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The Republic versus Alfred Agbesi Woyome: Matters Arising from State Judgment and Settlement Debts (Part 1)

From the last quarter of 2011, the people of Ghana have been, in equal measure, fascinated and horrified by what is potentially one of the largest corruption scandals in Ghana's history. Between February 2010 and September 2011, the government of Ghana paid approximately GHC51 million (\$35 million) in tranches to Mr. Alfred Woyome, an Accra-based businessman with close ties to the ruling National Democratic Congress (NDC) party. The circumstances surrounding the payments are still somewhat unclear. They are also the subject of on-going criminal and civil cases, with some of the details surrounding the payments strongly disputed. However, according to an "Interim Report" prepared by the Economic and Organized Crime Office (EOCO) on the matter, in 2004/5, Mr. Alfred Woyome was involved in Ghana's winning bid to host the 2008 African Cup of Nations tournament. Subsequently, a company with which he was associated called MPowapak, or Vamed, submitted

bids for tenders to refurbish and construct new stadiums for the tournament. In the course of the tendering process, MPowapak/Vamed allegedly transferred all its rights and responsibilities under the bid to a company called Waterville Holding BVI.

The "Waterville/Vamed/MPowapak" bid was successful. However, the award of the contract to Waterville/Mpowapak/Vamed was subsequently abrogated. The government unexpectedly (and, possibly, illegally) awarded the stadium refurbishment contract to the Shanghai Construction Group, a Chinese construction firm. Waterville protested the termination through its lawyers, and was ultimately awarded 25 million euros in compensation for "actual work done and financial engineering." In 2009, Mr. Woyome petitioned the government to be paid for work he also allegedly did. Mr. Woyome claimed that he had been central to the bidding process, and demanded to be included in the settlement arrangements between the government and Waterville. According to the EOCO report, Mr. Woyome claimed, among other things, that he had been instrumental in raising 1.1 billion euros to finance the construction of the stadia and various other facilities, and that he was entitled to a 2 percent commission (approximately 22 million euros) for raising the said sum. This conclusion was ultimately supported by the legal directorate of the Ministry of Finance, and endorsed by lawyers at the Attorney-

General's Department, who wrote to the Finance Ministry urging prompt payment.

After some hesitation by the finance ministry, which resulted in Mr. Woyome filing a lawsuit against the government to enforce his claim, the government (acting through the finance ministry and the Attorney-General's Department) reached a settlement agreement with Mr. Woyome for the amount allegedly owed to him to be paid in instalments. By September 2011, full payment of GHC51 million – representing the amount allegedly owed for financial engineering and interest thereon – had been made to Mr. Woyome. The scandal broke in late 2011 when the Public Accounts Committee of Parliament raised questions about the payments. The scandal, which attracted intensive coverage in the electronic and print media, was the subject of a press conference by the Opposition in Parliament. It had become the primary news story nationwide by the time President John Atta Mills gave his annual press briefing in January 2012. It even generated more discussion than the then on-going 2012 African Nations Cup tournament.

As the primary basis for questioning the payments, the stories in the public domain have focused on the alleged absence of a formal contract between the government and Mr. Woyome as well as insufficient evidence that he had performed tens of millions of dollars worth of work prior to the start of the 2008 African Nations Cup. Moreover, very few questions appear to have been raised by the relevant authorities prior to the disbursements of the money to Mr. Woyome. Indeed, several letters were made public in which it appeared that officials from the Attorney-General's Department were suspiciously insistent that the finance ministry make quick payment to Mr. Woyome despite the seemingly obvious problems surrounding the transaction. Also, the proximity of Mr. Woyome to the ruling party fuelled suspicions about the speed with which the payments were made. He was present in Sunyani for the NDC 2011 presidential primary and appeared on political platforms for many aspiring candidates during the parliamentary primary contests of the NDC.

