



Technical Assistance Report

GHANA

Governance Diagnostic Assessment

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Prepared by

Gomiluk Otokwala, Ron Snipeliski, Rebecca Obare, Bonolo Namethe (LEG),
Thabo Letjama, Ed Hearne (FAD), Ravi Mohan Periyakavil Ramakrishnan (MCM)

Authoring Departments:

Legal Department

Fiscal Affairs Department

Monetary and Capital Markets Department

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Acronyms

AML/CFT	Anti-Money Laundering/Countering Terrorist Financing
BoG	Bank of Ghana
CHRAJ	Commission on Human Rights and Administrative Justice
DDEP	Domestic Debt Exchange Program
DNFBPs	Designated Non-Financial Businesses and Professions
DTRD	Domestic Taxes Revenue Division
EOCO	Economic and Organized Crime Office
FAD	Fiscal Affairs Department
GDP	Gross Domestic Product
GRA	Ghana Revenue Authority
IAA	Internal Audit Agency
IMF	International Monetary Fund
FIC	Financial Intelligence Center
LEAs	Law Enforcement Agencies
LEG	Legal Department
MCM	Monetary and Capital Markets Department
MER	Mutual Evaluation Report
MoF	Ministry of Finance
MoJ	Ministry of Justice
NGO	Non-Governmental Organization
NIC	National Insurance Commission
NPL	Non-Performing Loans
OSP	Office of the Special Prosecutor
PFM	Public Financial Management
PPA	Public Procurement Authority
RTIC	Right to Information Commission
SAI	Supreme Audit Institution
SEC	Securities and Exchange Commission
SRB	Self-Regulatory Body

Preface¹

In response to a request from the authorities of Ghana dated February 17, 2023, an IMF interdepartmental (LEG/FAD/MCM) Governance Diagnostic (GD) mission team visited Accra, Ghana from October 16 – 27, 2023 to conduct an assessment of governance weaknesses and corruption vulnerabilities. The purpose of the mission included helping the authorities design an action plan with specific prioritized, sequenced recommendations and structural reform to enhance transparency and accountability, prevent and combat corruption, in line with the IMF's 2018 Framework for Enhanced Fund Engagement on Governance.² The in-person mission was preceded by a virtual scoping mission conducted between September 18 – 29, 2023.³

The mission was led by Mr. Gomiluk Otokwala, and the team also comprised Mr. Ron Snipeliski, Ms. Rebecca Obare, Ms. Bonolo Namethe (all LEG); Mr. Thabo Letjama, Mr. Ed Hearne (both FAD), and Mr. Ravi Mohan Periyakavil Ramakrishnan (MCM expert). Mr. David Robinson provided support remotely and contributed to the drafting of this report. The mission was also supported by Ms. Rachel Sigman, a short-term expert with knowledge and understanding of the context, political economy, and major governance weaknesses in Ghana.

The mission team met with the Chief Justice of Ghana, some Supreme Court Justices, the Attorney General and Minister for Justice, Deputy Minister of Finance in charge of revenue, and the Governor and Deputy Governors of the Bank of Ghana (BoG). The mission also met with heads and senior staff of key ministries and agencies including the Ministry of Finance, the BoG, the Office of the Special Prosecutor (OSP), the Ministry of Justice (MoJ), Ghana Revenue Authority (GRA), Public Procurement Authority (PPA), Financial Intelligence Centre (FIC), Securities and Exchange Commission (SEC), National Insurance Commission (NIC), Ghana Investment Promotion Center (GIPC), Ministry of Roads and Highways (MRH), Ministry of Education (MoE), secretariats of four statutory funds, Right to Information Commission (RTIC), Commission on Human Rights and Administrative Justice (CHRAJ), and Ghana Police Service. In

¹ The Governance Diagnostic was possible due to a generous financial support of the Government of Switzerland/State Secretariat for Economic Affairs (SECO). Analysis and conclusions made in this report are of IMF staff only.

² <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance>.

³ The scoping mission team comprised Mr. Gomiluk Otokwala (Mission Chief, LEG), Mr. David Robinson, Ms. Rebecca Obare, Ms. Bonolo Namethe (all LEG); Mr. Thabo Letjama, Mr. Ed Hearne, Mr. Eduardo Camero Godinez (FAD), and Mr. Ravi Mohan Periyakavil Ramakrishnan (MCM).

addition, the mission met with senior officials and representatives of the private sector,⁴ professional bodies,⁵ academia,⁶ civil society⁷ and international development partners.⁸

The mission wishes to express its sincere appreciation for the excellent support and cooperation given by officials and staff of these various agencies, in particular the main point of contact for the Government of Ghana, Ms. Eva Mends (the Chief Director in the Ministry of Finance), and her staff.⁹ The mission is also grateful to civil society organizations and staff of international partners for their cooperation, as well as the candid and constructive discussions. The mission appreciates the support provided by Mr. Stephane Roudet (IMF Mission Chief for Ghana), Mr. Arthur Sode and the entire Ghana team, Mr. Leandro Medina (IMF Resident Representative for Ghana), Mr. Osa Ahinakwah (Local Economist) and Ms. Alyss Ben-Smith. The mission is thankful for the administrative assistance provided by Ms. Alexandra Rajs and for the overall guidance and advice provided by Mr. Emmanuel Mathias, Mr. Joel Turkewitz and Ms. Tina Burjaliani.

ADDITIONAL NOTES

This report reflects information gathered before and during the mission in October 2023 and in post-mission exchanges with the authorities in 2024. At the time of the finalization of the report, a new government has taken office in Ghana following the elections in December 2024. To maintain the integrity of the report, its content does not reflect any changes introduced by the new authorities (unless stated specifically).

In his inaugural address, the incoming President pledged to pursue a four-point agenda focused among others on “governance and constitutional reforms” and “accountability and the fight against corruption”. The new administration’s manifesto includes plans for many important governance and anti-corruption reforms, including in areas relevant to the findings in this report. The platform includes plans to scale up revenue mobilization by taking measures such as restructuring the GRA, reviewing the PFM Act and the Public Procurement Act to “plug leakages” and reduce corruption. The platform also includes plans for investigating, prosecuting and recovering proceeds of corruption; implementing “measures to curtail abuse of single-sourced and restricted tendering procurement”; enforcing the assets declaration regime; supporting the Auditor-General to enforce surcharges in order to retrieve embezzled funds;

⁴ Including the leadership and members of Association of Ghana Industries (a coalition of indigenous manufacturers in Ghana), Ecobank, Templars Law Firm, ENS Africa (law firm), etc.

⁵ The Ghana Bar Association and the Institute of Accountants.

⁶ In particular, the mission met with Professor Raymond Atuguba, Dean of the Faculty of Law, University of Ghana who also provided enormous support by sharing materials.

⁷ The mission met with officials of Ghana Integrity Initiative, Corruption Watch Project, Ghana Anti-Corruption Coalition, Center for Democratic Development, Act Africa and Economic Governance Platform and other members of the civil society coalition.

⁸ Among others, the mission engaged with the World Bank, the African Development Bank, the EU Delegation in Ghana, UNDP, USAID, UK High Commission, Embassy of France, GIZ, and FCDO.

⁹ The mission especially appreciates the helpful support of Mr. Samuel Aggrey, Ms. Gifty Nyamekye, Mr. Adrian Osei-Antwi, Mr. Michael Baidoo, Ms. Ms. Baaba Nyarko.

enacting a conflict-of-interest law for all government officials; strengthening the procurement legal framework to ensure greater transparency and to “prevent conflicts of interest and insider dealing by politically exposed persons in the award of contracts” (see Resetting Ghana: Jobs. Accountability, Prosperity—NDC 2024 Manifesto).

Executive Summary

i. Prepared at the request of, and in collaboration with, the Government of Ghana, this report, evaluates the strength of economic governance in Ghana, highlights important weaknesses and vulnerabilities and provides recommendations to address them.

The diagnostic report was prepared by staff from the IMF's Legal Department (LEG), Fiscal Affairs Department (FAD) and the Monetary and Capital Markets Department (MCM). In line with the IMF's 2018 Framework on Enhanced Fund Engagement on Governance, the diagnostic covers an assessment of the severity of corruption, the strength of the anti-corruption framework, as well as corruption vulnerabilities and governance weaknesses in the following areas: (i) the anti-money laundering regime; (ii) public financial management, in particular, budget credibility and arrears management, public procurement, governance of statutory funds, and public investment; (iv) revenue administration; (v) rule of law, including judicial integrity, enforcement of contractual and property rights, and (vi) financial sector oversight¹⁰. Governance weaknesses and vulnerabilities in the named areas are highlighted in the report to the extent that they are deemed sufficiently severe to affect or potentially affect macroeconomic performance.¹¹

ii. Addressing economic governance weaknesses and, in particular, corruption, has been a national priority for Ghana.

The National Anti-Corruption Action Plan (NACAP) 2012 – 2021 set targets and strategies to combat what the Commission on Human Rights and Administrative Justice (CHRAJ), a state agency, has called “the cancer of corruption.” According to CHRAJ’s 2015 progress report on NACAP implementation, “[corruption is] an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. It hampers efforts to alleviate poverty, undermines political stability and economic growth and diminishes the country’s attractiveness for investment.”¹²

iii. In recent years, the Ghanaian authorities have introduced a number of important reforms in recognition of the criticality of good governance and the need for effective measures to prevent, detect and address corruption.

Notably, in response to calls for a truly independent anti-corruption authority, the authorities established the Office of the Special Prosecutor (OSP) with the enactment of the OSP Act in 2017. The OSP is a specialized agency empowered to investigate and prosecute specific cases of alleged or suspected corruption and corruption-related offenses, recover the proceeds of corruption and corruption-related offense,

¹⁰ This report does not include an assessment of Central Bank Governance and Market Regulation, which are also key parts of the IMF Governance Framework.

¹¹ Information gathering for this report involved a virtual scoping mission in September 2023, a two-week in-person visit to Accra in October 2023 and other forms of outreach before and after the visit to Accra.

¹² See National Anti-Corruption Action Plan (NACAP) – Progress Report (January – September, 2015). NACAP is available here: [https://new-ndpc-static1.s3.amazonaws.com/CACHES/PUBLICATIONS/2016/05/03/National+Anti-Corruption+Action+Plan+\(NACAP\)+2012-2021.pdf](https://new-ndpc-static1.s3.amazonaws.com/CACHES/PUBLICATIONS/2016/05/03/National+Anti-Corruption+Action+Plan+(NACAP)+2012-2021.pdf)

and take steps to prevent corruption. Wider governance reforms have also received attention. Over the last decade, Ghana has enacted important legal reforms on access to information,¹³ public procurement,¹⁴ registration of collateral,¹⁵ combatting money laundering,¹⁶ financial sector oversight and governance,¹⁷ as well as land tenure and administration,¹⁸ thereby minimizing opportunities for abuse and rent seeking. Major improvements have similarly been made in digital service delivery across various state functions, including revenue administration, procurement (GhanEPS) and the court system, equally reducing corruption vulnerabilities.

iv. These efforts notwithstanding, governance weaknesses and corruption vulnerabilities persist in various state functions. While Ghana has enjoyed decades of political stability, third-party and perception-based indicators, as well as discussions with various counterparts during the mission, as detailed below, indicate that the problem of corruption in Ghana is systemic and is worsening.¹⁹ By many accounts, corruption has been prevalent regardless of the administration in office and various attempts to address the problem have recorded limited success. Public procurement processes are considered an important source of corrupt financing, including through side payments, bribes, kickbacks, non-enforcement of contract terms, and judgment debt. Specifically, gaps in procurement processes (see Section IV) provide an avenue for incumbents to reward party agents and supporters, collect kickbacks and raise money for political objectives and personal enrichment.

v. Public financial management (PFM), as discussed in Section IV of the report, presents opportunities for targeted reforms to improve macroeconomic performance. Ghana has a recurrent problem of weak budget credibility, which is at the root of a number of macro-critical governance weaknesses and has resulted in the accumulation of large expenditure arrears, a situation that presents major corruption vulnerabilities through a risk of discrimination in the selection of what creditors to pay and in what order. There are also multiple shortcomings in public procurement procedures and practices. Recent data shows that sole sourcing and restricted tendering account for over 40 percent of procurement by value, thereby undermining efficiency and exposing the system to corruption risk. While the law provides for specific derogations to competitive procurement, in practice, justifications are weakly evidenced. Moreover, the overwhelming majority of requests to the procurement authority, the PPA, for use of restricted or sole source procurement are approved. Governance weaknesses

¹³ Right to Information Act 2019

¹⁴ Public Procurement (Amendment) Act 2016

¹⁵ Borrowers and Lenders Act 2020

¹⁶ Anti-Money Laundering Act 2020

¹⁷ Banks and Specialized Deposit Taking Institutions Act 2016 and Bank of Ghana (Amendment) Act 2016

¹⁸ Land Act in 2020

¹⁹ Ghana has moved slightly downward in Transparency International's Corruption Perception Index, from a score of 48 in 2014 to 43 in 2022. Public opinion data collected by Afrobarometer in 2022 also reflect worsening perceptions of corruption in Ghana. It is acknowledged that perception-based assessments are vulnerable to recency bias and other shortcomings.

with the largest statutory funds²⁰ arise from poor practices in terms of transparency and procedures for use of funds, absence of appropriate accountability structures,²¹ absence of competitive procurement, unclear decision-making structures, expenditure arrears and poor value for money in investment spending. Statutory funds are principal contributors to capital project abandonment. Governance problems are therefore leading to severe erosion of value for money. Finally, there are a number of shortcomings in public investment management in Ghana, including inadequate prioritization of projects, failure to protect funding for approved projects over the life cycle, the emergence of expenditure arrears, major delays and abandonment of projects and delivery of poor quality or un-needed assets. Governance weaknesses are also present across the public investment life-cycle, representing corruption vulnerabilities and inefficiencies.

vi. Also, as shown in Section V, there are opportunities for targeted reforms in revenue administration to improve efficiency and transparency. Revenue administration in Ghana continues to be characterized by undocumented and outdated procedures in Domestic Taxes and Customs, leaving decisions open to unfettered discretion of officials. This state of affairs is aggravated in some cases by manual processes which are complex, inefficient, costly and lack an effective audit trail of transactions. In many areas, the Ghana Revenue Authority (GRA) has not developed and published guidelines on how to exercise the discretion provided for in the law. The lack of transparency leaves the GRA vulnerable to corruption. For example, the Commissioner General (CG) has the power to reduce penalties imposed by officers on post clearance audits and on waiver of the duties and taxes to be paid on filing an appeal by taxpayers, but the limits of this power are unclear. In addition, the lack of risk-based compliance management results in auditors selecting the cases they audit, contrary to good international practice. Coupled with weak audit performance monitoring and quality assurance, this is another area of major vulnerability to corruption. Improvements have been made to the implementation of the Exemptions Act. However, the issuance of exemptions, including the VAT Purchase Relief Orders, continues to be a major vulnerability to corruption and fraud. The provisions on the appointment of GRA executive management, to the extent they do not provide for a clear, merit based and transparent process, make the organization highly vulnerable to undue political interference in operational decisions.

vii. The current regime for protection of property rights and contract enforcement is also in need of reform (see Section VI of the report). Property rights, especially over land, suffer from insecurity of title, conflicting claims and protracted dispute resolution, making land administration prone to abuse and vulnerable to corruption. While the judiciary in Ghana is well established, concerns have been expressed by commentators and civil society about judges' independence and impartiality, and their protection from external influence, including political

²⁰ In 2023, 17.5 percent of public revenue was budgeted for allocation to a set of earmarked, statutory funds

²¹ For example, reports suggest that only about 50 percent of the District Assemblies Common Fund allocations are actually dispersed to local governments. Suhuyini, Alhassan Sayibu, Joseph Antwi-Boasiako, and Iddrisu Abdul-Rashid. "MPs Use of the District Assembly Common Fund in Ghana; 'Perception Meets Practice'." *The Journal of Legislative Studies* (2023): 1-17. In many cases, these allocations remain opaque and there is no requirement for MPs to fully account for their use of these funds.

interference. In the contract enforcement legal framework, undue delay and cost appear to be the biggest problems, but there is also a perception of judicial corruption.

viii. In Section III, the report highlights how AML/CFT tools can be leveraged more effectively to address corruption. A particularly significant issue in this area is the limited coordination among the relevant agencies in terms of fighting corruption, notwithstanding the establishment of the AML/CFT Inter-Ministerial Committee. Another area of concern is the availability and accessibility of beneficial ownership information, which can play an important role in preventing, detecting and prosecuting corruption and corruption-related offences. Although the Registrar of Companies has established mechanisms for collecting basic and beneficial ownership information of all legal persons, the beneficial ownership registry is still incomplete, especially with regard to *existing* (compared to newly registered) companies. In terms of AML/CFT supervision, although the major financial institutions (BoG, SEC, NIC) have established AML/CFT supervision units, these remain significantly under-resourced in proportion to the number of institutions that they need to supervise. The report also points to loopholes in the governance of the FIC, and gaps in the dissemination of suspicious transaction reports (STRs) to law-enforcement agencies.

ix. In the area of financial sector oversight, the mission identified a number of governance weaknesses (Section VII). The assessment of corporate governance conducted by the onsite supervisors, when assessed based on the directives issued by BoG in this regard, reveals shortfalls in many aspects. The coverage of related party transactions has to be expanded to cover all types of transactions within its remit in addition to financial (credit) exposures. There is a lack of skilled resources to work as Directors in boards of banks, especially in the audit committees, the risk committees and as independent directors. Public sector banks' governance appears to be weaker than that of other banks, as evidenced by their weaker financial performance, capital levels and higher NPLs.

x. Of particular significance, the anti-corruption legal framework needs to be strengthened to address corruption risks in various key state functions (Section II). Asset declaration and conflicts of interest frameworks need considerable strengthening as they lack sufficient transparency mechanisms, coverage, adequate enforcement and verification, and collected information is not shared with other agencies nor made publicly available. Monitoring and auditing activities are not risk-based, decreasing their effectiveness and efficiency. There is also no consistent and effective use of relevant legal tools to strengthen public sector accountability, such as the Auditor-General's surcharge powers. Detection capabilities for corruption offences are weak, impacting the number of cases received and processed by enforcement agencies. Additional weaknesses were observed from the low levels of high-profile investigations and prosecutions, lengthy criminal processes and inadequate specialization of anti-corruption courts.

xi. It is critical to strengthen Ghana's oversight and accountability institutions to enable them to fulfill their roles. A number of anti-corruption agencies have been established over the last decades, including most recently, the Office of the Special Prosecutor. The introduction of the OSP in 2018, alongside other governance reforms, has renewed energy for Ghana's anti-corruption efforts and, despite challenges, demonstrates the authorities' resolve

to challenge the norm. Yet the anticorruption framework is hampered by fragmentation, overlaps in functions, insufficient independence, and lack of resources. It is imperative to address those issues and to empower the agencies with the legal tools to effectively deliver on their mandates, including through deeper reforms and firmer implementation of the legal framework on asset declaration, conflicts of interest, access to information, and audits. Greater transparency would increase public trust and minimize the perception that decisions reached by the anticorruption agencies (for example, not to prosecute) are motivated by political considerations. It is particularly important to insulate the accountability institutions from political control and influence by strengthening the legal provisions on appointment and removal of key officials, among other measures.

xii. Effectively addressing governance and corruption issues in Ghana will require well-tailored and sequenced efforts, extensive outreach and willingness to challenge settled norms. Past efforts in Ghana, and in other countries, have demonstrated that changing outcomes comes about through improving policies, institutions, and incentives, and but also requires the engagement of public officials, power brokers, the private sector, and various communities. In Ghana, the forces that shape and influence underlying incentives and practices are deep, structural, and resilient. Cultural norms regarding wealth could influence the willingness to move to more transparent systems for publishing asset declarations. Strong deference to the moderating influence of traditional authority institutions could complicate the shift to more predictable/transparent land rights (given that at least 70 per cent of land remain under customary land tenure, as explained in Section VI). Also, current practices for political party financing generate strong incentives to use public authority to reward supporters and fund future elections. The mission takes note of the observation by various counterparts and academics during the mission that Ghana's political system generates huge rents for the winning party and their sponsors, without a cap on costs for the other party. Addressing these realities and establishing governance practices that are more rule-based and growth-oriented can be encouraged by external partners like the IMF but ultimately depends on concerted work by local stakeholders over many years.

xiii. Implementing deep governance reforms is not a risk-free endeavor. It may unsettle powerful vested interests whose reactions cannot be predicted. As the mission heard many times, Ghana's international reputation as a beacon of peace and stability has been preserved at some costs that are widely accepted. However, for the country to attain its full potential, it needs to build a new consensus that could dismantle many of the impediments to the quest for macroeconomic stability and growth. The cost of the low-level governance equilibrium is substantial, especially given its resistance to change and adaptation to new challenges and demands.

xiv. The report proposes immediate and near-term reform steps to help the authorities to address the identified governance weaknesses and corruption vulnerabilities. As noted above, effectively addressing the identified governance weaknesses would require long-term initiatives and prolonged efforts, including with support from Ghana's international partners. The recommendations coming out of the diagnostic will contribute to the formulation of governance and anticorruption policies and programs, improvement of the legal and institutional frameworks, as well as governance and anti-corruption reform measures in the

context of the Extended Credit Facility Arrangement for Ghana. Below is a matrix of priority recommendations, selected on the basis of expected impact from a longer menu of recommendations included at the end of each section.

xv. This diagnostic exercise also seeks to support the reform agenda under the IMF-supported program in critical governance areas. Ghana requested and received IMF financial support and is implementing an economic reform program to address the serious balance of payments and economic crisis. Key policies under the Fund-supported program include large and frontloaded fiscal consolidation to bring public finances back on a sustainable path. In the program's context, the authorities are implementing ambitious structural reforms in tax policy, revenue administration, and public financial management, as well as taking steps to address weaknesses in the energy and cocoa sectors. Among others, the diagnostic will crucially support key program priorities on public procurement, the domestic arrears clearance strategy, anti-corruption, and revenue administration. It will also support the authorities' efforts under Ghana's Post Covid-19 Program for Economic Growth to address gaps in the country's governance systems, to promote the efficiency of public spending, enhance competitiveness, and lay the foundations for higher and more inclusive growth.

Table 1. Priority Recommendations

Area	Key recommendations	Agency responsible	Implementation Timeframe ²²
Anti-Corruption	Strengthen the financial autonomy of anti-corruption agencies by submitting to Parliament and approving amendments to the PFM Act as detailed in Table 2 (Section II).	MoF, MoJ	Short Term (ST)
Anti-Corruption	Strengthen the asset declaration system by submitting to Parliament and approving amendments to require verification, publication and sanction for detected irregularities, and to expand coverage to assets beneficially owned by officials and their families (see Table 2).	MoJ, CHRAJ, Auditor-General	ST
Anti-Corruption	Enhance the external audit function's role in preventing and combatting corruption as detailed in Table 2 (Section II)	Auditor General, Attorney General	ST
Anti-Corruption	Clarify and properly demarcate the roles within the enforcement apparatus in Ghana and sign MOUs among agencies as to the basis on which they cooperate and how cases/files/intelligence are shared (Section II)	Attorney General	ST
Anti-Corruption	Establish the conflicts of interest framework by enacting the Conduct of Public Officers Bill in line with international standards and best practice (Section II)	Attorney General	ST
AML	Strengthen transparency of beneficial ownership (BO) information (Section III)	Attorney General	Medium-Term (MT)
Public Financial Management	Address governance vulnerabilities in the public procurement system. Ensure public procurement is open and competitive to the maximum extent possible (Section IV)	PPA MoF	MT
Revenue Administration	Strengthen the governance of the GRA including through delegation, streamlining processes and legal reform (Section V).	MoF GRA MoF	MT
	Implement revenue loss mitigation measures it (Section V).	MoF	ST
	Strengthen GRA Board oversight (Section V).	GRA GRA MoF	MT
Financial Sector Oversight	Adopt measures to strengthen financial sector oversight including through legal reform and strengthening prudential regulatory and supervisory framework which are closely related to governance aspects (Section VII).	BOG MoF	MT
Rule of Law	Complete the e-Justice project and prioritize the implementation of court automated systems, aimed at reducing avenues for corruption and speeding up dispute settlement (Section VI).	Attorney General The Judiciary	MT

²² The recommendations are classified as Immediate – to be implemented in up to 6 months, ST – Short Term to be implemented in six to twelve months, MT- Medium Term that may require up to 24 months.

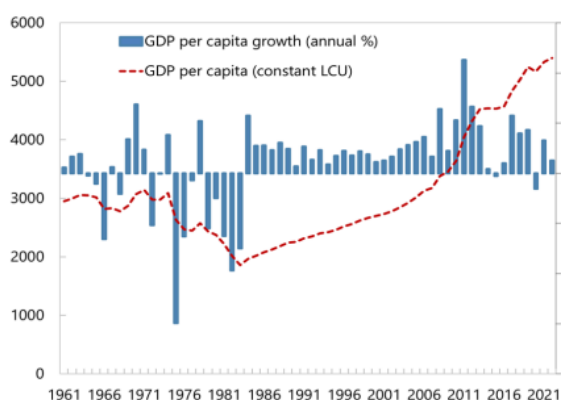
Section I. Severity of Corruption and Its Impact on Key State Functions

1. Ghana, a country of 31 million people on the West African coast, has enjoyed decades of political stability. Since its transition from military rule in 1992, Ghana has had peaceful transfers of power, including in the context of elections lost by the incumbent president or the incumbent political party. The design of Ghana's current political setup, according to the authorities themselves, is credited with the stability of the country. This setup includes a two-party system, a President who is both head of state and head of government, a judicial branch with constitutional guarantees of independence and a single-chamber parliament. At the same time, many Ghanaian officials and commentators acknowledge that the design of the political structures reflects a grand bargain intended to keep the wheel of state functioning given the unique history and composition of the country.

2. Often hailed as a development success story in Sub-Saharan Africa, Ghana has faced significant economic challenges in recent years, driven by both external shocks and underlying vulnerabilities, including weak governance. After years of robust growth, Ghana's economy was hit by external shocks, notably the Covid-19 pandemic, which exacerbated preexisting fiscal and debt vulnerabilities. The resulting crisis saw a spiraling external debt service burden, rapid depreciation of the cedi, and surging inflation. Ghana lost access to international and domestic financial markets, ultimately leading to a default on external debt in December 2022.

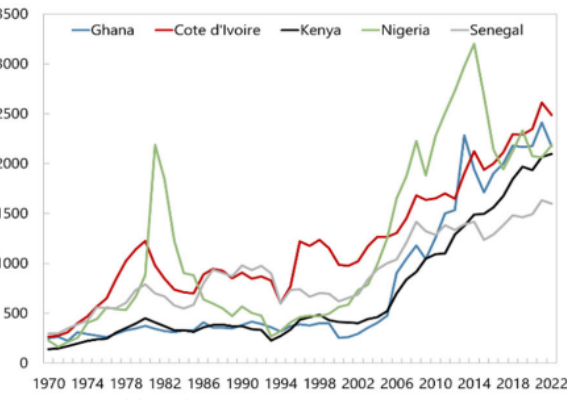
3. Weak governance exacerbated preexisting economic vulnerabilities ahead of the crisis. High expenditure arrears, which stemmed in large part from low budget credibility and weak commitment control, as well as poor procurement controls in public contracting, significantly strained public finances. Furthermore, low revenue collection resulting from inefficient revenue administration practices compounded by corruption, further undermined Ghana's fiscal position. The country's Commission on Human Rights and Administrative Justice (CHRAJ) has estimated that Ghana loses approximately GH¢13.5 billion annually to corruption, highlighting the severe governance challenges that exacerbate the nation's economic difficulties.

Ghana: GDP per Capita Growth



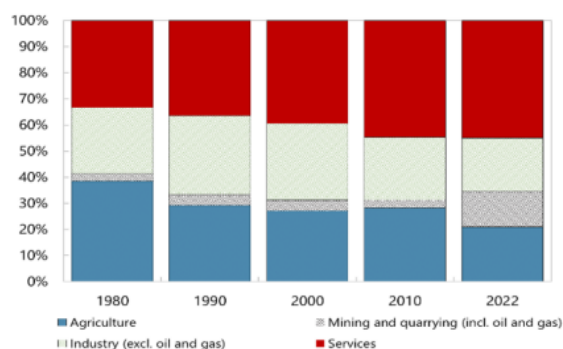
Source: World Bank, WDI.

Ghana and Comparators: GDP per Capita (Current US Dollars)



Source: World Bank, WDI.

Ghana: Sectoral Share of GDP 1980-22



Source: Ghanaian authorities and IMF staff calculations

Ghana: Export Composition, 2021 (in percent of total export)



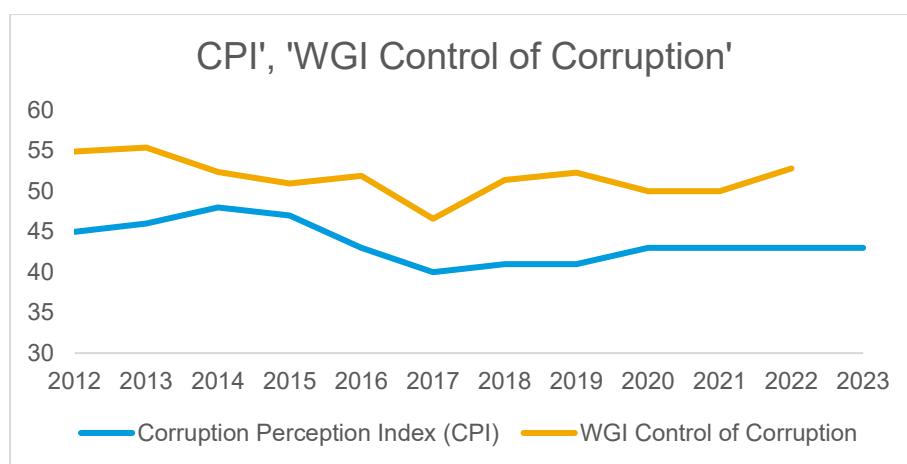
Source: The Observatory of Economic Complexities

4. Third party and perception-based indicators indicate that corruption is a serious challenge in Ghana and that its prevalence has grown over time. V-Dem country experts for Ghana perceive a consistent worsening of executive bribery and corrupt exchanges (e.g., procurement-based corruption) since 2016 and an increasing frequency of executive embezzlement and misappropriation of public resources since 2019.²³ Ghana has also moved slightly downward in Transparency International's Corruption Perception Index, from a score of 48 in 2014 to 43 in 2022. Public opinion

²³ Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, David Altman, Fabio Angiolillo, Michael Bernhard, Cecilia Borella, Agnes Cornell, M. Steven Fish, Linnea Fox, Lisa Gastaldi, Haakon Gjerl.w, Adam Glynn, Ana Good God, Sandra Grahn, Allen Hicken, Katrin Kinzelbach, Joshua Krusell, Kyle L. Marquardt, Kelly McMann, Valeriya Mechkova, Juraj Medzihorsky, Natalia Natsika, Anja Neundorf, Pamela Paxton, Daniel Pemstein, Josefine Pernes, Oskar RydÅlen, Johannes von RÅNomer, Brigitte Seim, Rachel Sigman, Svend-Erik Skaaning, Jeffrey Staton, Aksel SundstrÅNomer, Eitan Tzelgov, Yi-ting Wang, Tore Wig, Steven Wilson and Daniel Ziblatt. 2024. "V-Dem Dataset v13" Varieties of Democracy (V-Dem) Project, available at www.v-dem.net

data collected by Afrobarometer in 2022 also reflect worsening perceptions of corruption in Ghana. 77 percent of Ghanaians said the level of corruption in the country had increased “somewhat” or “a lot” over the past year, up from 53 percent in 2019 and 39 percent in 2017. Only six percent said the level of corruption had decreased.²⁴ According to the indicators, public trust in the police and judiciary are especially low, suggesting that citizens see few institutional avenues through which to pursue accountability for abuses of public resources and power.²⁵

5. Perceptions of increasing severity of corruption and waste of public resources in Ghana are supported by qualitative observations. Multiple reports have discussed the spending patterns of government officials and agencies and extensively reported transgressions involving high-level officials and economic elites. At least one Ghanaian civil society organization has pointed to a recent spate of government spending which it sees as driven by political and personal benefit.²⁶ During the mission, various counterparts, including high-level public office holders, expressed frustration to the diagnostic mission team about not just the extent of waste of public resources but the apparent lack of accountability that has characterized governance in Ghana under successive administrations.



