial meetings between the two teams were reportedly cordial. Some of the early decisions from the Presidency, notably the directives to District Chief Executives and the top brass of the armed forces and the police to remain

at post during the transition period, also sent signals that the transition would be smooth and free of needless recriminations. It was therefore something of an unpleasant surprise to see the amity and cordiality that characterized the initial transition period vaporize.

There was indeed reason to expect a smooth handover of power. First, this was the second time in the last eight years that one ruling party government was handing over power to a rival party following the former's defeat at the polls. There was therefore a precedent to follow and even improve upon. Second, earlier reports indicated that the members of the Kufuor administration had been busy preparing their hand-over notes several months ahead of the anticipated transition, aware that, regardless of the outcome of the December 2008 elections, the Kufuor administration would be replaced by a new one. These optimistic expectations and suppositions regarding the transition were, however, short lived. In a sense, the transition atmosphere had been rendered disagreeable from the outset by the raft of ill-advised and controversial eleventh-hour executive decisions taken by departing President Kufuor, notably across-the-board increases in the salaries of public officials and, especially even more controversially, the granting of “free, absolute and unconditional pardon” to some former functionaries of the NDC government who were then on trial, appealing their convictions, or had already served their sentences. These

included Mr. Kwame Peprah, Mr. Ibrahim Adam, Dr. George Sipah-Yankey, Ms. Sherry Aryitey, Mr. Dan Abodakpi and Mr. Tsatsu Tsikata. Not surprisingly, the pardons were immediately rejected by some of the named beneficiaries, while others claimed that it proved the political nature of their prosecutions. At any rate, it immediately produced the latest batch of Ghana's "prison graduates" with all the implied political martyrdom.

The NPP also began to voice concerns about the composition of President Mills's various sector-specific transition teams, which featured a good many personalities associated with the erstwhile Provisional National Defence Council (PNDC). Fears of a return to the authoritarian and militaristic methods of the past were heightened by the actions of some over-zealous "National Security" operatives in forcibly confiscating, in dramatic fashion, vehicles in the possession of certain NPP members on suspicion that they belonged to the state. Some NPP officials, including the former flagbearer of the party, Nana Akufo Addo, as well as some private citizens such as a senior official at Barclays Bank, were crudely, and arguably unlawfully, dispossessed of their vehicles in the process. Though the President's secretariat later issued verbal apologies in the media to those whose vehicles were wrongfully seized, these incidents significantly poisoned the atmosphere of the transition. The NPP accused the NDC of politically-motivated harassment, while the NDC insisted that they were merely attempting to account for and repossess vehicles that they believed belonged to the state. The tense situation was exacerbated by loud protestations from ex-President John Rawlings that President Mills was not acting swiftly and firmly enough to stamp his authority on the governmental machinery and replace certain holdovers from the Kufuor era. In a move that appeared to lend credence to suspicion that Rawlings might be exerting undue influence or pressure on the new administration, the Mills Government quickly announced that the Chief of Defence Staff and the Inspector General of Police were to step down. The appointments of all of the previous government representatives on the district assemblies were similarly revoked, as were those of the past government's appointees to the boards of state-owned enterprises.

The souring of the political atmosphere and the trading of accusations and counter accusations by the two sides had an adverse impact on the business and progress of the transition teams and committees; they became more discordant and 'inquisitorial'. This culminated in the acrimonious hearings on the "Ghana@Fifty" celebrations at which the NDC members of the transition committee requested the Auditor General to review the accounts of the organ created to manage Ghana's Golden Jubilee independence celebrations. The Auditor-General's

preliminary findings, controversially announced at a public hearing, suggested some impropriety on the part of the NPP officials involved in the celebrations, including Kwadwo Mpiani himself. Mpiani, in turn, accused the NDC transition team of witch-hunting and trial by media. He announced that he would no longer cooperate with the NDC and that the NPP would refuse to co-sign the final transition report. That largely brought to an inglorious end what had started as a smooth transition following Ghana's second electoral turnover.

The 2009 transition raises a slew of disturbing issues. Firstly, it is immediately clear that hardly anything had been done to address the problems that arose during Ghana's first transition from one elected administration to another. A lot of nasty and avoidable developments in the 2009 transition were simply repeats of 2001 events. The actions of the newly democratically-elected Mills administration recalled much of the same intemperate use of power and disregard for due process on the part of the newly democratically elected Kufuor administration: the hiring and firing of high government appointees by radio announcement and the frequent NPP government requests for certain officials to "go on leave," including the particularly unsavoury incident of the former Auditor-General being arrested on a Sunday while at a mass in church, taken home and house-searched (lamented upon in *Democracy Watch Vol.2, No 1, 2001*). Surely, it should be possible for civility to prevail in Ghanaian transitions in this democratic age. The real test of democratic statesmanship is in how those who hold power use it in dealing with friends and foes.

