

Overall Score:

67 - Weak

Legal Framework Score:

79 - Moderate

Actual Implementation Score:

54 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁴Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

In Ghana, citizens are free to form civil society organizations, including ones to fight corruption and promote good governance. However, such organizations are required to register with the registrar general and with other state institutions and to file appropriate returns.

The Ghana Integrity Initiative was formed in 1999 as a civil empowerment organization that focuses solely on curbing corruption. This was followed by the formation of the Ghana Anti-Corruption Coalition in 2001 to bring together organizations that fight corruption. Several other civil society organizations, such as the Center for Democratic Development, were also formed, but not with the sole purpose of targeting corruption. They aim to promote transparency and accountability and, hence, curb corruption.

Chapter 5 of the 1992 Constitution of the Republic of Ghana guarantees fundamental human rights and freedoms. Specifically, Article 21(1e) guarantees to citizens freedom of association, "which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interests." This includes the formation of anti-corruption civil society organizations.

Section 10 of the Companies Code, 1963 (Act 179) allows for the establishment of companies limited by guarantee (or "guarantee companies") as nonprofit companies.

References:

Chapter 5 of the 1992 Constitution of the Republic of Ghana, Article 21(1e)

Section 10 of the Companies Code, 1963 (Act 179)

Victor Brobbey, research fellow, Ghana Center for Democratic Development, "Report on Laws and Regulations Governing Civil Society Organizations in Ghana," Accra, 2011, <http://www.wmd.org/projects/defending-civil-society/country-reports/ghana-2011>

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes

No

Comments:

No law restricts anti-corruption/good governance CSOs from receiving funding from foreign or domestic sources. In fact, no legislation in Ghana seeks to regulate the activities of CSOs, including their funding.

References:

Chapter 5 of the 1992 Constitution of Ghana guarantees fundamental human rights and freedoms. Specifically, Article 21(1e) guarantees to citizens freedom of association, "which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interests." This includes the formation of anti-corruption CSOs.

Article 37 of the 1992 Constitution forces the state to enact appropriate laws to ensure "the enjoyment of rights of access to agencies and officials of the state" and "freedom to form organizations to engage in self-help and income generating projects; and the freedom to raise funds to support these activities."

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes

No

Comments:

The Registrar General's Department is empowered by law to register all private organizations in Ghana. These organizations pay a filing fee and are required to file returns with the department, which include information on their income and its sources and

their expenditures. However, the registrar general merely files them, and sanctions for defaulters are not enforced. The returns are not published and/or verified. They are also not easily accessible. A few CSOs provide the information on request.

References:

Section 123 of the Companies Code, 1963 (Act 179) requires that nongovernmental organizations file annual returns with the registrar general, which should include their incomes and expenditures.

Section 9 of the Trustees (Incorporation) Act, 1962 (Act 106)

Victor Brobbey, research fellow, Ghana Center for Democratic Development, "Report on Laws and Regulations Governing Civil Society Organizations in Ghana," Accra, 2011, <http://www.wmd.org/projects/defending-civil-society/country-reports/ghana-2011>

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

In Ghana, citizens are at liberty to create civil society organizations and engage in activism of any kind, including anti-corruption activities. The government does not create barriers for anti-corruption CSOs. However, it is possible that the government monitors their activities and pronouncements and sometimes reacts to the pronouncements.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

Anti-corruption and good governance CSOs engage with government in the political and policymaking processes, but the effectiveness of such engagement is suspect. For example, Ghana Integrity Initiative and other stakeholders have engaged with Parliament on the enactment of regulations for the Assets Declaration Act, but to no avail. Similarly, the Right to Information Coalition led by the Commonwealth Human Rights Initiative has engaged with the executive and Parliament, but there is still no sign that the bill will be passed even in its current unsatisfactory state.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

CSOs are able to operate freely. However, there has been recent lambasting in the media of some CSOs such as IMANI Ghana and the Ghana Center for Democratic Development for their alleged partisan stance on some issues. Some social commentators have questioned their mandate, source of funding and neutrality. These are issues that CSOs need to address.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes

No

Comments:

Civil society organizations for anti-corruption/good governance are safe when working on corruption issues. However, there has been lambasting of CSOs such as IMANI Ghana and Ghana Center for Democratic Development in the media on their alleged/perceived partisan stance on some issues.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

04a. In law, citizens have a right to organize into trade unions.

Yes

No

Comments:

However, it is sometimes difficult to form new unions or to split unions, partly because employers are already comfortable with the existing ones and partly because the leadership of existing unions do not want a challenge from new ones.

References:

Article 21 of the 1992 Constitution of Ghana states that “All persons shall have the right to ... freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest.”

Section 10(d) of the Labor Act, 2003 (Act 651) provides workers the right to form or join a trade union.

Victor Brobbey, research fellow, Ghana Center for Democratic Development, “Report on Laws and Regulations Governing Civil Society Organizations in Ghana,” Accra, 2011, <http://www.wmd.org/projects/defending-civil-society/country-reports/ghana-2011>

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100

75

50

25

0

Comments:

A report by the International Trade Union Confederation, called “The Annual Survey of Violations of Trade Union Rights: Ghana 2011,” says: “Many employers remain hostile to trade unions, particularly in the export processing zones (EPZ). One union leader was sacked for speaking out about concerns over the future of jobs in the health insurance authority. The labor legislation does not sufficiently secure trade union rights, and the authorities retain some discretionary powers over unions.”

We have not also heard of workers of any CSO/NGO forming a union, even though such groups seek to promote the rights of the ordinary people, including their workers.

References:

International Trade Union Confederation, “Annual Survey of Violations of Trade Union Rights: Ghana 2011,” <http://survey.ituc-csi.org/Ghana.html>

International Trade Union Confederation, “2009 Annual Survey of Violations of Trade Union Rights — Ghana,” www.unhcr.org/refworld/country,,ITUC,,GHA,,4c52caeb18,0.html

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

Article 21(1a) of the 1992 Constitution of Ghana guarantees freedom of speech and expression, which includes freedom of the press and other media.

Similarly, Article 162 of the 1992 Constitution guarantees freedom and independence of the media and no censorship.

Article 162(3) of the 1992 Constitution states that "there shall be no impediments to the establishment of private press or media and in particular, there shall be no law requiring any person to obtain a license as a prerequisite to the establishment and operation of a newspaper, journal or other media for mass communication or information."

Section 4 of the National Media Commission Act, 1993 (Act 449) also provides for the independence of journalists.

References:

Article 21(1a) of the 1992 Constitution of Ghana

Article 162 of the 1992 Constitution of Ghana

Article 162(3) of the 1992 Constitution of Ghana

Section 4 of the National Media Commission Act, 1993 (Act 449)

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

Article 21(1a) of the 1992 Constitution of Ghana guarantees freedom of speech and expression, which includes the freedom of the press and other media.

The Universal Declaration of Human Rights adopted by the United Nations General Assembly, and to which Ghana is a signatory, also states in Article 19 that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

However, Section 208 of the Criminal Code, 1960 (Act 29) criminalizes "any statement, rumor or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that the statement, rumor or report is false." This law can be abused by any government that does not believe in free speech.

References:

Article 21(1a) of the 1992 Constitution of Ghana

Universal Declaration of Human Rights adopted by the United Nations General Assembly, Article 19, www.un.org/en/documents/udhr/index.shtml#a19

Section 208 of the Criminal Code, 1960 (Act 29)

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

06a. In practice, the government does not create barriers to form a print media entity.

100

75

50

25

0

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

A license is not needed to establish a newspaper. The laws cited here provide an appeals mechanism for acquiring an electronic media license if one is denied.

References:

National Communications Authority Act, 1996 (Act 524)

Legislative Instrument, 2003 (L.I. 1719) on the National Communications Authority Act

National Media Commission Act, 1993 (Act 449)

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

75

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Broadcast media entities are required to obtain licenses before they can operate, probably because of the allocation of

frequencies/channels. This can take time. Some community radio stations have complained of delays in getting licenses.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

Owners and operators of television and radio stations are required by law to acquire licenses to operate. The laws cited here provide an appeals mechanism for when a request for an electronic media license is denied. In addition, an aggrieved citizen can proceed to the courts for redress.

References:

National Communications Authority Act, 1996 (Act 524)

Legislative Instrument, 2003 (L.I. 1719) of the National Communications Authority Act

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Media Commission allocates channels. This can sometimes take longer than expected, especially for community radio stations.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of obtaining a broadcast media license is reasonable, considering that the applicant would have made an investment already that took into consideration the cost of registration.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

An information and communications technology bill that seeks to regulate Internet usage, among other things, is still awaiting passage.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

In Ghana, there have never been reports of the government censoring citizens creating content online. Freedom of the Internet is so prevalent that the Internet is perceived to be abused by many people, especially by the youth, some of whom use it to defraud citizens and for other questionable purposes. This has led to calls for the government to enact a law that would enable some censorship. However, no such law currently exists.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

Article 117 of the Criminal Code, 1960 (Act 29) states that “The publication of defamatory matter is absolutely privileged and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely - , among others,

(h) if the matter is true, and if it is found that it was for the public benefit that the matter should be published.”

Articles 18 and 162 of the 1992 Constitution of Ghana

Section 4 of the National Media Commission Act, 1993 (Act 449) states that “Subject to its functions as provided in this Act, the Commission shall not exercise any control or direction over the professional functions of a person engaged in the production of newspapers or other means of communication.”

References:

Article 117 of the Criminal Code, 1960 (Act 29)

Articles 18 and 162 of the 1992 Constitution of Ghana

Section 4 of the National Media Commission Act, 1993 (Act 449)

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The private media in Ghana are completely independent of government, though some private media houses are owned by known party activists/executives, who might encourage self-censorship of corruption-related stories. Also, control can be exercised subtly through the awarding of advertisements.

With the government media houses, self-censorship cannot be ruled out. Some of the management may strive to please the appointing authorities.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The private media in Ghana are completely independent of government, though some private media houses are owned by known party activists/executives, who might encourage self-censorship of corruption-related stories. Also, control can be exercised subtly through the awarding of advertisements.

With the government media houses, self-censorship cannot be ruled out. Some of the management may strive to please the appointing authorities.

Moreover, in the absence of a right to information law, it is difficult to obtain information on corruption in government institutions.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

Yes

No

References:

Ghana National Media Policy, www.ict.gov.gh/pdf/NMC-MEDIA-POLICY.pdf

National Media Commission (Newspaper and Publication Registration) Instrument, 2003 (C.I. 39)

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes

No

References:

Ghana National Media Policy, www.ict.gov.gh/pdf/NMC-MEDIA-POLICY.pdf

National Media Commission Legislative Instrument, 2003 (L.I. 1719)

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

Complaints about low levels of professionalism, partisanship and corruption in the media are rife.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

Ghana News Agency, May 28, 2011, "Arrest Falling Standards of Professionalism in the Media – Akologu," www.ghanabusinessnews.com/2011/05/28/arrest-falling-standards-of-professionalism-in-the-media-akologu/

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

There were complaints of unfair coverage by the state media. Private media houses have their own agenda.

The European Union's report on the presidential and parliamentary elections of 2008 said print and audiovisual media provided extensive coverage throughout the monitoring period. "Reflecting their strong position in Ghanaian politics, the NPP (New Patriotic Party) and NDC (National Democratic Congress) received a wide range of coverage across the media," the report said. "In contrast, the smaller parties, including those with presidential candidates, received very low levels of coverage. The state-owned television and radio broadcasters failed to provide equal or equitable coverage of the candidates or their parties in line with constitutional provisions."

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

European Union Election Observation Mission, February 2009, "Ghana: Final Report on Presidential and Parliamentary Elections — 2008,"

www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

There were complaints about unfair coverage from the state media in the most recent elections. The European Union's monitoring report of the 2008 presidential and parliamentary elections said, "The state-owned television and radio broadcasters failed to provide equal or equitable coverage of the candidates or their parties in line with constitutional provisions."

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

European Union Election Observation Mission, February 2009, "Ghana: Final Report on Presidential and Parliamentary Elections — 2008,"

www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all

other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes

No

Comments:

Section 208 of the Criminal Code, 1960 (Act 29), which criminalizes “any statement, rumor or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that the statement, rumor or report is false,” was used to detain a journalist and news commentator in the past year. However, the case did not proceed to the courts for prosecution.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. “Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes

No

Comments:

There have been a few cases of harassment, but not officially sanctioned.