6. Ghana’s highest court and other accountability institutions have similarly sounded the alarm about waste and abuse in the management of public resources. In *Occupy Ghana v Attorney General*,²⁷ the court acknowledged the “fact that corruption, abuse of position and embezzlement of public funds among others has become the bane of our governance structures.” Noting the “rampant carelessness that is often times employed by those in charge of public funds in most entities,” the court called on accountability institutions established under the Constitution, such as the Auditor

²⁴ Afrobarometer Data, Ghana Round 9, 2022, available at www.afrobarometer.org

²⁵ It is important to note, however, that public opinion perceptions tend to be cyclical. In 2014, toward the end of the previous government’s term of office, 71 percent said that the government was responding badly to corruption and 83 percent said that corruption had increased in the previous year. Additionally, individuals’ perceptions of corruption are known to be tied to perceptions of economic performance. In the context of Ghana’s recent economic downturn, it is highly possible that worsening economic circumstances have produced worsening perceptions of corruption.

²⁶ See, for example, Kojo P. Asante and David Asante Darko, “Proposals for Reducing the Size and Cost of Running Government,” CDD-Ghana Briefing Paper Vol. 19 No. 3, January 2023, available at <https://cddgh.org/wp-content/uploads/2023/01/Vol.-19-no.-3-Proposals-for-Reducing-Size-of-Government...pdf>

²⁷ Available at <https://ghalii.org/akn/gh/judgment/ghasc/2017/24/eng@2017-06-14/source.pdf>

General's office, to "protect the public purse from persons who intend to embark upon personal economic recovery programmes with the public funds." At the Ghana Revenue Authority (GRA), a recent OSP investigation found evidence that, between 2017 and 2021, the Customs division was engaged in customs advance rulings and markdown of benchmark values that negatively impacted the collection of state revenue from import tariffs and taxes.²⁸ In 2020, the unconstitutional dismissal of the Auditor General²⁹--as per the Supreme Court decision--and the resignation of the Special Prosecutor (who alleged that the government sought to interfere with his decision-making)³⁰ also suggest that significant problems remain to be addressed.

7. The Commission on Human Rights and Administrative Justice (CHRAJ) – a government body –estimated that the country was losing approximately GH¢13.5 billion (US\$ 1.1 billion) to corruption annually, seven times more than the amount dedicated to the implementation of the Free Senior High School program in Ghana. In 2022, Ghana's finance minister, according to many reports, estimated that the country was losing US\$4 billion each year to corruption.³¹

8. Public procurement processes are most vulnerable to corruption. The vulnerabilities facilitate side payments, bribes, kickbacks, and non-enforcement of contract terms. Reports suggest that to secure major contracts, companies reportedly sometimes make large side payments, sometimes well into the millions of U.S. dollars, to a range of elected and appointed officials who possess the power to influence contracting decisions.³² It is believed that the above-mentioned practices have led to secondary forms of corruption, including the sale of contracts to third parties³³ and "judgment debt" settlements awarded to contractors for the government's abrogation or non-payment of contracts. A 20-year review has shown that collusive "judgment debts," a practice where corrupt government officials collude with private parties to fraudulently obtain and pay out large sums of money awarded by courts against the government, has been a major source of public financial loss in the procurement process. The authors estimate that from 2000 to 2019, the government paid out a total of \$358 million (GH¢1.9 billion in 2019) in judgment debts.³⁴ The mission takes note of the

²⁸ See https://osp.gov.gh/media/Resources/osp_investigation_report_labianca.pdf and osp.gov.gh/our_cases/case_profile/9/cases/

²⁹ <https://cddgh.org/directing-the-auditor-general-to-go-on-accumulated-leave-why-the-president-got-it-wrong/>

³⁰ https://www.voanews.com/a/africa_ghanas-corruption-fight-questioned-after-prosecutor-quits/6198591.html

³¹ What Ghana Can Do to Combat Corruption: Educate, Prevent, Enforce – available at <https://theconversation.com/what-ghana-can-do-to-combat-corruption-educate-prevent-enforce-176367>

³² See, for example, the U.S. Securities and Exchange Commission v. Asante K. Berko, <https://www.sec.gov/litigation/litreleases/lr-25121>, accessed November 18, 2023. See also Sarkodie, Samuel Asomado, "Lessons to be Learnt from Ghana's Excess Electricity Shambles," The Conversation, 5 August 2019; Ackah, Ismael, Katie Auth, John Kwakye, and Todd Moss, "A Case Study of Ghana's Power Purchase Agreements," IEA Ghana and Energy for Growth Hub, 15 March 2021, and Rahman, Kuanain, "Overview of Corruption and Anti-Corruption in the Energy Sector with a Focus on Ghana," U4 Helpdesk Answer, Transparency International, 25 May 2022 on corruption in energy contracts.

³³ The extent of this practice is unknown, but one significant case involving the former head of the Public Procurement Authority has brought significant attention to it. The case involving contractor Talent Discovery Limited was the subject of a [documentary](#) produced by investigative reporter Manassah Awure Azuni. The case has since been referred to the Office of the Special Prosecutor and the Commission on Human Rights and Administrative Justice (CHRAJ).

³⁴ "A 20 Year Review of Judgment Debt Payments in Ghana: Impact, Causes, and Remedies," Center for Social Justice Report, 2021. Judgment debts are awarded when contractors sue the government for breach of contract. These cases frequently occur after electoral turnovers of power. To illustrate: let's say a business is awarded a lucrative contract under the government of Party A. That

observation by various counterparts and academics during the mission that Ghana's political system generates huge rents for the winning party and their sponsors, without a cap on costs for the other party. In recent years, significant instances of misappropriation of public funds have been uncovered in the Ghana Youth Employment and Entrepreneurial Agency (GYEEDA), the Ghana Education Trust Fund (GETfund), the National Service Secretariat (NSS), the Ghana Cocoa Board (COCOBOD) and others.³⁵

9. Natural resource management is also particularly vulnerable to corruption. In many countries, corruption in the mining sector is prevalent, as easy access to rents from oil production and mining presents a high risk of corruption.³⁶ In Ghana, corruption concerns in this area have been identified in the (non)-enforcement of agreements with oil companies,³⁷ and in mining licensing,³⁸ among others. Anecdotal evidence also points to mismanagement and corruption with regard to cocoa, Ghana's main export commodity.³⁹

10. Strengthening accountability for corruption, especially among high-level and connected officials and individuals, can improve the effectiveness of the anti-corruption drive. Government officials, international development partners and the business and professional community alike expressed frustration about the lack of action to address malfeasance under successive governments, as illustrated by the non-prosecution of the bank managers who were implicated in the collapse of their banks and top government officials allegedly enmeshed in corruption scandals or suspected of having received bribes. In 2018, the Bank of Ghana revoked the licenses of a number of banks suspecting of "dissipating depositors' funds and insider trading". The BoG led the intervention in the banks and attributed their collapse to "weak risk management, poor corporate governance and non-compliance to professional rules and ethics by officials, including central bank supervisors."⁴⁰ Yet there

contract is then abrogated or left unpaid when Party B comes to power. When Party A subsequently returns to power, the contractor sues the government. In many cases, this process results in large settlements for the contractor regardless of their performance under the contract terms. Judgment debt cases have been tried and awarded in both Ghanaian and non-Ghanaian courts including in the U.S., U.K., and the International Court of Arbitration. In general, judgment debts support the system of procurement-based corruption by providing "insurance" to party financiers whose "investments" in the party (side payments, bribes, campaign donations, etc) do not produce the anticipated returns because of the party's electoral loss.

³⁵ See Kofi Takyi Asant and Moses Khisa, "Political corruption and the limits of anti-corruption activism in Ghana" in *Political Corruption in Africa*. Edward Elgar Publishing, 2019. 29-51.

³⁶ See Rabah Arezki, Markus Brückner, "Oil Rents, Corruption, and State Stability: Evidence From Panel Data Regressions," IMF Working Paper, available at <https://www.imf.org/external/pubs/ft/wp/2009/wp09267.pdf>.

³⁷ In Ghana's oil sector, a series of reports released by the African Centre for Energy Policy (ACEP) and the Public Interest and Accountability Committee (PIAC) document significant losses of revenue due to non-enforcement of agreements with oil companies. The extent to which these issues are attributable to corruption is unknown, but the reports document how contract extensions for non-performing companies were made possible by political patronage, and that the administrative processes involved in awarding petroleum agreements is "likely to create opportunities for corrupt behavior from government and companies." *Strengthening Action Against Corruption: Addressing Corruption in Ghana's Petroleum Contracting*, ACEP and UKaid, 2020, available at <https://adamsmithinternational.com/app/uploads/2021/06/1.-STAAC-Briefing-ACEP-1Dec2020.pdf>

³⁸ "Corruption Risk Assessment Report: On Mineral Mining Licensing in Ghana" GII (local chapter of Transparency International), available at <https://transparency.org.au/wp-content/uploads/2020/05/Ghana-Report.pdf>

³⁹ *Corruption, mismanagement hurt Ghana cocoa industry - World Bank*, available at <https://www.reuters.com/article/business/corruption-mismanagement-hurt-ghana-cocoa-industry-world-bank-idUSL8N1IX71K/>

⁴⁰ <https://www.reuters.com/article/ghana-banks/bank-of-ghana-plans-to-prosecute-executives-of-failed-banks-idUKL5N1V45KP/>

has been no prosecution of the alleged perpetrators even though the BoG informed the mission that it had provided relevant information for necessary action by law enforcement.

11. Internal accountability mechanisms—such as regulatory bodies, inspectorates or internal audit functions—lack adequate capacity and authority. These mechanisms are also regularly circumvented by the high degree of discretion afforded to senior officials, and through extensive avenues for exerting informal influence on decision-making and the application of regulations. Government decisions relating to capital investments, high-value procurement, the granting of concessions for “strategic” investments, the marketing and payment of debt instruments, or the divestiture of state property too often occur through opaque processes at the highest level of government with limited oversight and contestation. External mechanisms of accountability, such as auditing, parliamentary oversight, and prosecution through the courts have shown little effectiveness in constraining questionable behavior. This is in part due to the absence of effective follow-up mechanisms for actions that waste public resources, as noted in the Supreme Court case above, and the limited transparency. The absence of functional relationships with external law enforcement agencies enables officials to enjoy the profits of their illicit actions outside the country. In addition, the incomplete insulation of independent anti-corruption institutions from political control was mentioned many times to the mission as a vulnerability.

Section II. Legal, Organizational, and Strategic Frameworks for Anti-Corruption

A. LEGAL AND ORGANIZATIONAL FRAMEWORK

Context

12. This section assesses the legal and institutional framework for mitigating corruption risks in Ghana and identifies the main constraints that the country faces in this regard. The measures suggested to address the shortcomings aim at strengthening the overall anti-corruption frameworks and supporting governance arrangements to reduce opportunities for corruption.

13. Effective anticorruption efforts require a number of key competencies. While each country's anticorruption efforts must be shaped by its institutional history and governance arrangements, most successful anticorruption efforts include work to prevent corruption; identify, investigate, and sanction corrupt behavior; develop, coordinate, monitor and evaluate risk-based anti-corruption policies and strategies and establish and enforce clear standards of official behavior. Government action is essential, but constructive anticorruption efforts are most often pursued through collaborative initiatives involving government, the private sector and civil society, with a strong focus on transparency and inclusive governance.

14. Despite many years of anticorruption efforts, the legal and organizational framework erected to confront corruption in Ghana has struggled to fulfil its function. Overlapping legal mandates and the 'rebadging' of anti-corruption institutions have contributed to a confusing and complex institutional arrangement which, to have the impact necessary to combat corruption, must be clear and direct in its application. For example, in 1993, the Government of Ghana established the Serious Fraud Office (SFO) as a specialized investigative body given that existing institutions could not adequately detect, investigate and prosecute complex frauds and economic crimes.⁴¹ In 2010, Ghana enacted the Economic and Organized Crime Office (EOCO) Act 2010, which repealed the Serious Fraud Office Act, 1993 and replaced the SFO with EOCO. The recent creation of the OSP, coexisting with other accountability agencies like CHRAJ has drawn even more attention to the convoluted texture of the anticorruption landscape.

Legal Framework

15. Ghana has a relatively robust set of laws for preventing and fighting corruption. They include the 1992 Constitution, the Criminal Offenses Act, the Anti-Money Laundering Act, the Office of Special Prosecutor Act, the Right to Information Act, the Commission on Human Rights and Administrative Justice Act, the Public Office Holders (Declaration of Assets and Disqualification) Act,

⁴¹ The Serious Fraud Office was a specialized agency of government (modelled on the SFO in England & Wales) established to monitor, investigate and, on the authority of the Attorney-General, prosecute an offence involving serious financial or economic loss to the state.

the Public Procurement Act, the Internal Audit Agency Act, the National Audit Service Act, the Whistleblower Act, the Economic and Organised Crime Act and the Mutual Legal Assistance Act. The National Anti-Corruption Action Plan 2015-2024 is in place and is currently under evaluation in the context of a planned update.

16. Ghana has been a party to the United Nations Convention against Corruption (UNCAC) since 2007. While several deficiencies identified in past evaluations of Ghana's compliance with UNCAC have been addressed, including by enacting witness protection legislation, failure to adequately criminalize corrupt behavior (in particular bribery in the private sector), remains an important pending reform. Full compliance with the Convention will be necessary to guarantee future effectiveness in the operation of the anti-corruption framework – and to shift public perception to believe that the government is genuinely committed to tackling these issues. Ghana is also a party to the African Union Convention on Preventing and Combatting Corruption and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption.

Institutional Arrangements

17. There are a number of key institutions in Ghana that constitute the anti-corruption legal framework. Each institution has its own set of powers and responsibilities set forth in the constitution or Acts of Parliament. The Commission on Human Rights and Administrative Justice (CHRAJ) and the Auditor-General (together with the National Audit Service – NAS) are creatures of the 1992 Constitution.⁴² The Office of the Special Prosecutor (OSP), the Right to Information Commission (RTIC), the Internal Audit Agency, the Public Procurement Authority (PPA), the Financial Intelligence Centre (FIC) and the Economic and Organised Crime Office (EOCO) were created and are regulated by Acts of Parliament. Annex 1 lists their anti-corruption mandates and Annex 2 describes their governing bodies and top officials, including the composition requirements and method of appointment, whether they exercise operational functions, security of tenure and legal basis.

18. The Constitution of Ghana provides that the Attorney General alone has the ultimate power to initiate and conduct criminal proceedings (Art. 88). There is scope however for delegation of this power. The Constitution itself provides (Art. 88(4) that “all offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General *or any other person authorized by him in accordance with any law*”. Also, there is the possibility of obtaining a legal *fiat* by virtue of an Executive Order to carry out prosecutions on behalf of the Attorney General. There is legal precedent for this in Ghana.⁴³ The mission understands that, as a purely legal matter, all agencies with the power to prosecute derive their power ultimately from the AG.

19. CHRAJ consolidates the work of an anti-corruption agency, ombudsman, and human rights commission under one umbrella. It is empowered to investigate (i) alleged corruption⁴⁴, abuse of power and misappropriation of public monies; (ii) conflicts of interest allegations; (iii) cases of failure

⁴² See also the Commission on Human Rights and Administrative Justice Act (456) of 1993 for detailed provisions on the functioning of the CHRAJ.

⁴³ The Ghanaian Police have a fiat by virtue of an Executive order (Appointment of Public Prosecutors Instrument No. 4 of 1976) to carry out prosecutions on behalf of the Attorney General.

⁴⁴ Articles 218 and 219 of the Constitution suggest these investigations are of an administrative nature.

to declare or making false declarations of assets; and (iv) breaches of whistleblower protections. In addition, by virtue of Articles 218(b) and 287(1) of the Constitution, the CHRAJ is mandated to investigate alleged non-compliance with the provisions of the Code of Conduct for Public Officers (which is contained in Chapter 24 of the Constitution).

20. While CHRAJ has both investigative and preventive functions in terms of fighting corruption, it does not have the power to prosecute, and the measures it can impose lack teeth.

Once an investigation concludes, the Constitution⁴⁵ grants CHRAJ broad authority to “take such action as considered appropriate in respect of the results of its investigations” and lists some (but not all) the measures that it may adopt, including making recommendations or seeking remedies in court.⁴⁶ Such measures, however, seem better suited for an ombudsman but not for an anti-corruption agency (even with administrative/civil jurisdiction). The measures do not seem to be sufficiently dissuasive and do not provide a clear and proportionate range of measures or sanctions that may be imposed for the different offenses and considering different degrees of intent and outcomes. In addition, all measures decided by CHRAJ need to be executed through court proceedings⁴⁷, further debilitating its corruption enforcement powers.

21. The Economic and Organized Crime Office (EOCO) was established in 1993 as a specialized agency to monitor and investigate economic and organized crimes. On the authority of the Attorney-General, EOCO can prosecute these offences to recover the proceeds of crime. The EOCO Act gives extended powers/functions to the Office to deal with serious offences involving financial and economic loss to Ghana or any State entity or institution in which Ghana had a financial interest.

22. In 2018, Ghana enacted the Office of the Special Prosecutor Act. This Act established the OSP, another specialized agency, to investigate specific cases of corruption including those committed by public officers, politicians and individuals in the private sector, and to prosecute them. The OSP Act provides for the appointment of a Special Prosecutor, a Deputy Special Prosecutor and a Governing Board. The appointment of the Special Prosecutor requires an initial nomination by the Attorney General, which must then be agreed by the President, and submitted to the Parliament for approval – via a vetting process conducted by the Parliamentary Appointments Committee.

⁴⁵ Article 287(2).

⁴⁶ Under sections 7(d) and (f) and 18 of the CHRAJ Act, when CHRAJ finds the allegations or suspicions to be true, it may (i) issue recommendations to the appropriate authority, (ii) bring an action before any court and seek such remedy as may be appropriate for the enforcement of the recommendations, (iii) if within 3 months no action is taken which seems to the Commission to be adequate and appropriate, report the investigation’s results to the Attorney-General and the Auditor-General, (iv) take appropriate action to call for the remedying, correction and reversal of instances of corruption and abuse of power, through such means as are fair, proper and effective, including: negotiation and compromise between the parties concerned; causing the complaint and its finding on it to be reported to the superior of an offending person; bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires.

⁴⁷ CHRAJ cannot self-execute and enforce its decisions, like other administrative bodies. It requires the courts to enforce. This is different from the good practice of subjecting all administrative bodies’ decisions to judicial review.

23. Rapid and steadfast progress in implementing the work of the OSP is critical to demonstrate commitment to achieving real improvement in confronting corruption and building momentum for reform. The first order of business is, therefore, to ensure the OSP has the necessary independence to deliver on its mandate and sufficient resources to ensure its effective operation. The efficacy of the OSP hinges, among others, on the appointment of a vigorous and independent chief prosecutor, supported by highly qualified and experienced staff.

Key Shortcomings of the Anti-Corruption Framework

24. The institutional model adopted in Ghana to prevent and fight corruption shows governance weaknesses that impact the efficiency and effectiveness of anti-corruption agencies. Among the most relevant are fragmentation and overlapping mandates, *weak independence*, lack of financial autonomy, and lack of effective legal powers and tools to investigate, sanction and enforce their findings.

Fragmentation of the AC Framework and Overlapping Mandates of Key Institutions

25. The creation of new institutions over time - which had very similar mandates and some of which still exist – has been a recipe for confusion and overlapping mandates, and unnecessarily split funding streams. For example, CHRAJ's corruption investigation and prevention functions overlap with the OSP's. CHRAJ has authority to investigate "corruption," an abstract concept that is not defined in the applicable legal framework, while OSP is charged with investigating "corruption or corruption-related offenses" which are clearly defined in section 79 of the OSP Act and pertain to criminal offenses. This creates potential for duplicating investigative efforts and legal uncertainty and makes CHRAJ's mandate imprecise. CHRAJ informed the mission that when a complaint it receives seems to be linked to a criminal offense after initial inquiries, it is sent to OSP, but there are no protocols or criteria in place. Enforcing corruption offenses through both criminal and administrative/civil systems is an increasing trend in many countries that can yield improved results in curbing corruption⁴⁸. However, the effective coexistence of both systems requires that the legal framework clarify the scope and jurisdiction of each sphere.

26. In addition, CHRAJ performs corruption prevention activities⁴⁹ without a clear legal basis or authority, encroaching on the OSP's legally established corruption prevention mandate. Both agencies do not coordinate their activities in this regard⁵⁰. CHRAJ was also designated as Ghana's corruption prevention authority for purposes of the review of implementation of UNCAC.

27. The responsibility for enforcing compliance with the requirements to file asset declaration is vested in CHRAJ even though the filing itself is done with the Auditor-General,

⁴⁸ <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2015-September-3-4/V1506218e.pdf>

⁴⁹ For example, in 2021 CHRAJ's reported it held separate workshops on Corruption Risk Assessment for the Fisheries and Health sectors to identify and prioritize areas of vulnerability in their operations. Its latest 5-Year Strategic Plan includes carrying out 10 corruption risk assessments by 2025.

⁵⁰ EOCO also has the mandate to take reasonable measures necessary to prevent the commission of the crimes under its jurisdiction and their correlative offences (section 3(d) of EOCO Act.

thereby fragmenting a key corruption prevention tool. The World Bank recommended⁵¹ that the same agency that collects asset declaration forms should also be responsible for imposing regulatory sanctions for infractions, like failure to submit an asset declaration form on time, or unintentional error. However, in cases where regulatory violations may be indicative of corruption, more extensive examination may be required, including carrying out investigations, and such powers may then be entrusted to CHRAJ.

28. Ultimately, it will be important for the future effectiveness for the anti-corruption framework that there is a clear division of responsibility between the OSP's operation, the work of the Attorney General's Office, the work of the EOCO, the police more broadly and the CHRAJ.

It will be similarly important that the government ensures that this division of responsibility is reflected in the relevant budget allocation to the respective agencies.

Weak Independence

29. The office of the President of Ghana holds considerable power and discretion over the appointment of heads of most anti-corruption institutions, which could impact their independence. As shown in Annex 2, in seven out of eight anti-corruption agencies, the President appoints board members and heads of agencies either freely or "in consultation with the Council of State." This arrangement is not an effective check on presidential appointment powers given that its advice and opinions are not binding on the President and the President controls the appointment of or holds considerable influence on the majority of its members⁵². Presidential discretion in appointments is further facilitated by very weak fit and proper criteria for candidates, in many cases referencing qualities such as "moral character and proven integrity" and "relevant expertise". In some cases, requirements for appointments are nonexistent. Strong criteria to ensure candidates' independence from political affiliations and influence are also absent. There are no rules providing for transparent appointment procedures.

30. Independence may also be compromised by the lack of strong safeguards against arbitrary removal of heads of all anti-corruption agencies. Only the Special Prosecutor and Deputy, the Auditor-General, and CHRAJ's Commissioner and Deputy Commissioners enjoy legally (or constitutionally) established tenure periods and may only be removed for cause through a procedure involving a formal investigation conducted by another independent body. However, board members of the OSP, NAS, and the boards and CEOs/directors-general of FIC, RTIC, IAA and PPA may be removed by presidential decision (see Annex 2). Undue discretion and possible arbitrary removals are especially concerning regarding officials or bodies with operational and regulatory functions (e.g. the PPA's Board holds regulatory powers, reviews decisions by procuring entities and has other operational authority), or where boards hold decision powers that can compromise the autonomy of agency heads (e.g. the NAS's Board appoints all personnel under the Auditor-General and determines the structure, expertise and terms and conditions of service of officers and can issue regulations for the administration of the Audit Service).

⁵¹ World Bank (2018) Legal Review of Ghana Asset Disclosure Legal Framework. [WB report](#)

⁵² Articles 89 and 91 of the Constitution provide that the Council of State "counsel(s) the President in the performance of his functions" and "shall consider or advise the President or any other authority in respect of any appointment which is required by this Constitution or any other law...". Members of the Council of State only hold office until the end of the term of office of the President.

31. The introduction of parliamentary approval of the Special and Deputy Prosecutors' (OSP) appointments is a positive development against excessive executive influence, but still insufficient without additional safeguards. The OSP Act⁵³ provides that these presidential appointments must be approved by the majority of members of Parliament, although in the last decade, Ghana's presidents' have secured legislative majorities from their own political parties.⁵⁴

32. In terms of the exercise of its prosecutorial powers, there are concerns about the OSP's independence. The terms of the 2017 OSP Act make it plain that the Special Prosecutor has the authority to initiate and conduct criminal proceedings without having to seek the approval in each case of the Attorney General (taking its cue from Art. 88(4) of the Constitution). The operational Board for the work of the OSP (the functions of which are set out in Section 6 of the Act) consists of a number of members, all of whom are appointed by the President in accordance with Article 70 of the Constitution. While the Board cannot impact on the Special Prosecutor's decision-making regarding investigation and charge of suspects, it can have an impact on the day-to-day operation of the Office.

33. It will be essential for the future operation of the OSP that it not only has, but is seen to have, meaningful operational independence from the executive. As discussed below, financial autonomy, adequate powers and security of tenure are some ways of strengthening the independence of the OSP. The need for operational independence is all the greater in the light of the resignation of the first Prosecutor, who cited government interference with his work. Indeed, as the mission learned, the OSP was created mainly to assuage concerns about executive interference in the anti-corruption fight.⁵⁵ On its part, the OSP should create and publish a number of operational policies that make it clear on what basis its decision making is made. Together with an internal review mechanism for those decisions, this will not only ensure consistency of internal decision making, but it will also allow for possible external review in due course should a decision be challenged in court.

Insufficient Financial Autonomy

34. The financial autonomy of anti-corruption institutions is a key element for enhancing their effectiveness and outcomes. International standards (see, for example, the Jakarta Principles on Anti-Corruption Agencies⁵⁶) call for anti-corruption agencies (with corruption prevention and/or

⁵³ Section 13(3)

⁵⁴ In 2011 the Constitution Review Commission recommended that the Commissioner and Deputy Commissioners of CHRAJ, the Auditor-General and heads of the Electoral Commission and the National Commission for Civic Education (all identified as "constitutional independent bodies") be appointed by the President in consultation with the Council of State and with the prior approval of Parliament (Chapter Four, Sub Theme One Issue Seven: The President's Power of Appointment - paragraph 116). This was accepted by the corresponding White Paper issued by the Government in 2012.

⁵⁵ The OSP's power and effectiveness are also said to be hampered by judicial institutions that do not meaningfully act on OSP investigations and prosecutions. The courts have been quick to dismiss OSP prosecutions:
<https://www.theafricareport.com/330089/ghana-anti-graft-chief-threatens-to-quit-amid-growing-judicial-obstacles/>

⁵⁶ The Jakarta Principles on Anti-Corruption Agencies

Remuneration: ACA employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff.

enforcement functions) to receive a budgetary allocation over which they have full management and control, and for supreme audit institutions to have financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

35. In Ghana, anti-corruption agencies' financial autonomy is not protected by the legal framework. While most laws governing anti-corruption agencies state, in a general manner, that they are "not subject to the direction and control of any other person or authority,"⁵⁷ only isolated legal provisions support few aspects related to their financial and operational autonomy, while other provisions directly undermine it (see Annex 3 for examples). Moreover, the PFM legal framework treats independent institutions, including anti-corruption institutions⁵⁸, the same as all other government ministries and agencies, thereby granting the Executive –through the MoF– considerable power and influence over the management and execution of human and financial resources. The mission was told that, in practice, agencies cannot hire their staff or make payments without the MoF's "clearance" and that, in some cases, the Public Service Commission's authorization is required for hiring as well. Mexico, for example, through its PFM legal framework, has established safeguards over the financial autonomy for autonomous entities.

36. The Supreme Court recognized relevant protections over the financial autonomy of the NAS (and the Auditor-General), but they have not been extended to other independent anti-corruption institutions, and it is unclear they are upheld in practice. The Court⁵⁹ decided that the administrative expenses, including salaries, allowances, pensions and gratuities of the NAS staff, are not subject to the Executive's budget policy directives (budget ceilings and hearings at the MoF), nor to reductions to estimates by the MoF before submission to Parliament. It also held that only Parliament has the authority in certain circumstances⁶⁰ to reject fundamentally unreasonable

Authority over human resources: ACAs shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures.

Adequate and reliable sources: ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfillment of the ACA's mandate;

Financial autonomy: ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements. https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf. See also **Principle 8 of** The Mexico Declaration on Supreme Audit Institutions' (SAI) Independence, as well as EPAC/EACN 10 Guiding Principles and Parameters on the Notion of Independence of AC Bodies

⁵⁷ Article 187(7) of the Constitution (for the Auditor-General) and sections 4 of OSP Act, 6 of CHRAJ Act, 42 of the Right to Information Act and 14 of the Internal Audit Agency Act. FIC and PPA's laws do not contain this principle.

⁵⁸ Section 102 of the Public Financial Management Act defines covered entities as (a) the Executive, Legislature and Judiciary; (b) constitutional bodies; (c) Ministries, Departments, Agencies and local government authorities; (d) the public service; (e) autonomous agencies; and (f) statutory bodies. Autonomous agency means "a self-governing body established by the Government that is responsible for making binding decisions and developing its strategic plans without interference or with limited interference from the Government".

⁵⁹ Brown v. Attorney-General (2010)

⁶⁰ These circumstances would include situations where the estimates contain fundamental errors in relation to information laid before Parliament.

estimates⁶¹. After this decision, the Audit Service Board issued regulations that include⁶² a comprehensive framework to safeguard the financial autonomy of the NAS and Auditor-General (see Annex 4), which can be seen as good practice and extended to other accountability agencies but should be established through acts of parliament (primary law).

37. In addition, anti-corruption institutions consistently receive significantly less budgetary funds than amounts appropriated by Parliament and there are no legal safeguards to prevent or remedy this practice, impacting their operational capabilities. In 2016-2023 agencies only received an average of 51 percent of the funds appropriated for them each year by Parliament, with the government arguing that “almost all MDAs do not get the full release of the amounts budgeted.”⁶³ Specifically, after the OSP was created in 2017, while there were reasonable budgetary allocations made to the Office in 2018 and 2019, the mission understands that the actual sums allocated for the Office were not in fact disbursed to it.

38. Overall, successive administrations have fallen short in providing adequate financial support to existing anti-corruption institutions, invariably undermining their operational independence. There has also been a failure of the institutions themselves to provide the necessary transparency concerning their operations.

Insufficient Legal Power

39. The effectiveness of CHRAJ’s functions and powers is constrained by the applicable legal framework and its interpretation by the Supreme Court⁶⁴. CHRAJ is only permitted to initiate corruption or other ethics or integrity-related investigations with a formal complaint, which means it cannot initiate them of its own accord. Its decisions are not binding and are “purely investigative and educational in nature”. It can issue recommendations but has no adjudicative or self-enforcement powers, resulting in the need to institute legal action in court to seek any remedy available by law⁶⁵. The anti-corruption mandate of the CHRAJ only extends to a private individual who is alleged to be involved or implicated in an act of alleged bribery or corruption involving public officials and which is under investigation by the Commission. The mandate excludes private sector corruption.

⁶¹ In 2011, the Constitution Review Commission recommended extending these safeguards to other independent constitutional bodies. It also recommended that their budget estimates should be submitted directly to Parliament without ministerial clearance or approval (Chapter Eight, Subtheme One, Issue Five: Funding of the Independent Constitutional and Other Bodies - paragraphs 149-151). This was accepted by the corresponding White Paper issued by the Government in 2012.

⁶² Sections 44-50 of the Audit Service Regulations.