Seemingly "normal" but arguably legally dubious decisions and actions were also taken by the transition committees. Apart from triggering confrontations and challenges, by revoking appointments and summoning heads of government agencies to account for their actions, the Transition Committees announced decisions and actions that are properly the prerogative of the President and duly-appointed Ministers of State. The appointment of an acting Inspector General of Police and a Chief of Defence Staff before a new Council of State had been constituted also raised questions of constitutional import.

The apparently government-sanctioned "car-snatching" and the summary dismissals, as well as the unilateral seizure of privately operated public toilets and lorry parks by NDC party supporters and the ensuing partisan vitriol may have provided the drama for the 2009 transition. But they were really mere symptoms of much deeper gaps in Ghana's democratic practice and culture – i.e. the failure to formalize and institutionalize Ghana's transition process. The absence of clear guidelines to govern the transition process in a democratic political order certainly contributed to the power

excesses witnessed in the first three months of the new administration. But other negative systemic and cultural factors were at work too.

The pronouncements and, indeed actions, of some stalwarts of the new ruling party, particularly the statements made by former President Rawlings chiding President Mills for not immediately taking complete charge of all the reins of government betrays some misunderstanding of the difference between an electoral political changeover and a coup d'état. Worse still, it shows that at least for some, the ultimate goal of politics in Ghana is state capture, and the almost unfettered political power that comes with it. Obviously, for many in our political class, transition only means seamlessly passing along the culture of impunity from one government and ruling party to the other.

The chaotic transition also underscored the persistently blurred lines between what should be the professional and technocratic (career) public service class, on one hand, and the politically appointed public service class on the other; the tendency for governments to shield from prosecution career public servants who commit criminal offences and condone ethical and professional misconduct by career public servants closely aligned with the government of the day (especially where such officials became ruling party candidates and/or openly campaigned in favour of the ruling party). This has been particularly explosive where such "politically compromised" career public servants seek to hang on to their jobs while the incoming administration perceives the same positions and (agencies) as "strategic", prestigious, and especially where some of its well-placed insiders covet it. A particularly grotesque manifestation of this understanding of "tenure" in some government departments, agencies, boards and councils in Ghana's 4th Republic saw their chief executives unceremoniously ousted and occupants of those positions in the previous NDC administration simply reinstate themselves.

The 2009 transition highlighted some unfortunate attitudes to public service that have been developed by Ghana's political class. Public officials, over the decades, have acquired a sense of entitlement and a belief that public office is a means for self-improvement. The utterly outrageous *ex gratia* benefits that were approved by the executive and the legislature for each other is a clear example. It is instructive that parliament unanimously passed this package in a closed session and without sufficiently scrutinizing the details.

In sum, it is clear that immediate attention needs to be paid to the transition process. As has been suggested in some quarters, part of the reason for the chronic deficiency in

the transition process reflects the extremely little time there is between the elections and the handover – particularly in years when there is a presidential runoff. There is some truth to this, but most of the problems that arose were not all a function of the hurried transition. A number of these issues could have been addressed by putting in place clearer ground rules about the transition process as well as inculcating a culture of record-keeping in government. Better record keeping, for example, would have enabled easy tracking of such simple matters as what vehicles were in the government's car pool, who had custody or use of them, and whether they had been disposed of and how. Were such a simple system in place, there would be no need for an incoming government to resort to arbitrary and crude seizures of vehicles.

Another lesson to from the sordid episodes in the 2009 transition episode is that transitions dominated by partisan zealots will inevitably be over-politicised. The "spoils system" conception of transition that appears to be establishing itself as a convention in Ghana creates the erroneous impression in the minds of the transition actors that theirs is principally a mission to promote and guard the interests of their respective political parties and factions rather than interest of the nation at large. It also makes it almost inevitable that the transition process is perverted to assert the baneful practice of winner-takes-all, spoils-taking by members of the new regime, and to settle old political scores, all of which serve to deepen political polarization. Even where transition negotiations are conducted in a gentlemanly manner, it is likely to be turned into a mechanism for the two sides to trade political favors in the absence of clear rules. At any rate, the manner in which the 2009 transition was done, just like that of 2001, raise the question as to what would be done if an independent candidate became elected as the president of Ghana.

“ Properly done, transitions should consist of discussions between teams from the incoming and the departing administrations, principally technocrats, facilitated by clear regulations and good records on transactions of the entire government – political and technocratic. ”

Governments should not lack clear records on expenditures and transactions one and a half years later, but transition committees are not the appropriate entities to instruct the auditor-general to present accounts on. There is time for that after the transition.

