

Alternative Institutions for Promoting Accountability, Transparency, and Openness in Government Behavior in Ghana

Final Report

EAGER/PSGE

**Equity and Growth through Economic Research in Africa:
Public Strategies for Growth with Equity**

Submitted to:

**Harvard Institute for International Development
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Submitted by:

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Table of Contents

Sections	Page
Acknowledgements	iv
Abstract	v
1. Alternative Institutions for Promoting Accountability, Transparency, and Openness in Government Behavior	1
1.1 Introduction	1
1.2 The Policy Context.....	1
1.3 The Economist's Perspective of Governance	2
1.4 Study Objectives	2
1.5 Study Approach.....	3
1.6 The Role of the Private Sector in the Ghanaian Economy	4
1.7 Organization of the Report.....	6
2. The Legislative/Regulatory Process in Economic Theory	7
2.1 Introduction.....	7
2.2 A Paradigm of the Legislative/Regulatory Process in Developing Countries	8
3. Independent Regulatory Agencies in Ghana	13
3.1 Introduction.....	13
3.2 Evolving Credible Independent Regulatory Agencies – the Institutional Context.....	13
3.3 Regulatory Process in Ghana – Results of a Survey.....	24
4. Legislative/Regulatory Process in Ghana- Results of a Survey	27
4.1 The Survey.....	27
4.2 Analysis of Study Objective 1.....	28
<i>Sources of Legislation in Ghana</i>	28
<i>Role and Use of Information by the Private Sector</i>	30
<i>Role of Strategic Groups in the Legislative Process</i>	32
4.3 Analysis of Study Objective 2.....	34
<i>Capacity to Conduct Assessment of Proposed Legislation</i>	34
<i>Economic Impact Assessment of Legislation</i>	35
4.4 Analysis of Study Objective 3 – Alternative Institutions for Promoting Governance	37
<i>Monitoring the Legislative Process</i>	37
<i>Self-Monitoring by Parliament</i>	37
<i>Monitoring by Courts</i>	40
<i>Press Monitoring of the Legislative Process</i>	43
<i>Lobbying Parliament</i>	49

<i>Training of Parliamentarians</i>	51
5. Conclusions and Recommendations for Policy Change	52
References	57

Appendices	62
Questionnaires (1-5)	
List of Some Business and Other Associations in Ghana	
Model Law on Business Impact Analysis of Legislation	

List of Tables

1. Progress on Divestiture of State-Owned Enterprises, 1988-1996	5
2. Establishment and Structure of Selected Independent Regulatory Agencies	18
3. Recurrent Expenditure Estimates for Selected Regulatory Agencies, 1997,1998.....	21
4. Provisions Affecting Agencies' Acquisition and Handling of Information	23
5. Public Utilities Regulatory Commission Activities, 1997-1999	24
6. Results of a Survey of Independent Regulatory Agencies (Questions 1-4).....	25
7. Results of a Survey of Independent Regulatory Agencies (Questions 5-13).....	26
8. Questionnaires Distributed and Returned by Respondents	28
9. Role of Civil Society in Legislative Process	33
10. Civil Society Assessment of the Role of Business Community in Legislative Process.....	33
11. News Media Assessment of Business Community Participation in the Legislative Process.....	33
12. Level of Formal Education by Training in Economics	35
13. Self-Assessment of Knowledge in Economics.....	35
14. Approaches to Impact Assessment of Legislation Before it is Passed	35
15. Economic Impact Assessment of Legislation After Implementation	38
16. Media Coverage of Parliamentary Debate	45
17. Informing Clients About Legislation	45
18. Thoroughness of Media Analysis of Legislation	46
19. Qualification of Media Staff.....	46
20. News Media Attitude toward Formal Procedures for Lobbying	50
21. Media's Rating of Parliament's Ability to Pass Good Legislation.	51

List of Figures

1. The Legislative/Regulatory Process in Ghana	10
2. Prior Employment of Parliamentarians.....	27
3. Educational Background of Parliamentarians.....	27
4. Sources of Legislation	29
5. Information to Business Community – Parliamentarians' View	31
6. Means of Informing the Business Community about Legislation	31
7. Importance of Good Legislation.....	32

8.	Business Interest in Legislative Process – Parliamentarian Assessment	34
9.	Frequency of Economic Impact Assessments	38
10.	News Media Coverage of the Legislative Process – Parliamentarian Assessment	48
11.	Quality of News Media Coverage – Business Community Assessment	49
12.	Quality of News Media Coverage – Civil Society Evaluation.....	49
13.	Parliament’s Ability to Produce Good Legislation – Civil Society Assessment	50
14.	Strategy for Improving Quality of Legislation/Regulation	51

List of Text Boxes

1.	Government Can’t Appoint Officials of State Owned-Media Organisations	17
2.	House Unhappy about Lateness, Absenteeism of MPs.....	39
3.	Here Cometh a Bill to Kill Dissent in Ghana.....	47
4.	PURC Signs an Agreement with Maryland PSC	54

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Abstract

This study explores paths to improved governance in Ghana through institutions for promoting accountability, transparency, and openness in Government behavior. The study combines the results of a survey of the Parliament, business entities, civil society, and Independent Regulatory Agencies (IRAs) with an in-depth analysis of the legislative history of an important economic legislation, the *Value Added Tax (VAT) Law*. It examines how Ghana's elected officials and public bureaucracy originate, structure, and present legislation and rules that affect private sector activities, including the roles played by journalists, business entities, and the civil society in the legislative/regulatory process. The study also examines the prospects for employing identifiable thresholds (benefit/cost analysis, open records rules, comments, etc.) in the rule-making process. Issues related to the role of the press, the courts, and civil society in monitoring Governmental behavior, including the capacity of parliamentarians and IRAs to conduct economic impact assessments of legislation and regulations, are discussed. Finally, alternative institutional mechanisms for effective accountability, transparency, and information openness *vis a vis* the legislative process related to the private sector are presented. The study concludes that the adoption of a formal law on lobbying government could minimize the likelihood of regulatory capture and rent-seeking. Furthermore, the existing *Executive Directives* for proposed legislation could be strengthened by requiring the performance of 'Business Impact Analysis' on both proposed legislation and regulations. Finally, the study recommends training for parliamentarians, business organizations, and the press to strengthen their capacity in research, processing, and dissemination of economic information.

Keywords: Business Impact Analysis, Governance, Independent Regulatory Agencies, Lobbying, Parliament

Section 1

Alternative Institutions for Promoting Accountability, Transparency, and Openness in Government Behavior

1.1 Introduction

This report is prepared for the EAGER initiative of the United States Agency for International Development (USAID). A technical proposal prepared by MayaTech Corporation in 1995/96 was approved following peer review by a consortium of U.S. research bodies coordinated by the Harvard Institute for International Development (HIID). Harvard contracted with MayaTech, who engaged the services of two researchers, Dr. Fred Boadu, Associate Professor, Texas A&M University, and Dr. Mark Nadler, Professor and Chair of the Department of Business, Ashland College, Ohio. Consistent with USAID's goal to promote collaborative research between U.S. scholars and counterparts in Africa, MayaTech also contracted with two Ghanaian researchers -- Professor Seth Bimpong-Buta, Director of the Ghana Law School, and Professor Victor K. Nyanteng, Senior Fellow, Institute of Statistics & Socio-Economic Research (ISSER), Legon, Ghana. There was a true division of labor in the preparation of this report. Dr. Boadu & Dr. Nadler were responsible for the section of the report dealing with regulatory matters and model development. Professor Bimpong-Buta prepared a report on the law of private sector development in Ghana, and Professor Nyanteng and a team of researchers conducted the survey of Parliament and other entities in Ghana. All four researchers conducted the analysis.

1.2 The Policy Context

Ghana has made substantial progress in regulatory reforms since 1983, but there remain many "second-tier" regulatory and policy problems that are less obvious and/or more difficult to address (Foreign Advisory Investment Service (FAIS), 1995). The history of Ghana's macroeconomic policy adjustments and microeconomic reform reveal inefficiencies imposed on the economy by underlying institutional imperfections, especially in the functioning of governance institutions. The business community, donors, and multilateral agencies are demanding greater accountability, transparency, and informational openness in the process of Government. Such changes would promote equitable distribution of the benefits of economic growth, reduce inefficiencies in the form of public sector principal agent problems, regulatory capture, public sector moral hazard problems, and private rent-seeking behavior. Perhaps the greatest benefit of this reform would be the dramatic increase in the participation of non-state actors in the regulatory process. As the history of other democratized countries has shown, broad participation is the most effective way to eliminate the culture of reciprocal mistrust and suspicions on the part of business

and Government, and to build credibility in Government policy. Moreover, governance based on accountability, transparency, and informational openness is critical to the attainment of Ghana's goal of becoming a middle-income country by the year 2020 ("VISION 2020") (Government of Ghana, 1996).

1.3 The Economist's Perspective of Governance

Governance has been defined as, "the effective management of public affairs through the generation of a regime (set of rules) accepted as legitimate, for the purpose of promoting and enhancing societal values sought by individuals and groups" (Charlick, 1992; Carter Center, 1990; World Bank, 1992). The legitimacy of rules (broadly defined to include legislation, regulations, decisions by courts, and guidelines) is contingent on both the *processes* of formulating laws and *applying* the rules (World Bank, 1992). Moreover, the efficiency of both economic and political markets depends on effective and accountable management by the public sector, as well as a predictable and transparent policy framework. This policy framework must work to reduce the risks and transaction costs facing individuals engaged in economizing behavior.

The importance of good governance as a component of sound economic policy is underscored by the recent adoption of the *Code of Good Practices on Fiscal Transparency -Declaration on Principles* (International Monetary Fund (IMF), April 1998, hereafter referred to as the "Code"). The Code is intended to "serve as a guide for members to increase fiscal transparency, and thereby enhance the accountability and credibility of fiscal policy as a key feature of *good governance*." The four main tenants of the Code are (1) clarity of roles and responsibilities between public and private sectors; (2) public availability of information; (3) open budget preparation, audits, etc.; and (4) independent assurances of integrity. The Code is intended to minimize the transaction costs facing private entities in their interaction with the legislative/regulatory apparatus, increase private sector confidence, and reduce uncertainty and decision-making costs facing business. In the case of Ghana, confidence in Government policies will encourage private entities to save, invest, and create jobs, thus promoting economic growth.

1.4 Study Objectives

This study addresses issues related to governance as a rule-making *process* within two institutions in Ghana: (1) the Parliament, and (2) selected Independent Regulatory Agencies (IRAs). Information from a survey of both institutions as well as private sector entities informs the analysis of the nature and extent of public/private sector interaction necessary to promote good governance in Ghana. In addition, the study examines the role of economists and the use of information derived from economic analysis in the legislative/regulatory process. The lack of both human and financial resources may require the

participation of third parties (especially donor agencies) in the legislative/regulatory process in order to reduce information asymmetry problems likely to lead to distrust in negotiated policy outcomes. The establishment of rules and processes in Parliament and within IRAs that encourage media access to information would lessen the distrust of negotiated policy outcomes.

The study addresses the following specific questions:

- How do Ghana's legislators and regulators originate, structure, and present legislation and rules that affect private sector activities, including the roles played by economists, journalists, and the civil society in the legislative/regulatory processes? How do businesses learn about new laws and regulations, and changes in the existing rules?
- What is the capacity of, and what information resources are available to, Parliament and IRAs to conduct studies and employ transparent protocols (cost/benefit tests, performance standards, open records rules, time limits, comment periods, etc.) in the legislative/regulatory process?
- What specific alternative institutional mechanisms will increase the degree of accountability, transparency, and information openness in the legislative process?

1.5 Study Approach

The study combines tools from economics and law. Economic theory allows one to make predictions about the outcome of the economizing behavior of private entities, and the working of an efficient regulatory regime. Legal research entails detailed analysis of laws, court decisions, legislative histories, constitutions, etc. to gain insights into the design and implementation of legislative/regulatory goals, intent, and institutional efficiency.

Three principal sources of data are used in this study. The first source is a literature review of the formal and informal theories of regulation and their relevance to developing countries. Information from the literature was used to develop an economic model of the regulatory/legislative process in developing countries. In addition, the information was used to develop two questionnaires that were administered to selected entities and IRAs in Ghana. The second source of information consists of the responses to the two questionnaires. The first questionnaire was designed to address five specific issues:

- How Ghana's Parliament originates, structures, and presents legislation that affects the private business sector;

- How the private business sector learns about proposed legislation;
- The capacity of Parliamentarians to analyze the economic impact of legislation on the private business sector;
- The role of the media, civil society, and the judiciary in monitoring the legislative/legislation process;
- The prospect for adopting formal procedures such as lobbying rules to facilitate private sector participation in the legislative/regulatory processes.

The questionnaires (Annexes 1-5) were administered to members of Parliament, business associations, private businessmen and women, the news media, and members of civil society.

The second questionnaire administered to selected IRAs in Ghana was intended to explore the internal rule-making processes, and the extent of private sector participation. Information on the cost of regulation, the number of regulations issued per year, and the protocols for handling business records was also solicited. The objective was to determine the extent to which the internal controls within the IRAs function to raise the business community's confidence in IRA operations. The underlying hypothesis is that the absence of business confidence opens the door to rent-seeking and regulatory capture.

The third source of information is a case study of the recently enacted Value Added Tax (VAT) Law (Act 546), and the accompanying regulations, the VAT Regulations, 1998 (LI 1646). The process of negotiating the VAT Law provides anecdotal evidence to verify some of the findings from the two surveys. The case study entailed an in-depth reading of *all* the Parliamentary debates, published documents from the VAT Secretariat, and information gathered from conversations with individuals who participated in Board room discussions on the VAT Law. This case study demonstrates how the failure to allow for public participation in the legislative process could lead to costly policy reversals. The study also underscores some Parliamentarians' responses to questions dealing with the use of economic information in drafting economic legislation.

1.6 The Role of the Private Business Sector in the Ghanaian Economy

The historical dominance of the public sector in the economic and political markets in Ghana changed with the implementation of the Economic Recovery Program (ERP) in April 1983, and the Structural Adjustment Program (SAP) in August 1986. Both programs position the private business sector as the “engine of growth” that revitalizes economic growth in the major sectors--agriculture, industry, manufacturing, and services. The program for divestiture of more than 312 State-Owned Enterprises (SOEs) is evidence of the Government's determination to promote private sector-led growth. As of 1996, 183 (59%) of the SOEs had been divested (Table 1).

Table 1. Progress on Divestiture of State-Owned Enterprises, 1988-96

Mode of Divestiture	to 1991	1992	1993	1994	1995	1996	Total	% Change in Divestiture
Outright Sale	16	4	3	30	19	19	91	50%
Sale of Shares	11	5	2	2	6	1	27	15%
Joint Venture	6	3	1	4	0	4	18	10%
Lease	3	1	0	1	0	0	5	3%
Liquidation	24	2	5	5	6	0	42	23%
Total	60	15	11	42	31	42	183	100%

Source: ISSER (1997), *The State of the Ghanaian Economy in 1996*

The slow progress of the divestiture program and the sluggish performance of the private sector are due to several interrelated macro and micro factors. At the macroeconomic level, the high cost of capital, lack of access to credit sources, inflation, and Government attitude towards business have combined to raise the cost of doing business in Ghana. Capital for both short-term and long-term investment is very high in Ghana due to the rediscount rate (37% at the end of 1999). Since the stock exchange is not fully developed, most Ghanaian businesses simply stay away from this potential source of capital for long-term investment purposes. The Government's participation in the credit market is also 'crowding out' the private sector. At the same time, attempts to monetize the public debt have increased inflationary pressures. These harsh economic conditions have further eroded business confidence in the Government's macroeconomic policy initiatives.