The response of the Mills government to this scandal has evolved since the scandal broke. Initially, government officials (such as the Deputy Chief of Staff, Alex Segbefia) defended the payments. The President suggested that the previous administration was more culpable for the payments than his administration, suggesting that actions such as the termination of the tender and the award of the contracts to Shanghai Construction, and general negligence on the part of the NPP administration had left his government with a mountain of judgment debts, including that of Alfred Woyome. However, as more information about the transaction became known, and public uproar over the

scandal intensified, the government began to take steps to distance the executive from the scandal. At the President's press briefing in January 2012, he denied any knowledge of the scandal, and ordered an investigation by the EOCO. The Woyome scandal led to the resignation of the Minister of Education, Betty Mould-Iddrisu, who was the Attorney-General at the time the payments were negotiated. Mrs. Betty Mould-Iddrisu and her Deputy (Ebo Barton-Oduro) have both stated publicly that the government did not have a defence against Mr Woyome's claims (though subsequently, Mrs Mould-Iddrisu went back to court to challenge the judgment debt settlement).

The most politically damaging incident arising from the scandal was the dismissal of the Attorney-General, Mr. Martin Amidu, in January 2012. It appears Mr. Amidu had become aware of the scandal somewhat belatedly. However, once he became aware of the matter, he made no secret of his intention to investigate it fully, and prosecute all guilty parties irrespective of their political coloration. He initiated civil actions to retrieve the payments that had been made to Mr. Woyome, and prepared for criminal prosecutions against Mr. Woyome himself. Then, on 12 January, Mr. Amidu, while still Attorney General, issued an open letter in which he accused certain unnamed elements within his own party of masterminding a vilification campaign against him in what he called the 'gullible' and 'rented' pro-government media. He also suggested that the motivation for the vilification campaign was to intimidate him into covering up 'gargantuan crimes' that had been committed by individuals in his government. A few days later, Mr. Amidu was dismissed by the President for misconduct, and behaviour 'incompatible with acceptable standards' of a minister and an appointee of the President. His replacement, the Minister of Interior Benjamin Kunbour, was instructed to continue with the prosecution of the Woyome case.

In February 2012, Mr. Woyome, Mr. Paul Asimenu, head of the Legal Directorate at the Ministry of Finance and Economic Planning, Mr. Samuel Nerquaye-Tetteh, Chief State Attorney, and his wife Mrs. Gifty Nerquaye-Tetteh were arrested for corruption of a public officer, and defrauding by false pretences. Mr. Nerquaye-Tetteh had responsibility for the Woyome case in the Attorney-General's Department while his wife, according to the EOCO, was complicit because her bank records revealed she had received a transfer of \$400,000 from Mr. Woyome in the course of the negotiations with the government. Though charges against the latter three have been suspended for reasons that remain unclear, Mr. Woyome is currently being tried for causing financial loss to the state, and defrauding by false pretences.

A full analysis of the implications of this still unfolding tragic and occasionally farcical scandal for democracy and governance in Ghana will have to wait for the facts to be firmly established. The Woyome scandal has triggered disclosures of other judgment debts against the state dating back to the New Patriotic Party (NPP) administration. Many of these disclosures, including the Woyome episode, are still unfolding.

In Part One of the 'Judgment Debt' saga, *Democracy Watch* will highlight some of the major weaknesses in Ghana's Public Financial Management (PFM) systems exposed by these scandals, and raise questions on the management of public assets, public office-holder liability, and inherent deficiencies of associated key governance institutions and practices.

To be sure, the full facts of the payment(s) are yet to be disclosed and it is yet to be proven that any fraud has taken place. However, even in the absence of proof of fraud, the Woyome saga point to serious institutional gaps and multiple levels of governance failure. Although the scandal erupted during the tenure of the NDC government (and it has been, quite appropriately, embarrassed by it), the underlying causes are systemic deficiencies in Ghana's public financial management mechanisms: they seem to allow political interference and influence to easily trump the control and accountability mechanisms in the management of public funds and assets. Governments in the Fourth Republic must share responsibility for the failure to address these deficiencies, and for possibly taking advantage of them. The failure to raise multiple red flags and make strenuous efforts to protect the public purse (as former Attorney-General Martin Amidu has sought to do *post facto*) before the payment of such a large sum of money in such murky circumstances is simply alarming.

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Furthermore, questions must be asked about the systems and checks that are in place in respect of payments of public funds, and the extent to which the systems operate efficiently to prevent dubious payments. Certainly, the disclosures point to the actions and inactions of state institutions and official actors in promoting public accountability and, in particular, combating official corruption. What stands out in this entire affair is the conduct of public officials, and manifestations of conflict of interest. The scandal brings to the fore the absence of clear and stringently enforced rules and code of conduct to prevent public office-holder conflict of interest in Ghana's Fourth Republic. It also brings into sharp focus the need to strengthen regulations on asset declaration for public office holders. The telltale signs of political interference in the award and termination of public contracts and decisions to prosecute or not prosecute alleged state offenders and corrupt individuals is also deeply worrying. It suggests that Ghana does not have in place a key attribute of a “developmental state”: a competent and honest bureaucracy that is insulated from political influence.