Democracy Watch hopes that the lessons from the first 10 weeks of the Mills administration would have been learned and we would have in place procedures for a clear,

seamless, less politically partisan and technically competent transitional process by 2012. ■ ■

The repetitive handwringing over ex-gratia awards

In late January 2009, Ghanaians were alerted to the details of the retirement package that had been approved for the former president, his ministers, the members and speakers of Ghana's fourth parliament and other government officials. The President had been awarded, among other things, six fuelled and chauffeur-driven vehicles to be replaced every four years, offices and residences in and out of the nation's capital (fitted with gyms), three professional and personal assistants, non-taxable ex-gratia awards, pension benefits, a 45-day yearly vacation, entertainment at the expense of the state and \$1 million seed money for a foundation. The public had barely begun processing this information when it was also revealed that a generous package had been approved for parliament. The speaker's package included a lump sum of 126,600 Ghana Cedis (approximately 100,000 US dollars), a saloon car and an "all-purpose vehicle" to be maintained by the state. The deputy speakers' package included \$100,000 and a vehicle. Each Member of Parliament would receive, amongst other things, sums between 56,000 to 90,000 Ghana cedis. In total, the package was reportedly going to cost the Ghanaian taxpayer in the region of \$20 million.

The public reaction to this information was primarily that of shock, outrage and disbelief. Unfortunately, however, that this is not the first time that excessively generous retirement packages or conditions of service for politicians have been an issue. Indeed, it has been a recurrent issue in our national political life almost since independence. Generous retirement package has become a part of our political and public service culture. Civil servants have long held themselves entitled to these retirement packages. The Clerk of Parliament at the time of the 1966 coup reportedly remained in his government bungalow, free of charge, until his death in 1995, almost three decades after he left the public services. Senior civil servants are currently "entitled" to go into retirement with official cars that are two years old or older. So a little over two years before they retire, their ministry, department or agency purchases a brand new luxury car for their official use. The car is then parked in the garage while they continue to use their existing old official cars. Then, a few years later when they are ready to retire, they are able to do so with a barely-used state-acquired luxury car. Elected politicians have apparently adopted these perverse practices and made them even more egregious.

A major reason for the public's horrified reaction to the ex-gratia packages was that the transaction had been shrouded in secrecy. The Chinery-Hesse Committee report which made the recommendations was laid before parliament on January 6, 2009, the last sitting of that Parliament and one day before the new parliament and government came into office. Parliament constituted itself into a Committee of the Whole (which much conveniently for the Honorable Members, permitted the proceedings to be in camera and away from the unwholesome glare of media and taxpayers) to approve the package. What happened next is a matter of some dispute. Some MPs have subsequently suggested that they were not fully apprised of the details of the package, and/or that it was not properly laid before them. However, it appears that some minimum steps towards review and approval of the package were taken, leaving the people of Ghana reportedly saddled with a \$20 million bill. The approval of the package by the relevant NDC transitional committee did become a source of acute embarrassment to the government, and resulted in the person allegedly responsible for approving the payments being "punished" with the loss of a ministerial nomination. But it is also noteworthy that at least some members of the old and new parliament from both the NDC and the NPP wasted very little time in collecting their entitlements once they were disbursed.

The sizes of the ex-gratia packages appear grotesque. But that is not the main contention here. Indeed, we accept that the process by which the Chinery-Hesse report was put together was legally perfect and involved some of the best expertise available. But the high degree of opacity that characterized the entire process is highly disturbing from a governance perspective. The Chinery-Hesse Committee's deliberations and recommendations were not publicized. As usual, it is not known whether the then President sought the counsel of the then Council of State whose members are also beneficiaries of the ex-gratia package and whether the President agreed with the recommendations of the Chinery-Hesse Committee. Worse still, Parliament chose to insist on its right to deliberate in camera over a matter in which its members stood to benefit directly. It is shocking that none of this struck any of its authors as tantamount to self-dealing and inter-branch collusion. Even after the scandal broke, the report was extremely difficult to obtain.

To be sure, Article 71 of the Constitution under which the Committee was created does not require it to sit in public. Furthermore, the terms of reference for the Committee are not spelt out in sufficient detail. There were no clear rules or guidelines governing how they made their determinations or as to what constitutes an appropriate pension. There were frequent references to actions taken by the Committee

as being “in line with best practices” though it is not really clear from where these best practices were being taken. References are made to the British Prime Minister and the American President receiving pensions. However, it is not clear whether these are references to “best practices” or “common practices.” There is also a blanket statement in the report that practices in countries with similar socio-economic circumstances as Ghana were taken into account. But we are given no indication of exactly what information was taken into account from those countries, or how it was applied.