At the micro level, firms are experiencing low capacity utilization rates (Asante, 1995). The macroeconomic problems discussed above have had an adverse micro level impact in terms of firms' ability to undertake internal managerial adjustments to effectively deal with import competition. More relevant to this study are concerns expressed by the private sector about the Government's attitude toward business. Some believe the Government is hostile toward business, so that the policy pronouncements about a new partnership with the private sector are not credible. Issues related to confidence in policies, and the signals sent by the Government, are at the core of the governance problem.

These issues can be addressed by developing open, transparent, and accountable legislative/regulatory systems in support of public-private sector interaction.

1.7 Organization of the Report

In Section 2, a survey of the literature on regulatory economics is used to propose a general theory of regulation in developing countries. Analysis of the information gathered from the survey of Parliamentarians, business entities, the media, and civil society is presented in Section 3. Section 4 addresses the emergence of IRAs. The chapter also discusses the results of a second survey instrument administered to IRAs. Admittedly, these IRAs are in an early stage of development, and the ways in which they interact with the private sector are not well defined. However, the history of the evolution of bureaucracies in advanced countries suggests that IRAs tend to expand very rapidly. Insights into the structure, conduct, and performance of IRAs at an early stage can avoid problems in the future. Conclusions and policy recommendations are presented in Section 5. Copies of questionnaires, contact lists, and a draft law to increase accountability, openness, and transparency in the legislative/regulatory process are attached as an appendix. The draft law responds to the objective of the EAGER research program: to encourage the use of research-generated information to promote actual policy change.

Section 2

The Legislative/Regulatory Process in Economic Theory

2.1 Introduction

Regulatory economics literature has tended to emphasize issues in “regulatory origin,” as opposed to the “regulatory process” (Magat, Krupnick, and Harrington, 1986). The regulatory process literature focuses on the “internal organization and information flow within an agency and between the agency and outside parties.” These models “become the basis for hypotheses about how certain factors - such as compliance costs, trade association activities, and participation in regulatory rulemaking by submitting formal comments that affect the stringency of the rules a regulatory agency sets” (Magat, Kurpnick, and Harrington, p.47). Moreover, the literature makes clear distinctions between the roles of the legislature and regulatory agencies, especially in discussions of the oversight responsibilities of the former. These fine distinctions are not made in the present study because the principle of separation of powers is not firmly established in emerging democracies, and the lines between the regulatory, legislative, and overall policy making processes are blurred.

Regulatory economics literature is comprised of three broad theoretical strands: (1) public interest theory, (2) capture theory, and (3) supply and demand theories. Public interest theory holds that regulations are issued in response to inefficient or inequitable market practices (market failure). Regulations are therefore needed to correct market failure. One could argue that the post independence period in Ghana, whereby the State emerged as the major player in the market, was an extreme application of public interest theory. Capture theory maintains that regulations are supplied in response to the demands of interest groups struggling to maximize the incomes of their members. The third broad strand, generalized supply and demand theories (Posner, 1974; Stigler, 1971), suggest that regulations are supplied to those who value them the most. This framework emphasizes the factors influencing the cost of obtaining legislation.

In addition to the three broad theories, the more recent 'post revisionist' or 'agency' theories (Fiorina and Noll, 1978; Kau and Rubin, 1979; Weingast, ; Denzau and Munger, 1986; and Kalt and Zupan, 1984) attempt to explain the mechanisms by which “voters' concerns are transformed by the political process into policy” (Levine and Forrence, 1990). This literature focuses on the information, monitoring, and agency costs required of voters and other groups to effectively control regulations. These new theories, however, describe “mechanisms of supervision; they do not predict outcomes” (Levine and Forrence,

1990).

Another popular theory is the "external signals theory." According to this theory, regulatory agencies attempt to "minimize conflicts and criticism which appear as 'signals' from the economic and social environment from which they operate" (Noll, 1971; Mitnick, 1980). In contrast, "information-based theories" argue for supplementing the external signals with "internal bureaucratic factors that determine the amount, type, and credibility of information generated within an agency." According to this theory, internal information flows affect the agency's regulatory decisions (Roberts and Bluhm, 1981). Other studies are grounded in "bounded rationality theories," which recognize the limitations on time, information-processing, and problem-solving capabilities on rule-making agencies. Bounded rationality theories maintain that these limitations force agencies to take shortcuts in the rule making process (Cyert and March, 1963).

All the theories outlined above are formal models with limited applicability. They describe the functioning of advanced constitutional/democratic systems characterized by formal procedures and rules, organs of the State that are separate but coordinated in the performance of their defined roles, a well-functioning information market, and an effective mechanism for monitoring the behavior of actors within the organs of State (Gray, 1989). In contrast, informal models consist of a "combination of unclear and loosely applied standards, monopolized authority, wide discretion, and non-targeted incentives which lead to a relatively undisciplined bureaucracy in which negotiation is commonplace. Rather than lobby primarily at the lawmaking stage, private parties potentially affected by policy change can wait until a general law is enacted and then lobby administrators for individualized relief or additional benefits" (Gray, 1989). Even in advanced countries, Joskow (1973) found the informal processes to be important in the rule making process.

Given Ghana's early stage in the democratization process, it requires a model that takes into account the nascent stage of its institutions and regulatory process. While formal models are helpful in understanding the mechanisms of regulation, in the case of Ghana, their applicability is limited. What is needed is a framework that accounts for the more informal and developing stage of Ghana's regulatory process.

2.2 A Paradigm of the Legislative/Regulatory Process in Developing Countries

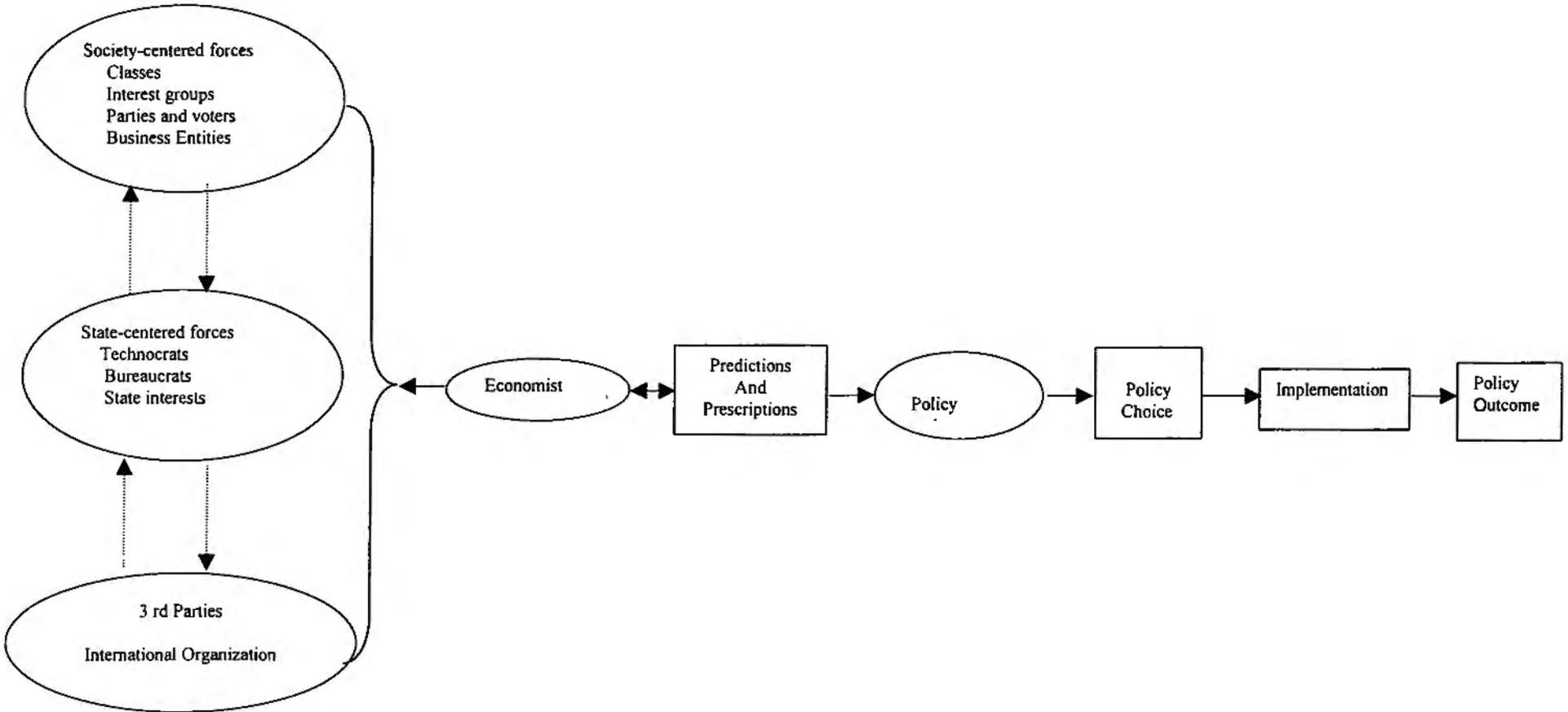
A framework proposed by Meier (1991) is particularly useful in developing a paradigm of the regulatory/legislative process in Ghana because it allows for a more fluid regulatory process. At a conceptual level, this theory posits that the legislative/regulatory process is a multistage production

process involving (1) the initiation of legislation or regulation; (2) bargaining between Government and the private sector regarding the limits of applicability of the proposed legislation; and (3) implementation of the law, and monitoring of commitments made under the law. As shown in Figure 1, Meier's framework places the economist in a central role; he or she is responsible for exposing *all* stakeholders to the risks and transaction costs associated with alternative policy choices. Moreover, the framework suggests that both society-centered and state-centered forces utilize the services of economists in making predictions and offering prescriptions that are passed onto Parliament. Economists also supply information to Parliament either through Parliament's own in-house sources, or through external sources. According to Meier's framework, the outcome of this competitive trading of ideas between Parliament and the private sector is a law or regulation that is widely accepted into national life because the process of enactment made it possible to account for the risks and transaction costs facing all stakeholders.

The above description of the legislative/regulatory process points to the legislature (Parliament), State interests (Ministries), and private sector entities as possible sources of legislation. Moreover, the framework explicitly accounts for the role of international and donor organizations in the legislative process. Such organizations have been the source of some significant economic laws enacted in Ghana over the last decade, included the Bank of Ghana Law (amendment, 1992), the Financial Institutions (non-banking) Law (1993), and the Free Zone Act (Act 504). Given the dominant role of the public sector in economic activity, and the importance of the donor community in promoting the market reform program in Ghana, one would expect most legislation and regulations to originate from these two sources.

Bargaining, as Meier's framework suggests, occurs at all stages of the legislative process. Efficient bargaining outcomes occur when there are symmetric information resources for Parliament and the private sector. However, this requires that Parliament must have the capacity to conduct its own set of predictions and offer prescriptions for policy change. While there is a nascent research division in Ghana's Parliament, its human and infrastructure resources are low. With the possible exception of the Bank of Ghana, the in-house research capability of most of the regulatory agencies is almost non-existent. A plausible hypothesis is that studies supporting proposed legislation and regulation are likely to be carried out by consultants and international organizations as part of project proposals in support of market reforms. This is especially plausible since private sector entities and organizations face similar constraints in financial and human resources and are likely to rely on third-party studies instead of their own in-house sources. Nonetheless, transparency is possible only when competing policy positions can be compared using a common yardstick. To improve the quality of legislation, parties in the bargaining process must be able to understand and utilize economic information.

Figure 1. A Framework for the Legislative/Regulatory Process in Ghana
Source: Adopted from Meier, 1991



Although all members of Parliament and the regulatory agencies have had some formal education, the lack of supporting economics research infrastructure suggests that their ability to use economic information in decision making is limited. In effect, one would expect very low economics research input into the legislative/regulatory process in Ghana. Thus, under the current system, the bargaining stage of the legislative/regulatory process is somewhat stifled.

Transaction costs associated with the implementation and monitoring of regulatory/legislative outcomes must be sufficiently low to support an efficient regulatory/legislative regime. What is being monitored in this framework is the legislature's compliance with the procedural requirements in enacting new legislation, and Government compliance with negotiated policy commitments (cf. Buchanan 1990). This contrasts with the more popular monitoring models that focus on Government monitoring of private behavior or the legislature's monitoring of bureaucratic behavior. In the tradition of Downs (1957) and Niskanen (1971), it may be argued that the incentive for Parliament or regulatory agencies to monitor their own behavior is low. Hence, there is a need for third party monitoring of the legislative/regulatory process. The media plays an important role in this regard. How the media goes about performing this monitoring role depends on the rules governing access to the legislative/regulatory apparatus and the human and infrastructure resources available at media houses. The hypothesis is that inadequate human and infrastructure resources available to the media limit their monitoring role in the legislative/regulatory process.

Another important monitoring institution is the judiciary. The opportunity for citizens to protect their political and economic rights is an essential ingredient in any credible governance regime. At this early stage of democratization, citizens in Ghana are using the monitoring powers of the judiciary only in a *reactive* sense, that is, only in reaction to an impediment placed in their way under a particular law. In advanced democracies such as the United States, citizens use the monitoring powers of the judiciary in a *proactive* sense. Indeed, laws encouraging 'citizen suits' are intended to increase citizen participation in monitoring Government behavior. A well-functioning monitoring regime that encourages citizen participation is possible when the private entity has the resources to expend on monitoring activities through the courts. Resource restrictions facing private entities in Ghana may prevent proactive monitoring activities. A reasonable hypothesis is that members of civil society play a limited role in the legislative/regulatory process. If this hypothesis is valid, then the role of organizations such as the Civil Society Coordinating Council (CIVISOC) is critical in the evolution of effective governance regimes and constitutional democracy in Ghana.

International and donor organizations play an important role in holding Governments to their

commitments. Donor organizations have been instrumental in empowering domestic private sector advocacy groups in their interaction with the legislative/regulatory apparatus (*see for example*, Mason, 1990). In Ghana, for example, the role of USAID in empowering the Private Enterprise Foundation (PEF) to better interact with the legislative process is well established. In addition, through their operation of 'loan conditionalities,' these organizations have forced the governments of developing countries to live up to their legislative/regulatory commitments. Given the key role played by these organizations in the economic reform program of Ghana, one would expect a significant number of legislative/regulatory proposals to originate from these agencies acting through the relevant Government Ministry.

Section 3

Independent Regulatory Agencies in Ghana

3.1 Introduction

When Ghana achieved political independence in 1957, the Government decided that a more active role for the public sector was the best way to promote economic growth. The primary institution for monitoring economic performance of business during the period 1957-1981 was the State Enterprises Commission (SEC). With the dismal failure of the State enterprises, policies shifted towards promoting the private sector as the engine of growth. This shift in policy called for new regulatory institutions to monitor economic activity. Today, there are over 60 regulatory agencies responsible for three broad areas of regulation (1) economic regulation (such as securities regulation, banking regulation, and utilities rate making); (2) management of Government benefit programs (social security and legal aid); (3) management of health, safety, and environmental risk (the Environmental Protection Agency).