Section 208 of the Criminal Code, 1960 (Act 29), which criminalizes “any statement, rumor or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that the statement, rumor or report is false,” was used to detain one journalist and one news commentator. However, the case did not proceed to the courts for prosecution.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes

No

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual’s work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12a. In law, citizens have a right to request government information and basic government records.

Yes | **No**

Comments:

Article 21(1f) of the 1992 Constitution of Ghana provides that “All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.”

The Right to Information bill (www.ghana.gov.gh/index.php) is pending before Ghana’s Parliament, which is supposed to be conducting public consultations on the bill before a debate.

References:

Article 21(1f) of the 1992 Constitution of Ghana

The Right to Information Bill (pending) www.ghana.gov.gh/index.php

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | **No**

Comments:

Article 21(1f) of the 1992 Constitution of Ghana provides that “All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.”

The Right to Information bill is still pending, and access to public information depends on the discretion of the custodian of such information. Granted, many public offices now release information, depending on the type of information, but not because a law requires it.

References:

Article 21(1f) of the 1992 Constitution of Ghana

The Right to Information bill (www.ghana.gov.gh/index.php)

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | **No**

Comments:

Article 21(1f) of the 1992 Constitution of Ghana provides that “All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.”

However, in the absence of a right-to-information law, there is no institutional mechanism through which one can gain access to government records.

References:

Article 21(1f) of the 1992 Constitution of Ghana

The Right to Information bill (pending) www.ghana.gov.gh/index.php

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

17

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Even though the Constitution guarantees freedom of speech and expression and the press and other media, there is no access-to-information law. Thus, access to information depends on the type of information one is looking for and one’s personal relationship with the custodian of the information.

Some institutions publish reports of their activities, which are in the public domain. These include reports on parliamentary sittings, audits and procurement activities, and reports by the Commission on Human Rights and Administrative Justice. Some institutions have websites with information about them and their activities.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In the absence of a right-to-information law, there is no information-request mechanism.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the type of information sought. The quality is usually higher when there is a charge for it. There may be an cash inducement, such as the excuse of too much dust.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the absence of a right-to-information law, there is no appeals mechanism.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable because no mechanism is in place.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Mike Boadi, Public Agenda newspaper, interviewed Aug. 22, 2011, in his office

Paula Sanziri, National Media Commission, interviewed Aug. 19, 2011, in her office

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

2.1. ⁶³Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes

No

Comments:

Article 42 (Chapter 7) of the 1992 Constitution of Ghana states that "Every Citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda."

Representation of the People (Amendment) Act, 2006 (Act 699) extends the right to vote to Ghanaians residing outside the country.

References:

Article 42 (Chapter 7) of the 1992 Constitution of Ghana

Representation of the People Law, 1992 (PNDCL 284)

Representation of the People (Amendment) Act, 2006 (Act 699)

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes

No

Comments:

Presidential and parliamentary elections have been held every four years since 1992. In fact, a specific date has been fixed, Dec. 7, every four years. This has become established and is unlikely to change.

References:

Article 66(1) of the 1992 Constitution of Ghana states that the president shall hold office for a term of four years.

Similarly, Article 113(1) states that Parliament shall continue for four years from the date of its first sitting and then stand dissolved.

European Union Election Observation Mission, February 2009,
"Ghana Final Report Presidential and Parliamentary Elections 2008,"
www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In Ghana, prisoners and mentally ill people cannot vote.

References:

Bernard Mornah, general secretary of the People's National Convention Party, was interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah is outspoken and appears on radio and television programs to speak on national governance issues. He represents his party at political meetings and is conversant with the elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commisison, interviewed on Aug. 26, 2011, in his office

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Since 1992, presidential and parliamentary elections have been held every four years: 1992, 1996, 2000, 2004, 2008. Elections are due again in 2012, and some political parties have already chosen their candidates for both elections.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commisison, interviewed Aug. 26, 2011, in his office

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

85

16a. In law, all citizens have a right to form political parties.

Yes

No

Comments:

Article 55 of the 1992 Constitution of Ghana guarantees the right to form political parties, and every citizen of voting age has the right to join a political party.

Section 2 of the Political Parties Act, 2000 (Act 574) says every citizen of voting age has the right to form or join a political party.

References:

Article 55 of the 1992 Constitution of Ghana

Section 2 of the Political Parties Act, 2000 (Act 574)

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes

No

Comments:

Traditional rulers and people with criminal convictions are not permitted to engage in active partisan politics. However, one can relinquish the traditional authority if one is keen to get into politics. There have been efforts by CSOs to enable people with criminal convictions to vote, but they have not succeeded.

Article 55(1-3) of the 1992 Constitution of Ghana guarantees the right to form political parties, and every citizen of voting age has the right to join a political party and run for political office. The Constitution specifies the qualifications for president and

Parliament.

Section 2(1) of the Political Parties Act, 2000 (Act 574) states that every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the government. This can be interpreted to mean running for political office.

References:

Article 55(1-3) of the 1992 Constitution of Ghana

Section 2(1) of the Political Parties Act, 2000 (Act 574)

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Politics is a very expensive venture in Ghana, so it is difficult to form political parties and run them successfully. There are official financial requirements and other requirements that have financial implications. These include having offices across the country and staff at party offices. Filing fees for candidates and the cost of election campaigns serve as major constraints.

Cultural constraints also are contributing to effectively excluding the poor and marginalized in society, including women and people with some form of disability.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Constraints, such as financial and cultural, effectively exclude the poor and marginalized in society, including women and people with some form of disability, from running for political office. The financial constraint is becoming a serious issue, complicated by social ties.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Two main political parties have alternated in ruling the country. The main opposition party has always had a substantial representation in Parliament.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC

is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes

No

Comments:

Ghana has the Electoral Commission. However, security agencies and the judiciary are responsible for handling election malpractices and disputes after election results have been declared.

References:

Article 43 of the 1992 Constitution of Ghana provides for establishment of the Electoral Commission.

Article 45(c) of the 1992 Constitution states that the Electoral Commission shall conduct and supervise public elections and referendums.

The Electoral Commission Act, 1993 (Act 451) provides for establishment of the Electoral Commission, which runs and supervises elections.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes

No

Comments:

Articles 45 and 46 of the 1992 Constitution and Sections 2 and 3 of the Electoral Commission Act, 1993 (Act 451) provide for establishment of the Electoral Commission and its independence.

The commission is responsible for conducting and supervising elections in Ghana. After the results are announced, any electoral complaints and irregularities are dealt with by the security agencies and the judiciary.

References:

Articles 45 and 46 of the 1992 Constitution of Ghana

Sections 2 and 3 of the Electoral Commission Act, 1993 (Act 451)

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100

75

50

25

0

Comments:

Although appointments to the agency that conducts and supervises elections are supposed to support its independence, Ghana's president has the authority to fill vacancies. Hence, one cannot rule out partisan considerations.

References:

Bernard Mornah, general secretary of the People’s National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commisison, interviewed Aug. 26, 2011, in his office

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People’s National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

When reports refer to the elections themselves, the Electoral Commission releases the results within three days after an election. Formal written reports take much longer to be produced and published. Disputes are handled by the judiciary and sometimes can take years to be decided.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Electoral malpractice is handled by the security agencies and the judiciary once election results are declared. They can impose penalties on offenders.

External and civil society monitors also observe elections in the country. These groups cannot impose sanctions.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office. The PNC is one of the opposition parties in Ghana. Mornah represents his party at political meetings and is conversant with elections and related issues.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

79

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The voter registration system is supposed to be clear and transparent, but political parties complain of bloated voter registers. The Electoral Commission is going through a process to introduce a biometric system of voter registration aimed at addressing some of the complaints and possible irregularities.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

European Union Election Observation Mission, February 2009, "Ghana Final Report Presidential and Parliamentary Elections 2008," http://www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

Article 48(1) of the 1992 Constitution of Ghana provides for appeal of a decision of the Electoral Commission.

References:

Article 48(1) of the 1992 Constitution of Ghana provides for appeal of a decision of the Electoral Commission.

Section 16 of the Political Parties Act, 2000 (Act 574)

European Union Election Observation Mission, February 2009, "Ghana Final Report Presidential and Parliamentary Elections 2008," http://www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

All conflicts arising from elections have been addressed by the judiciary since 1992, when Ghana held elections to return from military to civilian rule. However, there have been two prominent cases in which judicial processes have been delayed unduly. In one, a ruling was made after the term of office of the member of Parliament involved had expired. In that case, the ruling went against the then-MP. Hence, the complainant was deprived of the benefits of being an MP during the four years he should have been in Parliament.

Currently, there is another case, which has been pending since 2009. The MP's term of office will end in January 2013.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011. ISODEC is a rights-based civil society organization in Ghana.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Allegations and counter-allegations of police bias toward the ruling party have surrounded elections since 1992. These allegations have continued in subsequent elections and by-elections, but they have never been proved or prosecuted in court.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office.

Bernard Anaba, programs officer, Integrated Social Development Center, completed a questionnaire Dec. 14, 2011.

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

European Union Election Observation Mission, February 2009, "Ghana Final Report Presidential and Parliamentary Elections 2008," http://www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

Ghana News Agency, Dec. 30, 2008, Accra, http://ghanaweb-news.com/Ghana_Election_28_December_2008_Run_of.aspx

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

This is not provided for by Ghana's Constitution or an act of Parliament. However, Section 12 of the Electoral Commission Act, 1993 (Act 451) and Section 15 of the Representation of the People law, 1992 (PNDCL 284) are offshoots of the laws enacted by Parliament.

References:

Section 12 of the Electoral Commission Act, 1993 (Act 451)

Section 15 of the Representation of the People law, 1992 (PNDCL 284)

Muctar Abbas, private legal practitioner, response by e-mail.

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The number of election observers is very limited. There have been cases of alleged refusal of entry for election observers into some areas by party supporters.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

European Union Election Observation Mission, February 2009, "Ghana Final Report Presidential and Parliamentary Elections 2008," www.eueomghana.org/EN/PDF/Final_report/EU_EOM_Final_Report_Ghana.pdf

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

83
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

33

20a. In law, there are limits on individual donations to political parties.

Yes | **No**

Comments:

The only restriction on donations involves noncitizens. Noncitizens are not allowed to make donations in cash or kind to political parties.

References:

Article 55 of the 1992 Constitution of Ghana prohibits noncitizens from donating to political parties.

Section 24 of the Political Parties Act, 2000 (Act 574) prohibits noncitizens from making donations to political parties.

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | **No**

Comments:

The Political Parties Act, 2000 (Act 574) does not limit corporate donations provided by Ghanaian citizens, both individual and corporate. Donations from external sources, both individual and corporate, are prohibited. However, it is generally believed that political parties obtain donations from external sources. This is difficult to prove, especially since most parties do not publish their accounts. No political party in Ghana has ever published a list of donations.

References:

The 1992 Constitution of Ghana prohibits donations from external sources, but it sets no ceiling on domestic corporate

donations.

The Political Parties Act, 2000 (Act 574) prohibits donations from external sources but establishes no ceiling on domestic corporate donations.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | **No**

Comments:

No law limits expenditures by political parties.

References:

Article 55 of the 1992 Constitution of Ghana prohibits noncitizens from donating to political parties.

Section 24 of the Political Parties Act, 2000 (Act 574) prohibits noncitizens from making donations to political parties.

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

Article 55(14b) of the 1992 Constitution of Ghana requires political parties to declare to the public their revenues and assets and the sources for them, and to publish to the public annually their audited accounts.

References:

Article 55(14b) of the 1992 Constitution of Ghana

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes

No

Comments:

Article 55(14b) of the 1992 Constitution of Ghana requires political parties to declare to the public their revenues and assets and the sources of them, and to publish to the public annually their audited accounts. The Political Parties Act also requires the parties to submit audited accounts to the commission and requires the EC to publish them.

Section 21(3) of the Political Parties Act, 2000 (Act 574) states that "the Commission may at any time upon reasonable grounds order the accounts of a political party to be audited by an independent auditor. ..."