The ultimate reasoning behind the excessive awards appears to have been that; good governance is expensive and presidents must be encouraged to relinquish power and adhere to presidential term limits. Such justifications may be understandable, but they hardly seem appropriate for or applicable to Ghana where the two-term constitutional limit on presidential tenure is not under any real threat. At any rate, if our presidents must be bribed in this grotesque way in order to induce their compliance with constitutional term limits, then it calls into question their commitment to democratic governance and the rule of law. The justifications are also hard to square with Ghana’s economic reality as a developing country with limited resources. Furthermore, even by U.S. and British standards—and mind you, these are advanced industrialized countries—what has been offered is beyond the pale. No outgoing American President or British Prime Minister is entitled to a package deal approaching the kind of largesse that has apparently been approved here.

Just as we had asserted in respect of the Miranda Greenstreet report (see *Democracy Watch No 4, December 2000*), public scrutiny and comprehensive debate would have helped to refine the recommendations of the Chinery-Hesse Committee. There should have been much greater levels of public scrutiny and input into the amounts as well as the terms of the award than what was allowed. The entire transaction should have been subjected to searching questions as: should all the property given to the president as part of his retirement package be transferrable to his heirs? Are the sums appropriate, or are they excessive, given Ghana’s (and indeed the world’s) current straitened economic circumstances? Should the Ghana government have approved this package without further scrutiny, given that a key representative of the Government had declared just a few days earlier that “Ghana is broke”? Should re-elected public officials receive ‘retirement’ packages for jobs they are still doing? It seems incongruous to be able to receive a retirement package for the same public office four or five times! Public debate would certainly have helped to foster a resolution of some of the complex economic and ethical implications of the

mega retirement packages. It would have generated greater national consensus over them.

The ‘approval’ process also highlights some disturbing structural issues and governance deficits. The emoluments for the president are approved by the parliament, and the emoluments of the parliament are approved by the president. The susceptibility of this process to self-dealing is tremendous; and the appearance of a self-serving attempt by the political class of all parties to fleece the public is hard to avoid – particularly when these arrangements are made behind closed doors.

While *Democracy Watch* agrees with the Chinery-Hesse Committee that *ex-presidents should not live lives of penury, we also do not think, in a low-income developing country, they should live lives of opulence either. Neither set of circumstances augurs well for democracy.* We must by all means develop more open transparent procedures and clearer guidelines for ensuring that our retiring public officials are reasonably but not disproportionately compensated. The quadrennial legal fleecing of the Ghanaian taxpayer by their elected and appointed representatives must cease by 2012. ■ ■

Governance by press release

On January 27, 2009, the government of Ghana issued a press statement announcing that the president had decided to reconstitute the membership of the Boards of all government organizations and parastatals and that pursuant to this directive, all such boards were dissolved with immediate effect. The statement, signed by a Presidential Spokesperson (Mahama Ayariga), indicated that all appointments, promotions, re-designations, transfers, and re-assignments recently made by such boards would not take effect until the new boards were in place and had reviewed them.

The NDC government clearly wished to replace the current boards with its own appointments, hence the blanket firing of all board members. The decision to dissolve the boards came via press announcements. But it is regrettable that the president (who is a former law professor), will take decisions with such wide ranging legal consequences in such an informal and unceremonious manner. There was no formal/ official directive or order from the executive. It was communicated to the affected persons by radio and television with no letters sent or reasons assigned. It is doubtful if the executive has formally communicated the

action it is purported to have taken in writing to most of the affected persons.

It is true that governance by press releases is a long standing practice in Ghana. However, notifying public servants of their termination, transfer or leave by radio and newspaper announcement is baneful to public administration and offensive to democracy. It is also disrespectful to the individuals directly affected and corrosive of the morale of the public service. Above all, it leaves state-related entities severely administratively impaired (a situation that persisted long after the Mills' administration dismissal by radio/newspaper announcement).

The practice of "governance by press conferences" is, in some sense, part and parcel of the political culture evolved in post-colonial Ghana. Governing via media announcement rather than by formal written executive directives and instruments is a relic of our military authoritarian past. Military governments in previous decades essentially assumed power by radio announcements, and then proceeded to govern by the same means. Officials of the government ousted in the coup d'etat were told to report, "by order," to the nearest police station. Ghanaians listening to the news at midday would discover that they had been elevated to or relieved from some government post.

Unfortunately, democratically-elected governments have found this "Banana Republic" practice of "governance by press statements" attractive and convenient enough to continue with. The practice is greatly facilitated in the 4th Republic by prevailing constitutional and legal arrangements which over-concentrate power in the hands of presidency and do not adequately regulate the exercise of presidential discretion. Thus, our presidents are able to hire and fire members of state boards and officials of other state agencies with complete ease. And we continue to live with a primitive situation in which even recipients of the highest national honors learn of their awards on radio and from newspapers, and are expected to assemble at the appointed place to receive their awards without further communication from the presidency. Similarly, municipal authorities continue to request developers to stop work "by order" – without any written communication from the municipality. Indeed, it appears that all manner of executive actions are reported to the public by way of press statements and media announcements. This is true of even presidential pardons! Needless to say, the true legal import of such executive requests and actions becomes an issue as there is a lack of clarity over their meaning and import. And it is no wonder that, some of the changes the government attempts to effect through media announcement are never complied with. They are simply ignored.