This study focuses on issues related to *economic regulation* because the evolution of economic regulatory institutions represents a relatively new phenomenon, thus presenting an opportunity to design policies that help to avoid some of the pitfalls experienced by developed countries. What has emerged in the United States as the *regulatory reform movement* is a manifestation of societal discomfort with both the wide powers wielded by these agencies, and the high cost of their operations. For Ghana and other countries pursuing market reforms, an early understanding of the mechanics of regulatory agency behavior could prevent the waste of valuable resources in the future. Unfortunately, issues related to economic regulation in Sub Saharan Africa (SSA) have received scant attention in the literature. Studies by Stallard (1992), Stryker (1993), and Boadu (1995,1996) are among the few that have addressed the specific issue of economic regulation in SSA.

3.2 Evolving Credible Independent Regulatory Agencies - the Institutional Context

Under the Constitution of Ghana, regulatory commissions are statutory bodies established by an Act of Parliament (Article 190 (1)(d)). Parliament also determines the functions and membership of the regulatory agency. A member of a regulatory agency may not be (1) victimized or discriminated against for having discharged his duties faithfully in accordance with the Constitution, or (2) dismissed or removed from office or reduced in rank or otherwise punished without just cause (Article 191). The

Constitution of Ghana has been described as a “development-oriented” constitution in that the protection of private property, the right to inheritance, and private sector initiative are core principles (Afar-Gyan, 1995). The protections under Article 191 were created to ensure viability and stability of Government programs (*Report of the Committee of Experts, 1991*). Adherence to the Constitutional protections offered to IRAs may be argued to promote confidence in the regulatory agencies by insulating them from political pressure and capture by strategic groups and individuals.

The voluminous literature on regulatory agencies attests to the difficulty in explaining their functions and behavior. While an enabling statute often specifies the functions and objectives of an IRA, the determination of whether the IRA is actually fulfilling the legislative intent is another matter. Of particular concern to a country that is promoting private initiative as a policy is whether the actions and barriers raised by the operations of IRAs are counter to the policy. At a minimum, IRAs must (1) function to evoke confidence in the business community, (2) prevent capture by strategic groups, and (3) avoid unchecked growth in agency size and budget.

The extent to which IRAs in Ghana meet these minimum requirements is not easily determined partly because performance records for most IRAs are scarce. A fallback approach is to analyze the enabling statutes, Executive and Legislative Instruments (EIs & LIs), and other available materials, in the context of those issues that the general regulatory economics literature deems pertinent. Issues related to the following have been extensively discussed in the literature, and will be examined using the information on IRAs in Ghana:

- Appointment and tenure of officers and staff of an agency
- Degree of autonomy of the agency
- Extent of private sector participation in agency deliberations
- Control of agency finances and budgets
- Information gathering and “chain of custody” of acquired business information.

The hypothesis is that a combination of the provisions operates to promote the attainment of the objectives sought by establishing regulatory agencies in Ghana. Also, the provisions in the enabling statutes may have differential weight in promoting the attainment of a particular objective. There are considerable degrees of freedom in defining how these provisions work to promote the three objectives sought by IRAs in Ghana.

- *Appointment and Tenure of Commissioners*

The power to appoint persons to hold or act in an office of a regulatory agency belongs to the President (Table 2). While the President enjoys wide discretion in the exercise of this appointment power, there are indications that appointments are made to protect confidence in the agencies. For example, appointments to the National Communications Authority and the Public Utilities Regulatory Commission (PURC) are made in consultation with the Council of State, an advisory body established under the Constitution. Also, in politically sensitive situations, the President has prevented erosion of business confidence by appointing to persons who are well-respected and trusted by civil society and the business community to regulatory agencies (*cf. Gray, 1991, p. 433*). The establishment of PURC, and the appointment of an eminent constitutional scholar as Chairman is a case in point. Under what most considered to be pressure from the donor community, the Water and Electricity Corporations of Ghana increased utility rates to reflect the true cost of their services. The decision led to a near quadrupling of utility prices. The furor that followed led to a reversal of the decision and subsequently to the formation of PURC. The appointment of a renowned constitutional scholar to head the Commission gave instant credibility to PURC and effectively ended public discontent with the management of the public utilities in Ghana. Unlike ministerial appointments that have been hotly debated in the press, appointments to agencies have not triggered any major public discussions.

- *Autonomy of Regulatory Agencies*

The business community is more likely to have confidence in an agency that is quasi-autonomous in its regulatory activities. While it is too early to determine the extent to which regulatory agencies are free from Governmental controls, it may be argued that the Government has attempted to build business confidence by granting autonomy to those agencies whose decisions directly impact business decision making. For example, in the case of PURC and the Securities Regulatory Commission (SRC), the enabling statutes explicitly grant autonomy to the agencies to determine both the substantive and procedural aspects of their operations. In contrast, in the case of the National Insurance Company (NIC) and the Food and Drug Board (FDB), the enabling statutes indicate that the Government is the primary source of control over decision making. In the case of the NIC, it should be noted that the State insurance company, the Social Security National Insurance Trust (SSNIT) controls over 80% of the insurance market. In the case of the FDB, the popular market failure argument explains the Government regulation of food and drug safety.

One commission (*not surveyed in this report*) whose independence has been called into question is the National Media Commission (NMC). Members of the opposition party have implied that the commission is subject to political control that deprives the minority parties "equal time, space and access" to the State-Owned Media (SOM). In 1992, the minority parties brought an action in the Supreme Court against the

Ghana Broadcasting Corporation (GBC) to ensure equal access to the press consistent with the provisions under the Constitution of Ghana, arguing that "the State shall provide fair opportunity to all political parties to present their programs to the public by ensuring equal access to the State-Owned Media" (Article 55 (11), (*National Patriotic Party (NPP) v. Ghana Broadcasting Corporation* (writ No CSI/93 delivered 30th November, 1993)). In a unanimous ruling, the Supreme Court stated that the SOMs shall grant "equal time, space and access to the activities of all registered Political Parties." In a motion urging the NMC to enforce the Supreme Court ruling, the minority member invoked a classic regulatory capture argument, "the unpalatable, compelling crux of the matter is that SOM in our country, is heavily biased, and controlled by the ruling NDC (National Democratic Congress), and that they will continue to be its mouthpiece" (*Private Member's motion June 17th 1999, Parliamentary Debates*).

The response by the Majority Whip was equally compelling. The majority asserted the independence of the NMC under Article 172 of the Ghana Constitution, "the National Media Commission shall *not be subject to direction or control by any authority*" (authors' emphasis). The argument being presented is that the Parliament was the wrong forum to seek enforcement of the Supreme Court ruling. The matter was referred to the NMC to investigate and report to the Parliament. Ordinarily, the regulatory capture theory has focused on private individuals' capture of the regulatory apparatus. In this case, the accusation is directed at the Government. This matter only highlights one of the well-known problems in building effective governance institutions in transition economies - the limitations of the Government's ability to self-monitor. A recent decision by the Supreme Court (Text Box 1) renders the Parliamentary debate moot, since the Supreme Court has stripped the Government of powers to appoint members of the NMC. For all practical purposes, this ruling marks an important turn in efforts to establish an independent media in Ghana.

TEXT BOX 1 (Source: JOYFM; 02/12/2000)

Government Can't Appoint Officials Of State Owned-Media Organisations

The Supreme Court has ruled that it is the responsibility of the National Media Commission and not the Government to appoint Chairmen, other board members and chief executives of all state-owned media organisations. The court by a unanimous decision therefore declared as null and void the appointment of Chairmen, other members of governing bodies and chief executives of state-owned Media made after 1992. The seven-member panel, chaired by Mr. Justice E .K. Wiredu, ruled that those appointments made after the coming into force of the Fourth Republican Constitution of 1992 were in contravention of Article 168 of the constitution, which deals with the appointment of board members of state-owned media.

The article states that "the National Media Commission (NMC) shall appoint the chairmen and other members of the governing bodies of public corporations managing the state-owned media."

The court's ruling was contained in a judgement delivered in a case in which the Media Commission in 1997, filed a writ against the Attorney-General claiming that the Government acted unconstitutionally by making such appointments because it contravened the Freedom and Independence of the Media as enshrined in the constitution. The Commission therefore averred that those appointments be declared null and void.

The media organisations are the Ghana News Agency (GNA), New Times Corporation (NTC), Graphic Corporation, now Graphic Communications Group Limited, and the Ghana Broadcasting Corporation (GBC). The other members of the panel were Mrs. Justice Joyce Bamford-Addo, Mr. Justice A.K.B. Amplah, Mr. Justice E.D.K. Adjabeng, Mr. Justice George Acquah, Mr. Justice William Atuguba and Ms Justice Sophia Akuffo.

Table 2. Establishment and Structure of Selected Regulatory Agencies

AGENCY	Enabling Legislation	Appt. of Comm./Board	Tenure	Independence of Commission	Allowances/Funds	Termination
Public Utilities Regulatory Commission	Established as Statutory body by Act of Parliament (Public Utilities Regulatory Commission Act (Act 538)).	Nine members appointed by President in consultation with Council of State (Sect. 2 (a-f)).	Hold office for a period not exceeding 5 years; eligible for renewal (Sect. 5(1)).	Commission not subject to direction, control, or authority in performance of its functions (Sect. 4).	Determined by the President. Commission funds consist of: 1. Govt. subventions, 2. Loans to Commission, 3. Grants, 4. Monies from Commission activities (Sect. 35(a-d)).	1. Absence from 3 consecutive meetings without sufficient cause, 2. Removal by President for stated reason, or 3. Voluntary resignation by member. (Sect. 5(2-4)).
National Insurance Commission	Established as Statutory body by the Government under the Insurance Law, 1989 (PNDCL 227).	Nine member governing "Board" appointed by the Government (Sect. 4(1)(2)(a-g)).	Hold Office for 3 years subject to re-appointment (Sect. 4(3)).	Government may give directions on matters of policy and the Commission shall give effect to such directives (Sect. 3).	Allowance determined by the Secretary (Sect. 4(5)). Funds consist of: 1. Fees paid by Insurers, 2. Grants from govt., 3. Commission revenues, 4. Loans from Govt. or Bank, 5. Donations from any source, 6. Monies allocated by Law.	1. Voluntary resignation, 2. Removal by Government on the advice of Secretary (Finance Minister) (Sect. 4(4)).
Securities Regulatory Commission	Established as Statutory body by the Government under the Securities Industry Law, 1993 (PNDCL 333).	Twelve members appointed by the Government (Sect. 2(1)(a-h)).	Hold office for 3 years subject to re-appointment (Sect. 2(2)).	Commission shall regulate its own behavior (Sect. 4(9)).	Govt. determines the Director's allowance. Allowance for other Commission members are determined by the Secretary (Sect. 5(1)(2)). Funds of the Commission shall consist of: 1. Grants from Govt., 2. Loans from Govt. or banks, 3. Monies accruing to Commission, 4. Grants from donors approved by Secretary (Sect. 6(1)(a-d)).	1. Voluntary resignation, 2. Unsound mind. 3. Three absences from meetings without just cause, 4. Found guilty of grave misconduct, 5. Death sentence or a term of imprisonment of 12 months without option of a fine, 6. Declared bankrupt, 7. Loss of professional license by court order. (Sect. 3(3)(a-f)).
Food and Drug Board	Established as statutory body by the Government under the Food and Drugs Law, 1992 (PNDCL 305B) and subsequent amendments Food and Drugs (Amendment) Act, 1996 (Act 523).	Fifteen members appointed by the Government (Sec 29 (1)(a-n)).	Members of the Board other than <i>ex officio</i> members shall hold office for 3 years subject to re-appointment (Sec 29 (3)).	Board operates under the control and supervision of the Ministry responsible for Health (Sec 27 (2)). However, the Board controls the procedure for its meetings (Sec 30 (5)).	No provisions on finances of the Board. The Board is authorized to appoint Committees but the remuneration or the Minister of Health (Sec 31 (2)) determines allowances of Committee members.	No provisions on termination or tenure of Board members.

AGENCY	Enabling Legislation	Appt. of Comm./Board	Tenure	Independence of Commission	Allowances/Funds	Termination
National Communications Authority	Established as Body Corporate under the National Communications Authority Act, 1996 (Act 524).	The governing body of the NCA is a 7-member Board appointed by the President in consultation with the Council of State (SEC 5 (1)(2)(a-d)).	Members of the Board other than the Director-General shall hold office for 4 years and are subject to re-appointment. The Director-General is appointed under the Public Services Commission rules and his/her terms of office are determined in his letter of appointment by the Minister (Sec 6 (1)).	The Minister may give directions to the Authority as appear to him to be in the public interest (Sec 4). The Board sets the rules for its meetings (Sec 8).	The monies of the Authority consist of: 1. Monies authorized by Parliament, 2. Loans granted by Government, 3. Revenues generated by the Authority, 4. Gifts and monies from any source (Sec 31 (1)(a-d)).	A member of the Board may resign or may be removed by the President for stated reasons (Sec 6 (2)). The Director General's tenure is subject to rules under the Public Services Commission. A member may be removed for failure to disclose interest in a contract involving the Authority (Sec 7 (8)).
National Board of Small-Scale Industries	Established as a Statutory body under The National Board For Small-Scale Industries Act, 1981 (Act 434).	Eight members appointed by the President on the recommendation of the Minister responsible for Industries (Sec. 2 (1)(2)).	The Chairman and other members of the Board shall hold office on such terms and conditions as the President may determine (Sec. 2 (3)).	Subject to the provisions of the Act, the Minister responsible for Industries shall be responsible for the Board (Sec. 13). The terms and conditions of employment of the Executive Director and the Deputy Executive Director shall be determined by the Minister responsible for Industries on the advice of the Public Services Commission (Sec. 5 (b)(2)).	The funds of the Board include: 1. Government grants, 2. Loans to the Board by Govt., 3. Grants from international and donor organizations, 4. Any moneys accruing to the Board in the course of performance of its functions, 5. Gifts.	A person shall cease to be a member of the Board if: 1. He is guilty of any unethical behavior or guilty of any serious misconduct in respect of his duties as a member of the Board and such behavior or misconduct is certified in writing by no less than two-thirds of the members of the Board; 2. He is absent from three or more consecutive meetings of the Board without sufficient reason; or 3. In the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his request, from practicing his profession in Ghana or in any other country by order of any competent authority (Sec 3 (a)(b)(c)).

AGENCY	Enabling Legislation	Appt. of Comm./Board	Tenure	Independence of Commission	Allowances/Funds	Termination
Bank Of Ghana	Established as a continuing body corporate under the Bank of Ghana Law, 1992 (P.N.D.C.L 291). Prior law was Bank of Ghana Act, 1963 (Act 182), and subsequent amendments.	Twelve members constitute the Board of Directors. A Governor and two Deputy Governors appointed under the law, a representative from the Ministry of Finance, and 8 other directors appointed by the Government. (Sec. 7 (1)(2)(a)(b)(c)(d)).	The members of the Board other than the Governor and Deputy Governor shall hold office for a period of three years subject to re-appointment (Sec. 9 (1)). The Governor and Deputy Governors shall be appointed for a term of five years subject to re-appointment (Sec. 16 (2)).			
Ghana Standards Board	Established as a Body Corporate under the Standards Decree, 1973 (NRCD 173) (Sec 1 (1) and subsequent amendments Standards (Amendment) Decree, 1979 (AFRCD 44).	Six members constitute the Board of Directors. A Chairman appointed by the Government, a Director appointed under the rules of the Public Services Commission and four other members appointed by the Government (Sec 4 (1)(a-c)).	No provisions on tenure of Board members.	The Board is responsible for setting standards for both imported and domestically produced products. The Minister for Industries may upon the advice of the Board enact by-laws affecting employment, terms of office, functions, etc. of the Board (Sec 3), and (Sec 8 (1)(a-d)).	The funds of the Board consist of : 1. Funds appropriated by Government, 2. Donations, gifts, fees, royalties, etc., 3. Sale of property, 4. Other income (Sec 14 (a-e)). The Board may borrow money from Government, Corporation, local authority, or person, with the prior consent of the Minister of Finance (Sec 15).	No provisions on termination of Board members.