References:

Article 55(14b) of the 1992 Constitution of Ghana

The Political Parties Act, 2000 (Act 574)(13)

Section 21(3) of the Political Parties Act, 2000 (Act 574)

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes

No

Comments:

The Political Parties Act, 2000 (Act 574) requires political parties to file with the Electoral Commission the state of their accounts, the sources of their funds, membership dues paid, etc., and audited accounts of the party for the year. However, the law does not say what the commission should do with the information except provide it to the public.

References:

Article 55(14b) of the 1992 Constitution of Ghana requires political parties to declare to the public their revenues and assets and the sources of them and to publish to the public annually their audited accounts.

Section 21 of the Political Parties Act, 2000 (Act 574)

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

Yes | **No**

Comments:

The law does not put a ceiling on how much can be contributed.

References:

Section 23 of the Political Parties Act, 2000 (Act 574) states that only citizens can contribute funds to a political party. Non-citizens are banned from making contributions.

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | **No**

Comments:

The law does not put a ceiling on how much can be contributed or donated.

References:

Section 23 of the Political Parties Act, 2000 (Act 574) states that only citizens, including corporate entities with at least 75 percent capital owned by citizens, can contribute funds to a political party. Noncitizens are banned.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

Comments:

The Political Parties Act, 2000 (Act 574) only requires returns and accounts from political parties. The law is silent about donations to individual political candidates.

References:

No law exists.

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

The Political Parties Act, 2000 (Act 574) does not say anything about auditing of the campaign finances of individual political candidates.

References:

No law exists.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

Comments:

The Political Parties Act, 2000 (Act 574) does not have any provision for an agency to monitor the financing of individual political candidates' campaigns.

References:

No law exists.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

8

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | **0**

Comments:

Limits are not imposed on donations to political parties and candidates.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commisison, completed a questionnaire approximately Sept. 13, 2011, in his office.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits on corporate donations to political parties.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commisison, completed a questionnaire approximately Sept. 13, 2011, in his office

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Total expenditures of political parties are not limited.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commisison, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This has never been done. Many of the political parties do not file returns and submit accounts, yet nothing is done to them.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office.

Augustine Okrah, assistant director, training, Electoral Commisison, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

This has never happened. The Electoral Commission usually tries to persuade the parties to comply with the law but does not monitor financing or impose any penalty.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The accounts of some political parties are audited, but those of candidates are never audited or even submitted to the Electoral Commission. Even then, the audit is supposed to be sanctioned by a party itself, except when the commission suspects something is not right.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire approximately Sept. 13, 2011, in his office.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commisison, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

No agency monitors the campaign financing of individual candidates.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no such agency.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Neither the Constitution nor the Political Parties Act requires the auditing of individual political candidates' campaign funds. In practice, it does not happen, and there is a lot of opacity in the funding of individual candidates' campaign expenditures.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

25

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

This is only done for accounting purposes and, in most cases, is inaccurate. Submissions to the Electoral Commission are often delayed, and the political parties do not publish their accounts.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is not easy for ordinary citizens to access a party's financial records. Even those parties that submit audited accounts to the Electoral Commission delay doing so.

Political parties are required by the Constitution to submit audited financial statements to the Electoral Commission and also have them published as information for the general public. However, Parliament watered down the constitutional requirement for political parties to publish their audited accounts by putting the burden of publication on the Electoral Commission in the Political Parties Act. It is a contravention of the Constitution to enact a law that contradicts a constitutional provision, but even then the Electoral Commission does not publish the accounts.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, interviewed Aug. 26, 2011, in his office

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is not easy for ordinary citizens to access a party's financial records. Availability, not cost, is the issue. Political parties are required by the Constitution to submit audited financial statements to the Electoral Commission and also have them published for the information of the general public. However, Parliament watered down the constitutional requirement for political parties to publish their audited accounts by putting the burden of publication on the Electoral Commission in the Political Parties Act. It is a contravention of the Constitution to enact a law that contradicts a constitutional provision, but even then the Electoral Commission does not publish the statements.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | **25** | 0

Comments:

Most political parties do not disclose information about their finances. There have been complaints about highly placed party officials keeping party finances away from the treasurers.

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Bernard Mornah, general secretary of the People's National Convention Party, interviewed Aug. 22, 2011, in his office

Augustine Okrah, assistant director, training, Electoral Commission, completed a questionnaire, approximately Sept. 13, 2011, in his office

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

3.1. ⁵⁵Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

Comments:

Article 12(1) of the 1992 Constitution of Ghana provides for the protection of fundamental human rights and freedoms of all citizens.

Article 125(5) of the 1992 Constitution states that "The Judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to this Constitution. ..."

References:

Article 12(1) of the 1992 Constitution of Ghana

Article 125(5) of the 1992 Constitution

Articles 293 and 294 of the 1992 Constitution

ghanamma.com, Nov. 5, 2010: "Police/Interior Ministry 'Sued' Over Nankpanduri Brutalities," www.ghanamma.com/2010/11/05/police-interior-ministry-sued-over-nankpanduri-brutalities/

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The president addresses the nation through Parliament at the beginning of every year, during which he informs Ghanaians about key policy issues. Ministers can also be hauled before Parliament to answer questions regarding their ministries. Very often ministers are contacted to respond to issues raised in the media about their sectors.

There is also a “Meet the Press” series, which brings sector ministers from time to time to address issues. This is usually hosted by the Ministry of Information.

References:

Kojo Asante, head of Legal Department, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, interviewed Sept. 2, 2011, in his office

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

Article 125(1) of the 1992 Constitution of Ghana states that “Justice shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.” Article 125(3) further invests judicial power in the judiciary and as such neither the executive nor the legislature shall have final judicial power.

References:

Article 125(1) and Article 125(3) of the 1992 Constitution of Ghana

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

This is hardly done, and often takes a long time.

References:

Kojo Asante, head of Legal Department, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, interviewed Sept. 2, 2011, in his office

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The executive reports to Parliament annually on the state of the nation and responds to questions about decisions. Parliament debates the president's "State of the Nation" address and also invites individual ministers to answer questions about their ministries. Because of this, the executive is cautious about the use of executive powers, especially since elections come every four years. However, this does not mean that these powers are not used to the executive branch's advantage.

References:

Kojo Asante, Programs Department, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office. CDD-Ghana is a civil society organization that works on democracy and governance issues.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | **No**

Comments:

However, within three years of the president's leaving office, civil or criminal proceedings may be instituted with respect to anything done or not done in his personal capacity before or during his time in office.

References:

Article 57(4) of the 1992 Constitution of Ghana states that "The President shall not, while in office as President, be personally liable to any civil or criminal proceedings in court."

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

Article 57(4) of the Constitution of Ghana, which provides exemption from prosecution for the president, does not extend to ministers. Ministers have been prosecuted while in office.

References:

Open Society Initiative for West Africa, 2007, "Ghana Justice Sector and the Rule of Law — A Discussion Paper: A review by AfriMAP and the Open Society Initiative for West Africa and the Institute for Democratic Governance," www.afriMAP.org/english/images/report/AfriMAP_Ghana%20JusticeDD.pdf

Criminal Code, 1960 (Act 29)

Article 2 of the 1992 Constitution of Ghana subordinates all citizens, including ministers, to the Constitution.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

47

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes

No

Comments:

Article 284 of the 1992 Constitution of Ghana prohibits public officers from putting themselves in conflict of interest situations.

Article 286 requires the president and other public officials to declare their assets and liabilities upon assuming office and upon leaving office.

References:

Article 284 of the 1992 Constitution of Ghana

Article 286, 1992 Constitution of Ghana

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

Article 284 of the 1992 Constitution of Ghana prohibits public officers from putting themselves in conflict of interest situations.

Article 286 requires the president and other public officials to declare their assets and liabilities upon assuming office and upon leaving office, which is four years.

References:

Article 284 and Article 286 of the 1992 Constitution of Ghana

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

The legislation cited in the sources section of this indicator limits itself to code of conduct and conflict of interest without specifics. The Commission on Human Rights and Administrative Justice has produced conflict of interest guidelines for public officeholders, which are expected to be incorporated into a pending bill. However, the bill is becoming unduly delayed.

References:

Article 284 of the 1992 Constitution of Ghana prohibits public officers from putting themselves in conflict of interest situations.

Article 286 requires the president and other public officials to declare their assets and liabilities upon assuming office and upon leaving office, which is four years.

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes

No

Comments:

Laws require asset declarations, but they do not require public disclosure or auditing of disclosures. Efforts by civil society organizations to get the laws reviewed to provide for verification by the custodian have been frustrated by Parliament.

References:

Article 284 of the 1992 Constitution of Ghana prohibits public officers from putting themselves in conflict of interest situations.

Article 286 requires the president and other public officials to declare their assets and liabilities upon assuming office and upon leaving office.

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes

No

Comments:

Article 68(2) of the Constitution of Ghana bars the president from holding any office of profit or emolument except with the permission of Parliament.

No law bars ministers from going into the private sector.

References:

Article 68(2) of the Constitution of Ghana

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

The law permits a former president to enter the private sector only with the permission of Parliament. So far, no former president has taken up an office in the private sector.

In the case of ministers, there is no restriction. Some ministers even engage in private business while in office and also after they leave office.

References:

Kojo Asante, head of programs, Center for Democratic Development and lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, interviewed Sept. 2, 2011, in his office

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice produced guidelines to help public officials manage and resolve conflict of interest situations. However, these guidelines have not been enacted into law.

The constitutional provision (Article 284) is too broad and reads as follows: “A public officer shall not put himself in a position where his(her) personal interest conflicts or is likely to conflict with the performance of the functions of his(her) office” and does not specifically talk about gifts and hospitality. This compelled the implementing institution, the Commission for Human Rights and Administrative Justice, to produce the Guidelines on Conflict of Interest for Public Officers. Because these guidelines have not been codified, they are unenforceable in a court.

References:

Kojo Asante, Programs Department, Center for Democratic Development and lawyer by profession, interviewed Aug. 18, 2011, in his office

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The assets disclosures are not audited. Neither the Constitution nor the Public Officers (Assets Declaration and Disqualification) Act, 1998 (Act 550) expressly provides for the auditing of executive branch asset disclosures or those of any other branch of government.

However, Act 550 gives the custodian, the auditor general, the responsibility of formulating such regulations as he/she deems necessary to make the law effective. The auditor general's proposed regulations have been pending in Parliament for a very long time because Parliament does not agree with the provision on verification and public disclosures. In fact, the silence of the Constitution on verification of auditing has allowed many public officers, including members of Parliament, to argue that the law does not even allow for verification by the auditor general.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, legal officer, Center for Democratic Development, interviewed Aug. 18, 2011, in his office

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

The legislation does not provide for public disclosure. It does not even provide for verification by the custodian of the declarations.

References:

Article 286 of the 1992 Constitution of Ghana requires the president to file assets disclosures upon assuming office and upon leaving office.

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Some appointments to senior civil service positions, such as chief directors, are made from outside the existing structure and are perceived to demonstrate the partisan nature of these positions. As a result, most senior civil service servants are unable to separate their public functions from private/political ones. They struggle to remain loyal to the party and also carry out their civil service duties.

In several cases, civil/public officials have made statements as if they were speaking on political platforms. Also, there have been instances in which party members have protested against certain government officials and secured their removal because they awarded contracts to opposition members. Attendance by government officials at funerals of party members and their relatives, as well as official donations at these funerals, are another example of this conflict.

Party executives form part of official entourages of the president and ministers, both within and outside the country.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student at the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

83

32a. In law, the judiciary can review laws passed by the legislature.

Yes

No

References:

Article 2 of the 1992 Constitution of Ghana

Judicial Procedures and Practices

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100

75

50

25

0

Comments:

The judiciary is legally permitted to review laws enacted by the legislature that are inconsistent with the Constitution. Parliament appears to have enacted such laws, like the Assets Declaration Act and the Political Parties Act, but nobody seems interested in challenging them in the courts.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes

No

Comments:

Section 41 of the Criminal Procedure Code, 1960 (Act 30) provides for the general authority of courts to bring those accused before them. Privileges of parliamentarians as provided in Articles 115 to 120 of the 1992 Constitution of Ghana do not include immunity from criminal proceedings. Similarly, the Standing Orders of Ghana's Parliament (revised on Nov. 1, 2000) do not provide for immunity from criminal proceedings.