⁶³ [Government frustrating Special Prosecutor - Bernard Ahiafor - MyJoyOnline](#)

⁶⁴ See REGINALD NII ODOI The Commission on Human Rights and Administrative Justice of Ghana in Retrospect [The Commission on Human Rights and Administrative Justice of Ghana in Retrospect by Reginald Nii Odoi :: SSRN](#)

⁶⁵ CHRAJ has no adjudicative powers and thus any of its findings are of no legal effect unless a court of competent jurisdiction enforces it after finding that its investigations and findings are credible and of urgent need of enforcement. REGINALD NII ODOO supra. See also footnote 44.

B. CORRUPTION PREVENTION FUNCTIONS

Conflicts of Interest and Asset Declarations

40. There is no comprehensive conflicts of interest legal framework in Ghana. Chapter 24 of the Constitution is the overarching “Code of Conduct of Public Officials”, but it only (i) defines conflicts of interest very generally (“a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office”), (ii) prohibits a person in the service of a public corporation or authority to be appointed as the Chairman of its governing body, and (iii) establishes the obligation and some requirements for filing asset declarations (see below). Other relevant aspects recommended by international standards⁶⁶ are missing, including regulating actual, potential and apparent conflicts of interest; incompatibilities; influence peddling; gifts; favoritism; nepotism; use of confidential information; and, “revolving doors” scenarios, among others. As noted above, there are no clear and proportionate sanctions regime and effective enforcement mechanisms. Some of the Public Services, like the Civil Service, issued codes of conduct, but disciplinary measures are weak, and enforcement is not done by independent bodies. A Conduct of Public Officers Bill⁶⁷ is currently being considered in Parliament with the aim of upgrading the conflicts of interest and asset declaration legal framework. Staff understand that the authorities are committed to pursuing the passage of the bill into law.

41. Ghana’s asset declaration framework is incomplete and ineffective in preventing and fighting corruption. Article 286 of the Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act provides a long list of high-ranking and mid-level public officials obligated to declare, and a description of the assets and liabilities that must be declared (section 4 and Schedule II of the Act). However, there are many gaps. First, the assets beneficially owned by the public officers and their close family members do not fall under the declaration requirements. Second, the periodicity for filing declarations – upon taking and leaving office – is a good practice, but the 4-year cycle for updating declarations is exceptionally long considering Ghana’s high corruption risks and makes the asset declaration system ineffective in detecting corruption⁶⁸. Third, while declarations are to be filed with the Auditor-General, it is CHRAJ that is responsible for verification and sanctioning violations of the asset declarations framework, including failure to declare or falsely declaring. As noted above, the applicable sanctions are uncertain (see footnote 46). Fourth, there is no legal obligation or power for the Auditor-General or any other authority to verify declarations, access other agencies’ information and data for such purpose, or to share declared information with other accountability institutions (even upon request), thereby reducing their usefulness in curbing corruption. Fifth, asset declarations of high-level officials are not made public⁶⁹ and there is no legal basis or regulations for

⁶⁶ OCDE Recommendation on Guidelines for Managing Conflict of Interest in the Public Service; the European Union regulation on conflicts of interest in procurement in the Directive 2014/24/EU3, and the G20 Anticorruption Working Group High-Level Principles on the Prevention of Conflicts of Interest and Good Practices guide.

⁶⁷ <https://www.parliament.gh/epanel/docs/bills/Conduct%20of%20Public%20Officers%20BILL,%202018.pdf>

⁶⁸ World Bank (2018) Legal Review of Ghana Asset Disclosure Legal Framework. [WB report](#)

⁶⁹ The previous asset declarations legal framework (the Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law, repealed in 1998) required that asset declarations be gazetted (mentioned in the NACAP 2015-2024 (2.2.3)).

developing an electronic platform for administering asset declarations.⁷⁰ And finally, there is no publicly available data on levels of compliance⁷¹.

Transparency and Access to Information

42. Ghana enacted an access to information law in 2019, taking an important step toward enhanced transparency and accountability of government, but implementation has been slow.

The Right to Information Act regulates the procedures through which access to information can be requested, the various grounds (exceptions) for denying access to information and the burden for government to show the harm of disclosing it⁷², as well as administrative and judicial review mechanisms. The Right to Information Commission (RTIC) did not initiate operations until late 2021 and secondary regulations have yet to be issued.⁷³

43. The institutional coverage of the Right to Information Act is incomplete and exemptions to disclosure are broad.

The Act's definition of "public institution"⁷⁴—as the basis for applicability of the law—is vague and it is unclear if it includes the Legislature, the Judiciary⁷⁵, state-owned enterprises and other autonomous bodies. While the majority of exceptions to public information access protect legitimate state interest, others are unreasonably broad, such as denying access to information that is prepared for submission or has been submitted to the President, Vice-President or Cabinet for consideration⁷⁶. The Act includes a broad definition of "State Secret"⁷⁷, but the term is not used elsewhere, which could lead to interpretation challenges or serve as an additional ground for denying access requests. The general and cross-cutting 30-year classification period does not allow for information to be classified as confidential for shorter periods in accordance with the harm test and there are no declassification procedures (e.g., once the grounds that led to the exemption cease to exist). However, the inclusion of an overriding "public interest" disclosure provision⁷⁸ is consistent with good practice.

44. Proactive transparency requirements are weak, and enforcement mechanisms are not effective.

Proactive transparency obligations are limited to making "available to the public general information on governance" (section 2), and publishing a manual containing: (i) a list of departments

⁷⁰ The Conduct of Public Officers Bill currently being considered in Parliament fails to address many of the above-mentioned shortcomings in the current legal framework.

⁷¹ CHRAJ annually reports on the number of cases it receives and resolves for failure to declare assets.

⁷² Although it is unclear whether this burden applies during the access request stage (see section 72).

⁷³ On a related note, Ghana joined the Extractives Industry Transparency Initiative (EITI) in 2007 and was assessed as having made "meaningful progress" in its 2020 assessment. It joined the Open Government Partnership in 2011.

⁷⁴ Per section 86, "public institution" includes a private institution or a private organization that receives public resources or provides a public function. "Government" is defined as "any authority by which the executive authority of the Republic of Ghana is duly exercised".

⁷⁵ Although the Judicial Service issued its right to information manual.

⁷⁶ Sections 5 and 6.

⁷⁷ Information considered confidential by the Government which if disclosed would be prejudicial to the security of the State or injurious to the public interest (section 84)

⁷⁸ Section 17.

and agencies under an institution's purview; (ii) a description of the organizational structure and responsibilities of each institution, including details on the activities of each division or branch, a list of the classes of information which are prepared by or are in the custody or under the control of the institution; (iii) a list of the types of information that may be accessed free of charge or upon payment of a fee; (iv) name and contact details of the Information Officer in the institution responsible for processing access to information requests; and, (v) the applicable access to information requests procedures. While there are harsh individual penalties for disclosing confidential information (section 81), sanctions for not complying with the RTIC's decisions may be imposed on institutions, but not on individuals, limiting their dissuasive effect. All regulations associated with the implementation of the Act are issued by the Minister of Information, in consultation with the RTIC's Board. Draft regulations are currently being prepared.

Audit

45. Ghana's Auditor-General performs transparent and impactful external audits, but coordination with other anti-corruption institutions needs to be strengthened. A clear mandate coupled with several independence and financial autonomy safeguards (see above) have enabled the Auditor-General to act independently and serve as an example of good practice in the region. The NAS is developing memoranda of understanding with other agencies, but the timeframes for signing and implementation are uncertain. There is no data on the number of cases referred to OSP or whether any systematic follow-up is done.

46. Even though the Auditor-General has had the authority to issue surcharges for disallowed expenditures since 1992⁷⁹, its use has been minimal. Irregularities found during audits may be disallowed by the Auditor-General, who is empowered to determine the amounts that were unduly spent, accounted for or that caused loss or deficiency. These amounts are then recoverable (surcharged) by the state against the official responsible. After a 2017 Supreme Court decision found that, in addition to making recommendations, the Auditor-General is obliged to issue surcharges and take action to recover the respective amounts⁸⁰, 112 surcharges totaling GH¢511,211,239.04 were issued for FYs 2017-2018⁸¹ and only one other was issued for 2021 for GH¢617,120.35⁸², and the actual recovered amount is uncertain⁸³. The almost null use of the surcharge power between 2019-2022 was attributed to the need to further investigate detected expenditure irregularities⁸⁴, noting that the NAS had lost surcharge appeals because evidence gathered to support surcharges was not admissible by

⁷⁹ Article 187 of the 1992 Constitution included this authority since its enactment.

⁸⁰ *Occupy Ghana v. Attorney-General*. The Court added that "corruption, abuse of position and embezzlement of public funds among others has become the bane of our governance structures" and that "the tendency where public accounts are considered as a fattened cow to be milked by all and sundry must stop".

⁸¹ Special Audit Report of the Auditor-General on Disallowance and Surcharge as at 30 November 2018.

⁸² Special Audit Report of the Auditor-General on Recoveries made from Disallowed Expenditure in the Auditor-General's Reports from 2017 to 2020 and Payroll Savings as of 30 September 2022

⁸³ The Auditor-General opened the "Auditor General's Recoveries Account" at the Bank of Ghana in June 2022 and reported that, as of 30 September 2022, a total of GH¢1,282,733.90 has been recovered into the account.

⁸⁴ 2019, 2020, 2021, 2022 audit reports for MDA's "I will investigate these matters further and where appropriate, disallow any items of expenditure that were contrary to law, and surcharge responsible officials accordingly".

the courts.⁸⁵ The same Supreme Court decision established that it is mandatory for the Attorney-General to ensure surcharge recovery actions be taken and the PFM Act⁸⁶ provides for the preparation of an annual report in that regard. However, no such reports have been issued and there is no public information to otherwise assess performance or identify binding constraints.

47. The government is taking steps to strengthen follow-up of audit recommendations, but transparency and enforcement need to be enhanced. The MoF issued the “Audit Recommendations Implementation and Follow-Up Instructions for Public Institutions”, which provides guidance and procedural clarity for tracking and monitoring implementation of recommendations by both internal and external auditors. Public institutions are required to prepare and forward to the MoF an annual statement on the status of implementation⁸⁷, but this document is not made public. The “Status of Implementation Review Committee”, within the MoF, will oversee and report on audit follow-up activities. The Minister of Finance is also empowered to issue surcharges⁸⁸ and will be assisted by a PFM Compliance Desk that will be operational in 2024.

Whistleblower and Witness Protection

48. Ghana has a legal framework for protection of whistleblowers. In 2006, the legal framework was strengthened with the enactment of the Whistleblowers Act, and the subsequent Whistleblower (Amendment) Bill 2023. The Act enables individuals to disclose, in the public interest, information that relates to the unlawful or other illegal conduct or corrupt practices of others. It also provides for the protection of persons making disclosures from reprisals or victimization.⁸⁹ In the most recent Afrobarometer surveys, 68.8 percent of Ghanaian citizens say that ordinary people “risk retaliation or other negative consequences” if they report corruption.⁹⁰ Additionally, public and civil service employees often feel compelled to stay silent – or participate in corrupt acts – for fear of being transferred to a less desirable post.⁹¹ It remains to be seen whether the implementation of the new whistleblower provisions will encourage more Ghanaian citizens to take advantage of the mechanism that has been the case since the passage of the Act in 2006.

49. Similarly, Ghana has legal provisions for protection of witnesses and victims. The 2018 Witness Protection Act is comprehensive in substantive terms, but it is unclear how effectively the law has been implemented. In order to achieve its objectives, not only should the Act be fully operationalized, but the Witness Protection Agency should also be fully and independently funded. Also, prosecutors, judges, court staff and defense attorneys must be familiar with the provisions for

⁸⁵ Special Audit Report of the Auditor-General on Recoveries made from Disallowed Expenditure in the Auditor-General’s Reports from 2017 to 2020 and Payroll Savings as at 30 September 2022

⁸⁶ Section 85(2)

⁸⁷ Section 88 PFM Act

⁸⁸ Section 97 PFM Act.

⁸⁹ CHRAJ is responsible for implementing the whistleblower provisions.

⁹⁰ Afrobarometer Data, Ghana, Round 9 (2023), Available at www.afrobarometer.org. Note that this figure represents a 10percent increase over Round 8 (2020-21) responses.

⁹¹ Sarah Brierley, “Unprincipled principals: Co-opted bureaucrats and corruption in Ghana,” *American Journal of Political Science* 64, no. 2 (2020): 209-222.

the Act and its implications for them in order to ensure that applications for protective measures are not contested or rejected unnecessarily.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF CORRUPTION

50. Under the 2017 Act, the OSP has adequate legal powers to gather intelligence, investigate and prosecute corruption-related criminality, but lacks sufficient resources. It lacks dedicated personnel and equipment. It is important to ensure that the OSP is resourced sufficiently to have meaningful access to relevant investigative and analytical equipment and training. Defendants in large corruption cases typically have powerful defense teams with ready access to modern equipment and methods. There must be an equality of arms in such cases and presently the OSP operates with significant staff shortages, lack of training in some respects, and lack of reliable access to modern sophisticated equipment. These issues alone could mean the difference between a case being successful or not and the ability of the OSP to investigate all cases referred to them.

The OSP's Performance

51. A limited amount of data relevant to performance is provided on the OSP's website.⁹² It is not clear from the cases cited on the website the proportion of cases which are initially considered for investigation, the proportion of these cases which proceed to investigation, and the proportion of these cases which proceed to prosecution. Nor is it clear from the website how frequently this information is updated.

52. Successful high-level prosecutions are not common and, unless action is taken, this could remain the case for a long time. There are good reasons for this state of affairs, including that the sophistication of these top-ranking suspects means it can be difficult to amass sufficient evidence to progress a case beyond the investigation phase. Large complex cases like this can take many years to investigate and then prosecute effectively, even in highly developed jurisdictions with access to an array of sophisticated equipment and case management functions such as the USA and the UK. It could also be that smaller cases are being prioritized at the cost of larger cases.

Prioritization of cases

53. The available information suggests that the majority of OSP investigations and prosecutions focus on defendants who do not occupy (or did not previously occupy) senior positions within government. In the absence of a clear policy which sets out the principles on which the OSP makes decisions about which cases to prioritize, and an absence of data and analysis as to whether and why cases are successful, it is inevitable that speculation occurs. The OSP must establish those principles to ensure consistency and transparency of decision making and make those principles public (on its website).

⁹² <https://osp.gov.gh/>

The Analysis Gap that Hinders the OSP

54. There is currently no clear and consistent policy in place at the OSP which determines when a case meets the legal and evidential burdens for proceeding to charge and assessing whether it is likely to result in conviction. Such a policy would ensure consistency of decision-making and that cases are only sent to court when they are evidentially ready. With the proper review process to supplement its use, it also allows for analysis that links strongly with the prioritization suggestions made above as to when cases fail and why they fail.⁹³

55. To remedy the above concerns, a Charging Code for OSP Prosecutors should be created and implemented. Such a Code is a mechanism adopted in a number of common-law jurisdictions and has been used with considerable success. The Code will consist of a two-stage process that requires the prosecutor to consider:

- Is there sufficient reliable and credible evidence to provide a realistic prospect of conviction? Prosecutors must consider what the defense case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- Is it in the public interest to proceed with the charge? This consists of seven considerations:
 - a) How serious is the offense committed?
 - b) what is the level of culpability of the suspect?
 - c) what are the circumstances of, and harm caused to, the victim?
 - d) what was the suspect's age and maturity at the time of the offense?
 - e) what is the impact on the community?
 - f) is prosecution a proportionate response?
 - g) do sources (e.g., informants) require protecting?

56. The OSP needs to ensure: 1) that all future cases have recorded on the file jacket (or if held electronically, within the case management system) the detailed reasons for the case not proceeding to charge/being withdrawn once proceedings are commenced/dismissed by the court/why it is unsuccessful following trial; 2) that dedicated staff resources are provided to establish a back catalogue of data from concluded cases, or those undergoing the appeal process, ensuring that the above data is captured; 3) that all of the captured data is analyzed for trends and patterns that could reveal shortcomings in investigative or prosecutorial approach and which may be remedied through provision of more or better facilities, training or greater consistency of approach.

Mutual Legal Assistance

57. Ghana has a framework for mutual legal assistance. The Mutual Legal Assistance Act provides the basis for cooperation in this regard. Ghana has concluded two regional treaties. Notably, Ghana does not require a treaty basis and can provide assistance on the basis of an arrangement. The Ministry of Justice is the central authority, which can send and receive MLA requests directly to and from other central authorities. The framework requires an application to Court to obtain permission to provide information to the requesting State. The Act is in fact a good example and contains detailed

⁹³ In addition to the above, the OSP should improve the transparency of its operations through publicly available principles and guidelines that shape its casework operations and decision-making. It is possible – and of course desirable – to do so without revealing sensitive case-related information

provisions across a wide range of mutual legal assistance matters. However, the provisions concerning extradition in the context of corruption proceedings need to be strengthened.

Table 2. Anticorruption Recommendations

	Key Recommendations	Agency Responsible	Implementation Timeframe
1.	Consolidate and strengthen CHRAJ as Ghana’s central anti-corruption agency, focusing its mandate to avoid overlaps and promoting its efficient operation by: ▪ Granting it the legal mandate and necessary powers to (i) coordinate, implement, monitor and evaluate the NACAP and other anti-corruption strategies and programs, (ii) lead corruption prevention efforts (eliminating OSP’s prevention mandate), (iii) investigate, through administrative procedure, and directly sanction conflicts of interest violations and irregularities, (iv) collect and conduct the verification of asset declarations filed by public officials and investigate and directly sanction related violations, and (v) investigate breaches of whistleblower protections. ▪ Removing its broad and vague “corruption” investigation mandate.	MoJ CHRAJ Parliament	ST
2.	Improve the overall effectiveness and efficiency of the anti-corruption legal and institutional frameworks by: ▪ <i>Strengthening anti-corruption agencies’ independence</i> and insulating them from undue public and private influence, by submitting to Parliament and approving amendments to ensure that: ✓ Candidates considered for appointment by the President to key anti-corruption positions are selected through transparent, merit-based and participatory mechanisms, including strict fit and proper criteria to ensure candidates’ professionalism, experience and independence. ✓ Presidential appointments are approved by a qualified majority of members of Parliament. ✓ Removal of anti-corruption agencies’ top officials can only be made on grounds specifically established by law and through procedures similar to those applicable to the removal of CHRAJ commissioners. ▪ <i>Strengthening the financial autonomy of anti-corruption agencies</i> by submitting to Parliament and approving amendments to the PFM Act to: ✓ Establish a dedicated PFM framework for independent anti-corruption agencies, in line with international standards and best practice. ✓ Ensure that anti-corruption agencies receive the full amount of budgetary funds appropriated by Parliament	Office of the President MoJ CHRAJ Parliament MoF Parliament	ST

	every FY, including a narrow and clear set of exceptional grounds for any needed modifications. ✓ Guarantee that anti-corruption agencies can execute their budgets without MoF's approval. ▪ <i>Enhancing the operational effectiveness of anti-corruption agencies</i> by submitting to Parliament and approving amendments to: ✓ Allow anti-corruption agencies to initiate investigations on their own initiative, without the need for a complaint. ✓ Establish dissuasive, proportionate sanctions regimes and effective enforcement mechanisms. ✓ Grant anti-corruption agencies adjudicative powers (without affecting judicial review), including the power to sanction individual public officials (not only institutions), and removal from office.	MoJ CHRAJ Parliament	ST
3.	Improve the transparency and access to information framework by: ▪ Enacting the Right to Information regulations. ▪ Submitting to Parliament and approving amendments to the Right to Information Act to: ✓ Introduce a complete institutional coverage of government bodies and agencies, including SOEs, the Judiciary, Parliament and other independent or autonomous institutions. ✓ Remove or adjust overly broad and vague exceptions to access to information, in line with international best practice. ✓ Introduce comprehensive proactive transparency requirements for all government institutions and agencies.	RTIC RTIC MoJ Parliament	ST MT
4.	Enhance the conflicts of interest framework by enacting a Conduct of Public Officers Act following international standards and best practice.	MoJ CHRAJ Parliament	ST
5.	Strengthen the asset declaration system by submitting to Parliament and approving amendments to ensure that: ✓ The content of asset declarations filed by high-level officials are made public. ✓ Asset declarations are subject to verification and detected irregularities are adequately sanctioned ✓ Public officials are required to declare assets beneficially owned by them and their close family members. ✓ Asset declarations are filed every two years (instead of every four years). ✓ A list of non-compliant and/or sanctioned public officials is annually made public. ✓ There is a sound legal basis (including regulations) for an asset declarations electronic system.	MoJ CHRAJ Auditor-General Parliament	ST
6.	Enhance the internal and external audit functions' roles in preventing and combatting corruption by: ▪ Preparing and publishing (i) a report detailing the legal and operational challenges faced by the Auditor-General and the	Auditor-General Attorney-General	ST ST

	Attorney-General for the documentation, enforcement and collection of surcharges and (ii) a time-bound action plan to implement the report's findings and recommendations. ▪ Publishing rules governing the issuance of surcharges by the Auditor-General, including procedures to properly document them for their enforcement in court. ▪ Submitting to Parliament and approving amendments to the Audit Service Act to ensure that the Auditor-General can directly collect surcharged amounts in court, without the need to rely on the Attorney-General. ▪ Regularly publishing all government institutions' annual statement showing the status of implementation of any recommendations contained in (i) an internal or external audit report; (ii) Parliament's decision on the Auditor-General's report; (iii) Auditor-General's Management letter pursuant to section 88 of the PFM Act.	MoJ MoF	MT ST
7.	Develop a National Anticorruption Strategy for 2025-2029 on the basis of inclusive consultation, with clearly defined objectives, responsibilities, management and oversight arrangements, and public reporting requirements.	MoJ (while function transferred to CHRAJ)	MT
8.	Operationalize and strengthen the witness protection scheme such that it provides effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning corruption-related offences, in accordance with Article 32 of UNCAC	Ministry of Justice	MT
9.	Establish a criminal offence of bribery in the private sector in accordance with Article 21 of UNCAC	Ministry of Justice	MT
10.	Provide for the extradition of a person in connection with corruption related offending, in accordance with Article 44 of UNCAC	Ministry of Justice	MT
11.	Draft and commit all relevant parties to a memorandum of understanding on the investigation and prosecution of corruption-related offences	Ministry of Justice	MT
12.	Improve transparency of operations of the OSP through publicly available guidelines and principles which shape the OSPs operations and decision-making processes	OSP	MT

Section III: Effectiveness of Ghana's Anti-money Laundering Framework in Curbing Corruption

58. In any given country, the AML/CFT framework is an important tool to fight corruption. Effectively implemented AML/CFT measures create an environment in which it is more difficult for corruption to thrive and go undetected. An effective AML/CFT regime enables countries to: better safeguard the integrity of the public sector; protect designated private sector institutions from abuse; increase transparency of the financial system; and, facilitate the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets.

59. Ghana's national ML/TF risk assessment (NRA) of 2016 identified bribery and corruption as major predicate crimes. Ghana's recent Mutual Evaluation Report of 2017 (MER) cites recent reports on corruption scandals in the judiciary (which led to the dismissal of 22 Justices), diversion of public funds through padding of salaries, and the massive misapplication of public funds by public institutions. The Auditor-General's Annual reports in recent years show the significant scale of some corruption offences as contributing factors to the prevailing ML risk exposure in Ghana. The NRA also suggests that there are incidences of cases linked to corruption in other public institutions.

60. Accordingly, Ghana considers combatting corruption as a national priority. Ghana has been pursuing a range of policy and operational responses to combat corruption, including the establishment of three Financial and Economic Crimes Court (FECC) in 2008 to primarily handle high profile money laundering and corruption cases (NRA p34), empowerment of EOCO and other key law enforcement agencies to enhance their operational efficiencies, and the domestication of UNCAC. Generally, investigators and prosecutors have demonstrated commitment and capacity to investigate and prosecute several high-profile corruption and other ML related cases. In spite of these efforts, results of Ghana anti-corruption efforts, especially in terms of convictions and confiscation of proceeds of corruption and other related crimes, remained very low. Improved and sustained efforts are required to continue to mitigate the corruption risks in Ghana.

61. This section discusses the state of Ghana's AML/CFT framework, identifies the recent legal and institutional reforms in this area, and makes some recommendations.

A. GHANA'S AML/CFT STATUS: RISK AND CONTEXT

62. Ghana's National Risk Assessment (NRA),⁹⁴ which was published in August 2016, evaluated money laundering/terrorism financing (ML/TF) risks as high. Ghana's geographical location, predominantly cash-based economy, large informal sector, and porous land borders are some of the factors that increase the country's exposure to these risks. The NRA identified fraud, theft,

⁹⁴ Available at

https://www.giaba.org/Frame/pdfviewer%7C%7C07e60db5a9d0b69d181d31777a2a3b492e239ed5a9e58fa770a9137e027d273d%7C%7C1001_NRA%20REPORT%202016%20-%20PUBLIC%20VERSION.pdf

robbery, tax evasion, corruption, and drug trafficking as the most prevalent predicate crimes. The ML threat assessments of these crimes were rated as *high*. Other predicate offences that pose *medium* ML threats include human trafficking, migrant smuggling, organized crime, arms trafficking, counterfeiting of currency, counterfeiting and piracy of products, environmental crime, and forgery (NRA Annex 4). The Key sectors identified as exposed to significant ML/TF risk included banks, bureaux de change, casinos, real estate developers/agents, and non-profit organizations.

63. The mutual evaluation of 2017 raised major concerns about technical compliance and effectiveness of the AML/CFT framework. The 2017 mutual evaluation (ME) of Ghana's AML/CFT regime by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) assessed both the technical compliance and effectiveness of Ghana's AML/CFT regime against the Financial Action Task Force's (FATF) 40 Recommendations. Ghana was rated non-compliant (NC) or partially compliant (PC) on eight of the FATF's 40 Recommendations. Ghana was rated low or moderate in terms of level of effectiveness on 10 of the 11 immediate outcomes when measured against FATF's effectiveness methodology. The tables below provide the ratings on the level of effectiveness of the AML/CFT system of Ghana as per FATF's reports.

Table 3. Ratings for Effectiveness and Technical Compliance

Immediate Outcome 1 Risk and Coordination	Immediate Outcome 2 International Cooperation	Immediate Outcome 3 Supervision	Immediate Outcome 4 Preventive Measures	Immediate Outcome 5 Legal Persons and Arrangements	Immediate Outcome 6 Financial intelligence Units (FIU)
Moderate Level of effectiveness	Substantial Level of effectiveness	Moderate Level of effectiveness	Low Level of effectiveness	Low Level of effectiveness	Moderate Level of effectiveness
Immediate Outcome 7 Investigations	Immediate Outcome 8 Confiscation	Immediate Outcome 9 TF Investigation	Immediate Outcome 10 NPOs	Immediate Outcome 11 Proliferation Financing	
Moderate Level of effectiveness	Low Level of effectiveness	Low Level of effectiveness	Low Level of effectiveness	Low Level of effectiveness	

Source: GIABA Website

64. Due to its poor effectiveness ratings, Ghana was referred for enhanced scrutiny under FATF's International Cooperation Review Group (ICRG) process. FATF and Ghana agreed upon an action plan in October 2018. Subsequently, the country addressed most of its strategic weaknesses and was removed from FATF, ICRG scrutiny in June 2021. In addition, since the mutual evaluation, Ghana has also made progress in addressing deficiencies in its technical compliance, resulting in re-

ratings by GIABA from partially compliant (PC) to largely compliant (LC) on Recommendations 16 (wire transfers), 17 (reliance on third parties), and 33 (statistics), as well as from PC to compliant (C) on Recommendation 35 (sanctions). However, addressing the other technical deficiencies remains work in progress.

65. The AML Act, Anti-Terrorism Act and other sector specific legal framework set out the AML/CFT preventive measures, which accountable institutions (financial institutions and designated non-financial businesses and professions (DNFBPs)) are required to implement.

Politically Exposed Persons

66. Regarding politically exposed persons (PEPs), all accountable institutions are required to identify, maintain records and make periodic reports of the PEPs customers to the FIC. Generally, most AIs, except DNFBPs, implement preventive measures relating to PEPs but improvement is required to ensure effective compliance. Most FIs have put in place measures, including customer onboarding process, ongoing monitoring of relationships and transactions, to identify and manage PEPs. Currently, some of the FIs have developed their internal PEPs list and also file reports on PEPs to the FIC.

67. To complement their internal PEPs list, some of the FIs also subscribed to relevant commercial databases. Though guidance has been issued by sector regulators and the FIC to clarify who PEPs are and enhance measures to be applied by AIs. Overall, identification of PEPs' associates and closed relatives is a major challenge across all FIs, especially in the absence of a mechanism that could enhance the linkages of some of the relationship. Furthermore, some banks said they have challenges in developing a PEP database that significantly covers all categories of PEPs.

B. RECENT LEGAL AND INSTITUTIONAL REFORMS

68. Ghana has embarked on a number of important legal reforms to strengthen its AML/CFT regime. These include the passage of the Anti-Money Laundering Act of 2020, the Real Estate Agency Act of 2020 and the 2019 Companies Act with important provisions on capturing beneficial ownership information. See Annex 4. In tandem with the legal reforms, a number of institutional reforms have also been introduced. A few key examples are identified below.

Office of Special Prosecutor (OSP)

69. As noted in the preceding section, the OSP was established in 2018 as a specialized independent anti-corruption institute in Ghana, pursuant to the United Nations Convention Against Corruption. The OSP however is not currently adequately resources, in terms of manpower and financial resources. In addition, the number of alleged corruption-related cases disseminated by the FIC to law enforcement agencies is low (see the table below). The dissemination of cases is way below the generally perceived number of corruption cases.

Table 4. Law Enforcement Agencies (LEA) Requests⁹⁵

LEAS	2019	2020	2021	2022
NIB (National Investigation Bureau)	12	18	22	37
CID (Police – Criminal Investigation Department)	114	89	66	57
EOCO (Economic and Organised Crime Office)	50	73	35	122
GRA (Ghana Revenue Authority)	9	43	112	32
NACOC (Narcotics Control Commission)	1	4	1	2
OSP (Office of Special prosecutor)	0	2	0	3
NSCS (National Security Council Secretariat)	4	3	13	42
OTHERS	0	26	10	9
TOTAL	190	258	259	304

Source: FIC

Table 5: Intelligence Reports (LR) Disseminated to LEAS

	2019	2020	2021	2022
IR to LEAs	174	302	190	72

Source: FIC

Financial Intelligence Centre (FIC)

70. The FIC has been granted direct access to (nearly) all public databases, which has greatly enhanced its analysis function. It, however, does not have access to the National Identification Authority (NIA). This is still under review.

AML/CFT Supervisors

71. The financial sector supervisory authorities implement measures, such as identifying and verifying the beneficial owners of financial institutions (FIs), to prevent criminals from controlling FIs. The financial sector supervisory authorities are autonomous and do not suffer from interference from other competent authorities. The financial sector is generally subject to risk sensitive AML/CFT supervision. While the regulatory authorities have a wide range of administrative sanctions and remedial measures that can be imposed on FIs for non-compliance, sanctions are rarely applied. Though still significantly understaffed, the financial sector supervisors have enhanced their AML/CFT supervision activities.

- i. The **Bank of Ghana (BoG)** has strengthened its AML Unit by increasing the staff force from 6 to 17 and introducing supervision technology, which is still being tested. Despite this, the Unit is still significantly understaffed as it is responsible for the AML/CFT supervision of approximately 580 financial institutions.

⁹⁵ Law enforcement agencies may make requests to the FIU to seek appropriate financial and law enforcement intelligence. The FIU has access to all the public databases within the country and international information through Egmont Group membership.