- *Agency Finances and Budget*

The enabling statutes are silent on the sources of financing for the Bank of Ghana and FDB. For the rest of the IRAs, there are four main sources of funding (1) Government subventions, (2) loans, (3) grants, and (4) donations and gifts. Agency heads are required to submit yearly budget proposals, but there is no indication that budget allocations are made on any strict rules regarding previous performance. Also, there is no evidence that a Parliament responsible for approving final budgets actually uses the approval process as a means to discipline IRAs. A more plausible hypothesis is that budgets are allocated on the basis of current needs. For example, the FDB may experience a sudden increase in budget allocation if, in a particular year, the Board was involved in drafting several food and drug guidelines.

Table 3. Recurrent Expenditure Estimates for Selected Regulatory Agencies, 1997,1998*

Agency**/Year	1997	1998	% Change
PURC	-	600,000,000	-
FDB***	33,000,000	88,579,000	168%
GSB	2,459,930,000	2,933,926,000	19%
EPA	565,563,000	638,317,000	13%
NBSSI	864,679,000	970,270,000	12%

Source: Government of Ghana, *Annual Expenditure Estimates, 1998*

* All amounts in Ghana Cedis ((3,500 Cedis = \$1 US Dollar) (January 2000))

** The EPA was not surveyed.

*** The high percentage increase in the budget of the FDB is only a 'newness' effect. The increase reflects setup costs.

The donor community is the primary source of grants to IRAs. It is not exactly clear under what circumstances an IRA may be able to contract a loan. Also, there are no protocols directing who may give a gift to those IRAs permitted to accept gifts under the statutes. The acceptance of a gift from a private entity may taint the image of an IRA if the public interprets the gift as a means to buy influence. An IRA may contract a loan, or receive a grant, donation, or a gift only with the prior approval of the Minister of Finance. This requirement helps to monitor those entering financial relationships with the IRA. However, the approval of the Minister does not eliminate the possible negative effect on the independence of the agency. As Ghana pushes towards an advanced stage in market reform, the Government may want to explore the extent to which IRAs may expand the share of their finances through a user-fee system. Discussions with the Director of the FDB suggest that the Board will be moving towards a user-fee system in the future as a means to raise money to support its activities. While the Government's support has been quite generous (*see Table 3 above*), there are concerns that such large allocations to the FDB will be severely tested over time and threaten the Board's functions.

- *Acquisition of Information and Chain of Custody*

Agencies need information to be able to carry out their regulatory functions. The enabling statutes establishing these agencies explicitly authorize the agencies to compel the production of information, or carry out physical inspection of premises to gather the needed information. To facilitate the agencies' work, businesses may be required to (1) keep records, (2) file reports, and (3) give testimony or appear before the agency to provide needed information. For businesses, a critical concern has always been confidentiality of information provided to agencies. This is of major importance in a country like Ghana, where protocols for handling information may not be well established. For example, in market-led economies, intentional or unintentional mishandling of a firm's financial information or trade secret could spell doom for the firm's competitive position in the market. For such IRAs as the SRC or the Ghana Standards Board (GSB), the handling of firms' and private individuals' business information may be the single most important aspect of their operations.

Table 4 summarizes the various provisions concerning the acquisition of information by IRAs. The table shows that while IRAs have very expansive powers to acquire information, there is some effort to protect information given to an IRA. For example, the FDB may release information only with the prior written consent of the party who furnished the information. What is interesting about the provisions is that the penalties attached to information acquisition seem to focus on punishing the owner of the information. With the exception of the FDB, no agency has provisions for the punishment of agency officials who release information to a possible competitor. In the case of the GSB, an *indemnity clause* protects officials who release information. Even in the case of the FDB, the size of the penalty for releasing business information may encourage non-reporting by private parties. For example, if a private entity owns property rights to a formula for producing a particular drug, that company stands to profit if the drug has export potential. However, the company would need to obtain a license from FDB. The license approval process requires that the party give FDB information on the privately owned formula. Should a staff member from FDB release this information to a third party, they would be subject to a fine of 100,000 New Cedi, the equivalent of 35 U.S. dollars at current exchange rates. It is understandable why private parties may wish to avoid the FDB altogether. The Government may want to examine the general area for protecting circumstantially relevant business information and the chain of custody within IRAs.

Table 4. Provisions Affecting Agencies' Acquisition and Handling of Information

Agency	Mode of Information Acquisition	Types of Information	Secrecy Requirements	Penalties related to Information acquisition
Public Utilities Regulatory Commission	<ul style="list-style-type: none"> • Periodic reports from PURC • Written request by Commission • Physical inspection of premises 	<ul style="list-style-type: none"> • Finances and operations • Contracts, reports of engineers, documents, books, accounts, etc. • Answer all questions submitted by commission 	None	<ul style="list-style-type: none"> • 10 million Cedi for filing false report. • 10 million Cedi or 2 year imprisonment, or both for impeding the work of an officer of the commission
National Insurance Commission	<ul style="list-style-type: none"> • Report 6 months at the end of each financial year • Upon request by the NIC • Investigation by NIC • Physical inspection of premises 	<ul style="list-style-type: none"> • Financial, capitalization, reserves, solvency • Records of business transactions 	Any person may inspect documents submitted to the NIC by an insurance company upon the payment of the prescribed fee.	• 500,000 Cedi or 2 year imprisonment, or both for violations of any of the provisions under this law.
Securities Regulatory Commission	<ul style="list-style-type: none"> • May order the production of books • May inspect audits and books • May copy or take extracts • Magistrate may order production of books 	Business or affairs of <ul style="list-style-type: none"> • the stock exchange • dealers in securities • dealers in unit trusts and mutual funds • auditor reports • reports, financial position reports 	Information can only be disclosed to the commission. Information can be disclosed with the consent of the party who has custody. Information may be produced in criminal proceedings	<ul style="list-style-type: none"> • It is not an excuse to refuse release of information for fear of self-incrimination • Refusal to provide information or provision of false information draws a fine of one million Cedis or to one-year imprisonment or both.
Food and Drug Board	<ul style="list-style-type: none"> • May inspect animals and foods sold to the public. • Physical inspection of premises. • Open and examine packages • Examine books, documents, and records. • May break open a container or door to gain entry. 	The Board may order any person to supply particulars of the composition, chemical formula, results of research and investigations carried out by the firm, and use of the substance sold or used in the preparation of drugs. Public analysts appointed to determine the contents of foods, drugs, and devices offered by firms to consumers.	No information furnished to the board may be released without the prior written consent of the person supplying the information.	It is an offence to release information without the written consent of the party supplying the information. The penalty for a first offence is Cedi 100,000 and/or imprisonment of 6 months. The penalty for a second offence is Cedi 500,000 and/or imprisonment of two years.
Ghana Standards Board	Information to be supplied by applicants for licenses and Standard marks.	No provisions on the type of information required by the Board. Any person desiring to use a standard mark in connection with any goods, commodity, process, or practice may make application to the Board in such a manner as the Board may determine or as may be prescribed.	All information obtained by the Board or any officer or employee or by any person in the course of administering this law as to the formula, process, or practice shall be treated as confidential.	It is an offence to: <ol style="list-style-type: none"> 1. Convey the impression that a good, process, or device complies with the standards set by the Board; 2. Convey the impression that a mark complies with the standards set by the Board; 3. To continue using a license that has been revoked by the Board; or 4. Compares an unlicensed product to one that has been licensed by the Board. These offenses are subject to a summary fine not to exceed Cedi 500 thousand and or a term of imprisonment not exceeding two years. There are no provisions on punishment for disclosure of business information by the Board. There is an indemnity clause protecting members of the Board and employees of the Board.

3.3 Regulatory Process in Ghana - Results of a Survey

In addition to the review of statutes and legislative instruments, a survey of regulatory agencies was undertaken to gain some insights into the internal operations of agencies. The results of the survey are summarized in Table 6. With the exception of the respondents from the GSB (who identified private individuals as a source of regulation), all respondents attributed the initiation of regulation to a committee within the agency. It is not exactly clear the context within which a private individual becomes the primary source of regulation, unless such an individual wields considerable influence over the agency.

Responses to Question 3 show that at least for now, only a few regulations are being issued by agencies (3 in the case of PURC (*see Table 5 below on PURC activities since its establishment*), and 4 in the case of the FDB). Neither the Bank of Ghana nor the GSB could estimate the number of regulations issued for the previous two years. This may be because the person responding to the survey is not responsible for documenting regulatory matters. One would expect the Bank of Ghana (BOG), as the regulator of financial institutions, and the GSB, as the regulator of product standards and safety, to have issued a considerable number of regulations. Responses to Question 4 indicate that agencies are not issuing regulations based on any identifiable efficiency criteria, for example, a cost/benefit assessment. Actually, some respondents expressed surprise at the suggestion that the cost of regulations should be considered in deciding whether to issue a regulation. This does not bode well for private sector entities because the failure to define objective criteria significantly expands the discretion of the regulatory agencies.

Table 5. Public Utilities Regulatory Commission Activities, 1997-1999

Year	Rate Hearings	No. of Consumer Complaints	
		Electricity	Water
1997	2	-	-
1998	2	12	6
1999	1	5	2

Source: Public Utilities Regulatory Commission (personal correspondence)

Responses to Questions 5-13 (Table 7) point to a confused regulatory environment in Ghana. For example, while an agency like the FDB issued four regulations (Question 3), no background studies were performed (Question 5). The results also show that most agencies received no private input in issuing regulations (Question 7). The responses to Question 8 point to efforts at encouraging private sector participation in the regulatory process. In the case of the GSB, however, notice is given after the regulation has been issued. This may open the door for capture especially since private entities may propose regulation (response to Question 1).

Table 6. Results of Survey of Regulatory Agencies *

Responses to Questions 1-4				
Body	Question 1	Question 2	Question 3	Question 4
PURC	Committee	Committee	3 in 1998	Nk
NIC	Committee	Committee	None	Nk
NCA	Committee and Ministry	Individual and Committee	None	Nk
NBSSI	Ministry	Committee	None	Nk
BOG	Committee	Committee	Nk	Nk
GSB	Committee, Ministry and Private Citizens	Committee	Nk	Nk
FDB	Committee	Committee	4 in 1998	Nk

* SRC is a new body and had not started operation at the time of survey. Hence, it was not included in the analysis.

SURVEY OF REGULATORY AGENCIES

1. Who proposes regulation in your agency?

- a) A designated individual
- b) A committee
- c) From the Ministry
- d) From private citizens
- e) From the President's office
- f) From Parliament

2. Who handles regulatory affairs in your agency?

- a) An individual
- b) A committee
- c) Ad hoc, we appoint an individual or committee as needed

3. How many new regulations did your agency issue in:

- a. 1998 -
- b. 1997 -
- c. I Do Not Know
- d. nil

4. Considering all the people and processes involved in passing regulation, about how much (in money term did your last regulation cost your agency? (If not known put "nk")

_____ Cedis

Table 7. Results of Survey of Regulatory Agencies (Questions 5-13)

Regulatory Body							
Que.	PURC	NIC	NCA	NBSSI	BOG	GSB	FDB
5	Yes	N/A	Yes	Yes	Yes	Yes	No
6	Consultant	N/A	Consultant	Internal Rev. Survey	Relevant Dept.	Technical Committee	N/A
7	Yes	N/A	No	No	Not In All Cases	No Response	Yes
8	Yes	Yes	Yes	Yes	Sometimes	No*	Yes
9	1 - 21 Days	Minimum 90 Day	90 Days	One Month	Not Standardized	N/A	No Response
10	Yes	Yes	Yes	Yes	Mainly No	Yes	Yes
11	Planned	Yes	Yes	No	Yes	Yes	Police Is Partner
12	N/A	N/A	N/A	Min. Of Trade	No Response	N/A	No Response
13	Planned	Yes	Planned	No	Yes	Mkt Surveillance	Planned

*Notice of the regulation is published in the Gazette after the regulation has been made. Only the strategic stakeholders are given prior notice for comment.

Questions

5. Were any studies performed to outline the issues and impacts of the regulation?
6. Who performed this study?
7. Did other bodies or private entities submit position papers on the proposed regulations?
8. Does your agency give notice prior to proposing new regulation?
9. How much notice (in days) does your organization give prior to introducing a new regulation?
10. Are your regulatory processes and discussions open to the public?
11. Do you have an enforcement division within your agency?
12. If no, what agency/agencies oversee the enforcement of regulations from your agency?
13. Do you conduct post-regulation impact analysis?

Section 4

Legislative/Regulatory Process in Ghana - Results of a Survey

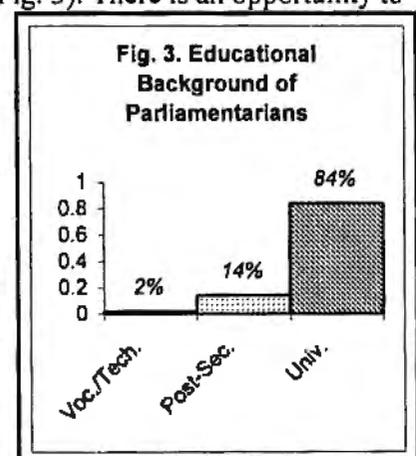
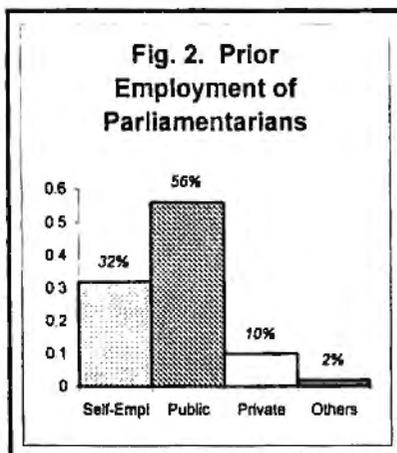
4.1 The Survey

A survey of selected institutions and private sector entities was conducted during the period October 1997 to May 1998. The survey results are interpreted within the context of a case study of the enactment of a business-related law, *The Value Added Tax*. The case study is used as anecdotal evidence to verify some of the hypotheses proposed in this study. A discussion of the respondent characteristics is followed by an analysis of the survey results. The discussion is organized under the three objectives of the study.

The current Parliament was inaugurated in January 1997 and will run until December 2000. Questionnaires were distributed to all 200 Parliamentarians in early November 1997. Parliamentarians were slow in returning completed questionnaires and the response rate was low (25% of the total distributed). Two observations about the backgrounds of Parliamentarians are especially pertinent to an understanding of the relationship between the legislative/regulatory process and the private sector. First, a majority (56% compared to 10% private) of Parliamentarians were public sector employees prior to entering Parliament (Fig. 2). There may be gaps in terms of Parliamentarians' knowledge of business practices and culture. These gaps can only be filled by making the private sector a true partner in the legislative/regulatory process. Second, the majority (84%) of Parliamentarians has a college education (Fig. 3). There is an opportunity to

train Parliamentarians in the use of economic information in decision-making.