However, members of Parliament are immune from arrest and service of a summons while on their way to and from Parliament. This provision recently generated debate when a lawyer parliamentarian was arrested at a court premises and claimed he was on his way to Parliament.

References:

Section 41 of the Criminal Procedure Code, 1960 (Act 30)

Article 2 of the 1992 Constitution of Ghana

Articles 115 to 120 of the 1992 Constitution of Ghana

Standing Orders of Ghana's Parliament (revised on Nov. 1, 2000)

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

Articles 284 to 287 of the 1992 Constitution of Ghana deal with conflict of interest and require members of the legislature to file assets disclosure forms upon assuming office and upon leaving office, which is four years.

References:

Articles 284 to 287 of the 1992 Constitution of Ghana

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

Articles 284 to 287 of the 1992 Constitution of Ghana deal with conflict of interest and require members of the legislature to file asset disclosure forms upon assuming office and upon leaving office, which is four years.

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

References:

No law exists.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

The Conflict of Interest Guidelines for Public Officials produced by the Commission on Human Rights and Administrative Justice have not been codified and thus cannot be enforced.

However, Article 286 of the 1992 Constitution of Ghana requires the president to file asset disclosure forms upon assuming office and upon leaving office, which is four years.

References:

No law exists.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

No regulation governs the independent auditing of asset disclosure forms of members of the national legislature. The only requirements are that asset declaration forms be completed, put in sealed envelopes and deposited with the auditor general. The law is even silent about verification by the custodian of the declarations, rendering the law ineffective.

References:

Article 286 of the 1992 Constitution of Ghana requires members of the legislature to file asset disclosure forms upon assuming office and upon leaving office, which is four years.

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

No regulation restricts post-government employment in the private sector for legislators. Even while serving, members can and do engage in private-sector employment, though that requires permission from the speaker of Parliament, acting on the advice of a committee of Parliament.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The constitutional provision (Article 284) is too broad and reads as follows: “A public officer shall not put himself in a position where his(her) personal interest conflicts or is likely to conflict with the performance of the functions of his(her) office.” It does not specifically talk about gifts and hospitality. This has compelled the implementing institution, the Commission on Human Rights and Administrative Justice, to produce the Guidelines on Conflict of Interest for Public Officers. However, these guidelines have not been codified and are not enforceable in courts. Thus, the laws governing gifts and hospitality for members of the national legislature are not effective.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

Comments:

Neither the Constitution nor the assets declaration law expressly provides for auditing of asset declarations, and this is not done in practice. In fact, some members of Parliament argue that the auditor general has no power to audit asset declarations.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | **No**

Comments:

Article 286 of the 1992 Constitution of Ghana requires members of the legislature to file asset disclosure forms upon assuming office and upon leaving office, which is four years, but does not provide for public disclosure.

The Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) does not provide for public disclosure.

References:

No law exists.

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fio Fortunate Kwabena, student of the Ghana Law School, Accra, interviewed Sept. 2, 2011, in his office

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes

No

Comments:

The Hansard is the record of proceedings of Parliament and is sold at a very low price. Because the Hansard is sold at Parliament House in Accra and written only in English, it is not available or useful to many people.

References:

Section 25 of the Standing Orders of the Parliament of Ghana (Revised in November 2000)

Ghanaian Chronicle, Nov. 22, 2010, "West African Parliamentary Press Corps Formed,"
www.modernghana.com/news/305255/1/west-african-parliamentary-press-corps-formed.html

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100

75

50

25

0

Comments:

Ghana's Parliament has a website, but it is about to launch a new website, www.parliament.gh/

References:

Parliamentary Debates, Official Report, Nov. 18, 2010. The Hansard, which is the record of proceedings of Parliament, is available to the public at an insignificant cost.

Ghana's Parliament also has a website that is being updated. www.ghanamps.gov.gh/home/

Ghanaian Chronicle, Nov. 22, 2010, "West African Parliamentary Press Corps Formed,"
www.modernghana.com/news/305255/1/west-african-parliamentary-press-corps-formed.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs of parliamentary documents are insignificant.

References:

Parliament of Ghana's website, www.ghanamps.gov.gh/home/

Ghanaian Chronicle, Nov. 22, 2010, "West African Parliamentary Press Corps Formed," www.modernghana.com/news/305255/1/west-african-parliamentary-press-corps-formed.html

Personal encounters and request for documents

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

49

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

References:

Article 144 of the 1992 Constitution of Ghana

The Courts Act, 1993 (Act 459)

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed, Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

References:

Article 144 of the 1992 Constitution of Ghana

The Courts Act, 1993 (Act 459)

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

92

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

References:

Article 157 of the 1992 Constitution of Ghana provides for a Rules of Courts Committee to develop rules and regulations for procedures in courts.

The Courts Act, 1993 (Act 459)

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Although members of the national-level judiciary give reasons for their decisions, they sometimes delay providing them.

Judges have discretion to decide when to give reasons for a judgment. Depending on the sensitivity of a case, the judiciary may decide to withhold the reasons until later. For example, their reasoning in a case might be delayed or withheld if it could generate social strife.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed, Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes

No

Comments:

Article 154 of the 1992 Constitution of Ghana provides for establishment of a Judicial Council to, among others, be a forum for matters relating the judiciary, with a view to ensuring efficiency and effective realization of justice. Some high courts in the country have complaint desks to handle complaints from the public. Recently, two judges were dismissed after investigations into allegations of corruption and abuse of office.

References:

Article 154 of the 1992 Constitution of Ghana

Irene K. Odotei, Judicial Council of Ghana, <http://irenekodotei.org/content/judicial-council-ghana>

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes

No

Comments:

Articles 153 and 154 of the 1992 Constitution of Ghana provide for the establishment of the Judicial Council. The membership of the council upholds the independence of the council and its ability to monitor the judiciary. It is made up of the following people: (a) the chief justice, who shall be chairman; (b) the attorney general; (c) a justice of the Supreme Court nominated by the justices of the Supreme court; (d) a justice of the Court of Appeal nominated by the justices of the Court of Appeal; (e) a justice of the High Court nominated by the justices of the High Court; (f) two representatives of the Ghana Bar Association, one of whom shall

be a person of not less than 12 years' standing as a lawyer; (g) a representative of the chairmen of Regional Tribunals nominated by the chairmen; (h) a representative of the lower courts or tribunals; (i) the judge advocate-general of the Ghana Armed Forces; (j) the head of the Legal Directorate of the Police Service; (k) the editor of the Ghana Law Reports; (l) a representative of the Judicial Service Staff Association nominated by the association; (m) a chief nominated by the National House of Chiefs; and (n) four other people who are not lawyers appointed by the president.

References:

Articles 153 and 154 of the 1992 Constitution of Ghana

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Council, which is headed by the chief justice, has sometimes initiated investigations into allegations of impropriety or other untoward behavior by judges and other members of the judiciary. The most recent case was the investigation into the swap of cocaine for another substance when the case was pending in the courts. However, most of the time, the investigations are conducted internally. This could be enhanced by including citizens outside the judiciary on the committees set up to conduct such investigations.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed, Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Ghana News Link, Sept. 7, 2011, "Two Judges Sacked," www.ghananewslink.com/?id=16431

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Council, headed by the chief justice, is responsible for disciplining members of the judiciary. The judiciary also has set up complaints desks in some courts to serve the public. As cited in the news article on Ghana News Link, the chief justice ordered investigations of the conduct of two judges. Based on the findings of the investigations, they were dismissed.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed, Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Ghana News Link, Sept. 7, 2011, "Two Judges Sacked," www.ghananewslink.com/?id=16431

Phone interview with Ms. Lariba Nabila, Administrator at the Legal Resource Centre on August 19, 2011 at 12.05.

Phone interview with Mr. Charles Ayamdoo, Director of Anti-Corruption at the Commission for Human Rights and Administrative Justice (CHRAJ) and a lawyer by profession on August 28, 2011 at 5.00 pm.

Two Judges Sacked, Ghana News Link, 7th September, 2011 (<http://www.ghananewslink.com/?id=16431>)

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

Articles 286 and 287 of the 1992 Constitution of Ghana require all public officers to file declaration of assets and liabilities.

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

Section 284 of the 1992 Constitution of Ghana and Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) prohibit public officials from putting themselves in positions where their personal interests conflict with their duties. Judges are not mentioned, though they are public officers. Gifts and hospitality also are not specifically mentioned, though they are likely to influence public officers to put themselves into conflict of interest situations.

References:

Section 284 of the 1992 Constitution of Ghana

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

The Constitution does not categorically provide for the independent auditing of the asset disclosure forms of public officials, including judges. However, the custodian (auditor general) does not even verify the disclosures.

References:

No law exists.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

No law bars national-level judges from entering the private sector after leaving government service, but they are unlikely to want to do so. Retired judges are paid their salaries and other benefits as if they are in active service. However, some retired judges have become consultants for the government.

References:

Sections 284 to 286 of the 1992 Constitution of Ghana

Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | **50** | 25 | 0

Comments:

Although no law bars judges from going into the private sector after retirement, they rarely do. This is probably because they retire with their salaries and other benefits and at an older age (65 and 70).

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | **50** | 25 | 0

Comments:

A new code of conduct, based largely on the Bangalore Principles of Judicial Conduct and prepared for the judiciary and judicial staff through a committee set up by the chief justice, has come into force. However, this is not a law enacted by Parliament and may not be enforceable.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

Open Society Initiative for West Africa, 2007, “Ghana: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for West Africa and the Institute for Democratic Governance,”
www.afriMAP.org/english/images/report/AfriMAP_Ghana_Justice.pdf

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No regulation requires the independent auditing of asset disclosure forms of national-level judges. The only requirements are that asset declaration forms be completed, be put in sealed envelopes and be deposited with the auditor general. The law is even silent about verification by the custodian of the declarations, rendering the law ineffective.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

The Constitution and the Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550) do not provide for auditing of assets disclosure or even verification by the custodian of the disclosures.

References:

Article 286 of the 1992 Constitution of Ghana does not provide for public disclosure.

Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Just as the law does not provide for public disclosure, the custodian of the asset declarations does not make them accessible to the public, rendering the law ineffective.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are unavailable, so cost is not an issue.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Since there is no access to the asset disclosures, it is not possible to ascertain their quality.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

The 1992 Constitution gives Parliament the power to approve taxes and the estimates of expenditures: the national budget. This means, in principle, that Parliament can amend the budget. However, the power to amend the budget is limited since Parliament cannot introduce taxes or increase taxes or tax rates unless they are brought before it by the executive. Similarly, Parliament cannot increase any of the expenditure estimates that the executive brings before it, though it can revise estimates downward.

References:

Articles 174 and 179 of the 1992 Constitution of Ghana

Sections 169 and 170 of the Standing Orders of the Parliament provide for the functions of the Finance Committee of Parliament. These include authorization of expenditures from the contingency fund and its replenishment.

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100

75

50

25

0

Comments:

Parliament approves the budget, but it cannot amend the budget upward. It has always approved the budget since 1992. Because of the whip system in Parliament, the budget always gets approved. This is especially the case since the majority of Cabinet members are also members of Parliament.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | **50** | 25 | 0

Comments:

Parliament complains of inadequate capacity, but it also does not have enough time to debate the budget and sometimes is not given sufficient details. Besides, the partisan nature and composition of Ghana's Parliament are such that anything coming from the executive always gets approved.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

All debates in Parliament, including budget debates, are open to the public and are usually reported on by the press corps. However, not all committee proceedings are open to the public.