- ii. The **National Insurance Commission (NIC)** has commenced conducting risk-based offsite and onsite AML supervision of their 18 life insurance companies. It is adequately resourced with a staff of 3.
- iii. The **Securities and Exchange Commission (SEC)** has strengthened its AML Unit and increased their supervision staff from 1 to 4. The unit is responsible for the supervision of 126 institutions that are vulnerable to ML/TF risks. Though still understaffed, the team has adopted a risk-based approach to AML/CFT supervision and is conducting 10 onsite inspections every quarter. Additionally, most of the offsite AML/CFT supervisory activities are done manually, making them resource-heavy and time-consuming.
- iv. Most of the **Self-Regulatory Bodies (SRBs)** designated in the AML Act such as the Institute of Chartered Accountants of Ghana, the General Legal Counsel and other AML/CFT supervisors of DNFBPs have just commenced their AML/CFT supervisory activities.

C. NEXT STEPS AND RECOMMENDATIONS

72. To further enhance the AML/CFT regime as a tool for preventing and combatting corruption, a number of important steps need to be taken to close remaining gaps. Some of the key steps are outlined as follows:

- a. **Implement preventive measures including suspicious transaction reports (STRs).** The FIC⁹⁶ serves as the central agency for the receipt, analysis, and the dissemination of the results of the analysis of STRs, as well as other information it receives as required under national laws (such as cash transaction reports and wire transfer reports). However, there are few to no STRs from the large informal sector (DNFBPs) (See Table 6). STRs and their analysis can uncover corruption activity, trigger corruption investigations, and can be used to support ongoing financial investigations of corrupt activity. In addition, the FIC is a member of EGMONT (that is established on international networks) which may provide anti-corruption experts with an opportunity for international information exchange in anti-corruption matters. The country should consider increasing awareness of all AML/CFT stakeholders and implementation of all the FATF preventive measures.
- b. **Strengthen international Cooperation:** To fight corruption, Ghana needs to establish and implement effective laws and mechanisms which enable it to provide and receive a wide range of mutual legal assistance (MLA), execute extradition requests and otherwise facilitate international co-operation. Effective and timely international co-operation is essential for the recovery of assets related to corruption. The necessary legal frameworks for international co-operation should be in place, based on existing bilateral agreements. This should include the exchange of beneficial ownership information of legal persons and arrangements, which is not yet fully established in Ghana.

⁹⁶ A fundamental element of an effective AML/CFT regime is the requirement that financial institutions and designated non-financial businesses and professions (DNFBPs) report suspicious transactions to the financial intelligence unit (FIC in Ghana's case), which plays a central role in a country's AML/CFT operational network.

Table 6: STRs Distribution by Sectors

Year	2019	2020	2021	2022
Banks	1214	3512	2942	2886
NBFIs	4	0	23	35
Capital Market Operators	1	0	1	0
Insurance Companies	2	0	1	1
DNFBPs	2	3	0	21
Others	7	9	3	3
TOTAL	1230	3524	2973	2946

Source: FIC

Table 7: Information Exchange - Foreign

Year	2019	2020	2021	2022
Spontaneous dissemination (SDs)	9	7	1	1
Requested for information (RFI)	21	27	18	18

Source: FIC

- c. **Law Enforcement Agencies (LEAs) need to significantly increase the use of financial intelligence to identify corruption and ML cases.** The convictions for corruption and confiscation of proceeds of corruption and other related crimes, remain very low. The Ghanaian authorities have prosecuted self-laundering offences but, other types of ML offences including standalone offences are seldom prosecuted. Additionally, the weak regulatory framework for DNFBPs limits LEAs' ability to investigate and prosecute third-party facilitators, such as "professional" money launderers. These challenges result in a low number of convictions. Moreover, the authorities do not actively pursue confiscation as a policy objective. The lack of capacity to adequately conduct financial investigations limits the extent to which the authorities are able to confiscate criminal assets. Ghana's legal framework prescribes management and disposal of assets by the Attorney General. However, in practice, assets are managed by the competent authority that conducts the investigation which may not always have the capacity to manage the confiscated asset. There are also challenges related with registration of Land collaterals.
- d. **The Customs Division of the GRA, which also confiscates funds where there is a breach of the obligation to declare** cross-border transportation of currency and bearer negotiable instruments, needs to act with greater consistency. This GRA mandate is not being implemented consistently at all entry and exit points, resulting in a low level of confiscation, which is not consistent with the ML/TF and corruption risks in the country.
- e. **Address the challenges of maintaining accurate beneficial ownership (BO) information.** The registrar of companies should consider working together with the financial institutions,

the DNFBPs, and LEAs to obtain and maintain accurate BO information. Although the new Companies Act provides for sanctions against legal persons that do not maintain or provide beneficial ownership information to the Registrar, so far, no legal entity in Ghana has been sanctioned for breaches of the requirements on transparency and beneficial ownership of legal arrangements. Sanctioning non-complying legal persons may result in a more robust BO information regime.

- f. **The AML/CFT supervisors' sectoral and institutional risk assessments need to be informed by the outcomes of the NRA.** NRAs are intended to inform the national AML/CFT policy, strategies and implementation of a risk-based approach to both AML/CFT regulation and supervision. The supervision tools were all developed before the NRA and are yet to be fine-tuned to incorporate the NRA findings. For example, although Ghana's 2018 NRA identified bribery and corruption as one of the major predicate crimes for money laundering, the supervisory AML/CFT risk assessment tools do not take this into account. If the ML/TF risks at national or sectoral level are not assessed comprehensively, or if there is a disconnect or misalignment between the NRA findings and the AML/CFT supervision framework, AML/CFT supervision cannot be effectively risk-based. The supervisors are in the process of revising the risk assessment tools to include the national identified risks.

- g. **The FIC Board's mandate and functions should be rethought to ensure the FIC's full operational independence.** Section 9 of the AML Act establishes a governing Board of the Centre. The composition of the governing Board and the scope of its mandate raise concerns about the FIC's independence. The function of the Board is to ensure: (a) implementation of policies necessary for the achievement of the objects of the Centre; and (b) efficient and effective performance of the functions of the Centre. The composition of the Board (with senior management of partner organizations and the private sector) may result in the Board making decisions based on its members' organizational interest(s) rather than the specific interest of the FIC. Furthermore, Section 11(1) states that "A member of the Board has the same fiduciary relationship with the Centre and the same duty to act in good faith as a director of a company incorporated under the Companies Act, 2019 (Act 992)." This may compromise the operational independence of the FIC. The AML Act should be amended to restrict the role of the Board to providing advice on the strategic direction of the FIC but not ensuring implementation of FIC policies. The Board should not have the ability to make decisions that could compromise the FIU's operational independence or restrict its operations. The legal functions of the Board could be perceived as impeding the Centre's Director's ability to conduct their functions independently.

- h. **There is a need to ensure that the data used to assess the corruption risk in the national ML/TF risk assessment is accurate.** The responsibility of investigating corruption rests with different agencies, notably, the OSP, the Police Service - Criminal Investigation Department (CID), and the CHRAJ. This fragmentation makes it very difficult to gather accurate statistics of investigations, prosecutions, and convictions of corruption cases. The situation is made more complex by the terms used by different agencies to describe the corruption charges, which depends on the legislation being used. For example, the Police would charge for theft rather than embezzlement.

- i. **In certain areas, there is the need to establish the governing rules.** Notably, the authorities have not established legal or institutional framework to manage risks related to trusts, which is still governed by common law principles. Ghana should establish a mechanism that will enable the AML/CFT and Anti-corruption stakeholders to access *accurate* and up-to-date BO information.

Section IV: Fiscal Governance: Public Financial Management

A. OVERVIEW

73. This section considers a key element of fiscal governance: public financial management (PFM). Robust public financial management systems are an important enabler of integrity, transparency, and accountability and can assist in improving value for money in the delivery of important public services and reducing vulnerabilities to corruption. Recent analysis estimates that globally, the costs of corruption and efficiency losses are US\$4.5 trillion at the general government level (about 5 percent of world GDP), or US\$1.7 trillion at the budgetary central government level. Critically, the research estimates that up to 30 percent or more of all losses for a country were accounted for in the budget stage of the PFM cycle.⁹⁷

74. The mission has identified four areas of focus relating to governance of public financial management in Ghana. The areas are (i) Budget Credibility and Expenditure Arrears; (ii) Public Procurement; (iii) Governance of the Statutory Funds; and (iv) issues relating to Public Investment Management. The analysis focuses on governance weaknesses which could reduce efficiency in public expenditure or result in exposure to corruption. Planned reforms can assist in addressing weaknesses, but more reforms will be required to improve efficiency and reduce corruption vulnerabilities. In addition, there are a number of governance issues in the SOE sector. While these are not the specific focus of the present report (with the exception of SOE public investment), previous IMF technical assistance has pointed to the importance of governance issues in SOEs and these warrant ongoing focus.

B. BUDGET CREDIBILITY AND EXPENDITURE ARREARS

75. Ghana has a recurrent problem of weak budget credibility, which is at the root of a number of macro-critical governance weaknesses. There are persistent discrepancies between forecast and actual revenue and expenditure outturns. Revenue shortfalls against budgets have undermined budget credibility in recent years. While tax revenue outturns have usually corresponded to budgeted amounts, non-tax revenue has shown persistent underperformance.⁹⁸

⁹⁷ Artificial Fiscal Intelligence (2023) [Estimating the Costs of Corruption and Efficiency Losses from Weak National and Sector Systems](#)

⁹⁸ The cumulative underperformance of non-tax revenue was over GH¢12 bn over 2018-2021. The cumulative underperformance of total tax revenue against the Budget profile was over GH¢16 bn between 2018 and 2021

Table 8. Revenue Shortfalls Against Budget
(Negative numbers imply an overrun)

GH¢ '000	2018	2019	2020	2021	Cumulative
Shortfall against budget					
Tax revenue	459,314	(369,218)	4,799,932	(698,257)	4,191,772
Non-tax revenue	1,523,530	2,002,770	6,467,028	2,393,362	12,386,690
Total	1,982,844	1,633,553	11,266,961	1,695,105	16,578,462

Source: Adapted from Charaoui et al. (2023) *Ghana – Managing and Preventing Expenditure Arrears*. Unpublished.

76. A range of problems arise from weak budget credibility, including expenditure arrears.

The accumulation of significant expenditure arrears has become a major challenge for the public finances. The current stock of arrears is equivalent to 6.3 percent of GDP in 2023. The accumulation of expenditure arrears is not a new problem in Ghana. While a number of PFM reforms have been implemented in recent years, including a stronger PFM Act and the introduction of the Ghana Integrated Financial Management Information System (GIFMIS), the arrears issue has persisted. MDAs frequently commit in excess of available resources. Weak budget credibility has also led to the abandonment of investment projects midway based on revenue forecasts that did not materialize. Despite the clear pattern of available funding falling well short of budgeted amounts, MDAs continue to over-commit.

77. Expenditure arrears are a product of governance weaknesses and result in major corruption vulnerabilities. Analysis by the World Bank highlights how arrears can create complex governance issues, by introducing administrative discretion into PFM. Where cash constraints mean there is insufficient funding available to settle all payments by their due dates, officials decide which obligations to settle and in what order. This creates opportunities for corruption, where bribes can influence the prioritization of the settlement of particular invoices and arrears.⁹⁹

78. An arrears clearance and prevention strategy has been prepared. Building on previous PFM reforms such as the introduction of GIFMIS and GhanEPS, the main objective of the strategy is to develop and implement governance reforms to tackle the arrears issue. The strategy includes actions relating to more rigorous application of PFM sanctions, tighter commitment controls, full alignment of quarterly allotments with cash forecasts, more comprehensive medium-term budgeting for investment projects, standardized contracting, and extension of GIFMIS coverage.

79. The implementation of the strategy has been inadequate to date. The strategy was prepared in summer 2023 but has not been published. At the time of the mission, an Arrears Clearance Committee had been formed but it had yet to meet, and its Terms of Reference had not been agreed. The authorities plan for the Ghana Audit Service to check all arrears prior to payment, but at the time of the mission, this had not happened. There has been some progress on actions relating to improving cash forecasting. While the strategy appears well-placed to address the arrears issue, its full and swift implementation is an imperative.

⁹⁹ World Bank (2020) [An Overview of Potential Impact of COVID-19 Crisis on the Accumulation of Government Expenditure Arrears](#).

80. Major reforms of fiscal institutions and PFM processes are required to assist in addressing this problem, improving governance and reducing corruption risk. Plans to strengthen fiscal institutions can enhance budget credibility. The actions set out in the Arrears Clearance and Prevention Strategy should be implemented urgently, both in relation to clearing existing payables and preventing the built-up of arrears in the future.

C. PUBLIC PROCUREMENT

81. Internationally, studies have shown that public procurement is highly vulnerable to corruption. In addition to the scale and volume of transactions undertaken by governments, corruption risks are exacerbated by the complexity of processes, the close interaction between public officials and businesses, and the multitude of stakeholders.¹⁰⁰

82. In Ghana, there are multiple shortcomings in public procurement procedures and practices that lead to loss of efficiency and expose the system to corruption vulnerabilities. These shortcomings operate at multiple levels. First, successive reports by the Ghana Audit Service show direct financial losses arising from procurement irregularities (see Table 9 below). Second, use of non-competitive procedures without appropriate approval by the PPA are a recurring problem across a range of areas of government activity. Third, a major share of public expenditure is executed through sole-source or restricted tender process, without full competition but authorized by the PPA.

83. Successive reports by the Ghana Audit Service show direct financial losses arising from procurement irregularities. Procurement irregularities include many instances of goods and services being paid for but not received and evidence of payments without supporting documents. These irregularities relate to direct financial costs, as distinct from inefficiencies and foregone savings that arise from non-competitive tendering.

Table 9. Cost of Procurement Irregularities, 2018 - 2022

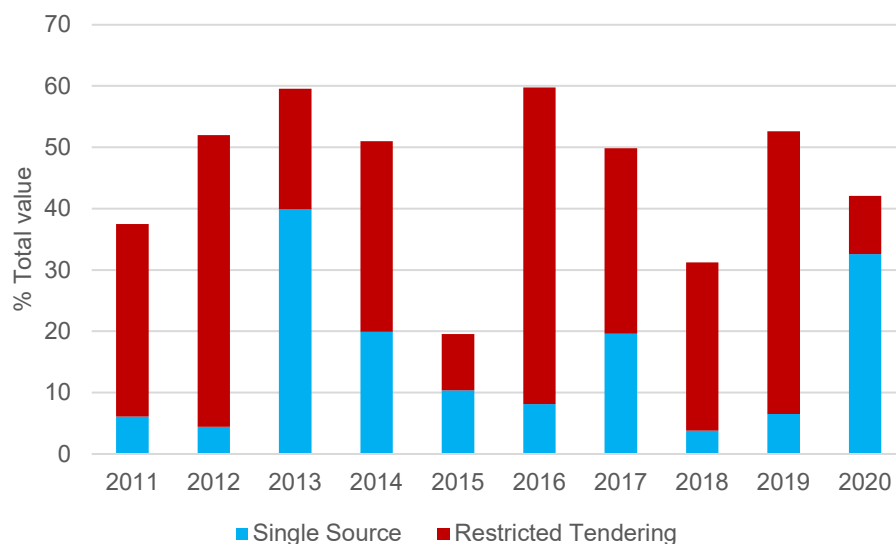
	2018	2019	2020	2021	2022	Total 2018 - 22
Value (GH¢)	6,823,337	20,604,593	10,667,174	511,569	14,254,724	52,861,397

Source: Ghana Audit Service (2023) [Report of the Auditor-General on the Public Accounts of Ghana MDAs, 2022](#)

84. A major share of public expenditure is executed through sole-source or restricted tender processes, undermining efficiency, and exposing the system to corruption risk. In recent years there has been considerable variation in non-competitive procurement as a share of total procurement by value; however, it has remained substantial. This seriously undermines the potential value for money in the delivery of important public services. The combined value of the use of single-source and restricted tendering as a share of total procurement has averaged over 45 percent since 2011 and exceeded 60 percent on two occasions. Figure 1 illustrates.

¹⁰⁰ OECD (2016) [Preventing Corruption in Public Procurement](#).

Figure 6. Value of Procurement through Single Source and Restricted Means, 2011-2020



Source: Mission analysis of PPA data.

85. While the law provides for specific derogations to competitive procurement, in practice, justifications are weakly evidenced. The Public Procurement Act and Regulations set out circumstances in which a procuring entity can seek derogation from the need to undertake competitive procurement. However, a high-level review of the most recent annual report of the PPA includes many instances of derogations having secured approval without obvious justification under the Procurement Act. The mission also learned that a large number of exemptions are requested ex-post and approvals granted retroactively (ratification), without any legal basis or objective criteria. See Box 1. Publicly owned banks and other SOEs may also request to conduct their procurement activities “in accordance with established commercial practices” under section 15 of the Public Procurement Act, but there is no full, publicly available and periodically updated list of exempted entities. Once exempted, the entities are not subject to any transparency requirements nor are they required to design procurement procedures under open, competitive and non-discriminatory principles, creating additional corruption risks.

Box 1. Weak justification of use of single source and restricted procurement

Article 36 of the 2022 Procurement Regulations details the process for seeking a derogation from the use of competitive tendering.¹⁰¹ Procuring entities must apply to the PPA proving justification in line with the criteria set out in Article 40 of the Public Procurement Act 2003.¹⁰² The Act describes six grounds for exemption including circumstances where a particular supplier has exclusive rights over a good or service, where there is an urgent need for the good or service to be procured, where there is a need to respond to a catastrophic event and where the goods or services pertain to national security. Together the six grounds represent a wide and somewhat loose set of circumstances to allow for direct award. In practice, it appears that many uses of single source procurement are weekly justified. A high-level review of the PPA's most recent annual report provides the following examples (of where single source procurement has been used):

- Supply of blank certificates for diplomas and degrees (Ghana Institution of Journalism)
- Purchase of a vehicle for the Chief Executive of the PPA (PPA)
- Engagement of three law firms (Ministry of Finance)
- Purchase of library books (Ghana Library Authority)
- Construction of an "ultra-modern sport complex" (Mineral Commission)
- Rental and laundering of academic gowns (University of Ghana)
- Procurement of copies of examination past papers (Ghana Education Service)
- Procurement of various professional services firms to undertake audits (Ghana Audit Service)
- Data entry, report writing and printing of procuring entity assessment reports (PPA)
- Procurement of six vehicles (Environmental Protection Agency)
- Purchase of 1,000 laptops (Ghana Revenue Authority)

From this analysis it is difficult to see how these examples could be considered to fall within the derogations listed in the Act.

Source: Mission analysis of PPA Annual Report, 2020 (unpublished)

86. Moreover, the overwhelming majority of requests to the PPA for use of restricted or sole source procurement are approved. Most recently available data from the PPA shows that 98 percent of requests to use restrictive tendering and 96 percent of requests to use sole source tendering were approved in 2020. While it could be argued that the COVID-19 pandemic skewed this data and exacerbated the need for urgent or emergency procurement, a proportional share occurred in January and February, prior to the first case in Ghana. In addition, the vast majority of procurements are for goods and services unrelated to the pandemic. Figures 2 and 3 illustrate. The Mission was informed that exemptions are often sought on the grounds of urgency. There is a difference, however, between genuine emergencies and issues that could have been foreseen but were not acted upon. Leading practice in public procurement draws a clear distinction between these circumstances and only allows derogation from competitive procurement in the former case.¹⁰³ The use of urgency as a justification for non-competitive public procurement points to weaknesses in the public procurement planning process at entity level.

¹⁰¹ Republic of Ghana (2022) [Public Procurement Regulations, 2022 \(L.I. 2466\)](#)

¹⁰² Republic of Ghana (2003) [Public Procurement Act, 2003 \(Act 663\)](#)

¹⁰³ For example, EU Procurement Directives stipulate that the circumstances invoked to justify emergency procurement cannot have arisen from the actions of the contracting authority ([Article 32 \(2\)\(c\)](#)). This would rule out, for example, emergency maintenance on an asset which had been neglected by the entity and was now in urgent need of remediation.

Figure 7. Approval Rate for Restricted Tendering

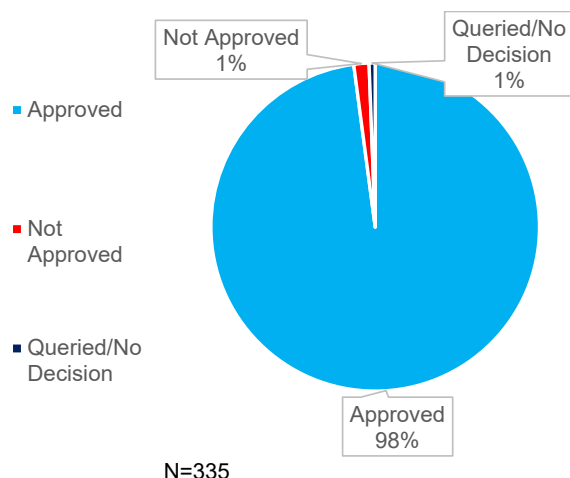
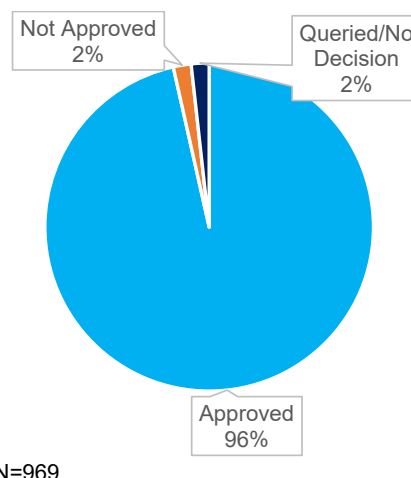


Figure 8. Approval Rate for Sole Sourcing



Source: Mission analysis of PPA Annual Report, 2020, unpublished.

87. Data on procurement trends and irregularities is not publicly disclosed nor efficiently analyzed and used for risk-based audits and monitoring. The latest published PPA report is for 2016. The lack of publicly available data impedes citizens and CSOs from externally scrutinizing government spending and contributing to enhanced accountability. Data and/or findings are not systematically shared with other accountability institutions to assist in their audit planning and corruption investigations. Data currently held by the PPA could help identify government institutions, functions or activities that have a high proportion of sole source procurement or restricted tendering and abuse in the use of certain types of exemptions requests. The PPA does not collect, analyze or publish data on the number of bids submitted in each procurement procedure, which could help detecting bid rigging and other irregularities and assess the level of competitiveness in open tendering procedures. Information on complaints and results of administrative review processes is scarce.

88. The PPA has developed a new digital procurement portal, but take-up has been negligible to date. The system, GhanEPS, is a web-based platform with functionality including user registration, tender notification, tender preparation and submission, online tender evaluation, contract awarding, creation and management of catalogue, creation and management of framework agreements and auctions and payments. The system was developed in line with the Public Procurement Act and Regulations and offers significant potential to streamline procurement, improve governance and reduce corruption risk. While the majority of procuring entities have been trained in the system, less than 1 percent of procurement took place through GhanEPS in 2022. The Public Procurement Act itself does not seem to provide a clear basis for making the use of the procurement portal mandatory. However, a recent circular from the PPA has detailed a range of steps that will be taken to ensure widespread use of the GhanEPS, which has been made mandatory.¹⁰⁴ The rate of take-

¹⁰⁴ PPA (2023) Mandatory Use of GhanEPS for all Government Procurement. Circular Letter to Procurement Entities, October. Unpublished.

up of GhanEPS should be closely monitored, and stiff sanctions should be applied in the case of off-system procurement. In addition, the planned integration with GIFMIS should be prioritized in order to ensure use of both systems.

89. Taken together, these shortcomings in Ghana's public procurement regime represent serious governance weaknesses and a major corruption risk. The issues raised in this section expose the PFM system to corruption risk in the following ways:

- Over-use of direct award of contracts through sole sourcing could be exploited by bidders or those responsible for contract award;
- Use of restricted bidding to a small number of market operators risks exposure to price-fixing or cartel-style behavior; and
- The type of procurement irregularities documented by the Ghana Audit Service, including where goods and services are paid for but never received, also represent a governance failing and procurement irregularity.

D. GOVERNANCE OF THE STATUTORY FUNDS

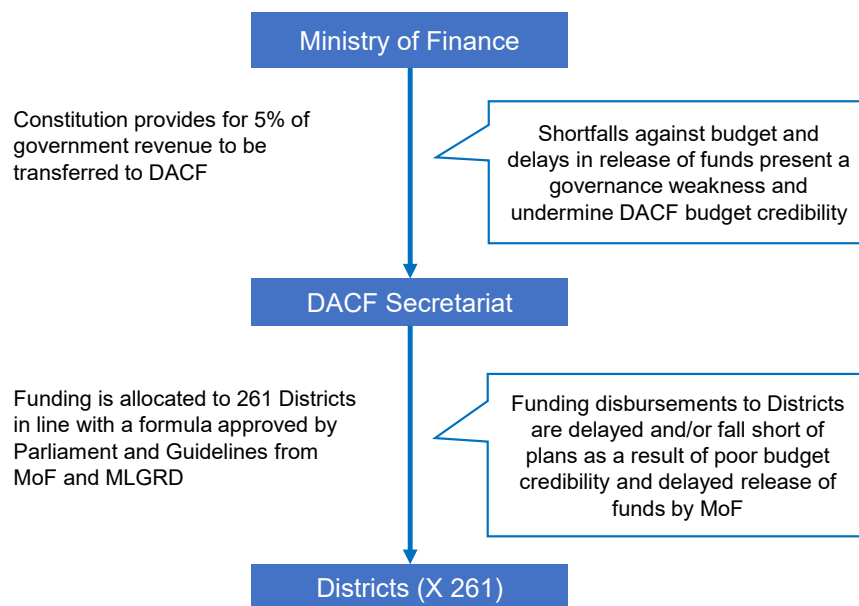
90. In 2023, 17.5 percent of public revenue was budgeted for allocation to a set of earmarked, statutory funds. While there are almost 20 separate Funds, around 40 percent of total earmarked expenditure is accounted for by four Funds:

- *The District Assemblies Common Fund* (DACF, Budget 2023, GH¢4.5 bn) was established in 1993 to support municipal and district assemblies through the provision of reliable funding allocations in order to enable balanced regional development.
- *The Health Fund* (Budget 2023, GH¢2.5 bn) was established in 2003 and supports the Ghana National Health Insurance Scheme.
- *The Ghana Educational Trust Fund* (GETFund, Budget 2023 GH¢1.87 bn) was established in 2000 in order to provide funding for educational infrastructure and the provision of scholarships domestically and internationally.
- *The Road Fund* (Budget 2023: GH¢1 bn) was established in 1985 to provide funding for the maintenance of public roads. The Fund's mandate incorporates two elements: (i) provide for routine maintenance, periodic maintenance and rehabilitation of public roads; and (ii) assist the Metropolitan, Municipal and District Assemblies in exercising their functions relevant to public roads.

In 2023, about 70 percent of the total budget of the Funds was for public investment.

91. As with other aspects of PFM, weak budget credibility is compounding governance problems. Planned budgets for the Funds are determined by formula in proportion to budgeted national revenue. Each Fund makes plans in line with anticipated allocations. However, revenue shortfalls nationally lead directly to shortfalls in the Funds. Allocations are not released by MoF in line with original timeframe or to the level set out in with the Budget.

Figure 9. Funding Flow under DACF



Source: Mission Team

92. There are fundamental governance weaknesses with the largest four Funds. These arise from poor practices in terms of transparency and procedures for use of funds, absence of appropriate accountability structures, absence of competitive procurement, unclear decision-making structures, expenditure arrears and poor value for money in investment spending. Successive audits have highlighted persistent governance and management irregularities which have not been addressed. Under the DACF, the irregularities include unaccounted-for funds, misapplication of funds, breaches of procurement protocols, payment for services not supplied, abandoned and delayed projects, and completed projects not being used.¹⁰⁵ In the five-year period 2018-2022, audits uncovered a direct cost of irregularities of over GH¢ 440 million.¹⁰⁶

93. The statutory funds are principal contributors to capital project abandonment. Audits of DACF have shown project delay and non-completion as persistent problems. Similar problems have arisen with GETFund and the Roads Fund. Academic research has provided detailed evidence of non-completion, showing that one in three projects commenced by local governments in Ghana are never finished, accounting for 20 percent of available investment spending.¹⁰⁷ Governance problems are therefore leading to severe erosion of value for money.

¹⁰⁵ Ghana Audit Service (2023) [Report of the Auditor General on the Management and Utilisation of the District Assemblies Common Fund and Other Statutory Funds for the Year ended 31 December 2022](#).

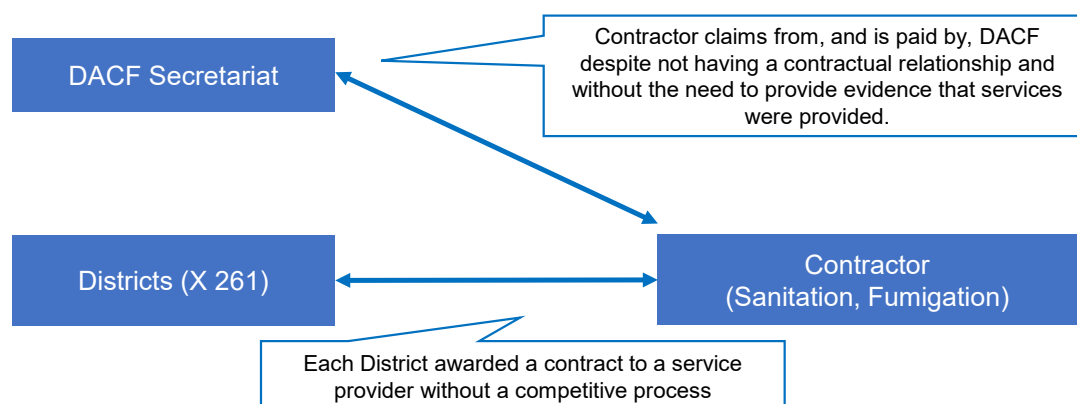
¹⁰⁶ This relates to direct financial costs rather than the potentially much larger loss of efficiency and value for money arising from poor practices.

¹⁰⁷ Williams, M. (2017) [The Political Economy of Unfinished Development Projects: Corruption, Clientelism, or Collective Choice](#)

94. Expenditure monitoring and control under DACF are inadequate. The mission was informed that each assembly is required to provide a paper-based monitoring report to the DACF Secretariat on a monthly basis. The 261 reports are manually combined to inform a quarterly progress report. This labor-intensive process has not resolved enduring problems with project delay and abandonment. There is substantial scope to streamline reporting and enhance the impact and relevance of monitoring reports. Inadequate commitment controls have contributed to governance shortcomings. The DACF Secretariat takes a passive role in this regard and as previous IMF analysis has shown, general MoF commitment controls are inadequate.¹⁰⁸

95. There are numerous examples of irregular governance practices under the Funds. In DACF, Districts are party to contracts for the provision of certain services (including fumigation and sanitation), but payment is made by DACF Secretariat and deducted from Assemblies' allocations without the requirement of certification that the services were actually provided. The contract was directly awarded to a service provider without a competitive procurement process. Figure 5 illustrates. Audit report shows that the contractor has failed to deliver fully on the terms of the agreement. For example, in 2022, the contractor failed to supply 42 trucks and 157 containers or replace 34 broken-down trucks and 109 damaged containers.¹⁰⁹

Figure 10. Governance Weaknesses in DACF Service Provision



This arrangement between DACF and the Districts is not subject to any formal agreement or documented in any way.

96. Certain features of GETFund have poor governance practices that result in corruption risk. For example, the “MPs Emergency Projects and Monitoring” allocation allows every member of parliament to allocate GH¢ 100,000 per annum to undertake projects in their constituency.¹¹⁰ This allows each MP total discretion over what projects to fund. There are no documented procedures for

¹⁰⁸ Charaoui, J. et al. (2023) Ghana – Managing and Preventing Expenditure Arrears. Unpublished.

¹⁰⁹ Ghana Audit Service (2023) [Report of the Auditor General on the Management and Utilisation of the District Assemblies Common Fund and Other Statutory Funds for the Year ended 31 December 2022](#).