The most breathtaking aspect of this scandal is its size. If the allegations are true, the loss to the country will be in excess of the amount allocated under the 2012 budget to a number of flagship public programmes. These include, the Capitation Grant, the School Feeding Programme, and the Schools Under Trees Programme. Consider also that the budget for all government scholarships this year was GHC22 million compared with the GHC51 million awarded to Mr. Woyome. But perhaps the larger scandal lies in the fact that the government is reported to have incurred GHC642 million in judgment debts between 2001 and 2011. Out of this amount, a total of GHC624 million was paid between 2009 and 2011.

The government has reportedly consented to undergo a Public Expenditure and Financial Accountability (PEFA) Assessment in 2012. This comprehensive review of public financial management systems sponsored by the World Bank and the UK Department for International Development (DFID), would undoubtedly include a review of the legal regime, accountability mechanisms, and anti-corruption tools in our public payments management. This is laudable. But it cannot and should not be taken as a substitute for a full public enquiry into the circumstances in which all those state judgment and settlement debts were incurred and the processes through which they were paid.

The place and role of government and political party communication teams in Ghana's public management is yet another governance query arising from the Woyome scandal that is begging for critical examination. A bevy of

government officials and ruling party functionaries as well as members of the NDC communication team joined forces with Mr. Woyome's legal team to mount a robust public defence in the aftermath of the judgment debt revelations. It was often very difficult to distinguish between government and party spokespersons alongside party-sponsored "serial callers" and media pundits. Their assertions and contentions, which invariably provoked equally propagandistic responses from their NPP counterparts, served to obfuscate and confuse, rather than clarify and educate the public on an already murky incident. And the source of funding for members of the ruling party communication team and the "serial callers" remains to be clarified.

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Finally, the Attorney-General's Department has come under the harsh glare of negative public attention as a result of this scandal. Even before Mr. Woyome became a household name, it had already been on the receiving end of harsh criticism by both the government and the opposition as a result of its handling of a number of high-profile cases. The reputation of the Department has been dealt a further blow by the leakage of letters and memoranda it authored urging prompt payment of the judgment debt. Some of these letters and memoranda were signed by then Attorney-General Betty Mould-Iddrisu herself. The revelation in the EOCO report that the wife of the state attorney responsible for defending the republic against Mr. Woyome's claims allegedly received a payment of \$400,000 from Mr. Woyome has also lowered public confidence in the Attorney-General's Department.

However, it is the Department's disjointed, bungling approach to the prosecution of the case that has tarnished its reputation the most. The stream of press releases by former Attorney-General Martin Amidu has greatly heightened the perception of the Department's incompetence. Styling himself as a 'citizen vigilante', Mr. Amidu has trenchantly queried the choices made by the Attorney-General's Department. More troublingly, he has questioned the commitment of the Department to fully prosecute the case, alleging that some of the attorneys

currently handling the case had attempted to dissuade him from prosecuting it when he was the Attorney-General. Irrespective of the truth or otherwise of Mr. Amidu's allegations, it has become increasingly obvious that the Attorney-General's Department is in dire need of reform. The number of staff, their capacity, their conditions of service, their case management processes and the independence of the office all need to be comprehensively reviewed.

The ongoing constitution review process must address some of the deficiencies the Department faces, such as its total and utter lack of insulation from interference from governments and ruling parties. This would have to be combined with a number of administrative reforms, including significant improvements in the conditions of service for state attorneys and a functioning library. The reforms must also ensure a significant enhancement in the ability of the Department to attract and retain the best and brightest legal minds, and a substantial reduction of the perennial case overload the Department's attorneys suffer. It is these sorts of institutional reforms that would give the Attorney-General's Department a fair chance of protecting the nation against the payment of judgment and settlement debts that reportedly constitute a total of 6 percent of Ghana's GDP in 2010.