The minister of finance and economic planning presents the budget to the entire Parliament, and this presentation is open to the public with wide media coverage. The debates in the House that ensue are also open to the public. However, the Select Committee sittings that examine individual budget allocations for the sectors are not open to the public.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are invited and encouraged by the executive to provide advice on the budget at the design stage, and a list of citizens and institutions that do that is usually published in an appendix to the budget statement. However, the extent to which this advice find its way into the budget is not known. Many citizens do not participate, partly because they are unsure their suggestions would be considered.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his

office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The Appropriations Act is available for sale at the government publishers. The detailed estimates can also be found at ministries, though it is not easy to get copies of these. Because of the bulky nature and potential costs of these copies, the number printed is usually limited. Many citizens do not even know these documents exist, and many cannot make good use of them because of their technical nature.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

References:

Article 103(1) of the 1992 Constitution of Ghana provides for the establishment of standing committees of Parliament.

Section 151(2) of the Standing Orders of the Parliament (Revised Nov. 1, 2000) provides for establishment of the Public Accounts Committee.

Section 165 of the Standing Orders of the Parliament (Revised Nov. 1, 2000) provides for the composition and duties of the Public Accounts Committee of Parliament.

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

100

75

50

25

0

Comments:

The Public Accounts Committee of Parliament does not receive reports from department heads. The department heads submit reports to the Ministry of Finance and Economic Planning. However, the Public Accounts Committee receives audit reports on the ministries and agencies, debates them and makes recommendations to Parliament.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

A member of the opposition in Parliament is chairman of the Public Accounts Committee, while the ruling party has one more member than the opposition parties. However, one cannot completely rule out partisanship in the work of the committee.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

B.K. Acolatse, Internal Audit, Judicial Service, interviewed Aug. 18, 2011, in his office at the Supreme Court buildings in Accra

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Parliament, on the recommendation of the Public Accounts Committee, can appoint a Committee to conduct investigations into the findings of the Auditor-General if Parliament finds it to be in the national interest. However, Parliament has never taken advantage of this mandate, at least not in the last three years. Early this year, there was a case involving the payment of a

judgement debt, which was uncovered by the Auditor-General. The President asked the Economic and Organized Crime Office (EOCO) to investigate this payment and other judgement debts. It was only from then that the Opposition (some of the members of which were invited for the investigation) raised the issue that it is only Parliament that can investigate the matter. Even then, Parliament has not done anything about it.

References:

Kojo Asante, head of programs, Center for Democratic Development, lawyer by profession, interviewed Aug. 18, 2011, in his office

Fortunate Fio Kwabena, student at the Ghana Law School, interviewed Oct. 2, 2011, at the law school in Accra

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁵⁵Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

Comments:

Article 190 of the 1992 Constitution of Ghana provides for the Public Services of Ghana, including the Civil Service.

Article 191 of the Constitution states that a member of the Public Services shall not be: a) victimized or discriminated against for having discharged his duties faithfully in accordance with this Constitution; or b) dismissed or removed from office or reduced in rank or otherwise punished without just cause.

Sections 75 to 80 of the Civil Service Law, 1993 (PNDCL 327) address misconduct and penalties.

The Code of Conduct for the Civil Service, though not a law, provides for sanctions against civil servants whose conduct violates the code.

References:

Article 190 of the 1992 Constitution of Ghana

Article 191 of the Constitution

Sections 75 to 80 of the Civil Service Law, 1993 (PNDCL 327)

Code of Conduct for the Civil Service

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

References:

Civil Service Interim Regulations, 1960 (L.147)

Sections 76 and 88 of the Civil Service Law, 1993 (PNDCL 327)

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Articles 216 to 219 of the 1992 Constitution of Ghana provide for establishment of the Commission on Human Rights and Administrative Justice with an ombudsman mandate, among others.

References:

Articles 216 to 219 of the 1992 Constitution of Ghana

The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Section 87 of the Civil Service Law, 1993 (PNDCL 327)

Code of Conduct for Civil Servants

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes

No

References:

Section 58 of the Civil Service Law, 1993 (PNDCL 327)

Sections 9 to 11 of the Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

50

45a. In practice, civil servants are protected from political interference.

100

75

50

25

0

Comments:

A summary of the workshop "Increasing Public-Sector Effectiveness by Changing Organizational Culture," held Dec. 3, 2003, in Accra, says: "Participants were unanimous that one of the key issues that has undermined Ghana's public service is political interference. Instead of pursuing the national interest, Ghana's public service has tended to serve political and personal interests. The politicization of the public service and the recent economic difficulties in the country have combined to destroy completely the civil-service culture the country inherited at independence."

More than a half-decade later, the situation has not changed. In fact, it is worsening. Professor Joseph Atsu Ayee, dean of the faculty of social studies at the University of Ghana, legon, in a lecture at the British council in 2009 drew attention to the creeping phenomenon jeopardizing the professionalism of the Civil Service: the appointment of chief directors from outside the service and the perception this practice is based on partisan considerations.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

Clement Atagra, The Ghanaian Times, May 6, 2009, "Don't Politicise Civil Service Appointments," www.modernghana.com/news/214701/1/dont-politicise-civil-service-appointments.html

Joseph R. A. Ayee, African Journal of Political Science, 2001, "Civil Service Reform in Ghana: A Case Study of Contemporary Reform Problems in Africa," <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/political%20science/volume6n1/ajps006001002.pdf>

Iowa State University in U.S., Ghana Institute of Management and Public Administration and World Bank-Netherlands Governance Knowledge Sharing Program, "Increasing Public-Sector Effectiveness by Changing Organizational Culture Workshop on the Effectiveness of Public Organizations," Dec. 3, 2003, Coconut Grove Regency Hotel, Accra, www.public.iastate.edu/~fowusu/Accra%20Workshop/Workshop%20Report.pdf

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Political considerations, corruption and ethnicity cannot be ruled out in the appointment, assessment and promotion of civil servants. This possibility makes the professionalism of the Civil Service questionable. In practice, chief directors are appointed from outside the Civil Service. These appointees know they will be removed when there is a change of government. It is often argued that they have the requisite qualification for the positions, but the practice frustrates those in the system who expect to be appointed or promoted to these key positions, fosters insecurity in the system and can promote corruption and forced loyalty to the ruling party.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

Clement Atagra, The Ghanaian Times, May 6, 2009, "Don't Politicise Civil Service Appointments," www.modernghana.com/news/214701/1/dont-politicise-civil-service-appointments.html

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

Comments:

Political considerations, corruption and ethnicity cannot be ruled out in the appointment, assessment and promotion of civil servants. This possibility makes the professionalism of the Civil Service questionable. In practice, chief directors are appointed from outside the Civil Service. The appointees know they will be removed when there is a change of government. It is often argued that they have the requisite qualifications for the positions, but the practice frustrates those in the system who expect to be appointed or promoted to these key positions, fosters insecurity in the system and can promote corruption and forced loyalty to the ruling party.

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A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

Clement Atagra, The Ghanaian Times, May 6, 2009, "Don't Politicise Civil Service Appointments," www.modernghana.com/news/214701/1/dont-politicise-civil-service-appointments.html

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

The term “Siberia” is used to describe job schedules or geographic locations that are generally not liked, and civil servants who are not liked are usually put on such schedules or transferred to the geographic locations as a form of punishment.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers’ leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers’ leader is not an employee of the government and does not owe allegiance to the government.

Clement Atagra, The Ghanaian Times, May 6, 2009, “Don’t Politicise Civil Service Appointments,” www.modernghana.com/news/214701/1/dont-politicise-civil-service-appointments.html

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

Comments:

Civil servants, unlike workers in the corporate sector, do not have financial targets that, when achieved, entitle them to bonuses. They do have allowances or may be given allowances that are equal to bonuses.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

Clement Atagra, The Ghanaian Times, May 6, 2009, "Don't Politicise Civil Service Appointments," www.modernghana.com/news/214701/1/dont-politicise-civil-service-appointments.html

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Each ministry, department and agency has what we call the Establishment, which provides a list of the staff positions approved for the institution. However, this list is not in the public domain and may not be easily seen.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice, which has been given an ombudsman role, is the independent redress mechanism. The commission is independent of the executive and has played a reasonably neutral role in carrying out its mandate.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

However, there have been complaints about the delayed implementation of a new salary structure, the Single Salary Structure, which is expected to be better than the current structure. In some cases, strikes have been threatened.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

In general, civil servants convicted of corruption are prohibited from future government employment, though there have been a few cases when such civil/public servants found their way back into the service. This is usually the case when a conviction has been politicized or a presidential pardon is granted.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

22

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

References:

Article 286 of the 1992 Constitution of Ghana

Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550)

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Article 284 of the 1992 Constitution of Ghana prohibits public officials from putting themselves in positions where their personal interests conflict with the performance of their duties.

References:

Article 284 of the 1992 Constitution of Ghana

Sections 76, 88 and 92 of the Civil Service Law, 1993 (PNDCL 327)

Guiding Principles of the Code of Conduct for Civil Service

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | **No**

Comments:

While still part of the Civil Service, some workers are believed to engage in private-sector enterprise and even award contracts to their personal companies. Some do it subtly by setting up the companies using the names of family members and other relatives.

References:

The Civil Service Law 1993 (PNDCL 327) does not bar civil servants from entering the private sector after retirement.

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | **No**

Comments:

No regulations specifically address gifts and hospitality, though they are presumed to be covered by the Constitution and the Civil Service Law.

The Commission on Human Rights and Administrative Justice has produced guidelines on conflict of interest, but they are not binding because they remain uncodified.

References:

No law exists.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

Comments:

Unfortunately, the legislation cited here does not provide for independent auditing, public disclosure or even verification by the

custodian of the declarations.

References:

No law exists.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning, She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No regulations govern the independent auditing of asset disclosure forms of members of the national legislature. The only legal requirements are that the forms be completed, put in sealed envelopes and deposited with the auditor general. The law is even silent about verification by the custodian of the declarations.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed August, 26, 2011, in his office.

Kojo Asante, legal officer, Center for Democratic Development, interviewed Aug. 18, 2011, in his office.

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

The legislation that provides for asset disclosure does not provide for public disclosure or even verification by the custodian of the declarations.

References:

Article 286 of the 1992 Constitution of Ghana provides for the declaration of assets and liabilities by public officers but not for their public disclosure.

Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550) provides for declaration by public officers of their assets and liabilities but not for public disclosure.

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, legal officer, Center for Democratic Development, interviewed Aug. 18, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, legal officer, Center for Democratic Development, interviewed Aug. 18, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, legal officer, Center for Democratic Development, interviewed Aug. 18, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

56

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes

No

References:

Section 12 of the Whistleblower Act, 2006 (Act 720) applies to all sectors of Ghanaian society, including civil servants.

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100

75

50

25

0

Comments:

There have been calls for an amendment to the Whistleblower Act, 2006 (Act 720), which provides protection from recrimination or other negative consequences for civil servants who report corruption, graft, abuse of power or abuse of resources, because the protection it provides is not adequate. In cases where the reports concern the top people in a structure, there is sometimes a way of turning the allegation against the whistleblower, who ends up being penalized. Workers are reluctant to report corruption, especially if it involves their superiors, because they fear recrimination.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

The Whistleblower Act, 2006 (Act 720) applies to all acts of corruption, whether in the public or private sectors.

References:

The Whistleblower Act, 2006 (Act 720)

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

With the high level of unemployment in Ghana, private sector employees do not enjoy the protections of public service

employees. The service conditions for most of them are not the best, and they cannot challenge them because they risk losing their jobs.

References:

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes

No

Comments:

The Whistleblower Act, 2006 (Act 720) does not provide a hot line, email address or local office for the reporting of cases, though it does list the institutions where one can report something. A civil society organization, Ghana Integrity Initiative, provides a toll-free telephone line for corruption victims and witnesses to use to reach its Advocacy and Legal Advice Center.

References:

No law exists.

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

13

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

There are no formal internal reporting mechanisms, but when a case is reported to the head of the institution, he/she may order investigations and institute disciplinary action. This will depend on the discretion of the head of the institution and possible related factors.

References:

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

Janet Fofie, director at the Public Services Commission, completed questionnaire sent to her by e-mail, Sept. 28, 2011

Estelle Appiah, legislative consultant with the Ghana Statistical Service, interviewed Oct. 6, 2011, in her office at the GSS offices within the Ministry of Finance and Economic Planning. She is a retired civil servant and owes no allegiance to the government.