¹¹⁰ Ghana Education Trust Fund (2023) [GETFund Distribution Formula for Fiscal Year 2023](#).

the list of eligible expenditure or processes for prioritizing among competing uses of the funds. Further, in 2023 each MP received a sum of GH¢ 45,000 to “monitor” expenditure in this budget line. MPs are not required to report on the results of this monitoring and expenses incurred are not required to be vouched for – the full sum is paid directly to the MPs. This level of local discretion, unregulated decision-making processes and absence of controls and transparency represents major governance weaknesses.

97. The Road Fund has a number of corruption vulnerabilities and governance weaknesses. There are fundamental shortcomings in project monitoring which is *ad hoc*. There is a high rate of project non-completion and accumulated expenditure arrears. The case for maintaining the Road Fund as a discreet entity, separate from the Ministry, does not stand up.

E. PUBLIC INVESTMENT

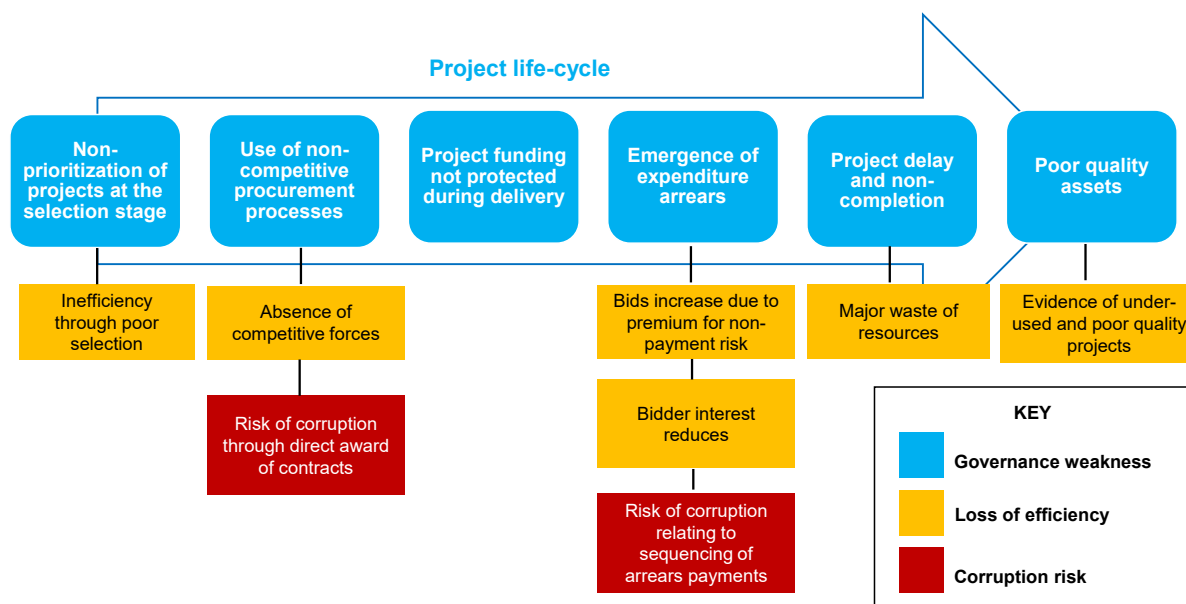
98. For a variety of reasons, public investment management is highly vulnerable to corruption risk. As evidenced by World Bank analysis, corruption vulnerabilities in public investment management have particularly serious implications for low-income countries where infrastructure investment represents a higher share of GDP and institutional structures may be less robust to address the challenge.¹¹¹

99. There are a number of shortcomings in public investment management in Ghana which present governance weaknesses and expose the authorities to corruption risk. These include absence of adequate prioritization of projects, failure to protect funding for approved projects over the life cycle, the emergence of expenditure arrears, major delay and abandonment of projects and delivery of poor quality or un-needed assets. Previous IMF analysis showed that poor governance of capital investment is a primary cause of expenditure arrears.¹⁰⁴ Capital investment arrears in turn lead to corruption vulnerabilities. The presence of expenditure arrears raises the issue of corruption, or the perception of corruption through a risk of discrimination in the selection of what creditors to pay and in what order. In addition, potential contractors become aware of the risk of non-payment or delayed payment and hence bid up the cost of delivering contracts to reflect a risk premium. This further reduces value for money and puts an additional burden on the public purse.

100. Together, these shortcomings operate in a systematic way resulting in loss of efficiency in public investment and vulnerabilities to corruption. While each of the challenges described represents a governance shortcoming, these issues interact over the investment life cycle. Weaknesses in project appraisal and selection processes, use of uncompetitive practices, limitations in multi-annual budgeting, high rates of project abandonment and sub-standard assets being delivered result in major loss of efficiency in public spending. At the same time, non-competitive procurement practices, failure to use GhanEPS, expenditure arrears on public projects and ambiguity on sequencing of arrears payment all represent vulnerabilities posing risk of corrupt practices. Figure 6 illustrates these issues over the investment life cycle. These issues are also in evidence in the SOE sector as discussed in Box 2.

¹¹¹ World Bank (2020) [Confronting Corruption Risk in Sectors and Functions](#)

Figure 11. Governance Weaknesses across the Project Life-cycle



Box 2. Weaknesses in SOE Public Investment Management

There are also weaknesses in SOE investment management. The case of the COCOROADS portfolio of projects managed by the COCOBOD provides evidence of similar issues besetting SOE investment as described above: These include:¹¹²

- Failure to prioritize projects and align project selection with funding availability.
- Poor costing of projects leading to overruns ranging from 5 percent to 100 percent of initial estimate.
- Use of single source, non-competitive process for 87 percent of projects.
- Major weaknesses in monitoring and contract management.

In the energy sector, there is further evidence of poor infrastructure governance. The Electricity Company of Ghana (ECG) entered into 50 contracts for electricity meters to the value of over US\$140 million without adhering to the Public Procurement Act. Weaknesses in project budgeting were in evidence.¹¹³

101. The Public Investment and Assets Division of the MoF is leading reform initiatives that have potential to address certain shortcomings. The development of the Consolidated Bank of Investment Projects offers significant potential to assist in portfolio management and improved budget credibility and control.

102. The full implementation of the PIM Regulations is a priority. To succeed, this must be complemented by the full implementation of the PIM Regulations.¹¹⁴ In particular, Article 11 which mandates that no new projects be commenced without sufficient fiscal space to complete existing

¹¹² Ghana Audit Service (2023) [Performance Audit Report of the Auditor General on the Construction of Cocoa-Roads](#)

¹¹³ Ghana Audit Service (2023) [Performance Audit Report of the Auditor General on the Management of Meters by the Electricity Company of Ghana](#).

¹¹⁴ Republic of Ghana (2020). [PFM \(Public Investment Management\) Regulations, 2020 \(L.I. 2411\)](#)

projects, must be adhered to at all levels of government. Non-compliance must be met with sanctions as provided in the Act.

F. RECOMMENDATIONS

Table 10. Recommendations on PFM

Budget Credibility and Expenditure Arrears			
1	Improve budget credibility - Reconstitute a fiscal council to improve the quality of information, transparency and accuracy of budget forecasts - Establish appropriate fiscal rules to guide credible budget formulation - Initiate short-term measures to improve the accuracy of forecasts	Ministry of Finance	ST
2	Expenditure Arrears Clearance - Publish the criteria for sequencing and prioritization of the payment of existing expenditure arrears - Expedite the review of outstanding claims	Ministry of Finance Ghana Audit Service	ST
3	Expenditure Arrears Prevention Urgently implement all actions in the Arrears Prevention Strategy	Ministry of Finance	ST
Public Procurement			
4	Ensure public procurement is open and competitive to the maximum extent possible - Adopt new internal guidelines to apply more stringent interpretation of exemption conditions for sole source and restricted tendering - Progressively increase the share of public procurement by value being tendered competitively - Conduct all public procurement through GhanaEPS as a matter of course - Require use of GhanaEPS as a condition of release of funds for procured goods and services - Fully integrate GhanaEPS and GIFMIS.	Public Procurement Authority	ST ST/MT
5	Address governance shortcomings and corruption vulnerabilities in the Statutory Funds Governance - In implementing the Strategy for Streamlining the Statutory Funds, ensure that: - Public Procurement processes are followed in full - Expenditure is adequately monitored and reported on - Expenditure is fully vouched and accounted for	Ministry of Finance Line Ministries Fund Secretariats	MT

6	Improve the quality of investment project appraisal, selection and budgeting • As a matter of urgency, ensure full implementation of the PIM Regulations • Conduct quarterly monitoring of compliance with PIM Regulations by MDAs	Ministry of Finance	ST
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Section V: Fiscal Governance: Revenue Administration

103. This section assesses the governance framework for revenue administration in Ghana. It discusses recent revenue administration reforms, major governance issues, key vulnerabilities to corruption, and ends with recommendations. The findings in this section largely reiterate advice provided to the authorities in the February 2023¹¹⁵ (FAD February 2023) and July 2023 (FAD July 2023)¹¹⁶ FAD missions and also draws from the August 2023 Tax Administration Diagnostic Assessment Tool (TADAT) mission findings, updated in light of information collected during this Governance Diagnostic.

A. THE REVENUE ADMINISTRATION LEGAL FRAMEWORK AND RECENT DEVELOPMENTS

104. Revenue Administration in Ghana is governed primarily by the Ghana Revenue Authority Act (GRA Act) of 2009 and the Revenue Administration Act (RAA) of 2016. The GRA Act 2009 established the GRA as a body corporate charged with responsibility to, among others, assess and collect taxes, interest and penalties due to Ghana. The Act provides for the Board of the GRA and the position of Commissioner General (CG) and sets out various powers and authorities for these positions as well as for the Minister of Finance. The Act is subject to the Constitution of Ghana (1992) which contains provisions that relate to the appointment of anyone in the public service of Ghana (Article 195). The President may delegate some of this power to the board or a committee of the board of a government agency or any public officer, if deemed necessary. Further, the Constitution (Article 196) provides the Public Service Commission (PSC) with typical human resource powers e.g., to recruit, promote, and perform related functions as established by law.

105. The Revenue Administration Act (RAA) provides for the administration and collection of revenue, including in the form of tax and customs, by the GRA. In addition, the GRA has power under the RAA to publish practice notes and rulings, which are binding on the GRA but not taxpayers. Practice notes aim to “achieve consistency in the administration of tax laws and to provide guidance to persons affected by the tax laws” (section 100, RAA).

106. The main revenue instruments take the form of specific statutes. Key among these are the Income Tax Act (ITA), Value Added Tax Act (VAT Act), Excise Tax Act, and Customs Act. There are also a significant number of additional levies and charges imposed under separate statutes. Exemptions are regulated under the Exemptions Act. Uniform administrative and procedural rules are specified in the RAA.

107. Ghana has introduced important reforms in the legal framework for revenue administration in recent years. Major reforms include the enactment of the Exemptions Act in 2022,

¹¹⁵ Letjama and others: February 2023- Enhancing Revenue performance in the medium-term- FAD Washington DC

¹¹⁶ Letjama and others: July 2023- Next Steps in Developing and Implementing a Medium-Term Revenue Strategy- FAD Washington

establishment of the Independent Tax Appeals Board (ITAB) and its inauguration in January 2023. The Office of the Special Prosecutor (OSP) was also established under the OSP Act 2017, with power to investigate and prosecute alleged corruption, including in public bodies like the GRA. The OSP recently concluded an investigation on alleged misconduct related to customs valuation and is currently investigating allegations related to auction sales of vehicles between July 2016 and August 2022.

B. GOVERNANCE ISSUES IN THE LEGAL FRAMEWORK

108. The provisions of the GRA Act on the appointment of the Board, management and staff risk exposing the GRA to undue political influence and interference. Under the GRA Act, the President of Ghana appoints the Board of the GRA and its Chair, the CG and, in principle, all the GRA staff. While this power of appointment derives from the constitution (Article 70, with regard to the Board, and Article 195, with regard to the CG and staff),¹¹⁷ it exposes the GRA to possible interference and politicization. It is also inconsistent with modern principles of transparency and good governance given the absence of clear criteria and the lack of an open process for these appointments. At present, the office of the President (and the PSC by default) is involved in all appointments, resulting in delays and disruption to the GRA. The power provided in Article 195 of the Constitution should be delegated to place staffing authority with the CG and Board.

109. Also, the prescription of the organizational structure of the GRA in the law has created needless rigidity. As a result, the GRA cannot easily restructure to respond to evolving practices about modern revenue administration. Section 17 of the GRA Act limits the GRA to three divisions (Domestic Tax Revenue Division, Customs, and Support Services). The section then states that any other division may be established as determined by Parliament. This is overly restrictive. The question of organizational structure is more typically a matter for the Board, and this should be the case for the GRA. Parliamentary review of the proposed structure would cause delays and make it difficult to align the GRA's structure with its strategy in addition to the fact that it diminishes the value of the Board.¹¹⁸

110. The weaknesses in the current GRA's governance framework make it difficult for GRA to evolve in response to its fast-paced revenue administration environment. It has created space for delayed decision making, weak accountability for results, limited merit-based promotions using the "out of turn" process and is slowly rendering the GRA an organization unfit for its purpose. Box 3 summarizes issues directly emanating from the weaknesses in the governance framework.

¹¹⁷ See section 4(2) and 13 of the GRA Act

¹¹⁸ Further, the Act duplicates this power by also providing it to the Board i.e., to establish divisions (article 12). This is likely a drafting error – however, the power should be vested in the Board and not Parliament.

Box 3. Major Weaknesses in the GRA's Current Governance Framework

- During the mission, all members of the executive management did not have valid employment contracts and it was unclear when they will be issued. This state of affairs cannot be remedied by either the Board or the Minister of Finance.
- Over 80 percent of the 528-management staff were due to retire within 10 years.
- Many managers were in acting positions, turnover triggered by retirement was so high that little skill or experience is gained in the new acting positions.
- Performance management arrangements were partly in place. Issues were reportedly caused by trade union resistance and delayed implementation.
- The CG's performance contract is with the Minister and not with the Board. It is not clear if the CG has a performance contract with each of the commissioners.
- Promotions are still largely based on the length of time in the position and not by demonstrated performance.
- There is lack of clarity on the relationship between the President, Minister, Board and the CG in the GRA governance framework.

Source: FAD February 2023 and discussions with GRA officers

111. The departures from good governance and administrative practice identified in the GRA's governance framework and practices impede its transformation agenda. These shortcomings are mainly a result of the conservative approach to the establishment of the GRA, particularly as it entailed merging four existing institutions.¹¹⁹

112. Formulation of the MTRS offers the authorities an opportune time to holistically review all the revenue laws and align them with modern standards. The Ghanaian authorities have committed to a comprehensive reform of the tax system and have developed and published a medium-term revenue strategy (MTRS). This can be leveraged to become a launchpad for revenue reforms.

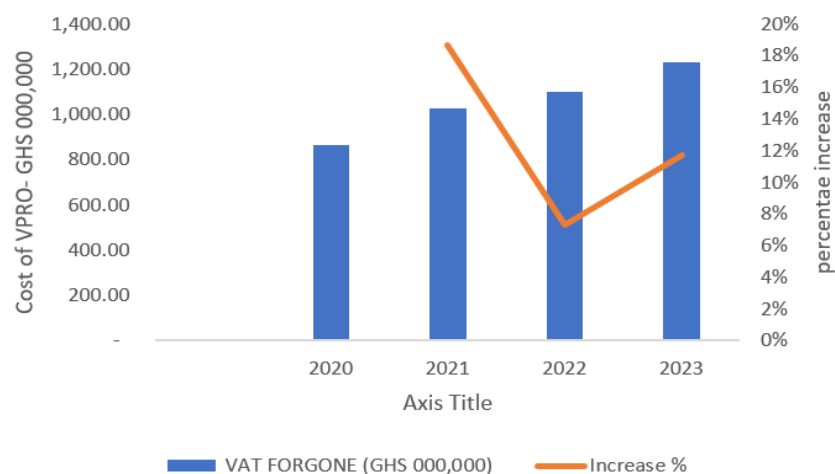
113. There are some tax law risks to revenue mobilization under the MTRS. Arguably the biggest revenue risk is the breadth of discretion in the application/enforcement of tax and other laws relating to tax liability. In a worst-case scenario, the increased revenue from MTRS measures may be largely undermined by revenue losses arising from the exercise of discretionary tax exemptions and other concessions. The Exemptions Act is intended to limit the revenue risk posed by exemptions. As noted in FAD September 2022, while the Exemptions Act strengthens governance and transparency relating to exemptions, no data was available to demonstrate that it has yet reduced the number and impact of tax exemptions

¹¹⁹ (i) Customs, Excise and Preventive Services; (ii) Internal Revenue Service; (iii) Value Added Tax; and (iv) Revenue Agencies Governing Board (established under Act 558 of 1998).

114. VAT relief purchase orders (VRPO) continue to exempt holders from paying VAT on purchase of taxable supplies and they are costly to the fiscus. A total of GHS 1.1 billion was issued in 2022 (7 percent increase from 2021) and GHS 1.231 is projected to be issued by end of 2023 (12 percent increase from 2022).

Incidences of abuse of this exemption have also been reported by the GRA. Authorities committed to eliminating VRPOs under the MTRS and this will help eliminate this tax expenditure and close its concomitant vulnerabilities to corruption.

Figure 12: Cost of VRPO's



Authorities committed to eliminating VRPOs under the MTRS and this will help eliminate this tax expenditure and close its concomitant vulnerabilities to corruption.

115. Some discretionary powers granted to the Commissioner General and other revenue officers have no supporting criteria and no guidelines for their transparent and consistent application. Annex 6 summarizes major discretionary powers provided to the CG and revenue officers. Given that this is a significant vulnerability, it is imperative that the GRA take an inventory of discretionary powers from all the revenue laws and develop guidelines for their application. The GRA is also encouraged to publish these guidelines to make the process more transparent and predictable.

116. Tax treaties also pose a revenue risk for Ghana as a capital importing country. The preparation of a formal Tax Treaty Policy to ensure that good practice is followed in tax treaty negotiations is important. This relates to both the choice of treaty partners and the negotiation process and should protect against negotiation of high-risk treaties.

C. BOARD GOVERNANCE ISSUES

117. There is a need for clarity regarding the respective roles of the Board, the Minister and the CG. The overall effectiveness of the GRA depends to a large extent on the clarity of the roles afforded to the Minister, the Board and the CG. While the Minister has powers throughout the Act e.g., directs the GRA on any function in relation to revenue, endorses and submits the annual budget to Parliament, oversees the Board, the Act is silent on the Minister's oversight of the CG for the administration and enforcement of the revenue laws. For clarity, the dual accountability that the CG has to the Minister for these matters and to the Board for the administration and management of the GRA should be explicit through regulation (the Minister can make regulations under this Act).

118. The GRA Act is silent on the confidentiality of taxpayer information and prohibition of Board access to such information (FAD February 2023). Good practice is that such information is available only to officers or others who require such information for their particular role in the

administration and enforcement of the tax laws themselves¹²⁰. Penalties for breaches of these provisions can be severe. About two thirds of the laws establishing revenue agencies reviewed by the IMF include confidentiality provisions for the Board. Some enabling laws completely prohibit Board access to confidential taxpayer information and the GRA may wish to consider such a provision. This will strengthen the credibility of the GRA in dealing with taxpayer matters.

119. The GRA Act requires the Board to make recommendations to the Minister on tax policy, legislation, reform, treaties, exemptions, and concessions (section 5(2))- creating potential conflict of interest for the Board. The exercise of this power would bring the Board, including its private sector members, into the middle of sensitive government deliberations and should be reconsidered. Although the Board members are required to declare interest in all matters, to the extent it is not clarified what would constitute such a conflict, the provision still does not provide enough of a safeguard to address the issue of vulnerability to undue influence in tax policy design and formulation.

120. Clarifying the role of the Board is important for sustained GRA success – both in ongoing operations and in terms of the transformation agenda. Some work should be done to establish clear guardrails as to what is a matter for the Board and what is not. A Board Charter could address both the inner workings of the Board (e.g., meetings, quorum, committees) and the question of the reach of the Board. The Board’s oversight role in HR and a range of other management functions should also be highlighted in such a Charter. A Board Charter could include directions on how information is shared with the Board and how the Board is briefed. It would be helpful to identify issues where the board decides or approves, where the board needs information to be able to drive strategy development, and where the board should not be involved at all.

121. The Board should, at a minimum, meet annually with the Minister. The Minister oversees the Board on behalf of the President and as such, there should be an opportunity for the Minister to provide direction, hear the Board’s view and to exchange ideas. The Board could have an annual performance agreement with the Minister. The CG’s performance contract should be with the Board and not with the Minister as is currently the practice.

122. The final element of the governance framework is the CG who is responsible for the GRA’s day-to-day operations and in need of stronger clarity on this role as it relates to the Board and the Minister. The CG has dual accountability – to the Minister for the administration and enforcement of the revenue laws and to the Board for the effective management of the GRA. This can present challenges and relies on a strong working relationship and solid understanding of roles between the Board and CG. This can in part be dealt with through the work described earlier on a Board Charter and through a sound performance contract with both the Board and the Minister.

¹²⁰ Typical examples of persons requiring access to confidential taxpayer information include auditors (who need access to all information pertaining to the determination of tax liability) and collection officers, who may require limited taxpayer information related to ability to pay and the taxpayer’s general financial information.

123. Modern revenue administrations digitize and automate processes not only for efficiency and effectiveness, but to mitigate corruption risks, improve overall governance, and enhance performance against stakeholder expectations¹²¹. Automated and digitized processes help revenue administrations to reduce face-to-face interactions between taxpayers and tax officials (a corruption vulnerability) and minimize the intrusion of revenue officials in the affairs of compliant taxpayers. They enable management to embed systems of internal control, access controls, and audit trails to ensure integrity of decisions and allow for review and subsequent audit. Technology also enables automated risk assessments and selection of cases for audit, inspection and other forms of verification required by the tax administration, thus removing personal influence and staff discretion and providing justifiable basis for actions taken by GRA.

124. The GRA has developed several initiatives to improve its current digital offerings for inclusion in the medium-term revenue strategy (MTRS). Major projects include: (i) upgrading the integrated customs management system (ICUMS); (ii) implementing an integrated tax administration system (ITAS); (iii) refinements to the current domestic taxes- Ghana integrated tax management information system (GITMIS); (iv) reengineering business processes; (v) introduction of e-VAT to make it quicker for non-compliant behavior to be detected' and (vi) implementing a data warehouse (DW).

125. Analytics of information within the DW will generate new criteria to detect non-compliance. The DW project would enter production status from 2023. The analysis undertaken of the data holdings including information about other economic activity supplied by third parties has, in other administrations, resulted in algorithms that are effective for identifying non-compliant behavior, allowing GRA staff to take targeted enforcement actions to bring the taxpayers and traders back into compliant status.

126. GITMIS is still suffering from the retention of the much older TRIPS software to issue corporation tax identification numbers. The TRIPS software is interfacing with the Government's corporation registration system to provide Taxpayer Identification Numbers as part of that registration process. GITMIS has this facility, but the corporate registration unit has identified that changing their system to access GITMIS is a low priority. Until TRIPS is decommissioned, there remains the possibility of gaps in GRA's record of corporations that have been established or de-registered. This impacts the accuracy of the GRA's taxpayer database, which has a detrimental effect on downstream compliance.

127. The procurement to replace the GITMIS software solution with ITAS system suffered major delays and was still not finalized as of October 2023. Progress on concluding the procurement has been protracted and the delivery schedule for implementing the new solution has not yet stabilized. Normally the localization and deployment of a new tax administration software requires 18 – 24 months for the first phase (normally monthly taxes such as VAT and PAYEE) to be operational with annual or semi-annual taxes requiring an additional 12 months. Complicating the delivery timetable is the inclusion of a new e-VAT solution as part of the procurement.

¹²¹ FAD- April 2019 Fiscal Monitor-Curbing Corruption- Washington DC

128. The introduction of new software solutions can be extremely disruptive to both GRA operations and to taxpayers if not managed properly. This initiative needs to be managed much like the ICUMS project with a dedicated GRA core team that bring the required business experts with BRP knowledge into the project as required. Weaknesses in GRA reforms methodology, including lack of a substantive head for the Transformation Office and weak enforcement of the GRA program management methodology pose a risk to successful implementation of ITAS.

129. Cybersecurity is a key requirement in the deployment of digital services. An increasingly urgent “pain point” for all governments is the likelihood that a cyberattack will compromise digital service offerings and all digital holdings. Ransomware attacks have become more prevalent including recent attacks on states. With 80 percent of the intrusions reported to be from email scams and 50 percent involving malicious software, appropriate upskilling must be applied to all staff. Validating the adequacy of GRA cybersecurity practices by continuing the practice of having an appropriate external resource conduct penetration testing of public facing services and of internal security practices is essential.

E. EXERCISING HUMAN RESOURCES (HR) AND BUDGET AUTONOMY

130. Most RAs have specific control over their HR management policy framework. One of the main drivers behind the creation of RAs is that some greater level of management autonomy will bring better performance results – not only in terms of revenue mobilization but across a range of performance indicators (e.g., management of arrears). This autonomy means that the RA manages its own job classifications and grading, staffing, recruitment and promotion and discipline, and sometimes remuneration. HR autonomy is seen to be the most significant manifestation of autonomy in the RA and the major policy driver behind any government’s decision to create an RA.

131. The ability to develop and to tailor an HR management framework to the specific needs of the GRA is critical. It would allow it to align its human capital needs with its own policies for grading, promotion, recruitment, and compensation, amongst others. These policies, approved by the Board, should incorporate private sector approaches, and can create a new management platform from which operational reforms are implemented. Advocating for integrity in the workplace is also seen as a key priority for RAs, with some looking at ways to vet staff and to collaborate with national anti-corruption agencies in promoting integrity and good ethical conduct.

132. The PSC is involved in many key GRA HR decisions adding rigidity and gratuitous bureaucracy in HR management. The GRA has developed a suite of HR policies and procedures that cover the range of HR responsibilities, and many make no reference to the PSC. However, the PSC is involved in interview and selection panels for certain positions (those that the President does not make direct appointments for). This involvement extends to re-appointment, acting appointments, and promotion. In many ways, the approach to HR management in GRA has changed little since the creation of the GRA and the institution behaves more like a regular department of government than a body corporate created by enabling legislation. This is an overall loss for the GRA and an impediment to the transformation agenda and threatens implementation of the MTRS- heavily reliant on HR capacity and skills.

133. The GRA's HR policies and procedures should be reviewed to determine whether they reflect modern HR practice. Some policy statements may remain entirely appropriate e.g., travel allowances, overtime, but some fundamental areas of HR are ill-suited to the challenges of the transformation agenda. Promotions for instance are based on moving from grade to grade after three to four years have elapsed. Promotions called "out-of-turn" that happen outside this cycle must be approved by the PSC and this method is used rarely. The GRA's current approach will not help to drive transformation and innovation in any way.

134. The GRA is facing several immediate workforce challenges. Analysis prepared by AFRITAC-West 2 in 2019 showed that over 75 percent of senior management was over 50 and would therefore be eligible to retire in the coming years. This is a human capital risk that could have been proactively managed but was not. As a consequence, acting appointments proliferate, staff are appointed to new positions in the months before they retire, and a great deal of management time is spent on interview panels. The bureaucracy that each process triggers, and the back-and-forth with the PSC where needed is ineffective and a drain on resources. There is relatively little skill gain as staff are in new posts for relatively short periods of time. Although there are elements of interventions put in place to mitigate human capital risks, these are nascent and are not yet part of a coherent strategy for mitigation of human capital risks.

135. The need for the Central Tender Review Committee (CTRC) to approve procurement for goods and services quoted above the approving threshold set for GRA Procurement Committee-complicates and slows procurement for GRA. This is a requirement of the procurement Act of 2016. Depending on the category of goods and services being procured, approval threshold by the Central Tender Review Committee ranges from as little as above GHS0.2 to GHS15 million. RAs have procurement autonomy and have their own procurement policies and procedures monitored by the Board and overseen by the auditor general. In addition, the threshold for approval by the CTRC seems very low and can result in the majority of the GRA procurement being approved by CTRC - creating significant delays in procurement with a detrimental effect on reform progress. The GRA as earlier noted, needs all the autonomy afforded to many modern revenue administrations elsewhere for it to improve its performance. The current approach to GRA autonomy undermines the essence behind establishing it as an autonomous revenue agency.

F. ORGANIZATION STRUCTURE

136. The GRA is currently reviewing its organization structure. The work underway was not available for review. The advice and suggestions in this section of the report is meant to assist management to adopt an organizational design that is most aligned with international good practice. Key elements of a good organizational design include (i) insulating the revenue administration from undue influence in exercise of its mandate; (ii) function-based design with separation of duties, appropriate numbers of staff assigned to each function based on workload, strong headquarters function providing oversight and uniform operations across the field and taxpayers-facing office network; (iii) segmentation of the taxpayer population by size e.g. large, medium and small taxpayers; and (iv) establishment of internal audit and investigations departments.

137. Good organization structure design contributes immensely to curbing corruption and improving organization effectiveness. It creates capacity for continuous improvement and standard application of operational procedures across all revenue administration offices. It also (i) helps remove one-to-one relationship between taxpayers and officials; (ii) allows for creation of effective processes to identify and curb corruption; and (iii) can help to focus resources on the highest risks to revenue collection. The organizational structure should also limit the number of management layers to improve supervision, speed up decision-making, and provide for an appropriate span of control.

138. The GRA's current organizational structure needs review. A total of 13 organizational units report to the CG. They include Tax Audit and Quality Assurance, Procurement, and International Tax Department. It is unusual for these units to report to the CG. A span of control this wide is likely to divert the CG's focus from high level and strategic priorities to operational issues which could be more effectively handled in other divisions. Of note is the absence of the Transformation Office in the current structure, and it is not clear if this reflects management's intention not to establish the office or to establish it at a lower level - both options detrimental to the GRA's capacity to manage reforms especially given the context of implementing the MTRS.

139. Both customs and tax administration rely on strong headquarter offices which are currently weak in GRA. Headquarter offices design and monitor how customs or tax administration works and efficient and effective delivery through a network of field offices. The GRA attempted an integration of the customs and Domestic taxes Revenue Division (DTRD) HQ functions, and this meant that overall responsibility for customs or tax administration was shared between a few senior executives. This makes it more difficult to hold a single senior executive accountable for customs or tax performance. While the nature of their work is the same (i.e., procedures, processes, monitoring, resource allocation), the content of the work of the departments is so different that an integrated approach can make oversight and direction more complicated. A welcome decision has been made to return the distinct HQ functions (called Policy and Planning) to both DTRD and Customs.

E. RISK MANAGEMENT

140. Taxpayer/trader's failure to comply with customs and tax laws happens for various reasons including lack of understanding, mistakes in filing returns, and deliberate tax evasion. The GRA must have in place effective and targeted strategies to minimize and take appropriate action to address the risk of non-compliance. Given it is not practical to address every risk to revenue, revenue administration agencies have increasingly looked to risk management techniques for help.

141. An Enterprise Risk Management (ERM) Department has been created to advance the GRA's approach to risk. An ERM framework has been developed and now approved, a compliance improvement plan (CIP) is under development with Foreign and Commonwealth Development Office's (FCDO) assistance, and a corporate risk register development has been started. Risk champions have been named in every division and unit (including outstations) to begin the cultural change to move the GRA to a footing of risk-based decision-making. The CG chairs a reinvigorated risk management committee that has identified a business continuity plan (currently under development) as a key priority.

142. The mandates of the ERM department and the risk units in Customs and DTRD will need to be clarified. A corporate level risk unit – such as has been created in the GRA—should be responsible for the overall framework, policies and processes and should take the lead on enterprise risks to the institution (e.g., destruction of premises, impact of civil unrest, pandemics etc). Meanwhile, DTRD and Customs should work within this framework but retain clear accountability for operational risk related to their core business. In some cases, these risks will be shared, and careful coordination will be needed.