Questionnaires were also distributed to 42 business associations and 50 businessmen and women using a simple "find and interview" approach. The business associations returned 37 responses (88%), and individual businessmen and women returned 46 (92%). All 21 news media houses responded to the survey. Twelve respondents were from the print media and the remaining respondents represented the electronic media. A group with diverse professions and occupational persuasions were grouped into a category "Civil Society" and included in the survey. One hundred and fifteen questionnaires were distributed to the group. About 70% of the



questionnaires distributed were returned. The group was divided into sub-groups as follows (the proportion in the sample is in parentheses): (1) Managers/Administrators (28%); (2) Economists, Lawyers, Accountants, and Bankers (21%); (3) Researchers, Lecturers, and Consultants (18%); (4) Analysts, Engineers and Chemists (13%); (5) Medical Doctors and Nurses (10%); and (6) Students (10%).

Table 8 shows the entities surveyed, the number of questionnaires distributed, and the number returned. Out of 428 questionnaires distributed, 234 (54.7%) were returned and used in the analysis.

Table 8. Questionnaires Distributed and Returned by Survey Respondents

Questionnaires			
Group	Distributed	Returned	% Returned
Parliamentarians	200	50	25%
Business Assoc.	42	37	88%
Bus. Men/Women	50	46	92%
News Media	21	21	100%
Civil Society	115	80	70%
TOTAL	428	234	55%

Source: From Survey.

4.2 Analysis of Study Objective 1

The first objective in this study is to examine selected issues related to the basic elements of rule making, and the role of the private sector and other stakeholders in the process. The following three specific issues are addressed:

- Sources of legislation in Ghana
- Role and use of information by the private sector
- Role-played by strategic groups (economists, business entities, journalists, and civil society) in the legislative process.

- *Sources of Legislation in Ghana*

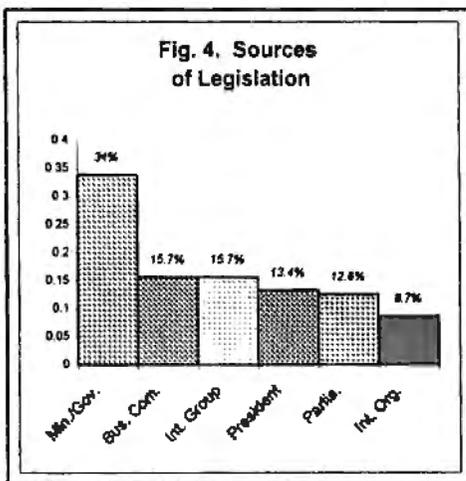
Legislation originates from several sources in Ghana. The legislative power in Ghana is vested in the Parliament (1992 *Constitution*, Art. 93(2)). Under Article 110(1) of the 1992 Constitution, Parliament may, by standing orders, regulate its own procedure. Thus, Standing Orders 109-115 contain rules governing voting in Parliament, secret voting, declaration of personal interest in contracts, unqualified person sitting or voting,

voting by members, and the procedure in case of a division in voting. The power of Parliament to set its own rules was affirmed in the recent case of *J. H. Mensah v Attorney-General* (Supreme Court, May 28, 1997, *unreported*).

Under the Constitution, the President is responsible for introducing bills in settlement of financial matters (Art. 108(a)&(b)). A Member of Parliament may introduce a bill by, or on behalf of the President. This can be done under Standing Order 120(2) of Parliament, which authorizes any Minister or a Member of Parliament to introduce a Bill on behalf of the President after giving notice.

Legislation may originate from an individual acting through the political party organization. The Constitution guarantees the right of individuals to belong to political parties, and in so doing participate in the political process. Under the directive Principles of the State (Article 36(2)(b)(c) and (4) of the 1992 Constitution), the State is to, among other things, "ensure that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities for contributing to the overall development of the country." It was suggested earlier that donor and multilateral agencies are important sources of legislation in Ghana. Acting through the relevant Government ministries, these agencies often propose legislation as part of project implementation. For example, the implementation of the Trade and Investment Program (TIP) managed by USAID/Ghana led to legislation that improved the ports and customs procedures.

According to the operating hypothesis, most legislation should originate from public sector sources given the dominant role of the Government in the market and the participation of the donor community in the ongoing ERP. Stated another way, the private sector plays a lesser role in proposing legislation for possible enactment. The hypothesis is partly supported by the results of the survey, as well as the case study of the VAT Law (Act 486). From the perspective of Parliamentarians, the most important source of new legislation is the Government



ministries. This was indicated by one-third of the respondents (Fig. 4). The business community and special interest groups were the next most important sources of new legislation as indicated by 15.7% of the respondents. The Office of the President was the fourth most important source of new legislation as indicated by 13.4% of the respondents. The Parliament itself initiates some legislation (12.6 % of respondents), while international agencies are identified as sources of new legislation by 8.7% of the Parliamentarians. In combination, the Government (ministries, the President, and international agencies) is

responsible for over 56% of new economic legislation.

The hypothesis is further supported by the legislative history of the VAT Law, which originated from a Government ministry as part of an effort to strengthen the ERP. Supported by the World Bank and the IMF, the Bill was presented by the Minister for Parliamentary Affairs on behalf of the Ministry of Finance (Parliamentary Debates, Wednesday, 7th January, 1998, col. 60). The rationale for the law was the need to expand and diversify the tax base as a means of increasing Government revenues in light of declining support from the donor community (*Statement by the Minister of Finance, Parliamentary Debates*, Friday, 30th January, 1998). The dominance of the Government (Ministry, President's Office, International Organizations) sector as the major source (over 56%) of business-related legislation suggests that the direction of market reforms in Ghana continues to be dictated by the public sector. One could argue that the Government is simply providing an enabling environment for the private business sector on the assumption that the private sector will eventually lead the reform effort in Ghana. While the Government's role in providing an enabling environment for business is laudable, the effort would be more credible if the origin, content, and expected outcomes of the Government's economic legislation reflected business practice and culture. In the case of the VAT, it is difficult to support the proposition that the business sector and the Government agreed on the legislation. A more plausible argument is that the Government, in response to demands by the major donor organizations, introduced the legislation primarily as a revenue measure to accomplish the objectives of the ERP and the SAP introduced in 1986. This conclusion is supported by the absence of any studies from the private sector that supported the Government's position. The fact that the VAT legislation did not originate from private sources is not fatal to effective partnership between business and Government. It is still possible for Government to initiate legislation, and then through proper sharing of information to obtain maximum private sector participation; however, under these conditions, the distribution of information pertaining to legislation becomes of utmost importance.

- *Role and Use of Information by the Private Sector*

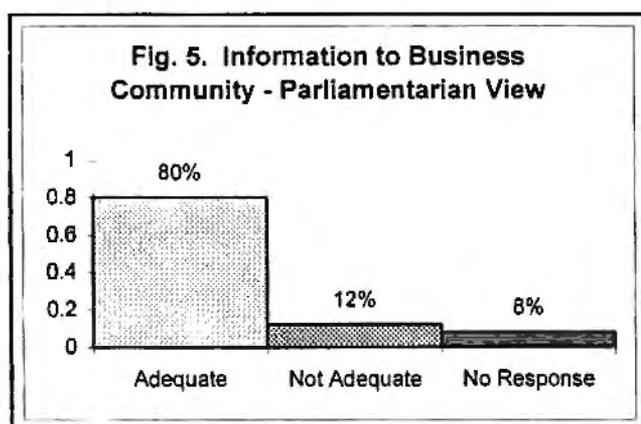
Efficient bargaining outcomes in the legislative/regulatory process are possible when parties have access to information that allows them to weigh the risks and transaction costs associated with alternative policy choices. On its face, current procedural guidelines for Ghana's legislative process seems to promote an effective governance regime. Parliamentary practice allows any person who has an interest in any matter pending before a Standing or Select Committee or Parliament itself, to testify, and present studies, investigations, and other information inputs into the legislative process.

Background studies may also be initiated by the particular institution (for example, the Ministry of Finance) which proposes legislation. Under a Directive issued by the Office of the President (*dated* December 23, 1994), all proposed legislation must receive the prior approval of the Cabinet. The proposed Bill - embodied in a

Memorandum, presented to the Cabinet by the Sector Minister, must state *inter alia*:

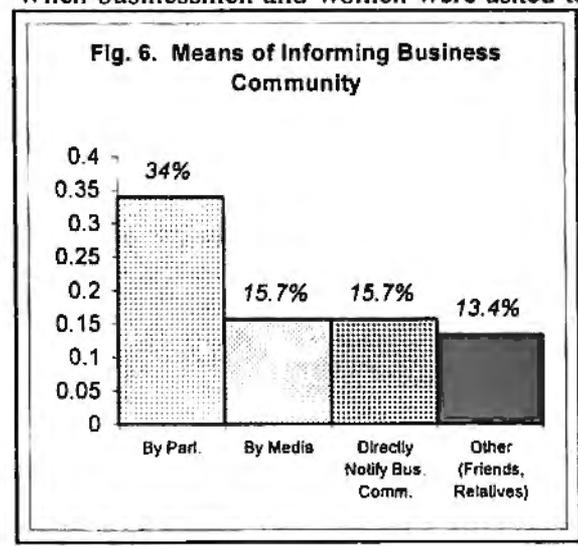
- Background of the proposed legislation;
- Issues for consideration by the Cabinet;
- Inter-Departmental - Ministerial consultations that have been held with bodies and agencies of relevance;
- Financial considerations supported by a statement that the Ministry of Finance has been consulted;
- Employment consideration, if any;
- Existing legislation, if any.

From the perspective of Parliamentarians, the business community is adequately informed about the legislative process. A majority (80%) indicated that the business community is adequately informed about business-related legislative processes (Fig. 5).



In a competitive political market, participatory governance means that groups work to promote their interests if there is effective demand for change (Becker, 1983; Olson, 1965). This means that business associations should inform their membership of impending legislation, and formulate a common position to present to Parliament. This is not the case. Fig. 6 shows that a majority of business people learns about impending legislation through the press. While this study does not address the issues related to the internal organization of business associations, the survey results suggest a need for private individuals to strengthen their involvement in organizations as a first step in forging an effective alliance to influence the legislative process.

When businessmen and women were asked to name the sources of information on proposed legislation, an overwhelming majority (71%) identified the news media and Parliament (not business associations) as the primary sources of information, while about 24% indicated that Parliament directly notified the relevant business association.



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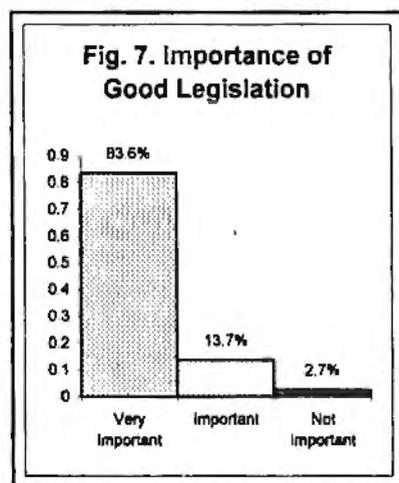
It is difficult to reconcile the results from the survey with the information from the legislative history of the VAT Law. Note that the VAT Law is perhaps the most important business-related legislation since the 1983 inception of the ERP. As one notable tax expert points out, "Ghana is probably the only exception to the observation that, aside from the short-lived value added tax in Vietnam in the early 1970s, no country has ever repealed VAT legislation" (Terkper, 1996).

There is broad consensus that a major reason for the failure of the first VAT Law (Act 486, passed on December 1, 1994), and the withdrawal of the law two months after passage was the lack of public education. The Finance Committee's Report and the debates in Parliament are replete with statements about the cost of failing to inform and educate the public. According to the Report, "many institutions and individuals were of the view that the VAT should be imposed only after a well structured and meaningful educational programme has been carried out, to bring about a better understanding of the system so as to obviate the state of confusion which greeted the 1994 VAT Act" (Report, p. 20).

The Minister of Finance reiterated the Committee's conclusion, "Mr. Speaker, one of the maybe not as oft-discussed contributing part of the 1995 withdrawal was the fact that a lot of people felt out of the decision making process, felt out of being a part of the processes that led to the introduction of the tax. And not only that, the general feeling that there was not enough discussions and consultations on all aspects of the economy is one of the general lessons that we have picked from the era" (Statement by the Minister of Finance (*Second Reading*) at p. 836). To improve the information process, there must be effective demand for information on legislation. To avoid costly policy reversals, Parliament has to improve the mechanism for sharing information with the business sector. Also, business associations need to improve their internal organization in order to effectively deliver information to their members. Improvement in governance institutions is both a demand and supply problem.

▪ *Role of Strategic Groups in the Legislative Process*

The participation of members of civil society is especially critical to the objective of good governance because they represent a broad cross section of Ghanaian society (Apter, 1965; Bates, 1988; Boeninger, 1991). The majority (96%) of civil society respondents rated good legislation as "very important" or "important" in



economic development (Fig. 7). However, respondents did not consider their role in the legislative process to be important. About 45% of respondents believe that ordinary citizens play no role in the legislative process, while 39% believed they play only a moderate role (Table 9). Civil society respondents also found the participation of the business community in the legislative process to be poor. About 23% rated business participation "poor" while 43.2% rated business participation "below average" (Table 10). About one-third of respondents thought that business community's participation was "average," and only about 3% found their participation to be "above average." Given that citizen monitoring of the impact of legislation has been found to be very useful in countries like the United

States, Ghana could be losing an opportunity for low-cost monitoring of the legislative process. The absence of civil society participation in the legislative process also means that the cost of implementing legislation is significantly increased because it is difficult to assess citizens' reactions to the impact of legislation. As

evidenced by the first VAT Law, lack of civil society participation in the process led to a spontaneous and violent reaction to the law.

Table 9. Role of Civil Society in Legislative Process

Table 10. Civil Society Assessment of Business Role

Role	Frequency	%	Role	Frequency	%
No Role	32	45%	Poor	17	23%
Moderate	28	39%	Below Average	32	43%
High	11	15%	Average	23	31%
Total	71	100%	Above Average	2	3%
			Total	74	100%

Source: From Survey.

News media assessment of business community participation in the legislative process contrasts with the assessment by the civil society. The majority (about 73%) of the print media found the business community to be either "quite active" or "very active" in the legislative process, while a majority of the electronic media found the participation to be "less active" (44.4%), or "quite active" (22.2%) (Table 11).

Table 11. News media Assessment of Business Community Participation in the Legislative Process

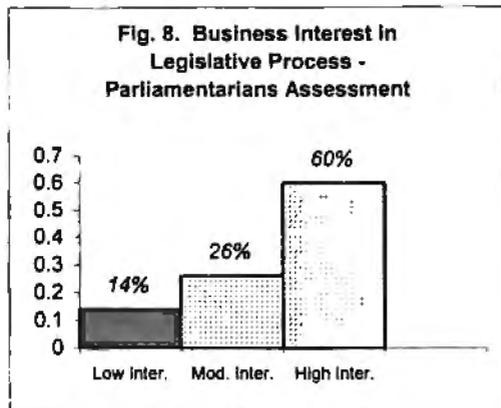
Media	Not Active	Less Active	Quite Active	Very Active	TOTAL
Print	2 [18%]	1 [9%]	5 [45%]	3 [27%]	11 [100%]
Electronic	1 [11%]	4 [44%]	2 [22%]	2 [22%]	9 [100%]
TOTAL	3 [15%]	5 [25%]	7 [35%]	5 [25%]	20 [100%]

Source: From Survey.