A workers' leader of the Civil Service who wished to remain anonymous, interviewed Oct. 7, 2011, in his office. The workers' leader is not an employee of the government and does not owe allegiance to the government.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

23 4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

75

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Articles 284 and 286 of the 1992 Constitution of Ghana prohibit public officials from putting themselves in conflict of interest situations and also require declaration of assets.

Section 86 of the Public Procurement Act, 2003 (Act 663) provides for the compilation of a code of conduct for all officials involved in the public procurement process.

Section 92 of the Public Procurement Act, 2003 (Act 663) prescribes penalties for officials who contravene the law.

References:

Articles 284 and 286 of the 1992

Section 86 of the Public Procurement Act, 2003 (Act 663)

Section 92 of the Public Procurement Act, 2003 (Act 663)

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

References:

Section 3(j)(k) of the Public Procurement Act, 2003 (Act 663) provides for facilitation of training for public officials involved in public procurement.

Regulations of the Public Procurement Act, 2003 (Act 663) www.ppaghana.org/documents/GhanaPPARegualtions.pdf

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

There are no specific regulations for conflicts of interest, so officials involved in public procurement are expected to comply with the general laws on conflict of interest. The Public Procurement Authority is required to compile a code of conduct for procurement officials, but this does not seem to have been done yet.

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office

Issah Alhassan, Ghanaian Chronicle, Sept. 7, 2009, "Conflict of interest? K-Poly Rector in \$19,000 Circus ... Accused of Breaching Procurement Procedures," www.modernghana.com/news/236914/1/conflict-of-interestk-poly-rector-in-19-000-circus.html

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

Comments:

No specific law provides for monitoring of assets, income and spending habits of public procurement officials. Public officials in general are required to declare their assets and liabilities when they assume office, when they leave office, and every four years. These declarations are not publicly disclosed or verified by their custodian.

References:

Article 286 of the 1992 Constitution of Ghana applies to public officials in general.

Public Office Holders (Assets Declaration and Disqualification) Act, 1998 (Act 550) provides for assets declaration by public officials in general.

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

Section 35 of the Public Procurement Act, 2003 (Act 663) states that competitive tendering shall be the preferred method.

References:

Section 35 of the Regulations of the Public Procurement Act, 2003 (Act 663),
www.ppaghana.org/documents/GhanaPPARegualtions.pdf

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Section 40 of the Public Procurement Act, 2003 (Act 663) defines the conditions for sole sourcing.

Section 40 of the Regulations of the Public Procurement Act, 2003 (Act 663) restates the provision of the act on sole sourcing.

References:

Section 40 of the Public Procurement Act, 2003 (Act 663)

Section 40 of the Regulations of the Public Procurement Act, 2003 (Act 663)

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

The appeals and complaints procedure has exceptions, or when one cannot challenge the decision of a procurement authority.

Section 78 of the Public Procurement Act (Act 663) provides for review of procurement decisions.

References:

Section 78 of the Public Procurement Act (Act 663)

“Appeals and Complaints Process Under the Public Procurement Act, 2003 (Act 663): Improving Efficiency and Transparency in Public Procurement.” www.ppaghana.org

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes

No

Comments:

Procurement regulations refer to the court as the final arbiter in any dispute.

References:

Public Procurement Act, 2003 (Act 663)

Regulations of the Public Procurement Act, 2003 (Act 663), www.ppaghana.org/documents/GhanaPPARegualtions.pdf

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes

No

Comments:

Section 3's (q) and (r) subsections empower the Public Procurement Authority to investigate and debar from procurement, suppliers, contractors and consultants who have seriously neglected their obligations under a contract, provided false information about their qualifications or offered inducements of the kind referred to in Section 32 of the Public Procurement Act.

Section 3(13) of the Procurement Act gives the Procurement Authority the power to debar companies guilty of major violations for one year and to compile a list of such companies and make it available to tender entities.

Section 92 of the act deals with offenses against the Procurement Authority. Section 93 deals with corruption.

References:

Section 3(q) and (r), Section 32, Section 3(13) of the Public Procurement Act.

Section 92 of the act deals with offenses against the Procurement Authority. Section 93

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

This should be the case, but it does not happen.

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office at Osu

Public Procurement Authority website, www.ppaghana.org

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec, 15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

88

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

The Public Procurement Authority maintains a website and publishes a newsletter, which make relevant information available to the public.

References:

Section 95 of the Public Procurement Act, 2003 (Act 663) says the chief executive of the Public Procurement Authority shall ensure that administrative rulings and directives of general application are promptly made available to the public.

Public Procurement Authority website, www.ppaghana.org

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

Section 56(4) of the procurement act requires the Public Procurement Authority to announce the name and address of each supplier or contractor whose tender is opened, and to announce the tender price to those present at the opening. It also must communicate on request to a supplier or contractor who submitted a tender but was not present or represented at the opening.

However, information relating to the examination, clarification, evaluation and comparison of tenders it not to be disclosed to suppliers or contractors or to any other person not involved officially in the tender procedure or in the decision on tender choice, except as provided in Section 28 on the record of procurement proceedings.

References:

Section 56(4) of the Procurement Act

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

Comments:

The Public Procurement Authority has a website where regulations, pending tenders, awarded tenders and other information is available.

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office at Osu

Public Procurement Authority website, www.ppaghana.org

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec,15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

Comments:

The Public Procurement Authority, or PPA, has a website that publishes procurement regulations, advertisements and award information. This is free, except for the cost of using the Internet since most Ghanaians do not have their own Internet service. In addition, the PPA publishes a bulletin that provides procurement information from time to time.

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office at Osu

Public Procurement Authority website, www.ppaghana.org

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec,15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office at Osu

Public Procurement Authority website, www.ppaghana.org

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec,15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

This is very easy if one has access to the Internet.

References:

Eric Appiah, public relations officer, Public Procurement Authority, interviewed Aug. 18, 2011, in his office at Osu

Public Procurement Authority website, www.ppaghana.org

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

References:

Chapter 6 of the 1992 Constitution of Ghana (Directive Principles of State Policy)

Divestiture of State Interests Implementation Law, 1993 (PNDC 326), www.dic.com.gh/div-prog/index.html

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes

No

Comments:

Article 284 of the Constitution of Ghana prohibits conflict of interest by public officials in general, including government officials involved in privatization.

References:

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326), www.dic.com.gh/div-prog/index.html

Article 284 of the Constitution of Ghana

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100

75

50

25

0

Comments:

There are no specific regulations on conflict of interest for public officers engaged in the privatization of public enterprises. Even the general provisions in the Constitution on conflict of interest are not enforced, just as the related provision on asset disclosures is not also enforced.

References:

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec. 15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Articles 284 to 286 of the 1992 Constitution of the Republic of Ghana

Public Office Holders (Disqualification and Assets Declaration Act, 1998 (Act 550)

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

Yes

No

References:

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326), www.dic.com.gh/div-prog/index.html

Divestiture Implementation Committee website, www.dic.com.gh/procedure/index.html

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100

75

50

25

0

Comments:

The Divestiture Implementation Committee has a website where privatizations are usually advertised. They are also advertised in newspapers. Thus, one can conclude that privatizations are effectively advertised. However, most of the viable state-owned enterprises earmarked for privatization have been sold, so there is no new information on the website.

References:

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326), www.dic.com.gh/div-prog/index.html

Divestiture Implementation Committee website, www.dic.com.gh/procedure/index.html

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326), www.dic.com.gh/div-prog/index.html

Divestiture Implementation Committee website, www.dic.com.gh/procedure/index.html

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Divestiture Implementation Committee has a website where privatizations are usually advertised. They are also advertised in newspapers. Once privatization regulations are in the public domain (website and newspapers), citizens can gain access to them within a reasonable time period. However, most of the viable state-owned enterprises earmarked for privatization have been sold, and so there is no new information on the website.

References:

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec. 15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326), www.dic.com.gh/div-prog/index.html

Divestiture Implementation Committee website, www.dic.com.gh/procedure/index.html

Bureau of Economic, Energy and Business Affairs, February 2009, "Investment Climate Statement — Ghana"

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The Divestiture Implementation Committee has a website where privatizations are usually advertised. They are also advertised in newspapers. Once the regulations are in the public domain (that is, the website and newspapers), citizens can gain access to them at no cost. However, most of the viable state-owned enterprises earmarked for privatization have been sold, so there is no new information on the website.

References:

Linda Ofori-Kwafo, programs manager, Ghana Integrity Initiative, an anti-corruption civil society organization, completed questionnaire Dec. 15, 2011.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Divestiture of State Interest Implementation Law, 1993 (PNDCL 326),
www.dic.com.gh/div-prog/index.html

Divestiture Implementation Committee website, www.dic.com.gh/procedure/index.html

Bureau of Economic, Energy and Business Affairs, February 2009, "Investment Climate Statement — Ghana"

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

The Commission on Human Rights and Administrative Justice is the ombudsman in Ghana, though it also has other mandates. Articles 216 to 219 of the 1992 Constitution of Ghana provide for establishment of the Commission on Human Rights and Administrative Justice, while Article 218(b) provides for its ombudsman function.

References:

Articles 216 to 219 of the 1992 Constitution of Ghana

The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

Article 225 of the 1992 Constitution of Ghana protects the Commission on Human Rights and Administrative Justice from political interference. The commissioner and her two deputy commissioners have security of tenure. Once appointed, they cannot be removed. However, they are appointed by the president, and one cannot rule out possible partisan considerations in their appointments.

References:

Article 225 of the 1992 Constitution of Ghana

Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is independent of the executive. However, the appointments of the commissioner and the two deputy commissioners are the prerogative of the president on the advice of the Council of State. If these officials view their appointments as favors from the executive, this could jeopardize their independence. The president might also delay filling a position and have the work done by someone in an acting capacity, which could limit the independence of the acting official.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the ombudsman agency, which is the same as the Commission on Human Rights and Administrative Justice, is protected from removal without relevant justification. Since the agency's inception in 1993, its leader has never been removed. Even when he was seconded to the United Nations for about five years, he was not replaced until he returned and resigned voluntarily later. When he stepped down in 2011, a deputy commissioner was appointed to act in his stead, until she too resigned. A substantive (not acting) commissioner was then appointed.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Even though the ombudsman has professional staff, its size is generally inadequate.

The Commission on Human Rights and Administrative Justice, which functions as the ombudsman entity, has a professional staff, including lawyers and investigators. However, their number is not adequate for the amount of work to be done and to cover the whole country. The commission, or CHRAJ, has offices in all 20 regions of the country and about 90 of 170 districts. Some of these offices do not have lawyers and trained investigators to carry out the commission's mandate.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The commissioner for human rights and administrative justice and his/her two deputies are appointed by the president on the advice of the Council of State. These appointments could be based on considerations other than merit such as perceived political loyalty. This could limit the independence of the appointees. However, once appointed, the commissioner and the two deputies cannot be removed without justification. It should also be noted that the president can sometimes appoint acting commissioners, who can be replaced at any time without any explanation. This can be another subtle way of maintaining their loyalty to the executive.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman agency receives regular funding, though there is always the contention that this funding is not adequate for the agency's recurrent expenditures and its operations. The funding has substantially increased in the past three years, along with financial support from donors.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman agency, which is the Commission on Human Rights and Administrative Justice, or CHRAJ, provides annual reports to Parliament on its activities and to Ghanaians on the state of human rights and corruption in the country. Furthermore, the CHRAJ releases reports of its investigations into individual cases through the media. However, the investigations often are delayed.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In accordance with a Supreme Court ruling, the ombudsman cannot initiate its own investigation. Somebody must make a complaint before the ombudsman can begin an investigation.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The CHRAJ can and sometimes does impose penalties, but it can enforce them only through the High Courts.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

The government decides what issues to pursue. In particular, the government does not take action on prosecution of public officials.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

Sometimes, a heavy workload and limited staff lead to delays in acting on complaints.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

Comments:

Article 218(g) of the 1992 Constitution of Ghana requires the Commission on Human Rights and Administrative Justice to report to Parliament annually on the performance of its functions. Once the commission reports to Parliament, the report becomes a public document. Furthermore, the commission announces its findings when they are ready.