143. While risk management units are established in DTRD and in Customs, they have only been recently formed and need support to operate effectively. The Customs Risk Management (RM) Unit has developed its mandate statement, policy, and standard operating procedures (SOPs). Formal endorsement of these instruments by the CG is planned for the near future. The numerous levels of compliance verification imposed on low-risk shipments at the border point to the need for effective operational risk management. In addition, while post clearance audit (PCA) has been in place for a while, front line officers do not seem to be confident that infractions can be identified after goods have left customs control. The relative nascency of risk management and PCA programs may explain this but sensitizing staff on the advantages of a risk-based approach is increasingly important. In DTRD, there is no risk management unit. The risk management function is currently carried out in the ERM department, but it is still nascent and not yet fully developed for DTRD to rely on in managing risk. FAD advice as earlier noted is for this role to be moved back to DTRD. This will help give the Commissioner full control of DTRD operations and help improve accountability for results. Due to lack of a risk management process, auditors continue to select cases for audit, a major vulnerability to corruption and fraud.

F. CUSTOMS OPERATIONAL PERFORMANCE

144. Effective governance practices enhance revenue administration performance against its objectives. Effective performance against stakeholder expectations is the main imperative for good governance. Ghana is not doing well against major performance measures used to assess revenue administration performance. In the main, Ghana's tax to GDP at 13.7 percent is lower than its peers and falls short of the "15 percent tipping point" required to sustain a country's development and social spending needs.¹²² Other key performance indicators, often used to analyze and understand tax gaps and tax-to-GDP ratios include measuring compliance levels, taxpayer satisfaction indices, audit effectiveness, and cost of compliance. Ghana's performance against these measures is inadequate, and this is discussed below.

145. Processes for the clearance of commercial cargo at the border are cumbersome and are not consistent with trade facilitation objectives¹²³. Numerous levels of review and inspection are performed regardless of the level of risk assigned to individual shipments. Annex 7 summarizes customs clearance process in Ghana.

¹²² See <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Tax-Capacity-and-Growth-Is-there-a-Tipping-Point-44436>

¹²³ FAD February 2023

146. Key issues in customs clearance process were discussed in FAD February 2023. Key issues relevant to this report include: (i) common additional customs scrutiny after commercial goods have been released, with PCA “Post Event Officers” and preventive officers performing random document checks on goods that have been cleared without a clear basis for selection of these cases; (ii) reported significant rate of non-compliance due to high duty rates, although this is unsupported by enforcement results data; and (iii) high inspection rate, which ends up being resource intensive, expensive to both the GRA and the taxpayer, and has a negative impact on the quality of inspections.

147. As earlier noted, the current customs clearance process runs contrary to the principles of key international agreements. These include the World Customs Organization’s (WCO) Revised Kyoto Convention (RKC), and the World Trade Organization’s (WTO) Trade Facilitation Agreement (TFA). Broadly stated, these international agreements have embedded the principles of risk-based compliance verification and minimum intervention at point of arrival. There is a need to examine the current processes with a view to streamlining, consolidating, and/or reducing the number of reviews and inspections that are currently conducted.

148. The PCA Department has adopted the practice of applying the maximum penalty allowed in law which has resulted in a considerable number of outstanding debts. The Customs Act has a general penalty provision that allows for the application of penalties of up to 300 percent of the duty and taxes evaded/owing. PCA officials apply the 300 percent maximum in all cases regardless of the circumstances of the non-compliance. A graduated penalty scheme should be developed which would (subject to well-articulated parameters and SOPs) allow for officer discretion in determining penalty amounts. In the interests of transparency, details of the penalty structure should be published to align with the WTO-TFA.

149. Although Policies and Standard Operating Procedures (SOPs) are in place for most customs functions, they have not been recently reviewed and are getting outdated. A review of the SOPs and creation of new products where none currently exist are both envisaged. It is the intention to ensure that a holistic approach is taken, ensuring that the revised policies and procedures are streamlined and provide for efficient and effective customs service. These will help in guiding officers’ application of discretion, consistent application of the law, fair treatment of taxpayers and instill accountability.

150. Customs officials interviewed during the FAD July 2023 mission indicated that training and capacity development was a concern. The evolution of the customs business, increased use of automation, as well as the evolving business models and practices of the private sector have put significant pressure on customs authorities to ensure that officers are appropriately trained. This is now imperative given that Customs will be losing a number of experienced officers and managers to retirement. The GRA should conduct a comprehensive skills gap analysis and based on this analysis, a customs-wide training plan should be developed and prioritized.

G. DOMESTIC TAXES OPERATIONAL PERFORMANCE

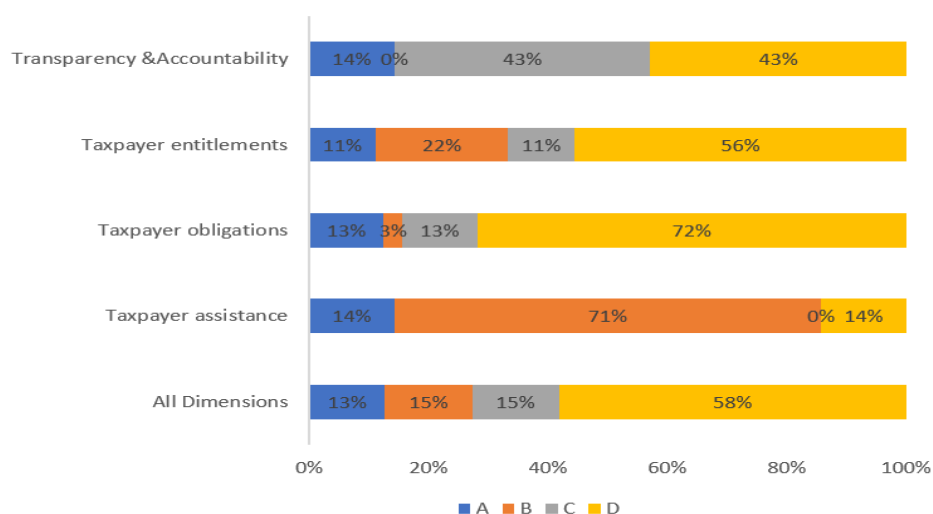
151. A recent repeat Tax Administration Diagnostic Assessment Tool (TADAT) mission was carried out in August 2023. A TADAT assesses the strengths and weaknesses of a tax administration.

It assesses performance of the tax administration on major direct and indirect taxes critical to central government revenues, specifically (i) corporate income tax (CIT), (ii) personal income tax (CIT), (iii) domestic excise tax, focusing on registered taxpayers trading in goods/services that contribute at least 70 percent of the excise revenue by value, and (iv) pay as you earn (PAYE). The assessment is done by reference to nine performance outcome areas (POAs), which has a set of 32-high-level indicators critical to performance administration linked to them. A total of 55 indicators are used. Each dimension is scored individually, and the scores are rolled up to make an indicator score. Dimensions are scored from A to D, with A score allocated for performance that is in line with international good practice, a B assessment showing performance a rung below international good practice, a C reflecting weak performance and a D reflecting either performance below a C or where there was no or inadequate data to adequately assess the dimension. In GRA, lack of data and data reliability have resulted in a D score for many dimensions - a hallmark of weak data governance and an urgent need to improve GRA data management practices.

152. The TADAT assessment has identified some improvements relative to the 2017 assessment, however major weaknesses in the core functions of a tax administration persist.

Figure 7 summarizes the performance of GRA against all 55 dimensions of the TADAT assessment. For all dimensions, D scores accounted for 58 percent of all scores, and only 13 percent of dimensions were in line with international good practice. Laudably, GRA showed relatively stronger performance on taxpayer assistance with A and B scores making 85 percent of total scores in indicators measuring this area. This helps in promoting voluntary compliance. However, and concerning, 85 percent of all dimension's scores related to indicators on enforcing taxpayer obligations POAs had a C and D rating, reflecting a weak performance in managing compliance and in attaining GRA's goal of improving revenue performance. Performance on dimensions related to upholding taxpayer rights and entitlements is also weak, with 66 percent of dimensions scoring a C or a D. This weak performance is likely to be hurting the confidence that taxpayers have in the GRA, and it is likely to be eroding voluntary compliance.

Figure 13. Analysis of GRA TADAT Scores



H. CONCLUSION

- 153. The diagnosis of GRA's performance shows the urgent need for strengthening governance.** There are many hallmarks of a tax system that is no longer fit for its purpose and that needs to be revamped and they are difficult to ignore. A drastic reform of the revenue administration system is required to prevent its collapse, and this is urgent. Adoption of the MTRS approach to reforming the Ghana tax system is a welcome development. It is imperative for the authorities to identify the root causes to this weak performance and develop a strategy to address those in reforming the system.
- 154. A root cause analysis is required to ensure that improvement interventions target the root of the current operational performance issues and not their symptoms.** Some of the root causes have been discussed in earlier sections of this report and they include: a restrictive GRA Act, unclear relationship between the key stakeholders in GRA governance (minister, board, CG), absence of a board charter to clarify board roles, inadequate autonomy afforded to GRA, inadequate adoption of modern technologies to improve revenue administration, and weak compliance risk management. Discussions with GRA also reflect the need for streamlined and more effective management processes, including improving the speed of decision-making, strengthening data governance, and entrenching a culture of accountability for results, for example by all senior management signing performance contracts in support of the new performance management system being rolled out.

I. RECOMMENDATIONS

Table 11. Fiscal Governance: Revenue Administration Recommendations

	Key recommendations	Agency responsible	Implementation Timeframe
GRA Governance Framework	a. Pursue delegation of HR authority from the President to the Minister, the Board and CG and minimize the role of the PSC in the GRA HR policies and processes. b. Conduct a review of all HR policies to assess adequacy of autonomy and determine appropriateness to the transformation agenda. c. Amend the GRA Act provisions related to organization structure to grant the Board and the CG flexibility in setting up the structure of the institution.	MoF GRA MoF	MT
Revenue Loss mitigation	d. Review legislation and operational procedures to minimize discretion. e. Where discretion is needed and cannot be removed, develop safeguards for its exercise and regularly report on its use. f. Enforce issuance of exemptions to be only in line with provisions of the Exemptions Act.	MoF MoF	ST

	g. Continue to eliminate ineffective exemptions and publish reports on cost and benefits of exemptions.		
Board Oversight	h. Develop a board charter that includes precision on the Board's role and develop a Board performance agreement with the Minister.	GRA	ST
	i. Amend the provisions of the GRA Act to make the Minister of Finance the appointing authority for the CG and on advice from the board following a transparent recruitment process.	GRA	MT
	j. Introduce in the law restrictions on Board access to confidential taxpayer information.	MoF	MT
Operational Effectiveness	k. Re-engineer, document and automate GRA processes to enhance efficiency, transparency, consistent treatment of taxpayers and limit unguided discretion.	GRA	MT
	l. Clarify the Enterprise Risk Management department role to be an overall risk framework, with operational risk a matter for Customs and DTRD.	GRA	ST
	m. Fully establish the risk management functions and processes in Customs and in DTRD.	GRA	ST
	n. Complete development of the CIP to improve audit, taxpayer services, filing, payment and debt enforcement performance.	GRA	ST
	o. Fully establish the Transformation Office and appoint its head.	GRA	ST

155. This section is an assessment of the Rule of Law in Ghana, which is one of the state functions covered under the IMF’s Framework for Enhanced Engagement on Governance. In the context of economic governance, the rule of law “captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights ... and the courts ...” ¹²⁴ In the IMF’s Governance Framework, and therefore in this report, the analysis of the rule of law focuses on those aspects of the rule of law that are critical to economic performance and, in particular, judicial integrity and the protection of property and contractual rights.

156. As the IMF's Governance Framework focuses on economic governance, this section covers three broad areas. The first is the quality of the judiciary, especially in terms of its integrity. The second is the effectiveness of the dispute resolution framework. The final area is the strength of the regime for protection of property rights, mainly in terms of land rights. This coverage of rule of law is therefore narrower than the common understanding of the term. For example, the report does not assess political aspects of the rule of law, such as freedom of expression, limits on police powers and other issues pertaining to criminal trials or human rights in a broad sense, as those are issues beyond the remit of the IMF's Governance Framework.

157. Broadly speaking, in comparison with its peers, Ghana is perceived as a relatively strong performer in the area of rule of law. The 2022 Bertelsmann Stiftung's Transformation Index (BTI)¹²⁵ scores Ghana a 7.0 (1 being the lowest value and 10 the highest) on its rule of law criterion, 8 on the *independent judiciary* indicator and 6 on *property rights*. Ghana's 2022 CPIA¹²⁶ rating of 4/6 on the "property rights and rule-based governance" indicator is significantly higher than the 2.9 average score for West and Central Africa, and an improvement over its own 3.5 score from a decade ago. The 2022 Worldwide Governance Indicators (WGI) assigns Ghana a 51.4 percentile rank¹²⁷ on the rule of law indicator.¹²⁸ This number reflects a decline from Ghana's rule of law percentile rank of 55.8 in 2012 and 57.2 in 2023 although in each of the 10 years beginning in 2012, Ghana never ranked below the 50th

¹²⁴ <https://databank.worldbank.org/metadata/glossary/worldwide-governance-indicators/series/RL.ESI#?~:text=Rule%20of%20Law%20captures%20perceptions,likelihood%20of%20crime%20and%20violence>

125 [BTI 2022 Scores.xlsx \(live.com\)](#)

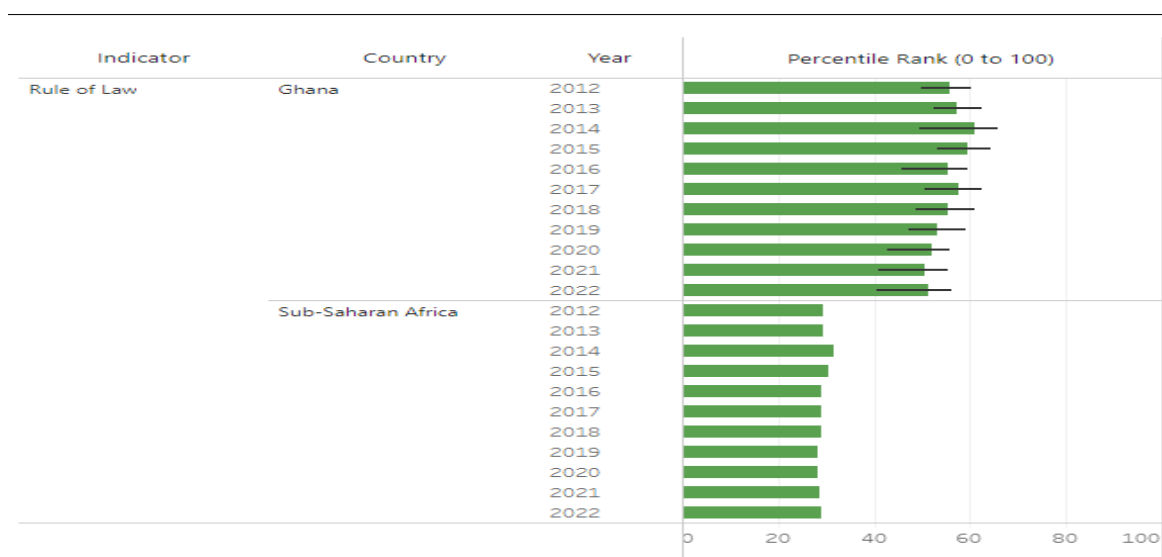
¹²⁶ The Country Policy and Institutional Assessment (CPIA) measures the extent to which a country's policy and institutional framework supports sustainable growth and poverty reduction and, consequently, the effective use of development assistance. Report available at https://www.worldbank.org/content/dam/documents/cpia/WB_CPIA_ENG_ghana.pdf

¹²⁷ Percentile Rank (0-100) indicates rank of country among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

¹²⁸ “Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” <https://www.worldbank.org/content/dam/sites/govindicators/doc/rl.pdf>

percentile globally. As the figure below shows, among countries in Sub-Saharan Africa, Ghana’s ranking would make it a standout performer.

Figure 14. Ghana’s Rule of Law Indicator



Source: WGI

158. However, many stubborn challenges remain. For example, the CPIA rating on “transparency, accountability, and corruption in the public sector” (3.5 out of 6) is not only less remarkable; it reflects stagnation relative to Ghana’s performance a decade earlier (also 3.5 in 2014).¹²⁹ In fact, with respect to *absence of corruption*, the 2023 WJP index ranks Ghana 101st among 142 Countries. Corruption concerns and other issues have similarly been reported in the judiciary. In its 2023 Country Overview, Freedom House observed that while the judiciary in Ghana has demonstrated greater levels of impartiality in recent years, perceptions of corruption and bribery, as well as delays in dispensing justice continue to pose challenges. Relatedly, the World Bank’s 2018 Systematic Country Diagnostic noted the rise of perceptions of corruption and a weakening rule of law in Ghana. The said diagnostic also noted the existence of critical allegations of corruption among court staff, including judges and magistrates.

159. Significant weaknesses in the rule of law, could hurt economic performance. Ghana’s 2022 Bertelsmann Stiftung Country Report notes that corruption and limited administrative capacity continue to pose the most significant challenges, exemplified by unduly lengthy legal procedures and sometimes incomprehensible verdicts.¹³⁰ The mission was also informed that investors, especially in agriculture, are deterred by the opaque and fragmented land titling system.

¹²⁹ See the 2014 CPIA assessment: <https://openknowledge.worldbank.org/entities/publication/c62f51fe-67f5-5c40-af1b-308b3a9e2945>

¹³⁰ See also Ghana Risk Report by GAN which notes that corruption poses an obstacle for businesses operating or planning to invest in Ghana. <https://www.ganintegrity.com/country-profiles/ghana/>

160. The results of the indicators highlighted above correspond to the findings of the in-person mission. Ghana's legal rules for contract enforcement and property rights are fairly robust by regional standards, but many vulnerabilities persist. For example, some members of the business community and professional service providers informed the mission that while corruption is not as rampant in the judiciary as in other segments of the public sector, there is a lingering perception that the judiciary is not fully independent from the political party in power. The mission heard about inconsistent regulatory enforcement actions sometimes linked to party affiliation. In addition to concerns about the independence of the judiciary and the perception of judicial corruption, significant resource constraints within the judiciary are perceived as hampering the functioning of the court system. Finally, as will be explained later in this section, the complexity of the various land tenure systems in Ghana poses significant challenges for the protection of property rights, resulting in protracted disputes over land rights that also exacerbate the corruption problem.

161. The rest of this section is organized as follows. Section B assesses the Integrity of the judiciary in Ghana. Section C identifies issues impacting the effectiveness of the dispute resolution system and therefore contract enforcement. And, finally, section D discusses key issues pertaining to the regime on property rights.

B. CONTRACT ENFORCEMENT AND DISPUTE RESOLUTION: JUDICIAL INTEGRITY¹³¹

162. To secure strong contractual and property rights, it is crucial to have a judiciary that is free from external influence. An independent (and impartial) judiciary, under the IMF's Governance Framework is one that is free from private influence and public interference.¹³² While the design of each system will necessarily differ, a study by the United Nations Office on Drugs and Crime (UNODC)¹³³ has identified certain key factors as relevant benchmarks for the assessment of judicial independence, including: the procedures of appointment and promotion of judges; the terms and conditions of judicial tenure; financial autonomy and autonomy in court administration; and, judicial conduct and discipline.

163. The Constitution of Ghana guarantees the independence of the judiciary. Article 127 of the Constitution declares that the exercise of the judicial power (including the judicial and administration functions) is subject only to the Constitution. The Constitution prohibits the President,

¹³¹The Constitution of Ghana vests the country's judicial authority in the Judiciary. Accordingly, the Constitution precludes the President, Parliament or any organ or agency of the President or Parliament to have or to be given final judicial power (Article 125 (3)). The Ghanaian court system consists of Superior Courts (made up of the Supreme Court, the Court of Appeal, the High Court and Regional Courts) on the one hand and other lower courts or tribunals that may be established by Parliament, on the other hand. The Supreme Court is the ultimate appellate body within the comprehensive court system of the country, and has supervisory powers over all other courts. Directly below the Supreme Court is the Court of Appeal which serves as the appellate court for both the High Courts and the Regional Tribunals. As the head of the judiciary, the Chief Justice is responsible for the administration and supervision of the judiciary (Article 125 (4)). In addition, the Chief Justice presides at sittings of the Supreme Court (Article 128 (3)) and may also preside at sittings of the aforementioned Superior Courts. In addition, the Chief Justice may appoint other Superior Court judges to sit on the Court of Appeal or the High Court for determination of a given case, for a specified period (Art. 136(1) and 139(1)).

¹³² Review of the 1997 Guidance Note on Governance—A Proposed Framework for Enhanced Fund Engagement, paragraph 23.

¹³³ <https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-14/key-issues/1--the-main-factors-aimed-at-securing-judicial-independence.html>

Parliament and other state organs from interfering with judges, judicial officers, or the exercise of the judicial power. In addition, the expenses of the Judiciary (including allowances, salaries and pensions) are to be charged directly to the Consolidated Fund. The entitlements of a judge or other judicial officer are not to be varied to their disadvantage. Also, judges enjoy immunity from liability with respect to the performance of the judicial power. And Article 146 of the 1992 Constitution provides a procedure for the removal of Judges which enhances judicial independence.

164. There are however a number of factors that could undermine the independence of the judiciary. One concern relates to the appointment of judges. Several studies and institutions, including the World Bank,¹³⁴ have raised concerns about the extensive reach of the President's power of appointment, including the lack of an upper limit on the number of Justices that the President can appoint to the country's Supreme Court. While the nature of the political system dictates the balance of power among the branches of government, and the design of such a system is generally beyond the scope of the IMF's governance diagnostic, it is crucial to avoid any appearance that the judicial arm is beholden to any other organ. Greater transparency in the appointment processes would help in this regard.

165. The administrative aspects of the judicial function are more susceptible to external interference, especially by the executive. Ghana's Judicial Service is organized into two distinct bodies, namely the judiciary (consisting of judges) and the Judicial Service staff. The judiciary has the sole responsibility of interpreting and enforcing the Constitution, laws and administering justice while the Judicial Service (as a Public Service institution), is responsible for the day-to-day administration of all courts and provides administrative support to the Judiciary.¹³⁵ The budget of the judiciary, which need not be approved by the Executive, chiefly pays for judges' salaries and other benefits. The budget of the Judicial Service on the other hand, intended to finance the overall administration of justice (e.g., equipment and crucial projects such as the automation of courts), is almost always capped and frequently subjected to significant reductions by the Executive, compelling the judiciary to make significant adjustments and suspending crucial projects.

166. The mission learned that the judiciary's incomplete financial independence has impeded critical projects that are vital to the administration of justice, chief among them being the automation of courts. While there are some automated courts in Ghana, they are far outnumbered by courts with analog processes.¹³⁶ Notwithstanding the government's 2019 World Bank-financed e-justice project,¹³⁷ efforts to automate courts have predominantly failed due to lack of funding.¹³⁸ Staff learned that even in the current automated courts, notebooks are still utilized for recording nearly all court related proceedings, and litigants and lawyers still have to apply for records of proceedings and

¹³⁴ [Ghana: Priorities for Ending Poverty and Boosting Shared Prosperity – Systematic Country Diagnostic \(https://elibrary.worldbank.org/doi/abs/10.1596/30974\)](https://elibrary.worldbank.org/doi/abs/10.1596/30974)

¹³⁵ Medium Term Expenditure Framework (MTEF) For 2021-2024

¹³⁶ See also, Maame Efua Addadzi-Koom & Ebenezer Adjei Bediako, Implementing an e-justice system in Ghana: Prospects, Risks, Challenges and Lessons from Best Practice (108 I Vol. 8, 2019).

¹³⁷ Insert WB hyperlink/relevant info

¹³⁸ Maame Efua Addadzi-Koom Kwame Nkrumah, Positioning E-Justice in Ghana's E-Governance Agenda for Sustainable Development: Post-Pandemic Reflections, University of Science and Technology, Conference Paper November 2023.

pay both official and unapproved fees, as documented by other sources.¹³⁹ In addition, in some of the automated courts, typists are required to manually transcribe legal proceedings and oral arguments, as the recordings have proven to be unreliable. These issues not only hamper the speed and efficiency of proceedings but also exacerbate the already heavy workload of judges (and judicial staff), who may, on certain days, handle as many as 35 cases as the mission learned. An incident exemplifying the consequences of lacking automation and reliable record keeping involved a judge who, as the mission was informed, issued a written order which was different from what had been read in open court. The view has been canvassed that allowing the judiciary to retain a greater share of internally generated funds (currently 30 percent is retained) could support the judiciary's financial autonomy and the sustainability of the digitalization agenda.

167. Also noteworthy in the assessment of judicial independence are the constitutional provisions that allow the Chief Justice to also sit on/preside over cases at the High Court,¹⁴⁰ the Court of Appeal¹⁴¹ and other courts. While the mission understands that this power has not been exercised, it could raise concerns about internal independence within the judiciary. Given the role of the Chief Justice as the head of the judiciary and a member of the Supreme Court, complications could arise if the holder of that office sat in a lower court from which appeal could ultimately arrive to the Supreme Court. Potential concerns range from conflicts of interest to undue influence and possible abuse of power. On a related note, the overall role of the Chief Justice in assigning cases, including appeals, across all courts appears to be a vulnerability which could be exploited (discussed in the next section). It would therefore seem crucial that internal guidelines are developed to strengthen internal independence by ensuring that judges are not exposed to undue pressure within the judicial hierarchy.

168. The creation of Judiciary's Public Complaints and Court Inspectorate Unit exemplifies the judiciary's interventions to strengthen the rule of law. The Unit was established in 2003 as part of the efforts to promote good governance, entrench anti-corruption, accountability and transparency in the Judicial Service.¹⁴² The Unit is currently headed by a Justice of the Court of Appeal who is appointed by the Chief Justice and assisted by four other Justices of the High Court and administrative staff. While the nature of petitions and complaints differ, they include petitions against the conduct of judges and magistrates, and complaints against abuse of power, display of open bias in court, breach of the judicial process, missing dockets and pleadings, corruption and misconduct on the part of judges and staff, and acts of misconduct by judges and staff. The petitions received during the 2022/2023 period significantly increased by nearly 100 percent to 235 compared to 120 during the 2021/2022 period, and the rate of resolving petitions improved to 99 percent during the 2022/2023 period as compared to 95 percent during the 2021/2022 period.¹⁴³

¹³⁹ Maame Efua Addadzi-Koom Kwame Nkrumah, Positioning E-Justice in Ghana's E-Governance Agenda for Sustainable Development: Post-Pandemic Reflections, University of Science and Technology, Conference Paper November 2023.

¹⁴⁰ Section 139(1)

¹⁴¹ Section 136(1)

¹⁴² Public Complaints and Court Inspectorate Unit 2022/2023 annual report.

¹⁴³ Public Complaints and Court Inspectorate Unit 2022/2023 annual report.

Table 12. Public Complaints and Inspectorate Unit (Complaints Received/Handled)

Period	Petitions Registered	Male	Female	Group/Entity	Petitions Resolved
July 2021 – June 2022	120	83 69.21%	22 18.3%	15 12.5%	114 95%
July 2022 – June 2023	235	162 69%	49 20.8%	24 10.2%	232 99%

169. Some of the challenges faced by the Unit include victims’ reluctance to report corruption for fear of retribution, and lack of training or capacity building of staff. The mission also learned that the work is hampered by the lack of anonymity in the process as complainants are required to disclose their identities.

170. Other actions by the Judiciary to enhance integrity include the establishment of the Code of Conduct for Judges and Magistrates, and the Code of Conduct for Staff of the Judicial Service. The Service implemented a medium-term Anti-Corruption Action Plan (2017-2019) which set out objectives to improve ethics among Judges and administrative Staff. A Right to Information (RTI) Manual provides information available to the public, and classes of information accessible from the Courts which is aimed at regulating the abuse of power.

C. ISSUES IMPACTING THE EFFECTIVENESS OF CONTRACT ENFORCEMENT AND THE DISPUTE RESOLUTION SYSTEM

Corruption Vulnerabilities in the judiciary

171. Concerns have been raised about corruption in the judiciary. As noted at the beginning of this section, separate reports from the World Bank and Freedom House have flagged concerns regarding bribery and corruption in the judiciary. Indeed, the 2017 – 2019 Anti-Corruption Action Plan for the Judiciary and Judicial Service recognizes that Ghana’s judiciary has been compromised by corruption.¹⁴⁴ In 2015, a two-year investigative report conducted by undercover journalist Anas Aremayaw Anas unearthed widespread practices of bribe-taking among judges and magistrates, including at least seven High Court judges. Ghana’s population widely perceives its judicial system as corrupt. According to a survey conducted by Afrobarometer in 2020, over 85 percent of Ghanaians believe that judges and magistrates regularly engage in corrupt behavior, second only to the police. In addition, judges and magistrates are perceived as being *more frequently* involved in corruption than

¹⁴⁴ The Chief Justice acknowledged that “none of Ghana’s institutions are totally free from corruption and we too have experienced more than our fair share. Corruption amongst Judges and staff undermines our very being, erodes public trust and confidence, and cannot and will not be tolerated. We, the Judiciary and the Judicial Service, are committed to addressing and eradicating corruption within our ranks.” -- [JUDICIARY OF GHANA\(ANTI CORRUPTION ACTION PLAN\)](https://www.judicial.gov.gh/jsfiles/anti_corruption_action_plan.pdf)
https://www.judicial.gov.gh/jsfiles/anti_corruption_action_plan.pdf

members of parliament, the President and his staff, tax officials, among others.¹⁴⁵ The mission also learned that the most common form of corruption involving judges and magistrates is the practice of accepting bribes in exchange for expediting or delaying judicial processes,¹⁴⁶ or to secure a favorable judicial decision.¹⁴⁷

172. Curbing corruption at all levels of the judicial system, including in judicial administration where the problem appears most prevalent, is key to ensuring a strong dispute resolution and contract enforcement system. While noting that the judicial branch is taking allegations of corruption against judges and judicial staff seriously, the Chief Justice cautioned the mission that the scale of judicial corruption in Ghana may be exaggerated. She referred to a well-documented practice where middlemen purport to collect money on behalf of judges, giving the impression that the judiciary is corrupt, but often without the knowledge or involvement of the judges themselves.

Inadequate Court Specialization to Adjudicate Contractual Disputes Effectively and Efficiently

173. There is a Commercial Division of the High Court with primary jurisdiction over contractual disputes¹⁴⁸ but sometimes these specialized courts are not necessarily manned by specialized judges. The mission was informed that judicial appointments and assignments, even to specialized courts, are not necessarily based on specialized knowledge. The rationale is that judges are trained as generalists in law school and are expected to deal with a myriad of legal questions that they may confront. Consequently, judges assigned to commercial courts, for instance, may lack adequate training in commercial matters at the time of the appointment. They are expected to eventually master the substance of the subject matter through exposure and experience.¹⁴⁹ However, even after these judges have become specialized, they are still available to be re-assigned to a specialized court in a different field and are generally so transferred after a few years—a move which the mission understands is intended to limit entrenchment and corruption. As a result, expert knowledge developed through experience is lost in this process. The judicial administration considers this cost worthwhile given that when judges are promoted to the appellate courts, they need to be prepared to decide on cases emanating from any field of law. Still, staffing a specialized court with a judge who is not necessarily an expert is a major critique shared by practitioners.

¹⁴⁵ Osse, Lionel, and Gildfred Boateng Asiamah, "Ghanaians Cite High Cost, Bias, and Long Delays as Barriers to Using Formal Justice System," Afrobarometer Public Release, 2020.

¹⁴⁶ During the recent inauguration of the Kotobabi District Court in December 2023, the current Chief Justice cautioned citizens against paying unauthorized fees or offering money in the form of tokens to judicial officers to expedite their cases. One factor cited as contributing to corruption among court officials is low salaries. In May 2023, the Judicial Service Staff Association of Ghana (JUSAG) declared a nationwide strike over the non-approval of reviewed salaries and other allowances of its members. Because of this strike, the court rooms were closed to litigants, lawyers and other court users. See <https://jusag.org/news/>

¹⁴⁷ Gordon, Morgan Bright, "Bribery and corruption in public service delivery: Experience from the Ghana Judicial Service," SSRN Working Paper, 2017.

¹⁴⁹ To strengthen capacity, training is provided to judges mainly through the training institute.

