

AFRICAN PEER REVIEW MECHANISM



GHANA COUNTRY REPORT
COMMENTS
OF
GOVERNMENT OF GHANA
CONSTITUTIONAL ISSUES

NOVEMBER 2005

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REPORT GHANA:
COMMENTS FROM THE GOVERNMENT OF GHANA

Introduction

The Government of Ghana (GOG) has taken note of the APRM country Report and wishes to first congratulate the APRM Panel for a report that lives up to the expectations of the APRM. The Government also notes that this is the first APRM Report of its kind, not only in Africa but also perhaps in the whole world. It has therefore taken cognisance of the fact that as a novel project, it does not have antecedents.

It is further observed, that the most important aspect of the Report is the extent to which it meets the APRM principles of an open, transparent, participatory, democratic and accountable approach. The Report also meets the criteria of credibility, objectivity, professionalism and absence of political manipulation.

Furthermore, the GOG is of the view that the essence of the APRM and its commitment to that process is to foster good governance and socio- economic development to alleviate poverty.

Ghana's political will and commitment to be the first country to accede to and implement the APRM has been guided by its long standing, pan-Africanist traditions to join hands with other African countries.

The GOG in this respect is convinced that unless the entire continent endeavours to make a united and concerted effort a meaningful development of Africa cannot be attained.

With these principles in view, we wish to submit the following comments on the Ghana Country Report. First of all we have observed that the document still requires some editorial work and we hope the Panel would take the appropriate measures to address these gaps and deficiencies.

COMMENTS

The Gov. of Ghana has noted that the Report has come out with many worthwhile recommendations, however some of these recommendations fall outside the ambit of the country's Constitution, which is the supreme law.

Democracy and Good Political Governance

Several critical issues emanating from Democracy and Good Political Governance include

1. SEPERATION OF POWERS (MINISTRY OF PARLIAMENTARY AFFAIRS, MINISTER / MP COMBINATION)

The Government of Ghana (GoG) notes that serving Ministers who are also MP's is a Constitutional provision. The separation of Powers under the Ghanaian Constitution is a hybrid one and has a historical and constitutional background.

The GoG however would review the meeting times of Parliament with the legislature to ensure regular attendance to Parliament by Ministers who are also MPs.

The role of the Ministry of Parliamentary Affairs is an essential link between the Executive and Legislature.

2. LIMIT ON MINSTERS' APPOINTMENT BY THE PRESIDENT

The GoG notes that the Constitution limits the size of the Cabinet and not the size of Ministers. Subsequent to this the President had appointed 19 Cabinet Ministers as limited by the Constitution (Article 76).

3. LIMIT ON THE NUMBER OF SUPREME COURT JUSTICES APPOINTED BY THE PRESIDENT

GoG notes that by Convention, the Judicial Council had always worked within an upper limit of not more than 13 Judges and The Chief Justice. This limit had never been exceeded. The Constitution did not provide an upper limit.

4. PARLIAMENTARY APPROVAL FOR CREATION OF NEW MINISTRIES

The Government of Ghana notes that the creation of new Ministries depended upon the vision, policies and programmes of a particular Government. The creation of new ministries under this government's administration has been motivated by the need to create a greater stimulus for development.

5. EXPUNGING THE TRANSITIONAL PROVISIONS FROM THE 1992 CONSTITUTION

GoG notes that the Transitional Provisions could only be removed from the constitution by a national referendum.

6. ELECTION OF DISTRICT ASSEMBLYMEN AND WOMEN AND ELECTION OF DISTRICT AND MUNICIPAL CHIEF EXECUTIVES

GoG notes that election of District and Municipal Chief Executives could only be effected through a Constitutional amendment. This might be done at the appropriate time.

7. HARMONIZING TRADITIONAL LAWS AND LAWS PROVIDED UNDER THE 1992 CONSTITUTION

GoG has requested the Attorney-General and Minister of Justice to examine the issue of harmonizing Traditional Laws and other laws provided under the 1992 Constitution. He has also been requested to take the necessary steps to appoint Legal Counsel to the Regional Houses of Chiefs.

8. CONTINUOUS REGISTRATION OF VOTERS THROUGHOUT THE YEAR

It is the view of GoG that with a National I.D. System, there would not be the need for continuous registration.

9. ADOPTION OF AN AFFIRMATIVE ACTION FOR WOMEN AND YOUTH IN THE GOVERNANCE SYSTEM

GoG notes that there is in existence, affirmative action programmes for women and the youth. There is however the need to continue to encourage and prepare our women and youth from the district level for higher/national governance system.

10. GIVE CHRAJ POWER TO PROSECUTE

GoG notes that the Constitution gives the Attorney-General the power to prosecute. The Attorney-General could also delegate this authority to a designated organization or body to prosecute. CHRAJ had not sought any authorization from Attorney-General to prosecute.

