



PARLIAMENTARY OVERSIGHT IN GHANA – A BRIEF REVIEW

*Summary of a paper by
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INTRODUCTION

The strength of “legislative oversight” is influenced by a cocktail of factors: type of democracy, the make-up of political parties in the legislature, party discipline, political culture, level of democracy, income level, etc. While all these factors are relevant and worthy of critical analysis, this paper will focus on examining the tools that are available for effective oversight in Ghana's democracy. The paper will begin by explaining 'oversight' as a political concept. This will be followed by a brief descriptive of Ghana's system of government; then, by a review of the available oversight tools; how these tools have been used; the challenges that Ghana's parliament faces in performing its oversight functions; and lastly, some indications of how to improve Ghana's oversight regime generally.

BACKGROUND

'Oversight' as a Concept

Like democracy, the responsibility of the legislature to monitor, evaluate or scrutinise the executive arm

of government could be traced to the classical Athenian democratic experiment. Even before the concept of “parliamentary oversight” (simply referred to here as 'oversight') was formalised in the 18th century, Greek philosophers have long-underscored the need for the *Ekklesia* (the Legislative Assembly) to take a keen interest in knowing how the laws they (the legislature) make are implemented by those who hold the power to carry out implementation.

However, it is the writings (particularly '*Spirit of the Laws*' in 1748) of the French philosopher, Charles-Louis, Baron de Montesquieu, which is often cited as the beginning of the formalization of the concept of 'oversight.' Montesquieu divides government into 3 arms and argues, among others, that the legislature is free to scrutinize how the executive implements the laws of the State.

Later in the 19th century, the British philosopher, John Stuart Mill, would observe that:

“The proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification of all of them

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which anyone considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office..."

From this, it may be further said that the function of the legislature ought not to stop at just making laws for the State; it should extend to ensuring that the laws that are made are implemented in accordance with the intent of the legislature. It is this understanding that constitutes the conceptual bedrock upon which 'oversight' is built. Oversight, therefore, derives from the relationship between the executive and the legislature.

Contemporary Understanding

Contemporary use of the concept follows the Montesquieu-Mill understanding but with some variations. Frederick M. Kaiser (2001), working within the American presidential system explains the term as the "review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation." Hironori Yamamoto (2007) says it is "the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation." Yet still, the National Democratic Institute (2000) describes it as "the obvious follow-on activity linked to law-making." The National Democratic Institute's description, therefore, highlights a vital aspect of the legislature's oversight responsibility – the need for the legislature to ensure that its laws are implemented in accordance with its intention.

Be that as it may, the variations in definitions may be seen as more formalistic than substantive; and simply a matter of differences in emphasis. In fact, Chen Friedberg and Reuven Hazan (2012) even believe that the variations "reflect a varied approach to the term, and demonstrate more than anything else its ambiguity."

By and large, these variations in emphasis are dependent on the type of democracy that pertains in the polity; that is, whether the polity is a parliamentary democracy, a presidential democracy or a hybrid of the two. In this regard, some writers have argued that oversight is stronger under presidential democracies than under parliamentary democracies. This is based on the reasoning that the legislature under the presidential system enjoys a relatively higher degree of separability and independence from the executive than under the parliamentary system.

This argument may however not be as comprehensive as it appears. A presidential system, by itself, may not secure a stronger oversight. Neither is a parliamentary democracy, by itself, a sure way to a weaker oversight potential.

The factors that influence the strength of oversight are many. One is the partisan composition of the legislature in question. Where the legislature of a presidential democracy is dominated by the political party of the president, the chances that oversight will be adversely affected are greater. In such a case it may not be true that a presidential democracy presents a stronger oversight than a parliamentary democracy.

Further, in a parliamentary democracy, the executive emanates from within the legislature. Its very continuance in power is largely dependent on the legislature's confidence in it. To that extent, a willing legislature may deliver even a stronger oversight under a parliamentary democracy. But even here, the partisan composition of the legislature may reduce the strength of oversight.