Insufficient Use of Digital Processes

174. There are many challenges confronting attempts to digitize the judicial process. These include inadequate digital infrastructure, connectivity gaps, and the prohibitively high cost of internet access.¹⁵⁰ Judicial Service staff informed the mission that the e-justice project has only been rolled out to a few courts and has been temporarily shut down in other courts due to technical glitches. This, in turn, means that most judicial processes, ranging from the conduct of proceedings to administrative steps like assessing and receiving fees for court processes and issuing out deposit receipts, are carried out manually by court officials.

175. The judiciary is working to address the challenge of inadequate digitization by prioritizing its e-Justice project. According to the 2022 Judicial Digest, the project is intended to enable court users to file and serve processes, assess fees and make online payments in order to reduce the cost of litigation, as well as time required to complete administrative tasks. It would also eliminate the occurrence of “missing dockets” and ensure fairness by automatically assigning cases to courts and judges. At the end of July 2022, the Judicial Service operated 385 courts nationwide, with 183 being District Courts, 75 as Circuit Courts, 120 as High Courts, 6 divisions of the Court of Appeal and the apex court, the Supreme Court. Only 51 High Courts representing 13.50 percent had been fully automated. This automation has principally occurred within the High Court, with less interventions targeted at the Circuit and District courts. The Judicial Service is also pursuing virtual and semi-automated systems where applicable.¹⁵¹

176. The mission was informed that since 2020, the Judicial Service has introduced a virtual court system to operate at selected Courts during court recess. The said virtual court is reinforced by the amendment of Ghana’s High Court (Civil Procedure) Rules, 2004, as amended. Additionally, as of 2021, the Judicial Service had scanned a total of 3,500,000 processes of all active dockets at the High Courts of Accra, forming the basis for e-dockets in the Justice system.

Case Assignment

177. Linked to the deployment of technological solutions in the judiciary is the issue of case assignment. Save for the Supreme Court, where the Chief Justice empanels the court to hear appeals and original disputes, there are no clear mechanisms or criteria for assigning cases in the various other courts below the Supreme Court. As noted above, under the Constitution, the Chief Justice is not just the head of the judiciary and the Supreme Court but also a member of the Court of Appeal¹⁵² and the High Court and could preside over any of these courts. By virtue of the constitutional role, the Chief Justice has inherent power to assign and transfer judges as well as assign cases at all levels of court. The e-justice system is intended to automate case allocation, eliminating manual case allocations. Until the system is successfully implemented across all courts, the responsibility for manually assigning cases

¹⁵⁰ The Judicial Digest, Volume 13, December 2022.

¹⁵¹ At the current moment, the e-justice system has more than 31,000 users with 3016 users categorized as lawyers).

¹⁵² Under Article 136, the Court of Appeal shall consist of the Chief Justice, at least 10 Justices of the Court of Appeal and other Justices who may be assigned by the Chief Justice to sit on specific cases.

to judges will continue to rest mainly with court registrars, working with supervising judges under the Chief Justice.

178. The current system of manual case assignment has many vulnerabilities. First, it is susceptible to errors such as potentially assigning an excessive number of cases to a single judge. Second, the manual system has been identified as prone to abuse and corruption. Authorities, legal practitioners, and frequent court users have attested that bribes and irregular payments are frequently exchanged. In particular, the manual system has led to accusations of influence buying and forum shopping where lawyers and litigants could request registrars to place their matters before a particular judge.¹⁵³ The result is a potential loss of confidence in the integrity of the judiciary and interference in the administration of justice.

Judgment Enforcement

179. There is also a case to be made for ensuring that the judgment enforcement function is adequately resourced. A truly independent judiciary is one that issues decisions and makes judgments that are respected and enforced.¹⁵⁴ Bailiffs are responsible for enforcing judgments and work under the supervision of court registrars. As part of the Reform and Modernization Programme of the Judicial Service, to improve justice delivery, the service of court processes in the courts is privatized. Officers of these companies serve processes paid for by court users whilst all other processes are served by court bailiffs.¹⁵⁵

180. Several challenges impede the effective enforcement of judgments. One significant issue is the understaffing of bailiffs, who often find themselves handling a tremendous amount of court dockets simultaneously. In complex cases, the number of lawyers involved may exceed 10, yet, despite their very demanding workload, bailiffs are expected to serve all parties involved. The mission was informed that bailiffs lack essential resources, particularly vehicles, which hinders their operation especially when they need to execute processes outside the city. It is therefore crucial to continue the reform to ensure that resources are committed not only to the dispute adjudication process but also the execution phase.

D. PROTECTION OF PROPERTY RIGHTS

181. The IMF's Governance Framework encompasses an assessment of the security of property rights under the component of rule of law for many good reasons. Secure property rights and access to land, for example, have been identified as crucial for private sector development and job creation.¹⁵⁶ They give confidence to individuals and businesses to invest in land, allow private

¹⁵³ Agbemava S, Appointment and removal of judges and assignment of files at Civil Courts in Ghana – Current Issues, KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques 4(3):262-268, January 2017.

¹⁵⁴ Legal and Judicial Reform: Strategic Directions.

¹⁵⁵ 2017 – 2018 Judicial Service annual report.

¹⁵⁶ <https://blogs.worldbank.org/voices/7-reasons-land-and-property-rights-be-top-global-agenda#:~:text=Secure%20property%20rights%20help%20protect,years%20has%20been%20forest%20degradation.>

companies to borrow—using land as collateral—and enable governments to collect property taxes.¹⁵⁷ Property rights over land are also especially important in low and middle-income countries like Ghana with large rural populations which directly rely on agriculture and land use.¹⁵⁸ The analysis of property rights that follows assesses the ability of potential investors and individuals to accumulate private property, secured by clear laws that are fully enforced by the state, and the extent to which the laws protect private property rights as well as the degree to which the government enforces those laws. Additionally, the assessment will cover the likelihood that private property will be expropriated.

182. Land tenure and usage in Ghana remain a delicate topic. Ghana has a total land area of 23 million hectares or 238,000 square km, with about 57 percent of the land classified as “agricultural land area” and about 24.4 percent of the total under cultivation.¹⁵⁹ According to the Food and Agriculture Organization, the mean farm size in Ghana is less than 1.6 hectares and, overall, small farms (generally less than 10 hectares in size) account for at least 95 percent of cultivated land. Various counterparts, including international development partners, attribute the near absence of large farmlands in Ghana to the fragmented structure of land tenure, as explained below.

183. Ghana’s Constitution recognizes a pluri-legal land tenure system. It vests all *public lands* in the country in the President on behalf of, and in trust for, the people of Ghana (Article 257(1)). The definition of “public lands” however is narrow, covering only land that, just before the coming into force of the current (1992) Constitution, was vested in the Government of Ghana for the public service. Public land also includes any land acquired under the Constitution for public purposes (Article 257(2)). Public lands are administered under statutory law. The rest of the land, constituting about 80 percent of the total land area, is held under customary law¹⁶⁰ and falls under the jurisdiction of customary authorities (families, stools, kins) depending on the location of the land.

184. What constitutes customary law in a particular community, and therefore the regime on customary land holding, is not always clear, as customary law is largely unwritten.¹⁶¹ Ghana’s customary land tenure takes several forms. In the northern half of the country, land inheritance is predominantly patrilineal and land is controlled by a mixture of chiefs and earth-priests; these lands are referred to as skin lands.¹⁶² In much of southern Ghana, the land inheritance pattern is matrilineal

¹⁵⁷ [7 reasons for land and property rights to be at the top of the global agenda \(worldbank.org\)](#)

¹⁵⁸ [Land Reform and Property Rights: A Key to Prosperity - Center for International Private Enterprise \(cipe.org\)](#). See also Eileen Bogweh Nchanji, Takemore Chagomoka, Imogen Bellwood-Howard, Axel Drescher, Nikolaus Schareika, Johannes Schlesinger, Land tenure, food security, gender and urbanization in Northern Ghana, journal homepage: www.elsevier.com/locate/landusepol

¹⁵⁹ <https://www.fao.org/ghana/fao-in-ghana/ghana-at-a-glance/fr/>

¹⁶⁰ Article 257(4) provides as follows: “Subject to the provisions of this Constitution, all lands referred to in clause (3) of this article [i.e., land in the Northern, Upper East and Upper West Regions of Ghana which were previously vested in the Government of Ghana] shall vest in any person who was the owner of the land before, the vesting, or in the appropriate skin without further assurance than this clause.”

¹⁶¹ Operations manual for the ascertainment of customary law on land and family under LAP 2, prepared by ACL Secretariat.

¹⁶² Project Performance Assessment Report, Ghana Land Administration Project, (Credit No. 3817; Project ID P071157), June 5, 2013, World Bank.

and land is mainly controlled by chiefs; these lands are referred to as stool lands.¹⁶³ There are parts of southern Ghana where land is controlled by clans and families and inheritance is patrilineal; in these family lands, clan and family heads exercise similar authority as chiefs do in other parts of Ghana.¹⁶⁴ To acknowledge this diversity of landholding systems, Article 36(8) of the Constitution provides that the managers of public, stool, skin and family lands are “fiduciaries charged with the obligation to discharge their functions for the benefit *respectively* of the people of Ghana, of the stool, skin, or family concerned.”¹⁶⁵

185. Non-citizens, including investors, are not allowed to outrightly own land. Article 266(4) of the Constitution provides that foreigners can lease land for a term of up to fifty years at any one time. Therefore, land acquisition, such as for agricultural purposes, requires identifying first the applicable legal regime governing the land (i.e., whether it is held by a skin, clan, family or subject to statutory title) and then following the applicable procedures to complete the transaction.

186. Acquisition of clear and secure title is as much a challenge as it is to defend title asserted over land. As noted above, one problem is that accurate records are often lacking for land acquired under customary law, as transactions may be undocumented. The Land Act 2020 requires transfer of interest in land be evidenced in writing, but an exception is made to allow for oral grant under customary law (Section 36(h)). As a result, it can be insurmountably challenging to confirm the title of the party purporting to transfer title.¹⁶⁶ Conflicting claims to land may result from good-faith transactions on the same land by a family with multiple parties or from transactions carried out by rival sections of the same family. These are particularly prevalent among large families or land-owning clans. But in some cases, the transactions are outrightly fraudulent, as the transferring authority or individual may falsely assert having the necessary power to grant property rights to others.¹⁶⁷ This situation results in the buyer lacking actual title to the land and potentially losing in a land dispute.

187. The difficulty in establishing title negatively impacts mortgage enforcement and creates opportunities for corrupt practices. It is significantly easier to deal with title claims and therefore secure a mortgage on land that is subject to statutory title compared to land held under customary title. Through the Lands Commission, it is possible to conduct a title search, even as protracted and fraught as the process may be. The same cannot be said about land held by families and clans where some title claims owe to oral traditions. Regardless, the process of perfecting any mortgage is riddled with landmines that appears to deter lenders. In discussions with banks, law firms and the business community, respondents described to the mission a maze of paperwork and attendant corruption,

¹⁶³ Project Performance Assessment Report, Ghana Land Administration Project, (Credit No. 3817; Project ID P071157), June 5, 2013, World Bank.

¹⁶⁴ Project Performance Assessment Report, Ghana Land Administration Project, (Credit No. 3817; Project ID P071157), June 5, 2013, World Bank.

¹⁶⁵ A similar provision is replicated in Section 13(2) of the 2020 Land Act: “A chief, tendana, clan head, family head or any other authority in charge of the management of stool or skin, or clan or family land, is a fiduciary charged with the obligation to discharge the management function for the benefit of the stool or skin, or clan or family concerned and is accountable as a fiduciary.”

¹⁶⁶ Aimee Kline, Élan Moore, Elizabeth Ramey, Kevin Hernandez, Lauren Ehrhardt, Megan Reed, Morgan Parker, Samantha Henson, Taylor Winn & Taylor Wood, *Whose Land Is It Anyway? Navigating Ghana’s Complex Land System*, 6 Tex. A&M L. Rev. Arguendo 1 (2019). Available at: <https://doi.org/10.37419/LR.V6.Arg.1>

¹⁶⁷ *Id.*

reports of missing files, inordinate delays and uncertainty that has bedeviled the use of land as collateral for loans.¹⁶⁸ The 2022 UNODC Crime survey results on Corruption in Ghana indicate that the prevalence of bribery in relation to the Lands Commission stood at 32.4 percent, which is considerably higher than the rate of bribery within the judiciary at 22.3 percent.¹⁶⁹

Box 4. Steps for registration of mortgages

Mortgages must be registered at the Lands Commission and the Registrar General's Department.

Under the 2020 Borrowers and Lenders Act, they also have to be registered in the newly created collateral registry located at the Bank of Ghana, a process that is largely automated and can be completed in minutes. Registered mortgages have priority, and the order of registration also determines the priority of interest.

The mission was informed that registration at the Lands Commission can take up to four years to complete, often requiring paying unauthorized facilitation fees. The process starts with conducting a search using a bar-coded site plan. Then there is a requirement to obtain consent. Where the consent is to be obtained depends on the nature of interest in the land; for example, consent from the stool is required if it is stool land.

Other steps include stamping, plotting the land at the Lands Commission (which can take up to a year) and then lodging the documents at the Lands Commission.

188. Unsurprisingly, land disputes outnumber other kinds of disputes in Ghanaian courts, and many are protracted. In May 2023, Ghana's Supreme Court ruled on a 40-year land dispute. Congestion from land claims affects the overall administration of justice, by occasioning delays and creating an incentive for payments of bribes. While limited digitization and lack of a paper trail are major causes of land disputes, some land-related disputes arise from conflicting judgments of the Land Court itself—where different judges allocate the same parcel of land to different litigants. Another important contributor to this situation is the incomplete mapping of the lots. Although the judiciary has recognized this concern and sought the assistance of the Lands Commission,¹⁷⁰ authorities underscored that it is essential for judges to receive training on land-related issues, because knowledge gaps persist.

189. Recent reforms have helped to simplify the administration of land. In 2020, Ghana passed a new land law, the Land Act, 2020 (Act 1036), with the aim to “revise, harmonize and consolidate the laws on land to ensure sustainable land administration and management, effective and efficient land tenure and to provide for related matters”. Prior to the enactment of the Land Act, Ghana's land law

¹⁶⁸ Officials of the Lands Commission informed staff that under optimal conditions, title registrations could be completed in approximately three months; however, the reported delays are mainly attributed to a multiplicity of factors, including the decentralized record system as the Lands Commission is an amalgam of four distinct agencies that preceded it. The ongoing digitization efforts and comprehensive mapping of the country is expected to significantly increase reliability, reduce delays, and mitigate current rent-seeking behavior when completed.

¹⁶⁹ GHANA: Corruption Survey Report. [https://www.unodc.org/documents/corruption/Publications/2022/GHANA - Corruption survey report - 20.07.2022.pdf](https://www.unodc.org/documents/corruption/Publications/2022/GHANA_-_Corruption_survey_report_-_20.07.2022.pdf)

¹⁷⁰ The judiciary refers certain land related cases to the Lands Commission where Commission officials go on site with litigants, conduct surveys and draw composite plans indicating the extent of the overlap and parcel in dispute.

was dispersed across various legislations and case law, creating legal uncertainty. One of the key highlights of the new Land Act is the codification of the various interests in land which hitherto, were defined in judgments and the academic literature.¹⁷¹ To expedite the registration process and reduce backlogs at the Land Court, the Act provides that an action concerning any land or interest in land in a registration district shall not be commenced in any court unless the procedures for resolution of disputes under the Alternative Dispute Resolution Act, 2010 (Act 798) have been exhausted. Also, to address the incidence of fraud and corruption in Ghana's customary land management, section 13 of the Act provides sanctions for misconduct by land administrators.¹⁷²

190. Reinstating the Land Tribunal could also prove helpful. According to authorities, relieving the workload of the Land Court can be achieved by reinstating a Land Tribunal, specifically tasked with handling preliminary issues. Such a Tribunal, which previously existed, was led by a High Court Judge, supported by technical staff and officers. Operating as a “quasi” court of first instance, the Tribunal ensured that only unresolved and/or complex matters would be referred to the High Court, i.e., the Land Court (the division of the High Court dealing with land disputes)

191. Another notable innovation is the provision of the Land Act on Customary Land Secretariats. The Lands Commission is the central government agency charged with the administration of public lands while an Office of the Administrator of Stool Lands manages land held under customary ownership. The Land Act requires a stool or skin, family or clan that owns land to establish a Customary Land Secretariat for the management of its land, with the support of the Lands Commission and the Administrator of Stool Lands. The role of the secretariat is to, among others, “record the interests and rights in land, and keep and maintain accurate and up to date records of land transactions” and perform other record keeping and verification functions.

192. Attempts to reform the land tenure system in Ghana to strengthen property rights have also received extensive external support. The first phase of the reforms under the Land Administration Project (LAP) referred to as LAP -1, implemented with the support of the World Bank from 2003 to 2011, laid the foundation by reviewing the laws on land, carrying out institutional reforms and undertaking pilots on a number of initiatives.^{173,174} A second phase of the project (LAP 2) was approved in 2011 to consolidate and complete the reforms. The idea was to upscale the customary

¹⁷¹ [Home - Bentsi-Enchill, Letsa & Ankomah. \(bentsienchill.com\)](http://Home - Bentsi-Enchill, Letsa & Ankomah. (bentsienchill.com))

¹⁷² Section 13(4) of the Land Act. In addition, section 277 of the same Act aptly criminalizes the falsification of land records; fraudulent issuance or erasure of documents issued by the Lands Commission; fraudulent removal of any other document filed with the Lands Commission; fraudulent obliteration, mutilation or alteration of documents kept in the Lands Commission; fraudulent deletion or alteration of the electronic records of the Lands Commission; and unlawful accesses or any other act that compromises the integrity of the records at the Lands Commission.

¹⁷³ Operations manual for the ascertainment of customary law on land and family under LAP 2, prepared by ACL Secretariat. The reforms include streamlining land administration institutions by the passage of the Lands Commission Act 2008 (Act 767) which merged four land sector agencies into a single entity – the Lands Commission – and brought the title and deeds registries under one organizational unit, the land registration division, a major institutional reform; decentralization of the deeds registry to all the nine regional capitals, effectively bringing the registration of deeds closer to the clients; the establishment and strengthening of 38 customary land secretariats to facilitate land management by traditional authorities and the ascertainment and codification of customary land rights in 20 traditional areas; establishment of six (6) land courts in Greater Accra; and establishment of new 3 tier planning model for the country.

¹⁷⁴ [World Bank Document](#)

land activities and support the new Lands Commission to streamline and computerize business processes for faster delivery of services.¹⁷⁵ However, according to the World Bank's *Implementation Completion Report Review*¹⁷⁶ LAP-2 repeated many of the earlier mistakes. To address the outstanding issues that were not completed within LAP 1 and LAP 2, the government is presently embarking on a new project with the support of a private investor, focusing on the transformation of manual processes into the digital environment.

E. RULE OF LAW RECOMMENDATIONS

Table 13. Rule of Law Recommendations

	Key Recommendations	Agency Responsible	Implementation Timeframe
1.	Finalize the e-Justice project and prioritize the implementation of court automated systems, aimed at reducing avenues for corruption and speeding up dispute settlement.	MoJ Judiciary	MT
2.	Undertake an impartial public expenditure assessment, with civil society participation, to analyze the budgetary constraints faced by the judiciary and the Judicial Service, respectively. The assessment should include specific recommendations regarding: a. outstanding critical projects that are vital to the administration of justice, and b. salaries of Judicial Service personnel.	MoJ Judiciary	MT
3.	Review the budgetary needs of bailiffs and ensure adequacy of resources for the enforcement of court judgments.	MoJ Judiciary	MT
4.	Establish guardrails to ensure internal independence within the judiciary and undertake a study on the need to reform the powers of the Chief Justice over the Court of Appeal and various High Courts, including in the assignment of cases.	MoJ Judiciary	LT
5.	Undertake a study of the adequacy of the training programs for judges and Judicial Service personnel.	MoJ Judiciary	LT
6.	Review the functioning of the Public Complaints and Court Inspectorate Unit (PCCIU) with a view to assessing the need to: a. allow anonymous complaints, and b. making its decisions accessible to the public	Judiciary	ST
7.	Develop and publish a report on the government's progress in implementing past and ongoing reforms related to Ghana's Land Administration projects.	Ministry of Lands MoF MoJ	MT
8.	Establish a reliable, easily accessible, and comprehensive digital land registry	Ministry of Lands MoJ	LT
9.	Explore the possibility of reinstating the Land Tribunal to adjudicate preliminary land-related disputes, thereby alleviating backlogs in the Land Court.	MoJ Judiciary Ministry of Lands	LT

¹⁷⁵ [World Bank Document](#)

¹⁷⁶ [World Bank Document](#)

Section VII. Financial Sector Oversight

193. This section provides analysis of key governance weaknesses in the oversight of the financial sector. The governance diagnostic mission leverages on the recent assessments and capacity development missions delivered to Ghana by the IMF and the discussions held with the Bank of Ghana (BoG) officials and other stakeholders. A review of banking sector oversight against the selected Basel Core Principles for Effective Banking Supervision (BCP) was done during the mission. Further, AFRITAC West2 (AFW2) has been providing regular technical assistance on banking regulation and supervision to the BoG and the progress made by BoG in implementing the recommendations of the TA mission reports was ascertained. The IMF report (August 2021) indicated that the BoG has made good progress in upgrading the institutional, regulatory and supervisory framework and encouraging digital payments in recent times.

194. However, the mission has identified certain governance vulnerabilities which have the potential to usher in corruption in the banking sector. One of the most important issues relate to the compliance with the BCP, which are related to the governance aspects. , Expanding the scope of related party transactions and enhancing the resilience of public banks are critical for strengthening the financial sector oversight by BoG. The effectiveness of banking supervision is challenged by the shortage of human resources as well.

A. FINANCIAL SECTOR OVERSIGHT

195. The banking sector in Ghana reports aggregated capital levels above minimum regulatory requirements. There are specific risks and challenges related to particular types of banks ownership (more specifically, banks with Government ownership). Banks dominate the banking sector having 93 percent of the industry's total assets. The remaining 7 percent is held by Specialized Deposit Taking Institutions (SDIs) such as Savings & Loans, Finance Houses, Leasing and other companies, Rural Community Banks and Microfinance Institutions as of the end of December 2022. Banking Sector assets as a percentage to GDP is 37.5 percent (as of the end of 2022). Resolution of problem banks including by revoking licenses, consolidation in the sector and winding up of some of them has been initiated from 2017 by the BoG.

196. The banking sector has a substantial presence of foreign owned banks, especially South African and Nigerian banks. There are 14 foreign banks which cumulatively account for 61.7 percent of the total banking sector assets. The number of banks with Government's majority ownership is four and they account for 20.8 percent of the total banking sector assets. Private local banks numbering five have 17.5 percent of the total banking sector assets.

Key Reforms

197. The mission ascertained the progress made so far towards aligning the regulatory and supervisory framework with international standards and the BoG reiterated its intention to carry forward the process. The Bank of Ghana Act (2002) and the Bank of Ghana (Amendment) Act, 2016

articulate the BoG's mandate to regulate, supervise and direct the banking and credit systems to ensure the smooth operation of a safe and sound banking system. The Banks and Specialized Deposit Taking Institutions Act, 2016 provides the legal framework for regulating and supervising deposit taking institutions.

198. The BoG has made good progress in implementing key recommendations from the Training Needs Analysis (TNA) mission conducted by AFW2 in 2021. A subsequent mission in August 2022 assisted the BSD by developing a course outline and by presenting workshops on curriculum development and test question writing. Additional assistance was offered by showing sample training materials, reviewing drafted course modules, coaching developers on ways to improve the presentation of information, and guiding discussions of the full developer group through examples, discussion, and debrief. The TNA recommended that BSD encourage specialization by risk area for staff who have completed an intermediate level of BSD training. Management concurred with this recommendation, but its implementation is scheduled at an appropriate time and upon completion and delivery of intermediate courses within the framework proposed by TNA.

199. Adopting Basel II/III requirements (especially the Pillar 1), strengthening the risk management systems in banks, and implementing risk-based supervision are some of key regulatory reforms undertaken by the BoG. These reforms have enhanced banks' safety and soundness as well as effectiveness of BoG's oversight. The BoG, as part of its efforts to enhance the resilience of the banking system has significantly increased the minimum capital requirements of banks. Cyber and Information security directive has been issued to banks for mitigating cyber risk in the context of rapid growth of digital financial services. Under the Financial Sector Development and Inclusion Strategy the authorities aimed to reach 85 percent of the population with access to formal financial services by 2023. The Fintech and Innovations office responsible for the regulation and supervision of payment system providers has made substantial progress in digital banking and the use of Suptech. Established in May 2020, the functions of the office include, licensing and oversight of dedicated electronic money issuers (mobile money operators), payment service providers (PSPs), closed loop payment products, payment support solutions and other emerging forms of payment delivered by non-bank entities. It also develops policies to promote FinTech, innovation and interoperability in Ghana.

Risks and Vulnerabilities

200. While the BoG has made progress in adopting the Basel regulatory reform process, there are areas in microprudential supervision where the benchmarking of the regulatory and supervisory practices to best international practices requires faster implementation. Adoption of Pillar 2 and Pillar 3 of the Basel Framework, implementation of the liquidity requirements, especially the LCR and NSFR, introduced by Basel III are some examples. Resource constraints continue to limit the effectiveness of banking supervision. One of the most important issues relates to the formulation and implementation of the "exit strategies" to roll back the regulatory relaxations and make progress towards implementing the Basel reform process in a calibrated manner. Effective follow-up of the onsite inspection reports to ensure compliance within a timeline and not allowing the major

observations to remain unrectified is an urgent priority. RBS process should encompass comprehensive assessment of corporate governance¹⁷⁷ and AML/CFT related risks.

201. The Domestic Debt Exchange Program (DDEP), launched in December 2022 and concluded in September 2023, was a voluntary debt swap that converted domestic notes and bonds of the Government of Ghana and some of its agencies for newly issued bonds with lower present value. The DDEP had a sharp impact on the banking sector, as government securities constituted a large share of several banks' assets. Several temporary regulatory relief measures were implemented to phase the impact of DDEP on banks' and SDIs balance sheets. Without these temporary regulatory reliefs, more banks would face deficiencies in regulatory indicators like CAR and would need to raise capital. High bank profitability since the DDEP has helped restore some of these ratios. The Ghanaian authorities have designed a financial sector strengthening strategy aimed at restoring capital buffers within a three-year period and banks have all designed individual recapitalization plans and started to implement them. The Ghana Financial Stability Fund has been set up with World Bank assistance and has started to disburse funds to recapitalize state-owned banks. However, the NPL ratio has been increasing since 2022, indicating deterioration in credit risk.

Governance of Supervisory Authority

202. Governance weaknesses in banking supervision (i.e., in terms of independence, accountability, transparency, resourcing, supervisory forbearance) can pose financial stability risks with significant macroeconomic implications. This is also true of weak regulatory and supervisory framework in licensing, related-party transactions, corporate governance, and disclosure. Such issues could also create vulnerabilities to corruption. Though the Bank of Ghana Act and the Banks and Specialized Deposit Taking Institutions Act strengthen the BoG's legal framework, certain aspects need further attention and are detailed in the following paragraphs.

203. Several measures have been taken to improve the governance at BoG, more specifically by means of the amendment to Bank of Ghana Act in 2016. The new Board Charter enhances the operational modalities of the Board and introduces a mechanism to monitor the status of Board decisions. However, financial autonomy of BoG has been significantly undermined by the monetary financing which has been extended since 2020 and the participation in government's Gold-for-Oil program. As far as necessary amendments to the Bank of Ghana Act are concerned, they envisage provisions, among others, for recapitalization of BoG, enhancing autonomy of the BoG by enforcing strict limits on monetary financing of the government and carving out the BoG from Section 14 in Presidential (Transition) Act, 2012

204. Under section 14 of the Presidential Transition Act, 2012, whenever there is a change in President, top political appointees, including the directors of government owned entities cease to function, and the Boards become non-functional. This applies to the BoG as well and in recent times there was an instance where the Board of the Bank was not in existence for a period of nine months. Given that the Board has to take very crucial decisions regarding the working of the monetary

¹⁷⁷ The BOG notes that corporate governance remains a key component in its RBS Framework. In addition, together with the Corporate Governance Directive, Corporate Governance Disclosure Directive, supervisors have as part of their supervisory methodology a Corporate Governance Toolkit to assist in the comprehensive assessment of corporate governance.

and financial system, the applicability of these provisions of the Act to the BoG is problematic as the law impinges on the Board's autonomy, governance and operational freedom. There has to be an urgent solution to this issue by amending the BoG Act as proposed in the discussions with the Legal Department of IMF.

205. Section 3(2) of the Banks and Specialized Deposit Taking Institutions Act, 2016 defines the banking supervision mandate. It stipulates the following: (i) promote the safety and soundness of banks and specialized deposit taking institutions; (ii) ensure the soundness and stability of the financial system and the protection of depositors in the country through the regulation and supervision of financial institutions; (iii) consider and propose reforms relating to deposit taking business; (iv) deal with unlawful and improper practices of banks and specialized deposit taking institutions; and (v) developing appropriate consumer protection measures. This is in accordance with BCP (CP1 EC2), which *inter alia* stipulates that the primary objective of banking supervision should be promotion of safety and soundness of individual banks and the banking system (microprudential and macroprudential safety and soundness objective). The emerging objectives such as financial inclusion, promoting development activities, etc. are not in conflict with the primary objectives.

206. The process of issuing/modification of subordinate legislation in the nature of various directives follows a transparent and consultative process. Exposure drafts are made available to the general public through the Bank's website and the comments received from the public are analyzed and incorporated into the directives.

207. The governance around internal decision making in the context of ongoing supervision is well established and goes through a rigorous process of reviews and approvals. These include unit head review, office head review, peer review, department head review and top management review. The Teammate+ currently in use has capabilities for these features. Data submitted in ORASS also assist the examiners to determine key risk indicators (KRIs) which help in taking supervisory decisions. The Governor assisted by Deputy Governors is practically the final authority to make supervisory decisions and external interference is not visible. However, the Bank of Ghana Act does not clearly define the role of the Board and it vests a significant concentration of power in the Governor while two Deputy Governors themselves are not decision-makers. In addition, the compliance with the onsite inspection reports is long pending in certain cases and, from the perspective of good supervisory practices, it is necessary to close these expeditiously.

208. The framework for safeguarding supervisors' integrity is contained under section 145 of the Banks and Specialised Deposit Taking Institutions Act, 2016. According to the section, staff are required to maintain confidentiality in respect of any information related to the affairs of Bank of Ghana or any of the regulated entities. Several guidelines are provided to the staff to ensure adherence to ethical standards and staff sensitization programs are conducted. The Office of Ethics and Internal Investigations, which reports to the Governor directly is in charge of compliance in this regard. Besides the Code of Ethics applicable to all the employees, the supervisory staff have a detailed standard of conduct. The Chartered Institute of Bankers, Ghana has published "Ghana banking code of ethics and business conduct".

209. Corrective and sanctioning powers of BoG are contained under various sections of the Banks and Specialised Deposit Taking Institutions Act, 2016. Top executive management is the

ultimate authority to take supervisory decisions to apply corrective and sanctioning measures and can also authorize exceptions, a power which can be abused. There are no appeal procedures available to banks and other interested parties against supervisory actions and decisions in the Act. For many of the penalties an upper limit is prescribed in the act, which is a constraining factor and needs to be revisited.

210. The Bank of Ghana has to transmit a copy of its annual accounts certified by the Auditor-General to the Minister of Finance within three months after the end of each financial year. An annual report of the Board depicting its working in different areas is to be submitted to the Minister of Finance and published by the Bank. The report on Trend and Progress of Banking Business gives a clear account of supervisory actions taken during the year and ensures transparency in the BoG's role as supervisor.