GoG also notes that the statement “ Serious concerns have been raised: (a) about the powers of the SFO’s Executive Director to restrict the movements and freeze the assets and bank accounts of those accused of fraud; and (b) about the inquisition- like power of the SFO to *buy* incriminating evidence to use against them”. The Government is rather taken aback at the language and import of the statement in respect of such an important anti – corruption agency. Secondly, nowhere in the Ghana Country Self – Assessment Report was such a statement made or even suggested. Thirdly, the Country Report did not provide any evidence in support of the statement. The government would like to comment on the additional issues raised under Democracy and Good Political government as follows:

Kindly note that the National Labour Commission has recently been established under the new Labour Law, to facilitate the settlement of industrial disputes, investigate labour related complaints, unfair labour practices and take such steps, as it considers necessary, to prevent labour disputes. The Commission aims to use Alternative Dispute Resolution mechanisms rather than Labour Courts.

Additionally, regarding the National Reconciliation Commission Report, please note that Government released the Report on April 22 2005. A White Paper was also prepared. It is important that the report’s recommendations are implemented, particularly the recommendations for institutional reforms

We are also happy to inform you that a seven member SFO Board of Directors was inaugurated on April 27 2005.

With reference to the issue of NGOs and their focus, it is noted that the Report does not validate the finding that NGOs who focused on vulnerable groups receive sufficient resources from international donor agencies, nor is there any other fact or evidence to support the statement.

Economic Governance and Management

As regards Economic Governance and Management, there are no substantive issues for comment, the Government except amendment of Article 108 to give Parliament oversight responsibility to the budget process.

AMENDMENT OF ARTICLE 108 TO GIVE PARLIAMENT OVERSIGHT RESPONSIBILITY TO THE BUDGET PROCESS

GoG notes that the Budget was a process and Parliament is involved at a point in the process. The preparation of the budget was a responsibility of the Executive. (Article 179)

Corporate Governance

Comment on the size of the Small and Medium Enterprise (SME) Sector:

The 2003 National Industrial Census (NIC) carried out by the Ghana Statistical Services (GSS) in collaboration with the Ministry of Trade and Industry, with assistance from the United Nations Industrial Development Organisation (UNIDO) has some preliminary results that give an indication of the number of SMEs engaged in manufacturing, mining and quarrying.

Sector	No. of enterprises
Manufacturing	25,931
Mining and quarrying	167

Source: National Industrial Census, phase 1, GSS

As regards decentralisation of the Registrar – General’s Department and offices, please note that decentralised offices have already been set up in Tamale, Takoradi and Kumasi. Negotiations are on going to utilize the presence of Post Offices in all district capitals to serve as registration points.

On the issue of amending the companies’ code and relevant laws to take into account the global corporate governance development.

GoG notes that the Office of the Attorney-General is in the process of drafting a new Companies Code.

Access to finance was identified as one of the constraints to Private Sector Development, particularly in the Small and Medium Scale Enterprises. This problem is being addressed through the implementation of the policies through the establishment of the Venture Capital Trust Fund which is to be financed by 20% of proceeds from the National Reconstruction Levy. The Fund is to provide start-up capital for new and young entrepreneurs.

In the area of Non-financial assistance to new entrepreneurs, initiatives include the establishment of a Business Incubator in Accra with assistance from the World Bank, provides office space and business advisory and support services to entrepreneurs. The initial advert in 2004 was highly over-subscribed.

Regarding consumer protection, a Consumer Protection Association does exist in Ghana that has been undertaking public education on Consumer Rights and advocating the passage of Consumer Protection Law. Of late though, they are quiet due to financial constraints.

Socio – Economic Development

In reference to the statement that there were no suggestions as to specific measures that could be put in place to effect changes, our comment is that it is not consistent. Firstly, many solutions are provided in the Country Self - Assessment Report, secondly, the many suggestions that were proposed and well noted and applied during the Country Review Mission and thirdly the issues as outlined in the Ghana National Programme Of Action.

Chapter Six

In respect of Chapter 6, the Conclusion, we wish to observe the following; that in addition to the cross cutting issues identified by the Panel, the improvement and efficiency of the Justice system, deepening Public Sector Reforms and enhancing the role of Parliament, were also identified by Government, as cross- cutting issues.

Conclusion

It is our fervent hope that this first APRM Review exercise, will provide us all with lessons and shared experiences that can benefit other assessments according to the principles of the APRM.

This is the sure way for all of us to benefit from the noble objectives of the APRM. The GOG would like to reiterate its commitment to the APR Process and particularly to ensure the implementation and monitoring of the POA through a national consultative, participatory and democratic process that brings together significant stakeholders including government, the private sector and civil society.

We wish to once again thank the Panel of Eminent Persons, in particular, Dr Chris Stals, the leader of the Ghana Country Mission for his sense of devotion, commitment and faith in the Ghana APRM process.

We also wish to thank the staff of the APR Secretariat for their untiring efforts and last, but not least, we are appreciative of the efforts of Technical Partner Institutions that participated in the Country Review Mission.

Dated 14th November 2005, Accra, by the Ministry of Regional Cooperation & NEPAD in collaboration with the National African Peer Review Mechanism Governing Council, on behalf of the Government of Ghana.