The ECG Exposé and Ghana's Public Sector

In January this year, Anas Aremeyaw Anas, the ace investigative journalist, produced a documentary revealing instances of maladministration and corruption at the Electricity Company of Ghana (ECG). The documentary, which was the culmination of over eight months of investigative work, revealed several fraudulent practices carried out by various officials of the ECG. Employees at the ECG were shown extorting money from clients, and ridiculing customers who refused to pay bribes. ECG employees were also shown fraudulently conspiring with individuals and companies to tamper with electricity meters to avoid the payment of bills. Other companies were shown to be bribing officials of the ECG to avoid disconnection for the non-payment of bills. After several years of operating without paying electricity bills, the companies are allegedly

dissolved, and their bills declared as “bad” debts by the ECG. The machinery and operations of such companies are subsequently transferred to other locations, where the companies resume their operations under a different name.

Most jarring was the revelation that several major, high profile organizations and individuals owed the ECG significant amounts of money. The list ranged from five-star hotels and telecom companies to state institutions and the Office of the President. In total, millions of cedis were owed to the ECG as of November 2011. Although some of these organizations have subsequently disputed the amounts allegedly owed to the ECG, the sums in question are nevertheless disturbing. The ECG frequently attributes the poor quality of its services to how badly resourced it is. It frequently (and accurately) points out that it supplies electricity to residential consumers at prices that are below the cost of production, and that the subsidy it receives from the government cannot maintain and replace the complex systems needed to operate optimally. Legitimate as these concerns may be, the level of managerial inefficiency that characterize the ECG’s revenue collection processes leave much to be desired.

Some of the information provided by Anas Amereyaw’s exposé provides some clues to this puzzle. The investigation revealed that a total of GH¢373,871.60 (equivalent to \$249,247.73) was paid to members of the ECG board between January and November 2011 – in spite of the financial challenges the state company was facing. The money was divided among eight members of the utility company’s board and paid tax-free by cash or cheque monthly. Given the financial constraints faced by the ECG, the payments to the board appear somewhat incongruous. Furthermore, given the apparent extent of mismanagement and malfeasance at the ECG, there is nothing to suggest that successive boards appointed to govern the ECG have been performing their oversight functions in a satisfactory and responsible manner.

It is evident that Ghana’s erratic electricity supply is not just a function of inadequate resources. It is also clearly a function of poor management. It is standard practice for Ghanaian presidents to appoint individuals to state boards using criteria other than merit and qualification. Patronage appears to be the sole purpose for which today’s appointments to state boards are made. Ruling party affiliation rather than technical merit or proven experience is the key factor determining appointment to a state board. A worrying uptrend associated with this matter is the practice of appointing unqualified ruling party executives, loyalists, even “foot soldiers” and activists to governing boards of public institutions. *Democracy Watch* is deeply

troubled by the near total abandonment of even the impression of technical competence as at least one of the criteria for appointments to these crucial, state commercial and industrial companies in favour of a barefaced regime of patronage and reward to individuals who render politically partisan services, including some of the unsavory kind. The time has come for the nation to seriously question the rationale for appointing politicians and party functionaries to public corporations or companies such as the ECG.

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The practice of appointing Members of Parliament to state commercial and industrial boards violates the principle of checks and balances. It is also inimical to the accountable and efficient management of public companies. It puts the MP-cum-board members in a clear conflict of interest situation. It undoubtedly undermines the ability of Parliament to exercise legislative oversight over these state bodies. It creates untenable situations where some MPs become involved in the review of the Auditor-General’s reports on state-owned companies on whose board they also serve. Thus, reports the MP may have already reviewed and certified at the company board level come back to him or her to scrutinize as a legislator.

The monetary allowances paid to these board members also come into question. How are these allowances determined or rationalized? And how do the recipients justify the allowances they receive when the same company is a non-performing company, such as ECG? The opacity surrounding the appointment and determination of emoluments of public company board members are longstanding deficits in Ghana’s state enterprise (corporate) governance. A particularly galling manifestation of this deficit is the tendency for ruling party-appointed boards to defend their party-appointed chief executives!

Democracy Watch has had frequent cause to comment on the impact on governance in Ghana of the excessive powers of appointment of the President. The appointment

of competent people to state and public sector boards today is more likely to be by accident rather than design. Indeed, it has become the practice for new presidents to authorize the wholesale dissolution of state boards and commissions when they assume office. The need for loyalty to the new government is cited as the main justification for this practice. Indeed, the practice is widely accepted even where the dissolution of the state board is illegal. But placing loyalty ahead of competence comes at a cost, as anyone who watched the exposé on the ECG (or indeed close observers of the Millennium Challenge Project; see following article) can attest. And from a public management and corporate governance standpoint, we may still ask: must this practice of appointing politicians, ruling party functionaries and presidential cronies to state companies cover both their chief executive officers and management teams?