The difference between civil society and news media assessment of the role of the business sector in legislation is a matter of economics. Since there is no formalized procedures for influencing legislation, the cost of gathering information on who is influencing the legislative process is very high. Everything else equal, the average citizen has little incentive to incur the high cost of monitoring the legislative process. The cost to the news media is lower because they have the infrastructure in place to gather information. Also, the news media benefit from information supplied by business entities. Until recently, when privately-owned electronic media were allowed to operate in Ghana, the print media was the only avenue for the private sector to express their views on proposed legislation. This historical relationship survives today, especially with the proliferation of print media sources since 1990.

The Parliamentarians' view of the participation of the business community in the legislative process requires

closer examination. In the opinion of Parliamentarians, the business community shows a high interest in business-related legislation. This was indicated by 60% of the respondents. About 26% indicated that the business community has shown "moderate" interest, and the remaining 14% indicated that the business community has shown "low interest" (Fig. 8).



The high number of responses from Parliamentarians indicating business interest in legislation does not necessarily reflect the idea of effective participatory governance discussed in this study. The VAT case study is a case in point. Over 68 organizations and individuals submitted memoranda or attended the Committee Hearings on the VAT Law (Committee Report, *Appendix*). Among the institutions attending the Hearings were the Association of Ghana Industries, the Ghana National Chamber of

Commerce, the Chartered Institute of Marketing, the Ghana Association of Leasing Companies, and the Trade Union Congress. However, none of the "institutions and individuals attending provided an independent study to show the revenue implications of such a policy (VAT)" (Report, p. 16). The argument being made here is that *participation* goes beyond mere presence at a committee hearing; participation requires the preparation of position papers advocating the views of a group. This exchange of ideas is at the core of democratic governance.

4.3 Analysis of Study Objective 2

▪ *Capacity to Conduct Assessment of Proposed Legislation*

The second objective in this study is to examine the capacity and information resources available to legislative/regulatory institutions in making decisions. Economists are often called upon to present information about alternative policy choices to policy makers. The policy maker must have the requisite educational training to understand and utilize the information presented. The Parliamentarians surveyed are highly educated (84% have completed university education). This high educational attainment partly explains why about 66% of respondents reported some training in economics during their school career, and most (90%) found economic analysis to be important in assessing the impact of business-related legislation both during and after the passage of the legislation.

About 71% of the Parliamentarians with a university education have had some courses in economics. For those with post-secondary education, only 43% have had some training in economics, and the only respondent with vocational/technical education had not taken any courses in economics (Table 12).

Table 12 Level of Formal Education by Training in Economics

Level of Educ.	Trained	Not Trained	Total
Voc/Tech	0 [0%]	1 [100%]	1
Post Sec.	3 [43%]	4 [57%]	7
University	30 [71%]	12 [28%]	42
TOTAL	33 [66%]	17 [34%]	50

Table 13. Self-Assessment of Knowledge in Economics

Fair in Econ.	Good in Econ.	Total
1 [100%]	0 [0%]	1 [100%]
7 [100%]	0 [0%]	7 [100%]
35 [83%]	7 [17%]	42 [100%]
43 [86%]	7 [14%]	50 [100%]

Source: From Survey.

In a self-assessment of the level of knowledge in economics, 83% of those with a university education rated their knowledge as "fair" and the remaining 17% indicated that it was "good." All the remaining Parliamentarians with post-secondary and vocational/technical education indicated that their knowledge of economics was "fair" (Table 13). As discussed below, this high educational attainment did not influence the use of rigorous economic impact analysis related to the VAT legislation.

▪ *Economic Impact Assessment of Legislation*

It was hypothesized that the lack of both human and infrastructure resources would prevent the use of transparent economic impact analysis in the legislative/regulatory process. The responses by the Parliamentarians indicated that some economic impact assessment was undertaken both before and after implementation of the legislation. The approaches used for the economic impact assessment, in the order of weighted frequency, were economic analysis, testimony by experts, testimony by the business community, and comments from international agencies (Table 14).

Table 14. Approaches to Impact Assessment of Legislation before it is Passed

Approach	Least Important					Most Important
	1	2	3	4	5	Average Weighted Importance
Economic Analysis	42%	30%	32%	0%	0%	33%
Expert Testimony	33%	28%	32%	23%	0%	31%
Business community	18%	33%	22%	36%	100%	25%
International Body	4%	6%	12%	41%	0%	10%
Others	2%	2%	0%	0	0%	2%
TOTAL	100%	100%	100%	100%	100%	100%

Source: From Survey.

* The weighted importance of approaches to impact assessment was estimated by assigning 5 points to the most important approach indicated by respondents, 4 points to the next most important, 3 to the next and down to 1 for the least important. The points for each approach are summed up and expressed as percentages.

The legislative history of the VAT Law does not support the contention that Parliamentarians conduct any rigorous studies in support of legislation. The VAT debate was replete with references to the economic impact of the VAT on individuals and the business sector. However, it is difficult to identify a specific "reference document" that guided the debate. The report of the Finance Committee (January 28th, 1998, *henceforth*, "Report") listed 15 documents that were referred to during the Committee's deliberations. Eleven of these reference documents were simply previous laws (Acts) which were deemed relevant to the VAT; and three documents were copies of the VAT Laws from Tanzania, Kenya, and Uganda. The only document that may be remotely called a 'study' was the *National Economic Forum Report* (October, 1997, *henceforth*, Forum). The national economic forum was intended to build consensus among strategic stakeholders in respect of overall economic policy making and implementation in Ghana. The discussion of the VAT was only a minor component of a broader forum discussion.

The Parliamentary Finance Committee made reference to an impact study provided by the Ministry of Finance, "the analysis provided to the Committee by the Ministry of Finance indicates the 15% proposed in the Bill would have yielded this revenue-neutral position. The Committee, however, recommends a rate of 10% even though the Ministry of Finance's position is that this could lead to a revenue loss of 20 - 30% for the whole year compared with the Sales and Services Taxes." There were also suggestions that computations made available to the Committee by the VAT Project indicate that "price changes will on average range from 0% to 3.3% on account of the introduction of the VAT at the current sales tax rate of 15% for many commodities at the second retailer level" (Report, p.14). These studies are not public documents nor are they a part of any public report on the passage of the VAT.

Several conclusions relevant to the issue of governance emerge from the Committee's report. First, the report suggests that economic policy decisions are not necessarily *ad hoc*. There is an effort to support decisions with 'some analysis,' albeit incomplete. However, the Report points to a total lack of 'effective competition in ideas' that could lead to the emergence of broad-based consensus on proposed laws. While the Government presented some studies on the impact of the VAT, there were no competing studies presented by individuals or private sector entities. Referring to the debate of the VAT rate, as the Committee points out, "it is important to note, however, that none of the individuals and institutions provided an independent study to show the revenue implications of such a policy" (Report, p. 16).

According to the Committee, their deliberations were informed by studies conducted by the Harvard International Institute and the Crown Agents from the United Kingdom. The lack of domestic expertise and input was noted in the Committee Record. As one participant noted, "Mr. Speaker, we have been told that VAT

has been highly recommended by such institutions as the Harvard International Institute and the Crown Agents. I think it is a sad note that we could not announce one Ghanaian consultancy which was consulted also to give its own feelings because here we are, we are proposing a tax regime for the people of this country” (Report (*Second Reading of Bill*), Wednesday, 4th February, 1998, p. 1202). While no competing studies were presented to the Finance Committee, there were misgivings about the two reports that the Committee used in their discussions and recommendations. According to one participant, " there was also a lot of talk about revenue and all the talk, not a single person gave us figures to show that indeed the tax would increase revenue so now if we are to make an intelligent decision and we all think that VAT is good because it would increase revenue, what are the Minister’s projections for 1999 and the year 2000?..You are saying that we should have enough revenue, and so VAT and the Minister would not give us the figures, and it is part of his work, and it is part of all economic analysis in economics that you do projections and you convince us that you are indeed going to have a lot of revenue” (Statement by Mr. Osafo-Maafa (*Second Reading*) at p.1299).

The debate on the VAT Law lends support the hypothesis about the consequences of inadequate human and infrastructure resources. Scarce resources compromise the ability of agencies to produce transparent studies in support of legislative/regulatory proposals. While third parties and consultants fill in some of the gaps for the Government, private sector agencies are generally not equipped to produce their own studies. The result is that debates often end up as challenges to the studies produced by the Government, but there are no counter proposals offered to allow for a thorough evaluation. For example, one would expect private sector entities to discuss the heavy burden of the tax on firms and households based on a carefully prepared study. This was not the case. The Government only presented studies on the revenue advantages of the tax with no discussion of the cost of the proposed legislation. As the survey of IRAs demonstrated, no agency could estimate the cost of regulation. The failure to consider the cost of regulations in addition to their benefits is one of the major gaps in developing efficient governance regimes in Ghana.

4.4 Analysis of Study Objective 3 - Alternative Institutions for Promoting Governance

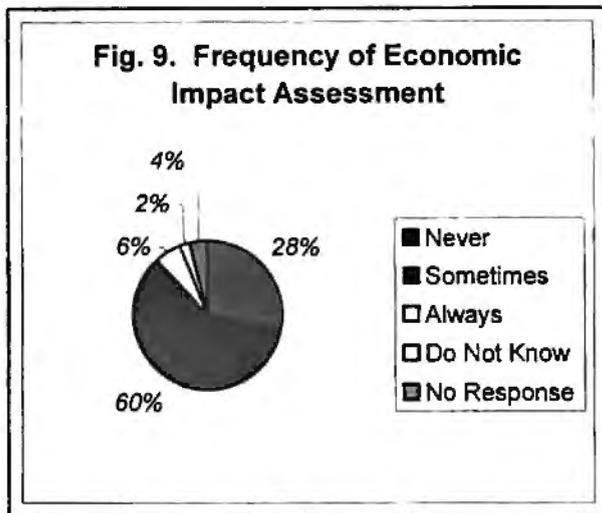
- *Monitoring the Legislative Process*

Effective governance requires openness in legislative/regulatory procedures, accountability for the impact of decisions arrived at in using the procedures, and transparency of the rules and regulations that define how the established procedures are supposed to operate. The third objective of this study is to examine the monitoring and policing roles of (1) Parliament, (2) the courts, (3) the Press, and (4) the business community/civil society. The possibility for adopting formal procedures to influence the policy making process is also discussed.

- *Self-Monitoring by Parliament*

It was hypothesized that Parliamentary self-monitoring would be weak in the absence of an effective information market that permits checks on members. Recent concerns about absenteeism in Parliament (*see Text Box 2*) are

evidence of the lack of an effective monitoring mechanism of Parliamentarians' behavior. Generally, there is no incentive for Parliament to monitor itself if the costs of not monitoring are lower than the benefits of monitoring.



About 60% of the Parliamentarians indicated that they have sometimes assessed the economic impact of legislation on the business community and 28% indicated that this has never been done, while only 6% of Parliamentarians indicated that the economic impact of legislation has always been assessed (Fig. 9).

Most Assessments of the economic impact of legislation is derived mostly through feedback from the business community. Other approaches to impact assessment of legislation, in order of importance, are analysis by Parliament, expert testimony, and comments from international agencies (Table 15).

Most Assessments of the economic impact of legislation is derived mostly through feedback from the business community. Other approaches to impact assessment of legislation, in order of importance, are analysis by Parliament, expert testimony, and comments from international agencies (Table 15).

Table 15. Economic Impact Assessment of Legislation after Implementation

Approach	Leas Important					Average Weighted Import.
	1	2	3	4	5	
Feedback from Business	54%	30%	12%	8%	33%	36%
Expert Testimony	18%	17%	44%	42%	33%	24%
Parliamentary Study	18%	40%	36%	36%	100%	25%
International Body	3%	13%	8%	42%	0%	10%
Others	6%	0%	0%	0%	0%	3%
TOTAL	100%	100%	100%	100%	100%	100%

Source: From the survey

- The weighted importance of approach to legislation impact assessment has been estimated by assigning 5 points to the most important approach indicated by respondents, 4 points to the next most important, 3 to the next and down to 1 for the least important. The points for each approach are summed up and expressed as percentages.

TEXT BOX 2: House unhappy about lateness, absenteeism of MPs

By A. Kofoya Tetteh & Joe Okyere (Online *Independent Newspaper* 12/99)

LATENESS and absenteeism on the part of Members of Parliament to attend sittings came up for discussions at yesterday's deliberations. Some of the members expressed their dissatisfaction at the rate of lateness and absenteeism of their colleagues which, according to them, will not make it possible for the completion of the agenda of the House for this session. This concern was expressed after the Leader of the House, Dr. Kwabena Adjei, had told the House that members of the Business Committee did not attend the Committee's sitting to prepare the agenda for next week. Dr. Adjei said as of 9 a.m. on Thursday when the meeting was expected to commence, only he, the Chairman, and the Clerks were present. He said two other members joined the group some 30 minutes later but due to lack of quorum, he had to give "administrative approval to the draft Business Statement. According to him, a successful Parliamentary session or agenda depends largely on the Judicious management of the business by the committee and appealed to committee chairmen, especially those considering various businesses, to expedite action on them to enable the House to complete its programme by the end of the meeting. Dr. Adjei's statement promptly brought Squadron Leader C. M. K. Sowu (rtd) (NDC, Anlo) and one of the regular members to the floor. He said members who absented themselves without permission should be charged for corruption since they have used official time for private gains.

Mr. Kojo Armah (PCP, Evalue-Gwira) asked members to set good example by attending meetings regularly and on time since members of the public are viewing proceedings of the House on television. Mr. Kwadwo Adjei-Darko (NPP, Sunyani West) said he was unable to attend the Business Committee meeting that day because he was asked to attend the Committee on Education's meeting with donors' representatives. Mr. Stephen Balado Manu (NPP, Ahafo Ano South) cautioned the House about sanctioning absentee MPs since their work is not confined to the walls of Parliament but also at the constituencies. The NDC member for Hohoe South, Mr. Kosi Kedem, said it is necessary for MPs to be in their constituencies at certain periods and that other parliaments have similar problems. The Majority Chief Whip, Mr. E. K. Doe Adjaho, on his part, said it is unfortunate that attendance in the House is poor and suggested that the leadership should find out what is causing the problem, a sentiment which was also shared by the Second Deputy Speaker, Mr. Freddie Blay. Mr. Ken Dzirasah, the First Deputy Speaker, who was then in the chair, reminded members that parliamentary proceedings take precedence over constituency duties and asked the MPs to be available at all times.

During the previous weeks the House recorded as high as 185 absentees for those days, 120 absentees for three days and 80 absentees for two days. It is worth mentioning that last week, the House recorded as low as 48 absentees for Tuesday

It is difficult to find evidence in the legislative history of the VAT that supports the results in Table 16. That is, there is no documentation to suggest that Parliament has used feedback from the business sector to make changes in legislation. This is not to say that this has not happened. The critical issue is that these changes must be made within the context of some identifiable procedure consistent with the ideal of openness and transparency to promote good governance. The absence of identifiable and transparent procedures leaves room for regulatory capture and rent-seeking.