A press statement or news release from the Castle is not a law or a legal instrument. Press statements and media

announcements should undoubtedly accompany written presidential directives – but they cannot and should not replace them.

“At any rate, in a system based on the rule of law, presidents must exercise their constitutional prerogatives or executive authority in the form of Executive Orders or Instruments.”

A person appointed by a letter to the board of a state organ should be removed by a letter, not a blanket radio announcement. As our democracy deepens and consolidates, *it is imperative that all executive orders and actions are put in writing, formally communicated to the affected persons and gazetted.* This is vital for purposes of official record keeping. It is also an essential mechanism for encouraging and promoting openness in public administration and government. ■ ■

The 2009 ministerial approval process

The 2009 Parliamentary vetting of ministerial nominees was as eventful and engrossing as that of 2005. Public interest in the hearings was again very high, and the hearings were broadcast live on radio and television. Some ministerial nominees got the chance to explain troubling statements they had made and positions taken in the past. It provided the public a rare opportunity to observe its Parliament and the democratic process at work.

However, the 2009 ministerial approval process replayed almost all of the deficiencies and underscored concerns identified by *Democracy Watch No 19, 2005*. It also highlighted some new ones. The chronic problem of the inadequate pre-screening of nominees, for example, was again on display. One nominee appeared so perplexed and so inadequately prepared to answer the questions being asked that the Committee had to adjourn the vetting to a later date, ostensibly to allow him time to regain composure. There were, once more, questions raised about claims some nominees made in their CVs. But it was not always clear whether the Committee cross-checked the claims nominees had made on their CVs and/or whether it was of any consequence. Nothing was asked of a nominee who had been tried, convicted and sentenced by a court of competent jurisdiction. Altogether, the process left no indication as to what circumstances would result in the rejection of a nominee as there was wholesale approval and confirmation of all the nominees.

Even more disappointingly, the process contained all the structural deficiencies of the 2005 vetting. Members of the Appointments Committee who had also been subsequently nominated for ministerial positions made no attempt to recuse themselves from the process after they were nominated. The Chairman of the Committee arrogated himself almost unlimited powers of control over the proceedings. Questions that the Chairman believed to be inappropriate were disallowed. Occasionally, he chose to answer questions posed to the nominees himself. It was not clear by what rules, measures or standards questions were being allowed or disallowed. Complaints from sections of the public that the Chairman was unduly shielding the nominees were not entirely unwarranted.

The partisan election and post-election climate intruded into the vetting process almost immediately, with several nominees being asked to explain statements made on political platforms. Even in situations where the alleged statements had little to do with the ministerial position for which the nominee was being vetted, countless committee hours were spent by nominees (and the Majority members of the Appointments Committee) defending campaign statements and/or challenging the relevance of such issues to the approval process. The procedural basis for these claims and counterclaims also remains dubious, given the rather lax minimum ethical and competence standards for ministerial eligibility set down in the 1992 Constitution.

Also, it appears that, at least in some circumstances, the vetting process was used to settle scores from the 2008/9 election campaign. In a sense, given the almost total absence of substance and structure that characterized the questioning in general, it was almost inevitable that it would degenerate into partisan bickering and backbiting. There were certainly a few sittings in which both the nominee and the Appointments Committee impressed the watching audience with their knowledge and understanding of the policy and strategy issues facing the ministry to which the nominee had been appointed. However, far more frequently, the questioning displayed a lack of depth and comprehension of the important issues at play, or the issues were not discussed at all.

It is important that, going forward, steps are taken to address the persistent issues and concerns that bedevil the vetting process. The standing orders that govern the committee's hearings should be revised in a number of respects, particularly to delineate the powers of the Committee Chairman. This is extremely important for the integrity of the process, given the powers attached to chairmanship of the Appointments Committee and the importance of some of their rulings. Furthermore, it is clear that the composition of the committee should be restructured. Members of the committee nominated for

ministerial positions should recuse themselves from the vetting process. This should be made a part of the Standing Orders governing the committee, and not left to the discretion of the committee chairman or nominee.