There are several aspects of public sector management in Ghana that are in need of reform. Appointments to state boards such as the ECG may seem relatively minor in importance but that is only because Ghanaians in general, and Ghanaian elites in particular, rarely make the connection between the criteria for appointments to state boards, and the poor nature of the services they provide. Ideally, appointments to state boards should be based on merit, made through an independent Public Services Commission, for fixed terms, and renewable if the appointees meet specific performance targets. In sum, *Democracy Watch* insists that state boards should be appointed and operated in a manner similar to boards in the private sector. Unfortunately, we are a long way from realising this ideal of sound management of our public sector and credible public sector corporate governance.

Lessons from the Millennium Challenge Account Project

In February 2012, Ghana celebrated an extremely unusual occurrence. A major public infrastructure project, the Millennium Challenge Account (MCA) Project, was completed on time, and within budget. The Millennium Challenge Account is an initiative of the United States government on the Millennium Challenge Corporation (MCC) platform. The MCC was created in 2004 to deliver foreign assistance to poor countries that have shown a

commitment to, among other things, good governance and economic freedom. The MCC signed its first five year compact with Ghana (the first country in Africa to qualify) in August 2006. The Ghana compact was aimed at promoting economic growth through the modernization of the country's agricultural sector. The compact would implement US\$547 million worth of projects in agriculture, transportation and rural services across the country over a five-year period. To help reduce poverty, the MCA projects focused on the provision of infrastructure and improvements in the capacity of farmers in 23 districts in the Northern Region, the central Afram Basin and the southern horticultural belt in the southeastern region where poverty rates are among the highest in the country.

Few projects in Ghana can match up to the Millennium Challenge project on three scores. First, the project was completed on schedule. The structure of the contract left no opportunity for extension so it was absolutely crucial that the project be completed on schedule, and it was. All expected deliverables had been completed by the time the closeout ceremony was held in February 2012. Secondly, cost overruns are the norm in the execution of public works projects in Ghana. The MCA project represents a very rare instance in the annals of public works and social provisioning in Ghana in which the total final cost was not significantly higher than the projected cost. Finally, in terms of value for money, the MCA project demonstrated a remarkably high level of efficiency. For example, the estimated cost of a six-classroom block constructed under the project was between \$120,000 and \$200,000. According to the 2012 Budget, a six-classroom block typically costs the government of Ghana between \$200,000 and \$300,000.

The relative success of the MCA makes it worthy of detailed examination and lesson learning. By all indications, this was an extremely well managed project. The MCC provided the funds and set rigorous standards for monitoring and accountability. Countries qualifying for the award had to take the lead in identifying solutions to gaps and problems in their political economies that could be funded from the grant; and they also had to take the lead in implementing the actions/projects devised to address those gaps and problems. Ghana set up the Millennium Development Authority (MIDA) to oversee the project. It was headed and staffed by Ghanaians. Moreover, many of the contractors and consultants that the Authority engaged were also Ghanaians. And the CEO and staff sought to build a "winning" brand characterized by integrity, transparency and absence of corruption and seem to have largely succeeded.

The basic framework for the administration of MIDA was not significantly different from that of many other projects in this country. The core administrative staff and other full-time employees of the Authority were recruited from both the public and private sectors through rigorous and transparent recruitment processes. Together, they provided administrative support for the technical staff and consultants.

The project's administration functioned smoothly without the usual encumbrances suffered by government ministries, departments and agencies. Procedures set out in the project document for provision of logistical support, procurement of goods and services, project reporting, reporting lines and all other activities were stringently adhered to, while the criteria for processing of payments were meticulously applied. This high level of adherence to laid-down guidelines ensured a consistent flow of work, leading to effective forecasting and realistic planning. It is particularly noteworthy that many staff members of the Authority came from the same public sector that is notorious for inefficiency and tedious red tape.