- *Monitoring by the Courts*

In democratic-constitutional systems, courts play a critical role in monitoring the behavior of all branches of Government. Although Ghana has a common law tradition, the implications of legal rule making (Ehrlich and Posner, 1974; Ogus, 1994) are not fully appreciated. There seems to be a movement towards some appreciation of the nexus between law and economics. In a series of court decisions, the Supreme Court has announced its intention to protect both the political and economic freedoms enshrined in the Constitution. The case of *British Airways v Attorney-General* (reported in 1996-97 Supreme Court Reports (SCGLR) 547) marks the beginning of a transition to a system of *rule of law*. Under this system, private companies can seek redress in court without the fear of being subjected to arbitrary rules. In the *British Airways* case, the company itself as well as the manager of the Ghana-based division of this foreign-owned company, were arraigned before a circuit tribunal on a criminal charge, namely, refusing to pay rent in convertible currency in respect to leased property contrary to sections 4 and 9(1) and (3) of the External Companies and Diplomatic Missions (Acquisition or Rental of Immovable Property Law, 1986 (PNDCL 150)) (*note this law was enacted under a military regime*). While the case was pending, the law under which the company was being tried (PNDCL 150) was repealed by the Statute Law Revision Act, 1996 (Act 516). Although the repealing Act did not exempt offenses created under the repealed legislation, the trial court, nevertheless, decided to continue with the trial despite the repeal of PNDCL 150.

British Airways brought an action in the Supreme Court, challenging the continuation of the trial in the circuit tribunal under Articles 21(1)(a) and 130 of the 1992 Constitution. It claimed, *inter alia*, that the continuation of the trial was unlawful and sought an order to discontinue the trial. The Supreme Court granted the application and held that "whenever in the course of any matter brought before the court, it was found that there existed in any lower court any matter which in the long run would result in injustice or in illegality, the court, in the exercise of its duty, would intervene at once and issue orders and directions so as to prevent such illegalities or injustice even before its occurrence." The court decided, therefore, that its timely intervention would prevent the Plaintiffs, *British Airways*, from going through the futile trial in the circuit tribunal in light of the repeal of PNDCL 150. In so holding, the Supreme Court per Bamford-Addo JSC said:

It would be unfair and unjustified and an abdication of duty if this court in a deserving case were to neglect to correct clear injustices and illegalities existing in lower courts, and when

relief is requested from the court. No self-imposed limitation on our wide supervisory powers, clearly granted by the Constitution, should be allowed to prevent us from exercising our powers in the supreme interest of justice, nor should justice be sacrificed on the altar of technicalities.

The decision underlines the Supreme Court's view that the rule of law should inform all aspects of development in Ghana, be it economic, political, or otherwise. The decision marks a clear shift from the previous position under a military regime, whereby Government was empowered to seize a business without the possibility of redress in court. Such laws usually contain an ouster clause denying the jurisdiction of the courts to entertain such suits. Thus, the decision in *British Airways* may be contrasted with the 1981 decision of the Supreme Court in the *Kwakye v Attorney-General* (1981) GLR 944 where the court per Archer JSC (as he then was) held that the true meaning of Section 15(2) of the transitional provisions of the 1979 Constitution appeared to be that wherever the court was satisfied that the Armed Forces Revolutionary Council (AFRC) took or purported to have taken an executive, legislative, or judicial action, then the court should not question the *validity, correctness, the fairness, or the justice* of that decision or action.

Another major Supreme Court decision that highlights the monitoring role of the Courts in an evolving governance regime is the decision in *Mensimah v Attorney-General* [1996-97] SCGLR 676. The Plaintiff in this case sued in the Supreme Court for a declaration that regulations 3(1) and 21 of the Manufacture and Sale of Spirits Regulations, 1962 (LI 239) were both inconsistent with the letter and spirit of the 1992 Constitution, particularly in regard to the exercise of the fundamental right of freedom of association guaranteed under Article 21(1)(e) of the Constitution. It should be noted that regulation 3(1) of LI 239 required an applicant for a distiller's license to belong to a registered distiller's co-operative society, while regulation 21 made it obligatory for a distiller to dispose of his or her products to specified persons or bodies.

The Supreme Court partially upheld the Plaintiff's claim. In a majority decision, the court ruled that regulation 3(1) was inconsistent with the letter and spirit of Article 21(1)(e) of the Constitution granting the fundamental rights to freedom of association. According to the Court, the requirement that an applicant for a distiller's license belong to a registered distiller's co-operative could not be justified under article 21(4)(c) of the Constitution, which states:

Nothing in, or done under the authority of, a law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision -
(c) for the imposition of restrictions that are reasonably required in the interest of defense, public safety, public health or the running of essential services, or the movement or residence within Ghana of any person or persons generally, or any class of persons...

However, the court rejected the Plaintiffs second claim, challenging the constitutionality of Regulation 21 of

LI 239. The Supreme Court held that Regulation 21, which requires a distiller to dispose of his or her products to specified persons or bodies, was constitutional and did not violate the person's freedom of association guaranteed under Article 21(1)(e). The stated rationale was that even if restrictive in nature, Regulation 21 gave the distiller a choice to either sell his products to a registered cooperative or to any of the distillers registered under the Excise Ordinance, 1953 (No. 31 of 1953). The court held that the purpose of Regulation 21 was to ensure easy and effective collection of taxes on locally manufactured spirits. Furthermore, all citizens had the duty to satisfy tax obligations under article 41(f) of the Constitution. In support of the decision that Regulation 21 was constitutional, the court per Bamford-Addo JSC said at p. 698:

To hold otherwise would be to prescribe the recipe for chaos in the *Akpeteshie* distillation industry, as well as other occupations which need to be regulated in the public interest...It would also amount to subordinating the general public interest to private economic interest of a small group of people whose school of thought happens to be different from Government policy. This is not to be *taken as allowing any or all economic regulatory enactments. No!* This is because they are subject to the limitations specified in the Constitution (authors' emphasis).

In arriving at the above decision, the Supreme Court took a stand on an issue central to private sector development, namely whether the Executive, in exercising its undoubted power to regulate the economic activities of the country for the public good, could compromise an individual's fundamental human rights. The court held that the Executive power must be subject to Constitutional limitations. Therefore, the exercise of the Executive powers must not erode the individual's fundamental human rights and freedoms. The Executive power to regulate economic activities must be exercised in such a way as to maintain the equilibrium between individual rights and freedoms and the preservation of law, order and public welfare. The court further held that the Executive must not exceed the bounds of reasonableness; if not, the Executive would unjustifiably encroach on the individual's right of association guaranteed under article 21(1)(e) of the Constitution.

The Supreme Court strengthened its monitoring role by making courts more accessible to business entities in the case of *New Patriotic Party v Attorney-General (CIBA case)* [1996-97] SCGLR 729. In this decision, the Court accorded a body corporate the same status as a natural person in enforcing the fundamental rights enshrined in the Constitution. The Plaintiff--in this case a political party registered as a body corporate--sued in the Supreme Court for a declaration that the Council of Indigenous Business Associations Law, 1993 (PNDCL 312) was unconstitutional as being in contravention of *inter alia*, articles 21(1)(e), and 37(2)(a) of the Constitution. The court rejected a challenge based on the theory that the Plaintiff in the case, a political party, could not bring the action.

In support of the Supreme Court decision that natural persons as well as corporate bodies had the capacity to enforce the Constitution, the court said per Bamford-Addo JSC:

It would be more beneficial and in accordance with the intention of the framers of the Constitution and in the *public interest to open the door widely to permit both natural as well as legal persons ... access to the court. I would think that corporate bodies by reason of their important place in society are most suited both financially and otherwise to undertake the defence of the constitutional order by resort to judicial review when the constitutional order is being threatened.* (authors' emphasis).

One can appreciate the importance of the above cases in Ghana's market-based and private sector driven economic policy only by realizing that in the United States, for example, it took several decades of court application of the *dormant commerce clause* (used to check regulations by States that burden interstate commerce in the United States) to break down barriers to commerce, and to strengthen the relatively cohesive relationship between business and Government that one finds today. So far there have not been cases challenging the authority of regulatory agencies in Ghana. This may be due to the fact that there have not been many regulations issued by these agencies. The Court's willingness to expand access for both private individuals and corporate bodies, coupled with the explicit recognition of the restraints on the exercise of executive power, are supportive of a credible governance regime. The ability to challenge the constitutionality of laws and Executive behavior can only improve accountability, openness, and transparency in Government legislative/regulatory practices.

- *Press Monitoring of the Legislative Process*

An informed public is an essential element of good governance. In a democratic-constitutional system, the press is a critical institution that carries the major responsibilities of informing the public, and providing a forum for the general public to participate in debates about the process and outcomes of Government decisions. Two conditions are necessary to support effective monitoring of the legislative/regulatory process by the press. First, the country's laws must permit access to Parliamentary and regulatory agencies' deliberations, and second, press institutions must have the resources (human and financial) to be able to gather and disseminate information to the public. Two hypotheses are examined. The first hypothesis is that, while there are formal laws that guarantee access to Government and other public documents, transaction costs associated with using the formal procedures are high, and in effect are a disincentive to use the procedures. A second hypothesis is that inadequate training and infrastructure resources inhibit the media's monitoring role.

In terms of access, there is no law governing journalists' access to Parliament. The matter is governed by the practices and procedures of Parliament. Journalists are entitled to comment fairly on any matter pending before Parliament or its committees. However, there are limitations on what journalists may publish. They stand the risk of being prosecuted for contempt of Parliament or breach of privilege. Thus, under Standing Order 30(h), the "publication of false, perverted, misleading, distorted, fabricated or scandalous reports, books or labels

reflecting on the proceedings in Parliament” constitutes a breach of privilege or contempt of Parliament. Standing Order 25 states:

Subject to the provisions of the Constitution no person shall be under any civil or criminal liability in respect to the publication of:

- (a) the text or a summary of any report, papers, minutes, votes, or proceedings of Parliament; or
- (b) a contemporaneous report of the proceedings of Parliament, unless it is shown that the publication was effected maliciously or otherwise in bad faith.

Regulations governing the publication of Parliamentary proceedings are covered by Standing Order 25 and 30(h) as discussed above. Standing Order 25 is a verbatim reproduction of Article 120 of the 1992 Constitution that grants immunity of publication of Parliamentary proceedings *unless* “it is shown that the publication was effected maliciously or otherwise without good faith.” It should be noted, too, that Ghana has an open records law, *Public Records and Archives Administration Act, 1997 (Act 535)*. Section 27 of Act 535 defines *public records* to include records created, received and maintained (1) by any public office, other than the security services; (2) by any court with jurisdiction within Ghana; and (3) by any other body or individual so designated by regulation, and public archives within the meaning of the Public Archives Ordinance, 1955 (No. 35) in the custody of the National Archives of Ghana at the time of coming into force of this Act.

While in theory these laws point to efforts by a relatively young democracy to involve private entities in the process of Government, in practice our survey and case study support the hypothesis the media's use of formal procedures to obtain information in their monitoring functions. The survey results show that the press has not taken advantage of the laws to gain access to essential documents that inform debates on issues of interest to the business sector. In the debate on the VAT Law, for example, the Committee referred to “some documents” but these documents have not been made public by the press or the Committee. One reason may be that the transaction of gaining access to documents is high. Conversations with an investigative reporter (*private conversation*) for a major newspaper indicated that it was more efficient to rely on the informal processes (“who you know”), than to use the formal rules to gain access to documents. The author's own effort to obtain copies of documents from regulatory agencies during the preparation of this report was a costly experience, and in most cases proved to be a futile effort. The access issue may not be as daunting as the implications of the recent spate of libel lawsuits against that some argue may have a chilling effect on the monitoring role of the press.

In terms of human and infrastructure resources, the survey shows that both print and electronic media companies assigned reporters to cover the parliamentary proceedings. About 52% of the media companies always assigned reporters, 38% sometimes did so, and the remaining 10% have never done so (Table 17). The extent to which the print and electronic media assign reporters to cover Parliamentary proceedings differ. About two-thirds of the print media always assigned reporters compared to one-third of the electronic media. About 56% of the

electronic media sometimes assigned reporters compared to 25% of the print media (Table 16).

Table 16. Media Coverage of Parliamentary Debate

Media	Frequency			
	A	S	N	Total
Print	8 [67%]	3 [25%]	1 [8%]	12
Elect.	3 [33%]	5 [56%]	1 [11%]	9
Total	11 [52%]	8 [38%]	2 [9%]	21

Table 17. Informing Clients about Legislation

Media	Frequency			
	A	S	N	Total
Print	6 [50%]	6 [50%]	0 [0%]	12
Elect.	3 [33%]	5 [56%]	1 [11%]	9
Total	9 [43%]	11 [52%]	1 [5%]	21

Source: From Survey. Percent totals may not add to 100 due to rounding.

A=Always; S=Sometimes; N=Never

An unresolved puzzle is the response to the question regarding the dissemination of information about legislative proceedings. Even though many of the news media companies covered legislative proceedings, the proportion of those who always kept their clients informed was only about 43%; roughly 52% only sometimes informed their clients; and the remaining 5% have never informed their clients about legislative proceedings (Table 17). Among the print media, 50% always kept their clients informed and the remaining 50% sometimes informed their clients. Among the electronic media, only 33% kept their clients always informed about legislative proceedings, 56% sometimes informed them and the remaining 11% never reported on legislative proceedings.

The question is why assign reporters to cover Parliamentary proceedings if there is no intention of informing clients about those proceedings? One reason may be that the press does not find the proceedings newsworthy. Another plausible, but purely speculative explanation, is that the media censors information not relevant to its particular political orientation. Newspapers, especially, have tended to espouse a particular political viewpoint that is either pro- or anti-Government. For these media outlets, it is unlikely that they will report on a particular Parliamentary debate purely for informational purposes. These outlets tend to report those Parliamentary deliberations that are most likely to highlight the weaknesses of, or what is perceived to be the potentially damaging impact of, the legislation (*see Text Box 3 for an example of a report by an opposition newspaper*).

The hypothesis that the lack of human and infrastructure resources available to the press helps explain why the press is not informing clients about parliamentary deliberations. This is implied by the press responses to the thoroughness of legislative analysis. Only 24% of the media houses indicated that they analyzed legislation thoroughly; the majority of them (57%) did moderately thorough analysis; 14% did not conduct thorough analysis, and the remaining 5% did not analyze any legislation at all (Table 18). Among the print media, 92% analyzed legislation moderately to thoroughly compared to 67% of the electronic media. The remaining 8% of the print media, and 33% of the electronic media, did not analyze legislation thoroughly (Table 19).

Table 18. Thoroughness of Media Analysis of Legislation

Table 19. Qualification of Media Staff

Media	T	M	NT	NAA	Total	NQ	BA	A	AV	VQ	Total
Print	3 [25%]	8 [67%]	1 [8%]	0 [0%]	12	0 [0%]	1 [8%]	5 [42%]	5 [42%]	1 [8%]	12
Electro	2 [22%]	4 [44%]	2 [22%]	1 [11%]	9	1 [11%]	0 [0%]	6 [67%]	2 [22%]	0 [0%]	9
Total	5 [24%]	12 [57%]	3 [14%]	1 [5%]	21	1 [5%]	1 [5%]	11 [52%]	7 [33%]	1 [5%]	21

Source: From Survey.

T= Thoroughly; M=Moderate; NT= Not thorough NQ= Not Qualified; BA=Below Average;

A=Average NAA= Not At All. AV= Above Average; VQ=Very Qualified.