Also, to encourage more substantive, informed questioning of nominees, the committee should be restructured to allow input from MPs who have some knowledge of the ministry for which a nominee has been presented for vetting. It is recommended that the Appointments Committee have at least four slots for ad hoc/non-permanent members, two from the Majority and two from the Minority. These slots will be left open for MPs who have some experience and understanding of the ministry for which a nominee has been presented. Thus, if for example, an education minister nominee is being vetted, MPs that were former education ministers, or were members of the parliamentary committee on education in previous parliaments can be invited to fill the temporary slots and question the nominee on policy issues and positions relevant to the education ministry. In this way, the vetting process would have more substance than fluff, and the committee's recommendations to the House to approve or disapprove a nominee would be informed by substantive considerations. ■ ■

The NDC's first 100 days in office

It is now commonplace in multi-party democratic elections for candidates and parties from all over the world to outline the specific goals they intend to achieve immediately after coming into office. Political parties in Ghana have increasingly adopted this practice. Thus, both the NDC and PNC listed in their manifestoes, the objectives they claimed they would realize within the first hundred days of being elected to office; and the CPP provided in its manifesto, "One hundred and fifty Day Fast Track Agenda". As the NDC administration has just passed the 100 day milestone, it is appropriate to conduct an audit of the pre-election promises the NDC indicated would be fulfilled by their hundredth day in office.

Making allowance for the fact that a number of these promises were made before and after the election by the then NDC presidential candidate and his surrogates, *Democracy Watch* is restricting its brief assessment to the NDC manifesto promises. We also recognize that some of the promises were imprecisely worded, and whether or not they have actually been "achieved" is bound to be disputed. That notwithstanding, below is an assessment of the pre-election "first hundred days" promises made by the NDC.

i. Establish a lean but effective & efficient government by cutting out ostentation and profligate expenditure; rationalizing ministries and ministerial appointments; and promoting service, humility and integrity as canons of government.

It is not clear if this goal has been met. The total number of ministries and ministers has been reduced slightly. However, it is highly debatable if this would lead to more effective and efficient government. A large number of deputy ministerial positions have been created. Indeed, the re-designation and reconstitution of ministries has not been revolutionary. Thus only weak claim could be made, at best, to having achieved greater efficiency and rationalization. More worrisome is the appointment of very large number of persons lacking executive experience in the private sector and/or government to key ministerial positions, and the assignment of individuals with limited sector specific knowledge to highly technical ministries. High-profile membership of the ruling party or a record of having been energetic in the NDC 2008 election campaign appears to have been crucial criteria in the appointments. The privileging of political pedigree over technocratic criteria would certainly ensure strong political direction in the ministries under the President Mills administration. But is highly doubtful whether it would promote efficient public administration.

ii. Prepare and present to parliament, legislation on various tax and tariff measures designed to provide relief for Ghanaians.

There have been a few adjustments in the tax regime. The Airport tax has been adjusted upwards. Taxes on petroleum products were reduced. However, the overall price of petroleum products has recently been increased – so it is unclear how this will provide “relief for Ghanaians”. Groundbreaking legislation has yet to be introduced on taxes and tariffs. Thus the promise to develop legislation that would provide relief for Ghanaians remains largely unfulfilled.

iii. Ensure prompt and effective implementation of existing legislation such as the Persons with Disabilities Act; 2006 Act 715 and the Whistleblowers Act, 2006 Act 720.

It is not clear what the NDC manifesto meant by the effective implementation of these statutes. No new policies have been announced in respect of either of these enactments. However, to the credit of the Mills administration, it has (re) constituted the Disability Council and given it a high profile inauguration.

iv. Review and re-constitute the membership of Commissions and Boards, solely on the basis of expertise and competence; eschewing all partisan and familial considerations.

Little progress has been made in achieving this goal. Membership of some commissions and boards has been re-constituted. Whether expertise and competence were the key criteria in making the appointments is uncertain for a number of reasons. There is no evidence that the performance of the old boards and commissions had been reviewed before they were dissolved, hence the summary dissolutions is difficult to justify. Moreover, the dismissals of the members of the boards had taken place without input from the Council of State, which needed to be consulted at least in some cases. Some of the dismissals also took place even before the transition team had completed its work. In addition, in a number of cases, ex-NDC or PNDC functionaries were appointed to replace the dismissed officials. These circumstances certainly make it more likely than not that partisan political considerations rather than technical merit had been an influential factor in the reconstitution of these commissions and boards.

v. Protect the safety and security of Ghanaians by streamlining, harmonizing and resourcing the agencies of state with responsibility for ensuring the security of life and safety of property.

Efforts at meeting this goal appear to be largely superficial. Beyond changes in the heads of the security agencies, there is no evidence or reports suggesting any post-election changes in the operations of the security agencies. However, anecdotal evidence suggests the persistence of the scourge of armed robberies and car accidents. In addition, there have been several post-election political clashes between NDC and NPP supporters in Agbogbloshie, Bawku and elsewhere. None of the above suggests improvements ensuring the security of life and safety of property of the Ghanaian. However, *after* the 100 day deadline had expired, a number of police checkpoints were put in place all over Accra.

vi. Take bold and comprehensive measures to deal with the appalling filth in our communities, and the related health problems of our people caused by inadequate, inappropriate and ineffective waste management systems and practices.