Licensing of Banks, Corporate Governance and Related Party Transactions

211. Licensing and Change of Control is one area which is very critical from a governance perspective. Banks and Specialized Deposit Taking Institutions Act, 2016 contains detailed licensing criteria for deposit taking institutions. The applications are received through the online regulatory analytics surveillance system (ORASS) and detailed scrutiny is conducted by the Bank Supervision Department. The procedure includes conducting a capital verification exercise to establish the source of funds, and assessing the suitability of banks' major shareholders, including ultimate beneficial owners (UBO) and others that may exert significant influence. Issues regarding the ascertainment of UBO in the licensing process is detailed under the section relating to AML/CFT.

212. Eight applications for banking license have been received since 2018. Seven licenses have been revoked as part of the banking sector clean up and one license has been surrendered as part of a voluntary winding up process. The Banks and Specialized Deposit Taking Institutions Act has provisions for addressing share transfers in terms of controlling significant ownership. Transparency in the licensing and acquisition of shareholding is evident. The finance minister/ministry does not have appellate authority over this area. The only appeal process in case a license is rejected is through an adjudicative panel to be set up by the Chief Justice of the country (in line with section 140 of the Banks and Specialized Deposit Taking Institutions Act, 2016). As there are substantial vacancies in the licensing office (12 available staff and 8 vacancies) it is imperative to dedicate more resources to this very critical area from a governance perspective.

213. Banks' strong corporate governance and transparency is another important aspect as it provides a solid ground to banks' prudent behavior, is essential for financial stability, and minimizes opportunities for corruption. During the mission, the BoG noted that it issued the Corporate Governance Directive for banks and specialized deposit taking institutions in December 2018. This was followed by the Fit and Proper Persons Directive, 2019 and the Corporate Governance Disclosure Directive, 2022. The Corporate Governance Directive includes key aspects of the Basel Corporate Governance Principles for Banks, 2015.

214. The assessment of corporate governance conducted by the onsite supervisors as against the directives issued by BoG in this regard and the corporate governance toolkit reveals shortfalls in many aspects. This is a vulnerability in the governance of banks and has the potential

for corrupt practices. Further, the corporate governance assessment has to be seamlessly integrated into the aggregate net risk score under risk-based supervision. The RBS manual should include a comprehensive methodology for assessment of banks' corporate governance practices and processes. The capacity building program especially at the intermediate and advanced levels on a continuous basis should envisage equipping the supervisors with necessary skills in this area.¹⁷⁸

215. The Fit and Proper Persons Directive, 2019 describes the criteria for assessing the fitness and propriety of members of the board and senior management. The directive is a very comprehensive document and the process of assessing fitness and propriety is transparent. Moreover, The BoG interviews the individuals as part of the assessment process. Since January 2018, BoG has approved 532 requests to approve the members of banks' board and senior management and rejected 27 such requests during the same period. The decision is within the remit of the BoG and the Finance Minister cannot overturn the decisions of the BoG. The challenges in this area are the limited pool of resources for specialist skilled members to constitute the Boards especially the Audit Committees and Risk Committees of the Board and the limited pool of resources for independent directors. This situation can lead to adverse selection of directors, which can lead to vulnerabilities and corrupt practices.

216. Disclosures in the area of corporate governance are mandated by the Corporate Governance Disclosure Directive, 2022. These disclosures enable enhancement of transparency regarding corporate governance practices in banks. Banks make disclosures in their annual reports relating to their compliance with corporate governance issues. Pillar 3 disclosures under the Basel Framework are yet to be implemented and there is an urgent need to adopt this.

217. Transactions with related parties unless monitored and managed diligently have the potential to be unfair, abusive and may be associated with fraudulent activity or corruption. The mission observed that there is a need to strengthen this framework especially in the backdrop of complying with BCP 20 and IAS 24. The Banks and Specialised Deposit Taking Institutions Act, 2016 contain requirements for related-party transactions. However, the provisions of the Act apply to financial exposure and do not cover all types of transactions (e.g. other dealings prescribed in BCP (CP20)). There is an urgent need to expand the coverage of the related party transactions requirement to other types of transactions. The identification of bank's UBOs are very important from related parties' perspective as indicated in the report under the section relating to AML/CFT area.

218. Public banks' regulation and supervision is another important aspect which has to be handled with lot of sensitivity. This is an area having the potential to usher in corrupt practices. While the principle of "ownership neutrality" in regulation and supervision is put in place, the governance standards in these institutions are below par. There are compromises in credit underwriting standards and as a result the NPL levels are on an upswing.

¹⁷⁸ The BoG notes that this is reflected in the current 3-Level Supervisory Competency Framework and that corporate governance is now a key course component of the Introductory and Intermediate Levels.

219. The Specialized Deposit Taking Institution (SDI) sector is exhibiting several challenges.

Asset growth decline, solvency ratio turning to negative, increase in NPL levels and profitability concerns are the major challenges. Governance standards in many of the segments of SDI leave scope for improvement and are prone to corruption. Supervision of these institutions require significant improvement. For instance, in the case of Rural and Community Banks, the onsite and offsite supervision is done by the ARB Apex Bank on behalf of the BoG and their skill set for conducting supervision taking into account the ever-changing scenario is not up to the mark.

B. RECOMMENDATIONS

Table 14. Financial Sector Oversight Recommendations

	Key Recommendations	Agency Responsible	Implementation Timeframe
1.	Enhancing the role of BoG as banking supervisor in terms of governance. - The microprudential supervision framework of the BoG has to be aligned with the Basel Framework by considering the adoption of Pillar 2 and Pillar 3, liquidity requirements, , etc. - Strengthen the resources available for supervision and embark upon a rigorous capacity development program of the supervisory staff. - Ensure amendments to the Bank of Ghana Act to carve out the BoG Board from Section 14 of the Presidential Transition Act, 2012. - Carry out amendments to the Banks and Specialized Deposit Taking Institutions Act to remove the upper ceiling on penalties.	MoF Bank of Ghana	MT
2.	Strengthen the prudential regulatory and supervisory framework which are closely related to governance aspects by benchmarking them with international standards and best practices. - Supervisory assessment of corporate governance in banks has to become an integral part of the risk-based supervision. - Strengthen the regulatory and supervisory framework to improve the governance of credit risk management function by banks. - Compliance with onsite inspection reports has to be made comprehensive and time bound. - Rectify the challenges regarding the limited pool of resources for specialist skilled members to constitute the Boards especially the Audit Committees and Risk Committees of the Board and the limited pool of resources for independent directors. - Enhance regulatory and supervisory framework for transactions with related parties.	Bank of Ghana	MT
3.	Supervision and regulation of public banks and Non-Banking Financial Institutions. - Enforce the concept of “ownership neutrality” in letter and spirit while framing regulatory policies and conducting supervision of public banks. - Strengthen the resilience of public banks by reducing their NPLs and improving their governance standards. - Improve governance in the Non-Banking Financial Institutions sector.	Bank of Ghana MoF	MT

Annexes

Annex 1. Mandates of Anti-Corruption Institutions

Institution	Mandate
Commission on Human Rights and Administrative Justice (CHRAJ)	- Investigate, through administrative procedures, all instances of <u>alleged or suspected corruption, abuse of power and the misappropriation of public monies by officials</u> and take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation. - Investigate instances of failure to declare or knowingly making false declarations of assets, and take such action as considered appropriate. - Investigate allegations of non-compliance with conflicts of interest provisions and take such action as considered appropriate. - Investigate cases where a person holding a position in the service of a public corporation or authority, is appointed as chairman of its governing body in contravention of Article 285 of the Constitution, and take such action as considered appropriate. - Investigate disclosures of impropriety under the Whistleblowers Act and complaints of victimization of whistleblowers. - Educate and sensitize the general public about corruption and enlist public support to fight corruption at all levels of society by such means as the Commissioner may decide, including publications, lectures and symposia. - Coordinate activities on anti-corruption within the NACAP* - Provide free advice and services on corruption prevention in Ghana.* - Work to reduce opportunities for corruption in corruption-prone sectors by assisting to implement corruption prevention measures and putting in place robust systems for checking corruption.* * No explicit legal basis but reported by CHRAJ as part of its functions¹⁷⁹
Office of Special Prosecutor (OSP)	- Investigate and prosecute specific cases of alleged or suspected corruption and corruption-related offenses. - Recover the proceeds of corruption and corruption-related offenses. - Take steps to prevent corruption.
Right to Information Commission (RTIC)	- Promote, monitor, protect and enforce the right to information under the Constitution and the RTI Act. - Resolve complaints related to access to information requests.

¹⁷⁹ CHRAJ's 5-Year Strategic Plan 2021-2025 <https://chraj.gov.gh/wp-content/uploads/2021/04/FINAL-PRINTED-CHRAJ-STRATEGIC-PLAN-2021-2025-1.pdf1.pdf>

Auditor-General	▪ Audit the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations; of the universities and public institutions of like nature; and of any public corporation or other body or organization established by an Act of Parliament. ▪ Audit the central bank's foreign exchange transactions. ▪ Collect asset declarations. ▪ Annually audit procurement activities. ▪ Disallow and surcharge illegal expenditure items.
Internal Audit Agency (IAA)	▪ Co-ordinate, facilitate and provide quality assurance for internal audit activities within the Ministries, Departments and Agencies and the Metropolitan, Municipal and District Assemblies. ▪ Set standards and procedures for the conduct of internal audit activities. ▪ Facilitate the prevention and detection of fraud. ▪ Take such action as it considers appropriate for effective enforcement of the Audit Act, including recommendation of prosecution and disciplinary action in respect of any breaches arising from an internal audit report.
Public Procurement Authority (PPA)	▪ Harmonize the process of public procurement in the public service to secure judicious, economic and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory, environmentally and socially sustainable manner. ▪ Monitor and supervise public procurement and ensure compliance with statutory requirements. ▪ Develop rules, instructions and regulations for public procurement. ▪ Investigate and de-bar from procurement suppliers, contractors and consultants, including those who offered inducements connected with procurement procedures. ▪ Establish and implement an information system relating to public procurement, including a register of procurement entities and a database of suppliers, contractors, consultants (including debarred) and prices.
Financial Integrity Center (FIC)	▪ Assist in the identification of proceeds of unlawful activity and in the combat of money laundering, financing of terrorism, financing of the proliferation of weapons of mass destruction, tax evasion and any other unlawful activity. ▪ Make information available to investigating and revenue authorities, security and intelligence agencies, and other competent authorities to facilitate the administration and enforcement of the laws of Ghana. ▪ Exchange information with similar bodies in other countries.
Economic and Organized Crime Office (EOCO)	▪ Investigate and prosecute money laundering, tax fraud, financial or economic loss to the Republic or any State entity or institution in which the State has financial interest and other serious offenses. ▪ Take reasonable measures necessary to prevent the commission of abovementioned crimes and their correlative offences. ▪ Recover the proceeds of crime.

Annex 2. Governance Arrangements of Anti-Corruption Institutions

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
Commission on Human Rights and Administrative Justice (CHRAJ)	One Commissioner and two Deputy Commissioners appointed by the President acting in consultation with the Council of State.	Yes	Same as for Justices of Court of Appeals and High Court: Moral character and proven integrity and is of not less than twelve years' standing as a lawyer (ten for deputy commissioners)	Commissioner serves until age 70 and deputies until age 65. May be removed under the same procedure as for Justices of Court of Appeals and High Court: for stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind. President receives petition, refers to Chief Justice who determines if there is prima facie case. If there is, Chief Justice sets up a committee consisting of three justices of the superior courts, appointed by the judicial council, and 2 other persons who are not members of the council of state nor members of parliament, nor lawyers, appointed by the Chief Justice on advice of the Council of State. The committee investigates the complaint and makes recommendations to Chief Justice who shall forward to the President. Proceedings held <i>in camera</i>, and the President shall act in accordance with the recommendation. investigated person may be heard.	Articles 136(3), 139(4), 146, 218, 226 228 Constitution and Section 7 of the CHRAJ Act
Office of Special Prosecutor (OSP)	Governed by a Board , composed of the Special Prosecutor, the Deputy Special Prosecutor, a representative of the Audit Service, Ghana Police Service, Economic and Organized Crime Office, Financial Intelligence Centre, CHRAJ, Minister for National Security, and one female representing CSOs. Appointments made by the President in	No Yes	Nominating institutions shall have regard to expertise in corruption matters, high moral character and proven integrity and non-partisanship. May not be appointed if: Owes allegiance to a country other than Ghana	Board members hold office for 3 years and are eligible for one reappointment. May be removed where, for sufficient reason, unable to act as a member. The Minister of Justice shall determine whether the inability may result in a declaration of vacancy. Vacancy may also be declared by the minister of Justice if member contravenes code of conduct contained in the Constitution; contravenes fiduciary relationship and duty of loyalty with the office, is absent from 3 consecutive meetings without sufficient cause or does not disclose conflict of interest.	Sections 5, 12, 13, 15, 16 and 21 of Office of Special Prosecutor Act. *The OSP Administrative Regulations are not available for online consultation.

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
	consultation with the Council of State. Special Prosecutor and Special Deputy Prosecutor are nominated by Attorney-General, appointed by the President <u>subject to the approval of the majority of members of Parliament.</u>		- Has been declared bankrupt to be of unsound mind, convicted for a high crime under the constitution, treason, high treason, offense involving the security of the state, fraud, dishonesty or moral turpitude, or any other offense punishable by death or by a sentence of not less than 10 years. - Has been found by a report of the commission or committee of inquiry to be incompetent to hold public office, or acquired assets unlawfully, or defrauded the state or misused or abused the office, or willfully acted in a manner prejudicial to the interest of the state and the findings have not been set aside on appeal or judicial review. - Possess the relevant expertise on corruption and corruption related matters. - Be of high moral character and proven integrity.	Special Prosecutor tenure of 7 years without reappointment. Deputy for 5 years with one reappointment. Both may be removed for stated misbehavior or incompetence, incapacity to perform the functions of the office by reason of infirmity of body or mind, willful violation of the official's oath or oath of secrecy, conduct which brings or is likely to bring the OSP into disrepute, ridicule or contempt or is prejudicial or inimical to the economy or security of the state. A petition must be submitted to the President who within 7 days refers to the Chief Justice. The latter within 30 days determines whether there is prima facie case. If so, within 14 days Chief Justice sets up a committee consisting of a chairperson, a lawyer of at least 15 years standing at the bar and one other person with expertise in investigations. The committee investigates and within 90 days make a recommendation to the President through Chief Justice. The President must act in accordance with recommendation.	
Right to Information Commission (RIC)	Governed by a Board composed of a Chairperson, a Deputy Chairperson, 4 other persons (including two women), and the Executive Secretary.	Yes	Having regard to the expertise of the person.	Board members have 5-year term with one reappointment. The President may by a letter terminate the appointment if member is mentally or physically incapable of performing, is declared insolvent, has engaged in gross misconduct or has been involved in actions that bring the Commission into disrepute, is	Sections 48, 49 and 55 of the Right to Information Act

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
	All appointed by the president in consultation with Council of State Executive Secretary appointed by the President. Shall hold office in the terms and conditions specified in the letter of appointment.	Yes	No requirements	convicted of a serious offense or is grossly incompetent. The President may only remove a member after the President has caused that an allegation is investigated and proven. Executive Secretary shall hold office on the terms and conditions specified in the letter of appointment.	
Auditor-General	Auditor-General appointed by the President acting in consultation with the Council of State. Audit Service governed by a Board composed of a Chairman and 4 other members, the Auditor-General, and the Head of the Civil Service or his representative. All appointed by the President, acting in consultation with the Council of State.	Yes No But appoints all personnel and determines the structure, expertise and terms and conditions of service of officers and can issue regulations for the administration of the Audit Service and for generally carrying out the purposes of the Act.	No requirements No requirements	Auditor-General retires after attaining the age of sixty years. But may be engaged for a limited period of not more than two years at a time but not exceeding five years in all and upon such other terms and conditions as the President acting in consultation with the Council of State shall determine. May be only removed for stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind, and under the same procedure applicable to Justices of Superior Courts (see CHRAJ above). Members serve for 3 years with two reappointments. A member of the Audit Service Board, other than the Auditor General or the Head of the Civil Service or his representative, may be removed from office by the President, acting in accordance with the advice of the Council of State, for inability to perform the functions of his office arising from infirmity of mind or body or for any other sufficient cause. A member ceases to hold office on the reconstitution of the Board.	Articles 70(1)(b) and 187, 189 of the Constitution and Section 10 of the State Audit Act.

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
Internal Audit Agency	Governed by the Internal Audit Board composed of: a Chairperson; the Minister of Finance or a representative; the Minister for Local Government and Rural Development or a representative; the chairperson of the Public Services Commission or a representative; the Director-General of the Agency; two other members appointed from the private sector, and two professional accountants each with not less than ten years experience in the profession nominated by the Council of the Institute of Chartered Accountants (Ghana). All appointed by the President acting in consultation with the Council of State. Director-General appointed by the President, acting in accordance with the advice of the governing council of the service concerned.	No but can decide on Policy Yes	The President shall in appointing members of the Board have regard to the integrity, knowledge, expertise and experience of the persons and in particular their knowledge in matters relevant to the functions of the Agency. No requirements	Board members, other than ex-officio, hold office for 4 years, with two reappointments allowed. No causes or procedures for removal established. The Director-General shall be appointed on terms and conditions specified in the letter of appointment.	Sections 2, 5, 8, 12 and 15 of Internal Audit Agency Act
Public Procurement Authority (PPA)	Governed by a Board composed of a chairperson who is a person competent and experienced in public procurement, four persons from the public sector and <u>with experience in public</u>	Yes Including operative, regulatory functions, reviews decisions by procuring entities and provides	As underlined in left cell.	Serve for term of 4 years with one reappointment. A member may be removed from office by the President acting in consultation with the Council of State for inability to perform the functions of office, infirmity or any other sufficient cause.	Sections 2, 4, 5 and 9 of Public Procurement Act

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
	<u>procurement and familiar with governmental and multilateral agency procurement procedures</u> consisting of a representative of the Attorney General and three persons nominated by the Minister of Finance (including one woman), three persons from the private sector <u>with experience in procurement</u> (including a woman), and the CEO. All appointed by the President acting in consultation with the Council of State. CEO appointed by the President.	general directions to CEO Yes	No requirements	The CEO shall hold office on terms and conditions specified in the letter of appointment.	
Financial Integrity Center (FIC)	Governed by a Board composed of one representative from each of the MoF, National Security Council Secretariat and the Bank of Ghana, one senior police officer nominated by Minister of Interior, the CEO, a state attorney nominated by the Attorney General and one person from the private sector <u>with accounting, banking or finance experience nominated by Minister of Finance</u>. The President appoints a chairperson and all other members in consultation with the Council of State.	No Yes	As underlined in left cell. No requirements but subject to security screening (sec 17).	Board members serve for 4 years with one reappointment. The President may revoke by a letter the appointment of a member. May be also removed where, for sufficient reason, is unable to act as a member. The Minister of Justice shall determine whether the inability may result in a declaration of vacancy. Vacancy may be declared by the minister of Justice if member is absent from 3 consecutive meetings without sufficient cause or does not disclose conflict of interest. The CEO shall hold office on terms and conditions specified in the letter of appointment.	Sections 7, 9, 12, 17 of the Anti-Money Laundering Act

Institution	Composition and Method of Appointment	Operational functions	Requirements for Appointment	Security of Tenure	Legal Basis
	CEO appointed by the President.				
Economic and Organised Crime Office (EOCO)	Governed by a Board composed of a chairperson; the Executive Director, one representative each of the Inspector-General of Police, the Narcotics Control Board, the Attorney-General's Office and the Ghana Revenue Authority, one lawyer in private practice with at least ten years experience nominated by the Ghana Bar Association; ; one chartered accountant with at least ten years experience nominated by the Institute of Chartered Accountants; and one person with intelligence background nominated by the Minister responsible for National Security. All appointed by the President acting in consultation with the Council of State.	No	No requirements	Board members serve for 4 years with one reappointment, The President may revoke by a letter the appointment of a member.	Sections 4, 6 and 11 of the Economic and Organised Crime Act
	Executive Director appointed by the President	Yes	No requirements	The Executive Director shall hold office on the terms and conditions specified in the letter of appointment.	

Annex 3. Relevant Provisions from the Constitution of Ghana

APPOINTMENTS BY PRESIDENT

70. (1) The President shall, acting in consultation with the Council of State, appoint
- (a) the Commissioner for Human Rights and Administrative Justice and his Deputies;
 - (b) the Auditor-General;
 - (c) the District Assemblies Common Fund Administrator;
 - (d) the Chairmen and other members of (i) the Public Services Commission; (ii) the Lands Commission; (iii) the governing bodies of public corporations; (iv) a National Council for Higher Education howsoever described; and
 - (e) the holders of such other offices as may be prescribed by this Constitution or by any other law not inconsistent with this Constitution.
- (2) The President shall, acting on the advice of the Council of State, appoint the Chairman, Deputy Chairmen, and other members of the Electoral Commission.

DETERMINATION OF CERTAIN EMOLUMENTS

71. (1) The salaries and allowances payable, and the facilities, and privileges available, to ... (c) the Auditor-General, the Chairman and Deputy Chairmen of the Electoral Commission, the Commissioner for Human Rights and Administrative Justice and his Deputies ... being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendations of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State.
- (3) For the purposes of this article, and except as otherwise provided in this Constitution, "salaries" includes allowances, facilities and privileges and retiring benefits or awards.

THE COUNCIL OF STATE

89. (1) There shall be a Council of State to counsel the President in the performance of his functions.
- (2) The Council of State shall consist of (a) the following persons appointed by the President in consultation with Parliament. (i) one person who has previously held the office of Chief Justice. (ii) one person who has previously held the office of Chief of Defence Staff of the Armed Forces of Ghana; (iii) one person who has previously held the office of Inspector-General of Police; (b) the President of the National House of Chiefs; (c) one representative from each region of Ghana elected, in accordance with regulations made by the Electoral Commission under article 51 of this Constitution, by an electoral college comprising two representatives from each of the districts in the region nominated by the District Assemblies in the region; and (d) eleven other members appointed by the President.
- ...(5) A member of the Council of State shall hold office until the end of the term of office of the President...
- (6) The appointment of a member of the Council of State may be terminated by the President on grounds of stated misbehavior or of inability to perform his functions arising from infirmity of body or mind, and with the prior approval of Parliament.

OTHER FUNCTIONS OF THE COUNCIL

91. (1) the Council of State shall consider and advise the President or any other authority in respect of any appointment which is required by this Constitution or any other law to be made in accordance with the advice of, or in consultation with, the Council of State.

(2) The advice referred to in clause (l) of this article shall be given not later than thirty days after the receipt of the request from the President or other authority.

APPOINTMENTS, ETC. OF PUBLIC OFFICERS

195.(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or to act in an office in the public services shall vest in the President, acting in accordance with the advice of the governing council of the service concerned given in consultation with the Public Services Commission.

(2) The President may, subject to such conditions as he may think fit, delegate some of his functions under this article by directions in writing to the governing council concerned or to a committee of the council or to any member of that governing council or to any public officer.

Annex 4. Legal Provisions on the Financial Autonomy of ACAs

Examples of provisions guaranteeing the financial autonomy of anti-corruption agencies

Safeguards:

CHRAJ. The appointment of officers and other employees of the Commission shall be made by the Commission, acting in consultation with the Public Services Commission (Article 226 of the Constitution).

OSP. The salary of the Special Prosecutor shall not be varied to the disadvantage of the special prosecutor during the tenure of office (section 13(6) of the OSP Act).

Auditor-General. The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring award or retiring age shall not be varied to his disadvantage during his tenure of office (Article 187 of the Constitution).

RTIC. Can operate through its own bank account (section 61 RTI Act).

CHRAJ. Its internal audit unit reports to the Auditor-General and not to the Internal Audit Agency (section 16(5) of the Internal Audit Agency Act).

Another example of protections of financial autonomy is found in the Judiciary. Article 127 of the Constitution enshrines the Judiciary's independence, including for its "financial administration", which comprises of the operation of banking facilities without interference, of the funds voted by Parliament or charged on the Consolidated Fund, and for the Judiciary's expenditures in respect of which the funds were voted or charged.

Provisions that undermine financial autonomy:

OSP, RTIC, IAA and FIC. The President can appoint all staff of these institutions under Article 195 of the Constitution. The President may choose to delegate such authority to the boards of the entities, although the board members mostly belong to the Executive or are appointed by the President (sections 5 and 21 OSP Act, 57 Right to Information Act and 15 Internal Audit Agency Act, 21 AML Act).

OSP. Allowances for board members are approved by the Minister of Justice in consultation with MoF (section 12 OSP Act).

IAA. Members of the Board other than the Director-General shall be paid such allowances as the President in consultation with the Minister of Finance may approve (section 8 of the Internal Audit Agency Act).

RTIC, PPA, FIC and IAA. Their CEOs terms and conditions are specified in the presidential letter of appointment (Sections 55 of the Right to Information Act, 9 of the Public Procurement Act, 17 of the AML Act, and 12 of the Internal Audit Agency Act).

CHRAJ. Two members of parliament and an Attorney-General's representative are members of the procurement committee, responsible for approving public procurements between 100,000-1,000,000 cedis for goods and services, and 500,000-15,000,000 cedis for works (first and second schedules of the Public Procurement Act).

Annex 5. Key Recent Legal Reforms on Anti-Money Laundering

- a. **Anti-Money Laundering Act 2020 (Act 1044).** The new law, which was enacted in 2020:
- i. strengthens the financial position of the Financial Intelligence Center (FIC) by requiring its operational budget to be funded by Parliamentary appropriations, the Ghana Revenue Authority (not exceeding two percent of the total revenue retained by the GRA), and by the Bank of Ghana upon consultation with the Minister and subject to the prior approval of Parliament (Section 23).
 - ii. enhances the record keeping requirements including archiving records (Section 32 to 34). Going forward, the archiving provisions should be harmonized with those in the Evidence Act.
 - iii. provides protection against civil or criminal liability of an accountable institution, including the directors, officers, and employees for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision if the directors, officers or employees comply in good faith with the obligation to file a suspicious transaction report or provide other information to the FIC or other competent authorities (Section 44).
 - iv. requires the appointment of AML reporting officers (AMLRO)/compliance officers at managerial level to monitor compliance with the Act (Section 50).
 - v. provides a wide range of administrative sanctions for AML/CFT supervisors (Section 53).
- b. **The new Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930)** among other provisions, introduced the supervisors' powers to impose administrative sanctions for infractions of AML/CFT requirements and expanded the external auditors' mandate to include AML/CFT.
- c. **The new Insurance Act 2021 (Act 1061)** introduces a mandate to enforce compliance of AML/CFT requirements (Section 3(f)), adoption of a risk-sensitive approach in regulation & supervision (S. 4(b)), and approval required for change in significant ownership or level of control (Section 122).
- d. **The Real Estates Agency Act 2020** addresses the establishment and operations of the regulating Council and Board of the real estate sector and the regulations pertaining to real estate brokers and agents and their operations and activities. The Act introduces market entry and a record keeping regime. This includes an annual licensing requirement for real estate brokers or agents, fitness and probity tests for all agents, and establishment and maintenance of records. The Act also includes a sanctioning regime and reporting mandates (the Council is mandated to submit an annual report of licensees as per section 21(6) and report on any anomalies regarding real estate transactions as per section 47(5)(c)).
- e. **The new Companies Act (2019) establishes the Office of Registrar of Companies as a central register for capturing basic and beneficial ownership¹⁸⁰ (BO) data of legal persons.** Although

¹⁸⁰ Beneficial owner" means an individual (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company; (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether

the Registrar has established a mechanism for collecting basic and beneficial ownership information of all incorporated companies, the Registrar has only collected the information of a portion of the existing companies. Companies are required to notify the Registrar of any changes in their companies, including a change of directors, a change in the address of the registered office of the company and any amendment in the company's regulating powers, within a period of 28 days. However, existing companies only update their information when seeking other services from the Registrar. Despite these challenges, the Registrar of Companies has allowed direct database access to relevant competent authorities, like the FIC, the Police, and other investigators. Financial institutions, on the other hand, can access beneficial ownership information at a fee through a portal on the Registrar's website.

acting alone or together with other persons; (c) on whose behalf a transaction is conducted; or (d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement.

Annex 6. Weaknesses in the GRA Governance Framework

- The Constitution gives the President the power to appoint the Board chair, Board members, the Commissioner General, Commissioners, and GRA staff. While it is appropriate for the President to appoint the Board chair, Board members, and the Commissioner General, it is unusual for the appointment of Commissioners and other GRA staff to be the ultimate responsibility of the President. Even though this may be largely ceremonial, it does potentially create a roadblock with appointments. The Constitution provides that these powers can be delegated. Instruments of delegation could be executed to delegate the power to appoint Commissioners to the Board and other GRA staff to the Commissioner General.
- The Board comprises nine members, four of whom must be from the private sector. As the Board Chair may also be from the private sector, it is possible that private sector representation could be a majority of Board members. Even if the Chair is appointed from government, the quorum for Board meetings is five members, so at any particular meeting a majority of attending members may be from the private sector. While it is important that there is private sector representation on the Board, the GRA Act should be amended to avoid private sector members being a majority.
- The GRA Act should expressly state experience requirements for private sector Board members, such as experience in management, administration, law, finance, customs, or taxation.
- While Board members may be subject to the secrecy rule in the RAA,¹⁸¹ it is preferable that a Board-specific secrecy rule is included in the GRA Act. Currently, Board members may access confidential information about proposed GRA administrative practices (such as sectors targeted for audit) or potential law or policy changes.
- The relationship between the Minister of Finance, the Board, and the Commissioner General should be clarified. This includes clarifying the Board's role in revenue policy and revenue law formulation.¹⁸² It is understood that, from time to time, tax policy formulation has defaulted to the GRA. Revenue law formulation is discussed below.
- There should be a clear delineation of the responsibilities of the Board and the Commissioner General. It should be made clear that the Board is not to be involved in the day-to-day operations of the GRA—This is solely the responsibility of the Commissioner General.
- The power to establish new divisions within the GRA should be with the Board and not Parliament. This will ensure that the organizational structure of GRA can be changed on a timely basis as necessary for the proper functioning of the GRA and to adapt to the changing business and community environment.
- The responsibilities of the Board and other parts of government should be reviewed and clarified, such as in relation to staffing and procurement. One purpose of establishing an independent revenue authority is to obtain, within limits, a degree of independence on these matters.
- The funding of the GRA should be reviewed. It is understood that GRA's subvention must now finance both operating and capital expenditure. This potentially acts as a limitation in GRA making transformational changes in its operations.

¹⁸¹ Section 7 of the RAA. This will depend on whether Board members are "engaged" by the Board.

¹⁸² Section 5(2) of the GRA Act

Annex 7. Examples of Discretionary Powers Provided for in Revenue Laws

Box 5. Discretionary Powers Provided for in the Revenue Laws

Tax Administration

- Granting of a tax incentive
- Extensions of due dates for filing of tax declarations
- Waiver of full duties and payment of 30 percent of taxes assessed on filing an objection and/or appeal.
- Selection of a taxpayer for a tax audit
- Remission of a penalty, interest or fine

Customs Administration

- Waiver/exemption of customs duty/excise
- Selection of goods subject to a "red channel" inspection
- Selection of a trader for a post clearance audit
- Application of penalties applied by PCA officers to make them proportionate with the offence
- Remission of a penalty or fine.

Source: GRA responses to RAGIA questionnaire

Annex 8. The Customs Clearance Process

Box 6. The Customs Clearance Process

Pre-arrival – electronic transmission:

- Step 1: Processing of applications for exemptions and concessions
- Step 2: Review for valuation
- Step 3: Review for classification and origin
- Step 4: Validation by approval officer of steps 2 and 3

Post-arrival:

- Step 1: 100 percent scanning of containers by port authority (images uploaded in ICUMS)
- Step 2: Manifest matching (paper with pre-arrival) for all shipments – could trigger inspections.
- Step 3: Documentary reviews of yellow and red referrals – could trigger inspections.
- Step 4: Inspection of red referrals
- Step 5: Release of goods or enforcement action

Source: FAD February 2023 and discussions with GRA.