References:

Article 218(g) of the 1992 Constitution of Ghana

Commission on Human Rights and Administrative Justice (CHRAJ) Act, 1993 (Act 456)

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman, which is the Commission on Human Rights and Administrative Justice, provides annual reports to Parliament on its activities and to Ghanaians on the state of human rights and corruption in the country. This means the reports come after the year has ended. However, the CHRAJ also releases reports of its investigations into individual cases through the media. The investigations often are delayed.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman provides annual reports to Parliament on its activities and to Ghanaians on the state of human rights and corruption in the country. Once the annual report is presented to Parliament, it becomes a public document and does not involve a cost. The CHRAJ also releases reports of its investigations into individual cases through the media. Similarly, reports of individual cases that are released through the media do not involve a cost, except for the newspaper. As such, the costs can be considered reasonable.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

Article 187 of the 1992 Constitution of Ghana provides for establishment of the auditor general, while Article 188 provides for the Audit Service. The Audit Service, headed by the auditor general, is the national supreme audit institution.

References:

Article 187 of the 1992 Constitution of Ghana

The Audit Service Act, 2000 (Act 584)

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

The Constitution and the Audit Service Act, 2000 ensure the independence of the auditor general, who is the head of the national supreme audit institution. Once appointed, he cannot be removed except for stated misbehavior, incompetence or the inability to perform his/her duties because of infirm body or mind as provided in Article 146 of the 1992 Constitution with regard to a justice of the Superior Court of Judicature.

Article 187(7a) of the 1992 Constitution of Ghana provides for the independence of the supreme audit institution.

Section 18(1a) of the Audit Service Act, 2000 (Act 584) states that "In the performance of his functions under this Act or any other law the Auditor-General (a) shall not be subject to the direction or control of any other person or authority."

References:

Article 187(7a) of the 1992 Constitution of Ghana

Section 18(1a) of the Audit Service Act, 2000 (Act 584)

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100

75

50

25

0

Comments:

The head of the audit agency is protected from removal without relevant justification. Since 1992, when Ghana returned to civilian rule, no head of the audit agency has been removed from office. When a vacancy has occurred, the appointee has always come from within the agency.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Service has 41 accountants, 4 lawyers and 209 graduates. However, these numbers are still inadequate to carry out the full mandate of the supreme audit institution.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The independence of the auditor general and the Audit Service, which he/she heads, is guaranteed by the Constitution and the law setting up the service. Once appointed, the auditor general can not be removed without justification. However, the appointment is made by the president, sometimes without advertisement and a transparent recruitment process. Such a situation could put the appointee in a compromised position if he/she sees the appointment as a favor from the executive.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Service receives regular funding through the budget for its operations. In addition, it sometimes receives support from donors. However, this funding is still considered inadequate.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency submits regular reports to Parliament, some of which are subject to public hearings by the Public Accounts Committee of Parliament. Once the reports are brought before Parliament, they become public documents. However, because of logistical constraints, the public mainly does not have access to the reports.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Despite public hearings by the Public Accounts Committee of Parliament, no serious action appears to be taken on these reports. In most ministries, departments and agencies, the audit implementation committees do not exist or are not operational.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Service can initiate its own investigations, but it hardly does so. The reasons include a heavy workload and limited resources.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Once the reports of the auditor general are submitted to Parliament, they become public documents.

References:

Article 187(5) of the Constitution of Ghana states that the auditor general shall “submit his report to Parliament and shall, in that report, draw attention to any irregularities. ...”

The Audit Service Act, 2000 (Act 584) requires the auditor general to submit his reports to Parliament.

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Once the audit reports are submitted to Parliament, they become public documents and can be seen by the public. However, the audits themselves are delayed, and it is not easy to gain access to copies of the reports because of logistical constraints.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are not sold, and the only cost may be that of making photocopies when the originals are not available. The Audit Service is not able to publish large quantities for distribution, even for a charge.

References:

Vincent Nyame Odikro, Legal Department, Audit Service, interviewed Aug. 26, 2011, in his office

Kojo Asante, director of programs, Center for Democratic Development, interviewed Aug. 28, 2011, in his office

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

88

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

The Ghana Revenue Authority Act, 2009 (Act 791) replaced the defunct Revenue Agencies Governing Board with three revenue agencies: the Internal Revenue Service; the Customs, Excise and Preventive Service; and the Value Added Tax Service, effective Dec. 31. 2009.

References:

The Ghana Revenue Authority Act, 2009 (Act 791), www.gra.gov.gh/docs/info/gra_act.pdf

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Newly recruited tax officials are given professional training before they assume office, and from time to time existing staff members are updated on tax laws. It is possible that the number of tax officials is inadequate and that the offices of the tax agencies do not cover the whole country.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. He, therefore, owes no allegiance to the government or the tax authorities.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Although the money may not be adequate, the tax authority receives regular funding. The funding is supposed to be a certain percentage of the authority's collections.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. As a former management staff member of the IRS, he knows much about the tax authority and has a large amount of experience in the IRS.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

75

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In several cases, the government has signed agreements with businesses granting them tax concessions that are not uniform. For enforcement, the situation is equally not uniform. There is a perception that corruption is rife in the tax collection agencies and that uniform enforcement of the tax laws cannot be guaranteed.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. As a former management staff member of the IRS, he knows much about the tax authority and has a large amount of experience in the IRS.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

References:

Customs, Excise and Preventive Service (Management) Law, 1993 (PNDL 330)

Customs and Excise (Duties and Other Taxes) Act, 1996 (act 512)

Ghana Revenue Authority Act, 2009 (Act 791)

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Customs officers go through professional training, including military training (they man the points of entry into the country), before assuming their duties.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. As a former management staff member of the IRS, he knows much about the tax authority and has a large amount of experience in the IRS.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The revenue collection agencies, including the Customs, Excise and Preventive Service, retain a certain percentage of their collections for operations. Thus, as long as they continue to collect revenue, they will continue to have funding.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. As a former management staff member of the IRS, he knows much about the tax authority and has a large amount of experience in the IRS.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There are several reports about corruption in the customs agency, and it is generally believed that the law is not enforced uniformly. Instances of corruption within Customs have been uncovered by the media.

References:

Bernard Anaba, programs officer, Integrated Social Development Center, completed questionnaire, Dec. 14, 2011. ISODEC is a rights-based civil society organization, and Anaba works on tax advocacy.

Francis Nartey, retired chief inspector of taxes, Internal Revenue Service, interviewed Aug. 19, 2011, by phone. Nartey retired about five years ago and is a private tax consultant. and owes no allegiance to the tax authorities and the government.

Edward Gyamera, Domestic Tax Division, Ghana Revenue Authority, Osu, interviewed Aug. 29, 2011, at his office in Osu

Feb. 2, 2011, "Aremeyaw Speaks: Tema Harbour Expose!" <http://blogs.myjoyonline.com/sms/2011/02/02/anas-aremeyaw-speaks-tema-harbour-expose/>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

References:

State Enterprises Commission Law, 1987 (PNDCCL 170),
<http://ghanalegal.com/?id=3&law=559&t=ghana-laws>.

Audit Service Act, 2000 (Act 584)

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

References:

The State Enterprises Commission Law, 1987 (PNDCL 170) does not provide the commission with independence from the executive (political leaders) of the country.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

Even though they have full-time professional staff members, the number is not adequate.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The State Enterprises Commission, the supervisory agency for state enterprises, can initiate investigations but faces limitations on disciplinary action it can take. It is also not independent of the executive.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The agency that oversees state-owned enterprises, the State Enterprises Commission, sometimes investigates and takes action against state enterprises that fail to submit reports or that demonstrate other shortcomings. However, the commission's ability to impose penalties is limited.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

80

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

References:

Companies Code, 1963 (Act 79) requires that companies, including state-owned enterprises, keep financial records and give the public access to them.

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

State companies are required to prepare annual financial statements and have them audited and published. In fact, this is a basic requirement for all companies, even nongovernmental, nonprofit organizations, registered with the Registrar General's Department and other state agencies.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

State companies are required by law to prepare annual financial statements and have them audited and published. In fact, this is a basic requirement for all companies, even nongovernmental, nonprofit organizations, registered with the Registrar General's Department and other state agencies. The accounts are audited according to international accounting standards.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

State companies are required to prepare annual financial statements and have them audited and published. In fact, this is a basic requirement for all companies, even nongovernmental, nonprofit organizations, registered with the Registrar General's Department and other state agencies. However, some of these audited accounts are delayed and may not be put in the public domain within a reasonable period of time. No penalties are imposed for the delays.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Most state-owned enterprises publish their audited financial statements in the newspapers, though the details are not available to citizens. In this case, citizens can access the financial records of state-owned companies at no cost.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

80
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

According to the Directive Principles of State Policy as contained in Chapter 6 of the 1992 Constitution of Ghana, the state must ensure ample opportunity for individual initiative and creativity in economic activities and foster an enabling environment for a pronounced role of the private sector in the economy.

References:

Section 8 of the Companies Code, 1963 (Act 79)

Directive Principles of State Policy, Chapter 6 of the 1992 Constitution of Ghana

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Section 14(b) of the Companies Code, 1963 (Act 79) requires the Registrar General's Department to register a company, unless the company has not complied with the requirements for registration.

References:

Section 14(b) of the Companies Code, 1963 (Act 79)

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Despite efforts to drastically reduce the time it takes to register a business, delays still occur because some officials and middle

people attempt to extract money from those who do not know the procedures for registration. And despite computerization, there are complaints of files not being found when a business goes for renewal.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Registrar General's Department charges fees that seem reasonable but could still be beyond the reach of ordinary people. In addition, there are other costs such as travel to the capital and multiple registration with other state agencies.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

Section 10(a) of the Labor Act, 2003 (Act 651) provides the right to safe and healthy work conditions.

Sections 118 to 121 of the Labor Act, 2003 (Act 651) make it the responsibility of the employer for health and safety conditions at work.

References:

Section 10(a) of the Labor Act, 2003 (Act 651)

Sections 118 to 121 of the Labor Act, 2003 (Act 651)

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

Section 10(a) of the Labor Act, 2003 (Act 651) provides the right to safe and healthy work conditions.

Sections 118 to 121 of the Labor Act, 2003 (Act 651) make it the duty of the employer to provide these work conditions.

References:

Section 10(a) of the Labor Act, 2003 (Act 651)

Sections 118 to 121 of the Labor Act, 2003 (Act 651)

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

Section 10(a) of the Labor Act, 2003 (Act 651) provides the right to safe and healthy work conditions.

Sections 118-21 of the Labor Act, 2003 (Act 651) make it the duty of the employer to provide these work conditions.

References:

Section 10(a) of the Labor Act, 2003 (Act 651)

Sections 118-21 of the Labor Act, 2003 (Act 651)

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections are required by law. However, these inspections are sometimes not carried out or are delayed. There are also allegations and complaints of corruption during these inspections, which often result in no sanctions being imposed on those who do not meet the required standards.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Business inspections are required by law. However, these inspections are sometimes not carried out or are delayed. There are also allegations and complaints of corruption during these inspections, which often result in no sanctions being imposed on those who do not meet the required standards.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

State agencies such as the National Fire Service, Ghana Ports Authority and the Ghana Highways Authority carry out inspections

of businesses, but there are still businesses that do not meet the required standards.

References:

William Botchway, public relations officer, Electricity Company of Ghana, interviewed Aug. 30, 2011, in his office at the Ministries, Accra

Anonymous respondent at the Registrar General's Department, interviewed Aug. 30, 2011, at the department

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

Article 218(e) of the 1992 Constitution of Ghana states that the functions of the Commission on Human Rights and Administrative Justice shall include: investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the attorney general and the auditor general, resulting from such investigations.

Sections 239 to 242 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana make corruption a crime.

References:

Article 218(e) of the 1992 Constitution of Ghana

Sections 239 to 242 of the Consolidated Criminal Code Act, 1960 (Act 29)

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes

No

Comments:

Sections 151 and 247 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana make extortion a crime.

References:

Sections 151 and 247 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes

No

Comments:

Sections 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana make bribery a crime.

References:

Sections 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Sections 244, 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana make bribery, whether receiving or giving, a crime.

References:

Sections 244, 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

Sections 244, 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana make bribery, whether a local or foreign official, a crime.

References:

Sections 244, 245 and 252 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

Section 260 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana makes the use of public resources for private gain illegal.