This goal has not been met. Some routine measures have been taken in some areas to clean up the environment. A “Keep Ghana Clean” campaign was launched by some NDC MPs in the Greater Accra Region, and there have been uncoordinated efforts by local officials in various parts

of Ghana (such as Cape Coast and Akim Oda) to address cleanliness and sanitation problems in their environments. Otherwise, there is no evidence of a “bold” or “comprehensive” plan or effort to make this a national priority. In the meantime, urban areas are plagued with appalling sanitation problems. A convincing and sustainable effort has yet to be made to address Ghana’s growing sanitation problem.

The practice of candidates and parties setting specific targets and deadlines for delivering on electoral promises is certainly a good thing. The growing emphasis on party manifestoes in our elections is itself a measure of the growth of Ghanaian democracy. It provides some basis for the electorate to choose between competing parties and candidates in our elections. Equally important, it provides some basis for holding governments accountable for their promises. Thus, media and public enthusiasm in assessment of the extent to which presidents and parties have delivered on their campaign promises and targets is encouraging. It confirms public interest in demanding accountability vertically.

The above assessment certainly suggests that the Mills administration has had trouble meeting some of its election promises. Very few of the six promises made have been addressed, and even then only partially at best. But this should not really come as a surprise, given the brevity of the period within which the administration has been in office.

Nonetheless, the 100-day assessment raises some pertinent issues. How realistic were the targets set by the Mills-NDC campaign? What had been the overall quality of media and other public educator interrogation of the promises made and targets set by politicians in the 2008 election campaign that would have assisted the public in judging those promises according to appropriate standards of feasibility? Perhaps the assessment of the 100 days in office of the Mills administration should serve as a cautionary tale about the importance of setting realistic and achievable short term targets. It should also serve to educate the voting public in respect of how much stock to place in election promises made by politicians. ■ ■

Yawning transparency gaps in the emerging framework for the governance of Ghana’s oil sector

Following the discovery of oil in 2007, the then Head of State, President Kufuor, proclaimed that Ghana would avoid the “resource curse” and use its new-found wealth to transform the country. In February 2008, to jump-start the revolution, the government hosted the National Forum

on Oil and Gas Development, where representatives from government, the private sector and the international community discussed regulatory challenges. It also organized several regional meetings on oil policy. The President’s office then developed the Fundamental Petroleum Policy for Ghana, which broadly commits the government to pursuing policies that guarantee optimal resource management and promote development.

To turn the vague Fundamental Policy into regulation, the then President created five Ministerial task forces to revise designated portions of Ghana’s laws and create a Master Plan—a proposal for a comprehensive new oil law. The task forces and their Ministries were: Fiscal Regime and Fund Types (Finance); Legal (Attorney General); Health and Safety (Environmental Protection Agency); Security (Defense); and Local Content (Trade and Infrastructure). The task forces were mandated to complete their work by October 30, 2008, when the President would submit the Fundamental Policy and the Master Plan to Parliament for review. This master plan initiated by the New Patriotic Party (NPP) to have a new Fundamental Petroleum Policy passed by the end of 2008 did not materialize. The new National Democratic Congress (NDC) administration headed by President Atta Mills has indicated its preparedness to review this draft policy initiated by his predecessor.

The efforts by government to rewrite Ghana’s oil laws are, particularly welcome; current ones are ill-suited for managing a modern, active oil industry. The actions by the previous government, however, raised doubts about whether it understood—or wanted to understand—the true challenges oil poses, and thus whether its rhetorical commitment to averting the ‘resource curse’ was ever going to translate into practical action. Unfortunately, during the 2008 electioneering campaign none of the presidential candidates demonstrated sufficient grasp and understanding of the enormity of the challenge of managing Ghana’s oil resource. And it is not clear yet from the pronouncements of the Mills administration that it has a superior grasp of the oil governance issues either.

The ‘resource curse’ arises from the incentives that oil creates for officials and executives to undermine regulations for personal gain. Oil companies want to maximize profits; they do not care whether oil promotes development. They have little reason to comply with regulations or invest in local development if not forced to do so, and are happy to support authoritarian governments if it facilitates production and profit-taking. In many oil nations, corrupt officials undercut regulations in order to channel free-flowing money into undisciplined spending, “foreign” bank accounts, and efforts to consolidate political power, such as extravagant election campaigns. Competition between government

actors to capture oil rents often results in instability, increased criminality and violence. Unfortunately, the huge personal gains that oil money offers to officials can more than trump official interest in matters of effective governance, equitable growth, and conflict prevention.