Other factors that influence the strength or effectiveness of oversight includes, culture, attitude and the term/tenure of office of both the executive and the legislature. Riccardo Pelizzo and Rick Staphenurst (2004), for example, found that apart from the form of government (whether presidential, semi-presidential, or parliamentary), the level of democracy and even per capita income levels correlates with a polity's oversight potentials.

While all these factors are important, the issues that engage the attention of the reformer more frequently are neither the type of democracy nor the composition of the legislature. The germane issues often tend to revolve around: the availability of oversight tools within the larger constitutional and administrative law framework; how these tools are used; the levels effectiveness of buffer State institutions and structures; and, the cultural or attitudinal posturing of the legislators.

OVERSIGHT TOOLS

There are several tools available for ensuring legislative oversight in a presidential or parliamentary democracy. These tools include:

- Debates,
- Hearings,
- Demand for Agendas: This also involves questions but they go further to request specific actions from ministers and other executive functionaries,
- Vetting and approval of executive appointments,

- Interpellations: This is a formal process used to request executive justification of a particular action or policy,
- Vote-of-no-confidence: This usually leads to the dissolution of government,
- Committees of Inquiry: This process is used to investigate a particular issue of public interest,
- Budget Oversight: This is a post-budget-approval process used to monitor how budgetary allocations are actually spent. This is often carried out by a public accounts committee of parliament;
- Etc.

Friedberg and Hazan classify these tools into 3 "arenas," namely, committee, plenary and others.

The Committee Arena

The Committee Arena comprises of those mechanisms that are employed by legislature outside the main chamber of the House and at the committee level to scrutinise the actions of the executive arm of government. In most democracies, the committee arena comprises of permanent committees and *ad-hoc* committees.

The role and functions of a permanent committee is largely predetermined and are usually designed to correspond to the activities of government ministries, departments or agencies. *Ad hoc* committees, on the other hand, are "appointed to examine issues of interest that are on the public agenda and that members of parliament deem worthy of particular examination" (Friedberg and Hazan).

Contrary to what the general public often assumes, both practitioners and scholars converge on the point that the committee arena (rather than anywhere else) is where parliamentary activities actually take place (Friedberg and Hazan, 2012; Lees and Shaw, 1979). Inter-party cooperation, attention to details and multi-partisan (or even apartisan) approach are the main characteristics of the committee arena.

The Plenary Arena

The Plenary Arena on the other hand is limited to the oversight functions that are played by the legislature as a whole in the main chamber of the house. This invariably includes debates, questions, etc. It is the Plenary Arena that woos public trust for the legislature. But in this very same quality lies the threat to interparty cooperation.

While consensus and national interest remains the flagship qualities of the committee arena,

partisanism and the inherent trait of politicians to (for the purposes of retaining their seats) show concern for the interests of constituents and gain personal reputation and popularity, are the principal features of the Plenary Arena. At the Plenary Arena, compromise and consensus yield to antagonism and disagreement, leading to strict adherence to rules and procedure. This, of course, is not to suggest that partisanism, disagreement, loyalty to party ideology or strict adherence to rules and procedure are entirely inimical. In fact, they may serve as enhancers of probity and accountability and, thus, better oversight of the executive. On the other hand, they, more or less, tend to stall unified progress.

The tools that are used in the Plenary Arena includes, questions or interpellations and demand for agendas.

Other Arenas

This includes oversight tools that are employed by the legislature entirely outside the house of parliament. The most popular tool in this regard is the state audit, which is generally aimed at scrutinizing public spending. Parliamentary visits and other forms of investigation also fall under this Arena.

OVERSIGHT IN GHANA'S PARLIAMENT

Ghana's democracy has been classified as a hybrid of the Westminster parliamentary model and the American presidential model. This classification is supported by Article 78(1) of the 1992 Constitution, which requires the President to appoint not less than half of ministers of State from within Parliament. The historical antecedent of this constitutional arrangement is found in the difficult relationship that existed between the President and the Parliament of the rather short-lived 3rd Republic.

Oversight Functions, Powers and Tools

The 1992 Constitution has given Parliament a huge oversight responsibility. It has also given Parliament a lot of power to carry out those functions. For example, Parliament has the power to determine its own procedure and agenda (of course, subject to the provisions of the Constitution). Neither the President nor even the courts may interfere with the internal affairs of Parliament. Ghana's Parliament enjoys a wide scope of immunity, even from court processes (Article 115 – 120).