Section 62 of the Financial Administration Act, 2003 (Act 654)

References:

Section 260 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana makes the use

Section 62 of the Financial Administration Act, 2003 (Act 654)

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes

No

Comments:

Section 179(c) of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana makes the use of confidential information for private gain illegal.

References:

Section 179(c) of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes

No

Comments:

Anti-Money Laundering Act, 2008 (Act 749) makes money laundering illegal.

References:

Anti-Money Laundering Act, 2008 (Act 749)

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Section 23 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana makes conspiracy to commit a crime illegal.

References:

Section 23 of the Consolidated Criminal Code Act, 1960 (Act 29) of Ghana

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

Articles 216 to 230 of the 1992 Constitution of Ghana provide for establishment of the Commission on Human Rights and Administrative Justice, with an additional mandate to combat corruption.

Article 190(1d) of the 1992 Constitution of Ghana authorizes Parliament to set up public services other than those listed in the Constitution.

References:

Articles 216 to 230 of the 1992 Constitution of Ghana

Article 190(1d) of the 1992 Constitution of Ghana

The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Economic and Organized Crime Office Act, 2010 (Act 804)

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

89

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

References:

Article 225 of the 1992 Constitution of Ghana

Sections 5 and 6 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100

75

50

25

0

Comments:

The state anti-corruption agency, which is the Commission on Human Rights and Administrative Justice, functions independently. However, the appointments of the commissioner and the two deputy commissioners are the prerogative of the president on the advice of the Council of State. This could jeopardize the independence of these officials if they view their appointments as favors from the executive. The president may also delay filling these positions, and make them acting positions. This could limit the independence of the acting officials.

The Economic and Organized Crime Office, which replaced the Serious Fraud Office, is less independent than the commission. Its findings/decisions end up with the attorney general, who decides whether to act on them.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria. These anti-corruption agencies are the Commission on Human Rights and Administrative Justice and the Economic and Organized Crime Office. However, appointments to the top positions are not advertised and so could be perceived to be based on factors other than, or in addition to, merit.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice and the Economic and Organized Crime Office have professional staffs, though the size of the staffs may not be adequate for the magnitude of their mandates.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies receive regular funding, though it does not appear to be adequate. Some donors also provide funding to support these agencies.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies (CHRAJ and EOCO) make regular public reports on the investigations they undertake and conclude. In addition, one of the agencies, the Commission on Human Rights and Administrative Justice, prepares an annual report on all its activities for Parliament. This report is also presented at a public forum to mark International Anti-Corruption Day, Dec. 9.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice does not have prosecutorial rights and can enforce its decisions only through the High Court.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies, CHRAJ and EOCO, independently initiate investigations on corruption, though most of the time they

investigate reports and complaints made to them. Both can also be asked by the president to carry out investigations of corruption allegations.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice, the anti-corruption agency, provides annual reports to Parliament on its activities and to Ghanaians on the state of human rights and corruption in the country. This means the reports come after the year has ended. The CHRAJ also releases reports of its investigations into individual cases through the media. The investigations often are delayed, and so are the reports.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues

can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Largely, citizens can complain to the anti-corruption agency without fear of recrimination. When the need arises, the CHRAJ can order that the state provide protection for a whistleblower. However, one cannot rule out subtle ways of recrimination and that is why a 100 percent score was not awarded on this question. Citizens may also have confidentiality issues.

References:

Florence Dennis, executive director, Ghana Anti-Corruption Coalition, interviewed Aug. 18, 2011, in her office

Fio Fortunate Kwabena, student at the Ghana School of Law, Accra, interviewed Sept. 2, 2011, at the school

Kwame Bosompem, deputy director, Commission on Human Rights and Administrative Justice, interviewed Oct. 7, 2011, in his office

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

References:

Article 33(3) of the 1992 Constitution of Ghana

Alhassan Yahaya Seini, executive director of the Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by e-mail.

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Human resource constraints (inadequate number of judges) and backlogs of cases make appeals take longer than expected. Also, lawyers sometime deliberately do not cooperate. They ask for adjournments or fail to appear for cases, citing ill health or other excuses.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Court cases in general are tedious and expensive, especially if those accused require the services of lawyers. Lawyer fees have been revised upward this year. In fact, justice appears to be growing out of the reach of poor people. Although the Legal Aid Scheme helps poor people, the demand for its services outstrips its resources. Sometimes, the accused are required to provide transportation for lawyers to court hearings. This can be quite expensive if it requires traveling out of the city and the adjudication of a case takes a long time.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

In general, criminal cases follow written law. In court, one can see lawyers quoting copiously from various laws while judges also quote from laws and precedents when giving judgments. However, there have also been allegations of corruption in the judiciary, which can influence judgments.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

75

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

In general, judicial decisions are enforced by the appropriate authorities, such as the police. However, in a few cases court decisions have not been not enforced. For example, the court decided that an Immigration official who was dismissed should be reinstated, but the New Patriotic Party government refused to enforce the decision.

References:

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

94

80a. In law, the independence of the judiciary is guaranteed.

Yes

No

Comments:

Articled 127 of the 1992 Constitution of Ghana guarantees the independence of the judiciary.

References:

Articled 127 of the 1992 Constitution of Ghana

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100

75

50

25

0

Comments:

The ruling party generally feels that the judiciary tends to favor the main opposition, which appointed many of the top hierarchy when it was in power. The chairman of the ruling National Democratic Congress made a statement to this effect, which was construed to be a threat to the chief justice. This was condemned by many political commentators, and the chairman denied it was a threat.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes

No

Comments:

No law expressly addresses the distribution of cases to national-level judges. The Courts Act 1993 (Act 459) regulates the respective jurisdiction of the various courts, and the rules of various courts (CI 19, 47 etc) regulate the procedures within the courts.

In the district circuit and high courts, for instance, parties can only file cases within the district, circuit or region where the subject matter of the dispute is situated or the contract was to be performed or the defendant resides. The aim, among other things, is to prevent the plaintiff from choosing a convenient forum for his case.

It must be noted that detailed procedures for the allocation of cases within the various High Court venues within the same location or Court of Appeal panels are governed by a directive/ regulations of the Judicial Council. For now, it makes for random allocation of cases to judges.

References:

Moubarak Muctar Abbas, a private legal practitioner, in an email to clarify the situation

The Courts Act 1993 (Act 459), which among other things, regulates the respective jurisdiction of the various courts

The rules of the various courts (CI 19, 47 etc.), which regulate the procedures within the courts.

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

Articles 146, 147 and 151 of the 1992 Constitution of Ghana spell out the conditions under which a member of the judiciary can be removed from office There must be justification.

References:

Articles 146, 147 and 151 of the 1992 Constitution of Ghana

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

A statement by the chairman of the ruling National Democratic Congress party was construed to be a threat to the chief justice, but no physical harm has been done to any member of the judiciary adjudicating corruption cases.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes

No

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

57

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100

75

50

25

0

Comments:

All citizens have full access to the justice system in principle, but ethnic and several other considerations sometimes influence this access.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

Every citizen has full access to the judicial system in principle, but financial and cultural constraints tend to limit this access, especially for women.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Section 2 of the Legal Aid Scheme Act, 1997 (Act 542) spells out who is entitled to legal aid.

References:

Section 2 of the Legal Aid Scheme Act, 1997 (Act 542) spells out who is entitled to legal aid.

Article 294 of the 1992 Constitution of Ghana

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

In principle, the state provides legal counsel in criminal cases to defendants who cannot afford lawyers. However, litigation is generally costly, and the Legal Aid Scheme is not adequately financed. Sometimes, defendants are required to provide transportation for pro bono lawyers to attend court.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Legal fees are high and have just been revised upward, so it is not that easy to bring a legal suit. An ordinary citizen cannot successfully/effectively defend him/herself in a criminal case before the courts without a lawyer.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In practice, a typical small retail business cannot afford to bring a legal suit before the courts because the cost of the processes is very high and much higher if the complainant requires the services of a lawyer. Filing and legal fees have been revised recently, and the ordinary citizen would find it too costly to file a suit.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdoo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

Various levels of the judiciary are in all regional capitals and in many district capitals. However, some districts still do not have courts, and some judges have to combine more than one district. Even within the districts, people have to travel long distances to courts. This drastically limits access, especially for the poor in society.

References:

Daphne Lariba Nabila, administrator, Legal Resources Center, interviewed Aug. 19, 2011, by phone

Charles Ayamdo, director of anti-corruption, Commission on Human Rights and Administrative Justice, lawyer by profession, interviewed Aug. 28, 2011, by phone

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Most appointments to lower level positions in the law enforcement agency (or agencies) are advertised, and applicants go through a strict recruitment process. However, appointments and promotions to the top hierarchy are perceived to be influenced by factors other than merit, and the next in line by seniority is not necessarily the one who will be appointed.

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephas Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

There are always complaints that the police lack adequate resources and that their salaries are low. The salary situation seems to have improved in the past year with the introduction of a new pay system (Single Spine Salary structure).

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephas Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

One of my respondents refused to answer this question. Of course the score is determined by the researcher, while the responses are only a guide.

Higher level appointments and promotions are generally suspected to be influenced by considerations other than merit. In most cases, the inspector general of police and other top-level officers are replaced or transferred with any change of government.

There have also been instances when the action of the police (and Bureau of National Investigations) is seen as directed by the government in power. These include arrests of political opponents and refusal of permits for public demonstrations.

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephas Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

Ghanaweb, May 10, 2011, "UER Police Commander Decries 'Political interference,'" Ghana News Agency, www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=208267

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

83

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

No law specifically provides an independent mechanism for citizens to complain about police action.

However, citizens can complain to the Commission on Human Rights and Administrative Justice or even go to the courts.

The police also have the Police Intelligence and Professional Standards unit, where, although this is not provided for by law, citizens can lodge a complaint.

References:

Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Whistleblower Act, 2006 (Act 720)

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

Comments:

There are complaints that inadequate human and material resources tend to limit the pace of investigations and appropriate action.

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephas Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The Commission on Human Rights and Administrative Justice has an anti-corruption mandate that covers all citizens, including the police.

Moreover, the attorney general can investigate and prosecute corruption committed by law enforcement officials, just like of all other citizens.

The police also have the Police Intelligence and Professional Standards unit, where, although this is not provided for by law, citizens can lodge complaints.

References:

Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Whistleblower Act, 2006 (Act 720)

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Human Rights and Administrative Justice is the independent agency that usually investigates complaints about corruption by public officials, including law enforcement officers.

The police can, on their own, initiate investigations into allegations of corruption by citizens, including law enforcement officials. However, it is often believed that the decision to investigate allegations of corruption are, in certain cases, dictated by higher authority.

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephass Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

Even though law enforcement agencies are not immune from criminal proceedings, there are some exceptions in the Constitution, Article 13(2), that can be misused. For example, a provision says a police officer who kills someone in the performance of his duties will not be prosecuted.

References:

Article 13(2) of the 1992 Constitution of Ghana

Sections 26 to 29 of the Criminal Code Act, 1960 (Act 29) provide for exemptions to the criminal code. They do not exempt law enforcement officers.

Section 13 of the Police Service Act, 1970 (Act 350) states that "The Chairman and any member of the Police Council shall have the same protection and privilege in case of any action or suit brought against him for any act done or omitted to be done in the exercise of his duties in relation to the hearing of appeals under section 20 of this Act as is by law given to acts done or words spoken by a Judge of the Superior Court of Judicature in the exercise of his judicial office."

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

In very recent times, members of the Police Service have been arrested and are likely to be prosecuted.

References:

Alhassan Yahaya Seini, executive director of Legal Aid Scheme, completed questionnaire Oct. 9, 2011. The questionnaire was sent to him by email.

Moubarak Muctar Abbas, private legal practitioner, completed questionnaire Dec. 15, 2011.

Deputy Superintendent of Police Felix Mawusi, Criminal Investigations Department, Ghana Police Service, interviewed Aug. 18, 2011, in his office at the CID Headquarters

Deputy Superintendent of Police Cephass Arthur, public relations officer, Ghana Police Service, interviewed Aug. 18, 2011, in his office at police headquarters

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