The ready availability of funds was also crucial to the effective execution of the MCA project. It was helpful that payment was executed without delay once a job was completed and the relevant paperwork submitted. It was equally important that the conditions for the disbursement of MCA project funds had been clearly articulated at the onset of the project. This facilitated compliance and monitoring of compliance.

The MCA project practice contrasts sharply with that of other public sector projects that are started without assurance of funding. Furthermore, allegations of graft for accelerating the processing of documents and hastening the release of funds are rife. The MCA experience confirms that where the timely delivery of goods and services to established specifications is the sole driver and motivator for assured timely disbursement of payments, the ability of contractors and service providers to work within schedule can be vastly improved. By the same token, contractors and service providers are not particularly motivated to deliver on schedule and within budget where administrators exercise too much discretionary power and delays in payments are routine. The effect of these conditions is that administrators can therefore be bribed to execute tasks that form part of their job description – such as processing documents. It is obvious that extraneous expenditures in the form of bribes plus the monetary value of delays are major reasons why many public projects end up way over budget.

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Significantly, MIDA was one of the few organizations that did not suffer drastic and arbitrary staff changes associated with a change of government in Ghana. The MCA was largely insulated from partisan political influence. Thus, while the board chairman of MIDA was sacked in early 2009 and was not replaced for a whole year, staff members of the Authority largely enjoyed security of tenure and were protected from politically engineered staff changes. This abominable practice of incoming elected governments capriciously and summarily dissolving the governing boards of state agencies and dismissing their chief executive officers (CEOs) is partly responsible for the inertia and stagnation that plagues many public sector organizations and institutions. This practice is even worse where officers are dismissed, with their replacements yet to be identified.

MIDA may have been fortunate in its choice of CEO, Martin Eson-Benjamin. Coming to MIDA and applying private sector ideas and practices, there was no hint of corruption or wheeling and dealing at the Authority over the five-year timeframe of the project. There were also no allegations of misuse of funds, and no accusations of delays in payments to contractors and service providers. The impressive success of the MCA project must be credited to the combination of good administrative practices, independence from political interference, a favourable corporate culture, guaranteed funds for project execution, detailed work planning ahead of implementation, insulation of project management from political control, and integrity of the contract award process. The clear lesson here is that if we apply the right principles and institute the right governance and management practices under a competent leadership with the right attitude, Ghanaians can make things work for Ghana. *Democracy Watch* urges the government of Ghana to create a model for managing projects based on the MIDA experience.

The Presidential Transition Act – A good first step

Previous transfers of power after elections have been characterized by confusion and conflict over which assets were transferable, as well as which presidential appointments were co-extensive with presidential terms. The 2000 election witnessed the first successful democratic transfer of power from one political party to another but the transition process was endangered by claims of illegally acquired state assets, wrongful seizures of private assets, and forcible evictions of outgoing officials. The aftermath of the 2008 election was equally acrimonious (see *Democracy Watch*, Vol. 8: No.3, 2009), and a number of the same issues that had marred the 2001 transition recurred. The recently enacted Presidential Transition Act, 2012 (Act 845) could help to mitigate these transition blues.

Indeed, the introduction of the PTA is a response to the kind of political culture that has been associated with our politics since 1992 – a culture that has evolved around transitions, one that has reduced electoral competition to a zero-sum game, and one that has ‘instituted’ poor record keeping, documentation and storage. The attitude of Ghanaian politicians to democratic competition and its related transition is a reflection of the over-concentration of power in the hands of the President, the executive branch of government and arguably the ruling party. The exercise of state power and the associated control of state resources for obvious clientele and rent-seeking politics have rendered previous transitions murky. *Democracy Watch* is of the view that a change in attitude among politicians from all parties is fundamental to making the democratic transfer of power smoother and devoid of rancor.

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Nonetheless, *Democracy Watch* welcomes the passage of the PTA as the right step towards ending the recurring negative practices that have so far been associated with the two transfers of power in the Fourth Republic. The PTA is a unique product of inter-party cooperation facilitated by the Institute of Economic Affairs (IEA), an independent public policy institute. The PTA is a first step toward enhancing transparency and accountability in the management of public assets held by officials. The Act sets up an inventory to account for public assets, and provides for a structured time frame for handing over assets and information to an incoming administration. The PTA also mandates periodic stock taking and a detailed inventory of executive assets. Section 9 establishes a national register covering public lands vested in the president and other official assets.