Quite apart from this 'internal security' provisions, the Constitution also gives Parliament the power to disapprove public expenditure, grants, loan, taxes, and even the entire national budget. Further, under

Article 103 of the Constitution, Parliament is empowered to form committees, standing or *ad-hoc*, at least one on which every MP must serve. The committees of Parliament may conduct investigations or inquiries into the “activities and administration of ministries and departments as Parliament may determine; and such investigations and inquiries may extend to proposals for legislation.” To make these powers and functions meaningful, the committees are given certain procedural powers of the High Court, and the power to commit for contempt (Article 122 and 123).

Apart from these administrative powers, the Constitution also equips parliament with political power that it may use to back its oversight responsibilities. For example, Parliament may remove the President or the Vice President from office (Article 69); and even pass a vote of censure on Ministers (Article 82). These are just a few of the powers that Ghana's Parliament is endowed with when it comes to the performance of its oversight function.

Challenges and Possible Solutions

In spite of these powers, the Constitution Review Commission (CRC), 2011, finds that “Parliament has in practice not developed into that autonomous, independent and vital institution capable of asserting its authority and discharging its constitutional functions.” The CRC went on to state that “its [Parliament] oversight function, for example, have been asserted only in very minimal terms.”

The causes of the failure of Parliament to, over the years, fully assert its powers, particularly those that would ensure a better oversight, are many. They may be grouped into internal or external causes or challenges.

Internal Challenges

These are challenges the causes of which are found in the express text of the Constitution itself. Financial autonomy is very germane, almost a prerequisite, to independence and, subsequently, strong oversight. The 1992 Constitution, however, does not permit Parliament to have its own funding independent of the Executive. Like many State institutions, Parliament's budget is passed through the Ministry of Finance and subject to the 'approval' of cabinet before its final approval (as a part of the national budget) by Parliament.

The effect of this circular procedure on the independence and autonomy of Parliament is far from settled. On the one hand, it may be argued that the submission of Parliament's budget to the

Minister for Finance for approval infringes on the independence and autonomy of Parliament. On the other hand, it may also be argued that Parliament's ultimate approval of the national budget (which includes its own budget) ultimately amounts, in a way, to its approval of its own budget and, thus, does not constitute an infringement of Parliament's independence. Also, the actual disbursement of the approved budget has over the years proven to be a challenge in this regard. Be that as it may, there seems to be very little doubt that Parliament's independence is enhanced significantly if its finances are not subject to Executive influences.

Another internal factor that chips away from Parliament's oversight capacity is Article 78(1) of the Constitution. The Article compels the President to draw not less than half of her ministers from within Parliament. This arrangement – the hybrid system – is not unique to Ghana. Australia, France and Sri Lanka are just a few examples of countries that practice the hybrid system of democracy. The advantages of this arrangement may be more than one. However, its negative effect on parliamentary oversight, at least in Ghana, is not hard to point out.

It is observed that most politicians see the office of an MP as a platform which significantly increases their chances of becoming Ministers, as the President is bound to appoint at least half of the ministers from that relatively small pool of the party MPs. The effect is that once in Parliament, MPs of the ruling party, strongly desirous of becoming Ministers, find it difficult to dispassionately scrutinize the government. This weakens Parliament's oversight role.

This challenge does not apply to opposition MPs, though. They never get appointed to ministerial positions. Another question that flows from this is whether opposition MPs *alone*, given the fact that their ruling counterparts are more or less beholden to the President, are capable of ensuring effective oversight. Indeed, this is possible, but only when opposition MPs form a majority. Ghana's 4th Republican Parliament is in its 22nd Session and 5th Term; and never have opposition MPs constituted a majority. Therefore, one may have to be extremely optimistic to suggest that opposition MPs could, without the decisive lead of the ruling party's MPs, secure a strong oversight in Ghana's democracy.