The public, on the other hand, has a strong interest in preventing resource-fuelled upheaval—it benefits directly from development and suffers from conflict. To avoid the ‘resource curse’, therefore, oil laws and institutions must create public accountability—they must allow the public to monitor oil companies and the government and demand that both respect national priorities. Currently, Ghana’s fragile democratic institutions do not provide the accountability necessary to check the oil industry. If they are to do so, they must be strengthened in several key ways. First, transparency is paramount—the government must develop oil laws through an open legislative process and award leases through transparent competitive auctions; laws must require the publication of all production and revenue information. Second, laws must establish formal oversight mechanisms, including external audits and independent committees to monitor production and spending. Finally, oversight committees must have investigatory and adjudicatory power to enforce national policies, and existing legal institutions must have the capacity to investigate and prosecute oil industry misconduct. Only maximum transparency, effective oversight and enforcement can guarantee that official and industry interests are aligned with those of ordinary citizens and constrain misguided or corrupt actions.

Unfortunately, the draft Fundamental Policy as it exists today provides little hope that it intends to give citizens a voice in oil policy—a key ingredient in any successful prevention of the ‘resource curse’. To the dismay of *Democracy Watch*, the Fundamental Policy frames Ghana’s oil regulation as a two-player game between the government and oil companies. It focuses on how the government will oversee oil production, failing to recognize that government is often complicit in the ‘resource curse’ and that citizens must also have oversight powers. The current Policy seems to regard good governance as necessary only to provide a stable working environment for oil companies and to maximize revenue collection—not to check misconduct. The Policy makes no mention of the types of laws and institutions discussed here.

Adding to concerns, the then President’s office developed the Policy and Master Plan in closed meetings that marginalized the public. Most worryingly, the National Forum was closed to most civil society groups, and the public and Parliament have not had any significant role in the review process. Development agencies say that early drafts of the Master Plan contained few transparency or

oversight provisions, and task force members have suggested that accountability is not a priority. Worse still, the former President’s office resisted pressure to include oil in the nation’s Extractive Industry Transparency Initiative program.

Developments in Ghana’s oil industry are equally opaque. There is little transparency in the leasing process. Contracts go to Parliament for ratification but are rarely openly debated or made publicly available. The Ghana National Petroleum Corporation has placed announcements on industry developments in local newspapers, but these efforts are discretionary and do not provide unfiltered access to documents. There may be changes in leasing procedures down the road. But by allowing the oil industry to operate in a black box during this crucial early period of development, the government had signaled that it does not place much value on transparency—and that its new laws won’t either.

When the NPP government first announced it had struck oil, there was reason to be optimistic that Ghana might successfully manage its new riches. A year later, however, the optimism faded. *If the government cannot or will not grasp the true demands of resource regulation, then its legal reforms are unlikely to result in an accountable oil industry—and Ghana is unlikely to escape the ‘resource curse’.* Hope, however, is not entirely lost. The Fundamental Policy and Master Plan have not yet become law. There is still time to engage in a national debate on oil policy and to build effective oil governance.

The discovery of oil and the dangers it presents should have been a prominent issue in the 2008 election campaign. Unfortunately, it was given scant attention. But the issue remains highly salient and the agenda pressing. The governance of Ghana’s oil sector must be placed at the center of the debates and discussions on the overall governance of the nation. Therefore, *Democracy Watch* fully welcomes President Mills’ expression of commitment to re-open the debate on the search for sound governance framework for managing Ghana’s oil. The rekindled debate and discussion must focus in detail on how the government intends to regulate the oil industry to ensure that maximum transparency prevails in the governance of the oil sector and that revenues accruing from it contribute to equitable and sustainable development. Open discussions of oil sector regulation will bring the public into the regulatory debate and help frame a national discourse on oil policy that will and *must* continue long past the NDC and other future regimes. Such a dialogue might be difficult to structure, but it is absolutely imperative if Ghana is to create a regulatory framework capable of avoiding oil’s pitfalls—and capturing its promise.

“Democracy is never a finished task; it is always a work-in-progress that can progress, stagnate or regress depending on the actions and omissions of the governed and the government.”

E. Gyimah-Boadi

“Democratic development is an endless odyssey rather than an excursion to the promised land.”

Baffuor Agyeman-Duah

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

H. Kwasi Prempeh

“We should not be astonished by future erosions of our democratic gains if tomorrow’s leaders are denied opportunities during their formative years at school to learn, internalize, and practice democratic values.”

Cyril Daddieh

“The legitimacy of a democratic representative system is open to question when women, who constitute a significant portion of the electorate, are not adequately represented.”

Audrey Gadzekpo

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Watching Democracy in Ghana

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