The ‘Advisory Council’ established by the Act comprises three eminent citizens. The role of the Council is to mediate any stalemate arising out of the work of the transition team. The outgoing and incoming presidents each appoint one representative. The third member is the incumbent Speaker of Parliament who acts as the chairperson. Decisions of the Council are binding on the transition team. The Council works by consensus and should therefore take a practical, depoliticized approach to resolve partisan disputes.

However, *Democracy Watch* finds disturbing the inclusion of the incumbent Speaker in the work of the Council and, moreover, as its chairperson. The Speaker of Parliament will normally be associated with or a member of the outgoing government, and therefore, some element of bias may be perceived by the incoming government or even by members of the public. *Democracy Watch* would have preferred a representative from the judiciary or from the office of the Chief Justice on the Advisory Council.

The Presidential Transition Act provides clarity in detailing a list of public office holders whose tenure ends with the outgoing President. The Presidential Estates Unit (PEU) established under the Act is charged with keeping an inventory of public assets. The PEU will be headed by an Administrator General (AG) appointed by the President but with security of tenure. The AG is responsible for a wide range of duties, and is also tasked with preparing handing over notes and briefing the incoming administration.

Other provisions of the Act that aim for an efficient and accountable handover period are the structured time frames included in the legislation. Three important areas are subject to specific timelines: official accommodation, appointments to a Transition Team, and the presidential inauguration. The

Act states that the outgoing President and Vice-President must vacate their official residences prior to inauguration day or swearing in of the elected President. The outgoing President and Vice-President are provided with temporary accommodation for official residences, if they so wish. After the Electoral Commission has declared a President-Elect, there is a 24-hour time limit for appointments to be made to the Transition Team, and the Team is required to meet within 48 hours. Finally, Section 11 amends the inauguration process to require the Speaker and Members of Parliament to be sworn in no later than 48 hours before the dissolution of Parliament.

Despite these strong steps toward a faster, more streamlined and responsible transition period, *Democracy Watch* believes that the PTA has numerous deficiencies. Some provisions are too broad, while others suffer from omissions. Finally, the implementation legislation may be practically hamstrung by the short time frame before the upcoming election period.

Regarding omissions, the Act focuses on the presidential transition, thereby expressly leaving the rest of the executive unaccounted for. For example, there are few details regarding transition protocols for key presidential appointees, including chief directors, metropolitan/municipal/district chief executives, as well as boards of public corporations and heads of security services. Secondly, a glaring omission is the failure to include a time frame for handing over documents and briefing notes to the incoming administration. Thirdly, and more generally, the Act does not deal with the critical issue of the mismanagement of public assets, as well as the practice of allowing public officials to purchase state assets immediately prior to leaving office, a practice that inevitably creates incentives for abuse and conflict of interest.

The Act lists government appointees whose tenure should end with that of the President. These include Ministers and Deputy Ministers of State; Regional and Deputy Regional Ministers; special assistants and special aides to the President, to the Vice-President and to Ministers of State, Deputy Ministers, Regional Ministers and Deputy Regional Ministers; non-career Ambassadors/High Commissioners, and persons appointed by the President as members of statutory boards and corporations. Perhaps a case can be made by some as to why the tenure of all holders of these positions should end with that of the government that appointed them. However, in the considered opinion of *Democracy Watch*, it is counterproductive and unhelpful to include appointments of members of statutory boards and corporations in this list. As has been argued elsewhere

in this edition of *Democracy Watch*, this would merely entrench the undesirable phenomenon of public sector boards that are not focused primarily on performance.

Invariably, in Ghana's Fourth Republic, presidents have appointed party loyalists to state board positions. Competence is often sacrificed for loyalty – with disastrous consequences for the board in question. It is unfortunate that this section of the Presidential Transition Act (PTA) facilitates and attempts to legalize political patronage in this manner. Certainly, by specifically including the members of statutory board and corporations on the list of government appointees whose tenure ends with that of the outgoing President, the PTA has succeeded in aggravating the problem (through institutionalization) by replacing competence with patronage and reward for political services. Perhaps, this is the weakest link in the entire PTA.