Another internal factor that stands in the way of the MPs of the party in government is Article 97(1)(g). Article 97(1)(g), causes an MP who “leaves” his/her political party to lose his/her seat. Another implication of the provision is that an MP who is evicted from his/her party may automatically lose his/her seat and may have to re-enter parliament on another ticket if he/she so wishes. Even though

dissent to one's party's position is hardly a ground for eviction from a party, it is not entirely impossible for an MP who dissents from a crucial party position to be evicted. Article 97(1)(g) therefore deters MPs from being effective in their oversight duties.

Internal challenges, complex as they are, may be surmounted in a relatively easy way. They only involve an amendment of the Constitution. In this regard, the CRC has made some recommendations that would deal a decisive blow to some of the forgoing challenges. For example, the CRC recommends that the President should be given the free hand to choose the minister from wherever. This means that the President may decide to not choose any of the ministers from within Parliament. When this happens, MPs would not see their seats as a catalyst to becoming ministers. This will significantly improve oversight.

One challenge that this 'free hand' recommendation poses, however, is that the President is not barred from choosing all or a majority of the ministers from within Parliament. It is therefore possible for a culture to develop, where successive Presidents will resort to appointing most or all their ministers from within Parliament. This may be counterproductive with respect to the strength of oversight.

External Challenges

These are factors that weaken oversight potentials but cannot be directly traced to any provision of the Constitution. These factors, unlike the internal ones, may not be cured by simply amending the provisions of the Constitution or by legislation.

The overarching external challenge is the quality of MPs. 'Quality' here means the competencies, capacities or abilities of an MP to fully appreciate the oversight duties and to carry them out effectively. Governance involves an almost-endless range of fields: finance, economics, law, sociology, trade, energy, industry, etc. Ordinarily, MPs need not be versed in all the fields. In fact, they need not be masters of any.

However, there is no doubt that MPs who are versed in a field, particularly the field that relates most to the committee on which they serve, are more likely to perform their oversight functions better than the ones who are not. It is, therefore, desirable that Parliament have a mix of MPs whose competencies and capacities touch on all the relevant aspects of governance. This, however, is a challenge in the sense that hardly do electorates take this need into consideration when casting their votes. This challenge, however, does not take away the fact that competent MPs are needed for better parliamentary oversight.

Overcoming the external challenges may be multifaceted. Under the 1957 Constitution, the ability to appreciate the English language was part of the eligibility criteria for becoming an MP. It is however almost certain that such requirements may no longer find space in law today. To go round this challenge, two things become very important - long service and training.

Long service builds experience. There is therefore a great deal of weight in the school of thought that says that political parties should work at retaining some of their experienced MPs in Parliament. The extent to which political parties could ensure this is, however, not unlimited. This is where the second element – training – comes in. Training here is not intended to be a substitute to the need for long service. In fact, it is more of a complement to it. It is imperative that Parliament organise regular training sessions for MPs. This has the potential of increasing the capacity and competencies of MPs towards ensuring better oversight.

Training should not only be aimed at learning new practices. It should necessarily include unlearning bad practices and cultures. Similarly, experience is counterproductive if it involves the accumulation of negative conduct and culture. In this regard, training would also require that MPs visit the legislatures of progressive countries.

The other important challenge, which perhaps needs no further elaboration, is the threat posed by corruption and conflict of interests. The perception of corruption and allegations of MPs putting themselves in positions of compromise do not only destroy oversight, it also destroys Parliament as a whole. Anti-corruption legislation are effective in this regard, but each and every MP's self-discipline, commitment and, above all, conscience is even more important.

CONCLUSION

The challenges to oversight, particularly those of corruption and conflict of interest, may be cured by institutional restructuring and rule making. This measures however have limited efficacy when one is dealing with MPs. This is because MPs themselves are the rule-makers. They also enjoy a relatively wider scope of privileges and immunity from many legal restraints and process that are required for effective enforcement of anti-corruption laws. Further, the Executive which, under Ghana's law, is to a large extent the primary initiator of institutional restructuring and rulemaking, is also the prime beneficiary of weak oversight. The Executive may not be highly motivated to initiate changes that would enhance Parliament's oversight potentials.

Under these circumstances, one may count on alert citizenry, civil society organisation and the judiciary for ensuring effective oversight within the polity. This also means that oversight, though originally an exclusive legislative function, needs to become a function for all.

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