There is also a lack of clarity in the Act regarding the duties of the Administrator General. With the inclusion of policy advice, organization of data, and briefing, there may simply be too much on the AG's portfolio to manage adequately. Thus there should be a more detailed articulation of the responsibilities, procedures and process by which the AG's Office can execute its mandate. Additionally, the Presidential Estates Unit (PEU), with its own AG appointed directly by the President, may be placed in a conflict of interest situation. A legislative device may be required to clarify the role and responsibilities of the AG's Office within the Act to maintain its independence and efficacy in the performance of its duties. As a matter of fact, *Democracy Watch* believes that the AG's Office in this particular instance may be redundant. It is absolutely unnecessary to establish another bureaucracy for a process that occurs once every four years. The tasks of the PEU and the position of the AG as contained in the PTA could easily been undertaken by any of the existing bureaucracies, such as the Lands Commission or State Protocol.

With the presidential election a few months away and the ink not yet dry on the PTA, there are significant, practical, implementation hurdles, including the appointment of the Advisory Council and Presidential Estates Unit. Accounting for all public assets held by relevant officials and the clarification of processes and procedures are tasks that should commence immediately. The enactment of the PTA is timely. Its passage has added to the annals of our democratic institutions and practices. We hope that its components will be set up in the near future and put to use in mitigating the acrimony that has characterized previous transitions. The PTA may not be perfect, but it is a positive

start to ensuring that Ghana continues along the path of peaceful transitions and towards democratic consolidation, and accountable governance.

President John Evans Atta Mills: 1944-2012

On Tuesday, 24 July 2012, the nation was thrown into a state of mourning following an official announcement that President John Evans Atta Mills had passed on. The statement noted that the President had been taken ill earlier in the day and passed away in the afternoon at the 37 Military Hospital while receiving medical attention. The sudden death of the President, close to a month after his return from a “routine medical check-up” in the United States shocked all Ghanaians. This is particularly so because the President had publicly declared upon his return that his doctors had confirmed his fitness and thus his ability to perform his duties as president. Ghanaians have duly mourned his death and given him a fitting burial. The nation has demonstrated a sense of unity and purpose as well as respect for the man, generally known as a ‘Man of Peace.’ *Democracy Watch* expresses condolences to Mrs. Ernestina Naadu Mills and the family.

The spontaneous expression of public grief over the death of President Mills in office and the focus on paying respect to him and his family confirm the values and basic cultural unity of Ghana — notwithstanding the severe polarization in its politics. It is therefore not surprising that Ghanaians utterly condemned comments by ex-President Jerry Rawlings in a BBC interview shortly after President Mills’ death claiming that the late President could have averted his death. The tributes and messages of condolence from Ghanaians and the international community acknowledged the late President’s respect for people, his humility and calm temperament and his avowed desire for peaceful coexistence. The late President is celebrated as someone who sought national unity at all times and demonstrated genuine commitment to national peace and stability.

President Atta Mills served the nation well and to the best of his abilities. His accomplishments are recorded, not only in academia and public service, but also at the helm of affairs at the highest levels of this great nation — first, as

Vice-President (1997-2000), and second, as President since January 2008. In the considered view of the *Democracy Watch*, the late President was a democrat. He believed in the ballot box as the only means in choosing political leaders for Ghana. By contesting national elections (not forgetting internal party primaries), on three different occasions and conceding defeat in two instances, this singular character of the late President contributed in deepening Ghana’s electoral democracy.

President Mills’ untimely death presents an opportunity for lowering the political temperature and unifying the country in a seemingly tense election year. In the short term, the challenge will be how to avoid acrimony and strive for a decent election campaign that prepares the ground for peaceful and credible election outcomes, and social cohesion afterwards. This will require statecraft on the part of President John Mahama, his government, the ruling party and the opposition parties, and the respective presidential campaign teams. It is also an opportunity for the propagandists of the respective parties and presidential campaigns to execute a truce and become more civil to each other — in honor of the late President.

“ President Mills’ untimely death presents an opportunity for lowering the political temperature and unifying the country in a seemingly tense election year. ”

Ghanaians will continue to remember the late President and reflect on his life in the months and years to come. In the medium- to long-term, the death of President Mills should, however, serve as a basis for critical reflection and drawing lessons on strengthening our governance institutions and processes, as well as for improving state systems and infrastructure. *Democracy Watch* will highlight some of these deficits, including how not to manage a President’s health, in a future edition. It is when the nation takes bold steps to address the shortcomings that became evident in the manner of his death that we will be able to immortalize his legacy. May his soul rest in peace. ■ ■

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