TEXT BOX 3

The Online Independent

Here Cometh a Bill to Kill Dissent in Ghana

A Vice President of Ghana can be removed for disagreeing with his President

As reported earlier in The Independent, a bill is before Ghana's Parliament. The Vice President succession bill 1999 which many political observers believe is inspired by the Rawlings-Arkaah saga which resulted in an unprecedented beating of Veep Arkaah by President Rawlings on December 27, 1997. We publish the bill verbatim for your judgement.

MEMORANDUM

The purpose of this Bill is to provide for the appointment of the Vice President in certain cases.

The Constitution is silent on the issue of the appointment to the office of Vice President where the Vice President dies, resigns or is removed from office. The Constitution also does not stipulate what should happen when the Vice President joins a party in opposition to that of the President.

This Bill seeks to fill the loopholes using the residual powers of Parliament in article 298 of the constitution. Under that article, Parliament is mandated to provide for matters to be dealt with where there is no provision express or by necessary implication in the Constitution to deal with the matter.

Clause 1 of the Bill permits the President to designate a successor where the Vice President dies, resigns or is removed from office. The qualification of the person is to be the same as that of the President and the person is to be approved by Parliament.

Clause 2 of the Bill states that the Vice President is deemed to have resigned if he joins a party in opposition to the President. He is also to be deemed to have resigned if he conducts himself in a way to bring him into conflict with the President.

Bill

AN ACT to provide for the appointment of the Vice President in certain cases and for connected purposes.

BE IT ENACTED by Parliament As Follows*Succession Of Vice President*

1. Subject to article 60(2) of the Constitution, the President shall designate a successor to the office of Vice President for the unexpired term if the Vice President dies, resigns, or is removed from office.
2. The provision of article 62 of the Constitution shall apply to a person designated by the President for the office of the Vice President.
3. The designation of a person by the President to the office of Vice President shall be subject to approval by Parliament by the votes of the majority of members present and voting with at least half of the members of Parliament present.

Vacation Of Office

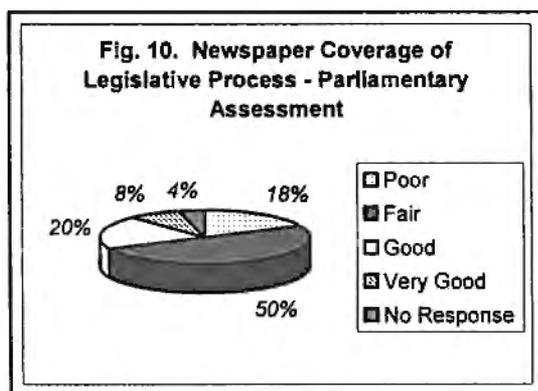
1. If the Vice President joins a party in opposition to that of the President during the tenure of office of the President, he shall be deemed to have resigned from the office of the Vice President.
2. If the Vice President conducts himself in a manner likely to or in such a manner as to bring him into direct conflict with the President, he shall be deemed to have resigned his office.
3. Where a vacancy occurs by virtue of subsection (1) or (2), the President shall designate successor and the provisions of section I of this Act shall apply.

Signed by Dr. O. Y. Asamoah, Accra

Date: 22nd June 1999.

The hypothesis regarding media personnel's qualifications to analyze legislation is supported by the responses from members of the press. About 10% of the media did not have qualified staff; 52% had staff with average qualifications; 33% had staff with above average qualifications; and the remaining 5% had very well qualified staff (Table 19). Supply and demand forces largely explain the qualification issue. Since 1992, when the new Constitution came into force, there has been an explosion in the number of press agencies in Ghana. Historically, the only outlet for an individual with training in communications was Government newspapers and radio. Today, there are several independent newspapers, radio, and television agencies. This explosion in media sources might have outstripped the supply of top-quality reporters and press agents.

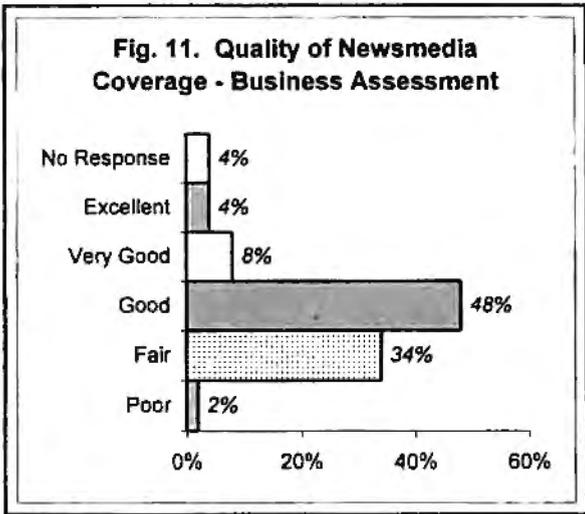
Parliamentarians, businessmen and women, and members of civil society were asked to assess the quality of media coverage of the legislative process in Ghana. The hypothesis was that assessments by



Parliament and the business sector would be more favorable since, in the case of Parliament, media presence was always there, and in the case of the business sector, the media provided a platform for their views. On the other hand, since the civil society at large is removed from the legislative/regulatory process, the expectation was that their assessment of the media role would be unfavorable. The results were surprising. About 68% of Parliamentarians thought that the extent of news media

coverage of the legislative process in general was not adequate (fair to poor); 20% thought that it was good, and only 8% thought the coverage has been very good (Fig 10).

Approximately 36% of businessmen and women ranked the proficiency of the news media reports on business-related legislation as fair or poor; 48% ranked the coverage as good; and only 14% ranked them as very good to excellent (Fig. 11). The quality of news media coverage of legislative process in the country falls short of the expectation of Parliamentarians, the business community, and the civil society. Specific to business-related legislation, 36% of the parliamentarians thought that the extent of coverage by the news media was inadequate (not good enough). The available data suggest that the extent of coverage was a lot better for other legislative processes than for business-related legislation. Among the businessmen and women, 75% ranked the proficiency of the news media report on business-related legislation as average and below and the remaining 25% ranked them above average.



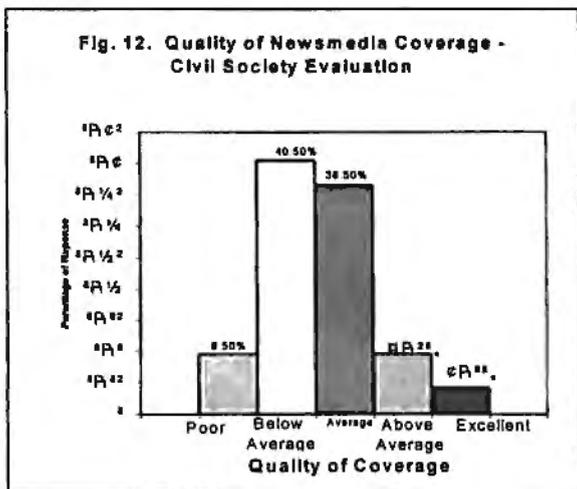
For effective dissemination of information on legislative process to the business community, a portion of the print media has special sections in their respective newspapers to highlight business-related news. Some of the electronic media devote airtime to business issues, particularly reporting on Parliamentary proceedings. About 81% of the media devoted space or airtime for business-related news and the remaining 19% did not.

About one-half of the civil society respondents thought that the quality of news media coverage was "below average" or "poor." About 36% thought that the quality was "average," and the remaining 14% ranked the quality as "above average" or "excellent" (Fig. 12).

This assessment of the media's ability to monitor the legislative process suggests an urgent need to strengthen the media's role. Strengthening the media entails both training press people and building infrastructure for information processing purposes. Perhaps the most critical need is to eliminate the transaction costs associated with public information acquisition. To the extent that parties rely heavily on informal processes in information acquisition, the seeds are planted for capture of the legislative/regulatory apparatus by those in strategic positions to do so.

▪ *Lobbying Parliament*

One of the objectives in this study was to explore the prospects of adopting formal rules for lobbying Parliament. As Ghana attempts a transition to a market-driven economy within the framework of



constitutional democracy, there is a need to institutionalize the process of influencing Government behavior. Informal approaches to influencing Government will always be present in a political system, and indeed may be useful in reducing transaction costs in business-Government interactions. The problem for a young democracy is that informality may unduly raise the cost of legislation and regulation to those parties that are not in a position to participate in the rulemaking process due to information restrictions. In societies where the

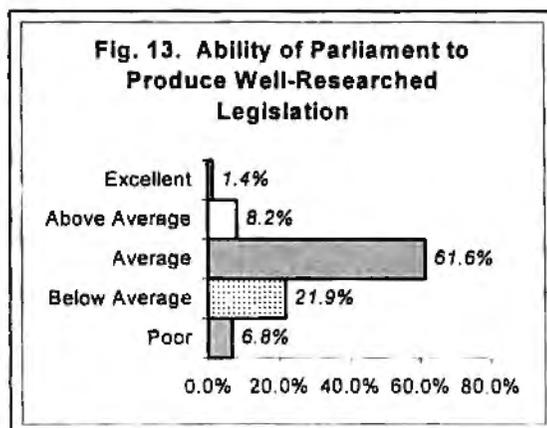
information market is weak, there is a tendency to distrust of Government intentions, thus opening the door to rent-seeking (Kreuger, 1974).

Formalized procedures make it possible to account for the expenditure of resources on institutional change. When formal lobbying is the law, it is usually accompanied by reporting requirements so that the system can be monitored. Lobbying is important as a means of promoting the effective participation of stakeholders in the legislative process. Associations, unions, and other groups are in a better position to lobby successfully than individuals. With the exception of the Ghana Bar Association (GBA), all business associations indicated a need for a formal law on lobbying Government. In addition, the majority of the news media companies surveyed (65%) reported that they would support formal procedures to lobby the parliament (Table 20). The need for formal procedures to influence legislation is best understood by reflecting on the historical practices in the country. Like most newly independent countries in SSA, Ghana inherited a "nascent civil society" that permitted group participation in the formulation of rules and regulations (Wight, 1946). Participation was in the form of notice, hearings, comment periods, and public debate on major legislation and regulatory proposals. In contrast, the post-independence period is characterized by "political monopoly," whereby the formal modes of participation have been largely eliminated and replaced with costly and high-risk strategies to influence policy (Drah, 1993). A formal law on lobbying is one way to revive practices that are known to have served the country well in the past.

Table 20. News media Attitude to Formal Procedure for Lobbying

Type of Media	Support	No Support	TOTAL
Print	7 [64%]	4 [36%]	11 [100%]
Electronic	6 [67%]	3 [33%]	9 [100%]
TOTAL	13 [65%]	7 [35%]	20 [100%]

Source: From Survey



A second recommendation for promoting accountability, openness, and transparency is to improve the capacity of Parliament to use economic information. Both the civil society respondents and the media found Parliament's ability to pass good legislation to be very weak. Less than 10% of civil society respondents found Parliament's ability to produce good legislation to be "above average" or "excellent," while the majority (62%) found Parliament's ability to be "average."

Almost one-third found Parliament’s ability to be "below average" or "poor" (Fig. 13). It is not exactly clear how respondents arrived at their conclusions given that a majority indicated that they did not play a significant role in the legislative process. It may be that a lack of confidence in Parliament’s ability to produce good legislation leads to their non-participation in the process. Whatever the reason, the results point to an important need to involve the public if good governance is to prevail in Ghana. Furthermore, responses from the survey indicate that Parliament by itself is unlikely to be able to produce good legislation (Figure 13).

Table 21. Media Rating of Parliament’s Ability to Pass Good Legislation

Type of Media	RATINGS						Total
	Poor	Below Average	Average	Above Average	Good	Excellent	
Print	0	2	6	1	2	1	12
Electronic	1	2	5	1	0	0	9
Total	1	4	11	2	2	1	21

Source: From Survey



It is reassuring to note that major stakeholders recognize the importance of economists in improving governance in the country through efficient rulemaking practices (Fig. 14). About 27% of respondents indicated a need to employ professional economists to assess the impact of legislation. The majority (29%) rates the importance of public feedback in the legislative/regulatory process as high. Respondents also pointed to the need for legislators to improve their knowledge.

▪ *Training of Parliamentarians*

The infrequent performance of economic impact assessment of legislation on the business sector and the admitted need for these assessments help explain the overwhelming support for training of Parliamentarians in economic analysis. For a better understanding of tools and methods of economic analysis of business-related legislation, the respondents were unanimous that they require some training. Given the high level of educational backgrounds of Parliamentarians, there is opportunity to develop one of the most efficient governance regimes in a developing economy.

Section 5

Conclusions and Policy Recommendations

This study addressed three main objectives. The first was to gain an understanding of how Ghana's legislators and regulators originate, structure, and present legislation and rules that affect private sector activities. The role of economists, journalists, and the civil society in the legislative process were also examined. It was hypothesized that given the dominant role of Government in economic activity, one would expect most economic legislation to originate from the Government Ministries, motivated primarily by donor agencies as part of the ongoing economic reform program. This hypothesis was supported by the results from a survey of Parliamentarians, the business community, and members of civil society. An in-depth review of the legislative history of the VAT legislation lent additional support to the hypothesis.

From a policy perspective, while the role of Government in providing an enabling environment for business is critical to the attainment of the reform objectives, there are real dangers in pursuing economic legislation that is not driven by business practices. The likelihood of compliance with legislative and regulatory outcomes is highest when the parties most affected by the outcome are involved in the process. The survey results show that neither Parliament nor IRAs have performed well in terms of informing the public about impending legislation/regulation. Moreover, the results show that the participation of the business community, organizations, and civil society has been weak. In the case of the VAT legislation, for example, no organization or individuals outside of Government performed any studies to assess the economic impact of the legislation on the business sector.

Efficient bargaining outcomes in the legislative/regulatory process are possible when parties have access to information that allows them to weigh the risks and transaction costs associated with alternative policy choices. On its face, current procedural guidelines in the legislative process in Ghana seem to promote an effective governance regime. Parliamentary practice allows any person who has an interest in any matter pending before a Standing or Select Committee or Parliament itself, to testify, and present studies, investigations, and other information inputs into the legislative process. Government and IRAs should make a concerted effort to publicize meetings and to encourage the participation of interested parties.

The history of the VAT Law teaches that where the public has been poorly educated, the public reaction to legislation has sometimes led to costly policy reversals. It is also important for legislators

and regulators to indicate how public feedback is used to improve legislation. A feeling on the part of the civil society that their views do not matter in the legislative process could threaten the stability of negotiated legislative/regulatory outcomes. One way to improve credibility of the legislative process is to put teeth into the Directive issued by the Office of the President (*discussed in greater detail* below). While only a single reference was made to the Directive during the debate on the VAT Law, it is a useful starting point for building a transparent and open mechanism for public debate on issues of national concern. Business organizations can strengthen Government efforts by educating their members with respect to proposed legislation and its impact on business performance.

The second objective of this study was to evaluate the capacity and availability of information processing resources available to Parliament and IRAs in Ghana. It was hypothesized that the lack of both human and infrastructure resources would prevent the use of transparent economic impact analysis in the legislative/regulatory process. The responses by the Parliamentarians indicated that some economic impact assessment was undertaken both before and after implementation of the legislation. The approaches used for the economic impact assessment, in the order of weighted frequency, were economic analysis, testimony by experts, testimony by the business community and comments from international agencies.

The legislative history of the VAT Law does not support the claim that Parliament and IRAs conduct rigorous economic analysis of legislation and regulations. The existing research unit within Parliament needs to be strengthened. The majority of Parliamentarians expressed strong interest in obtaining training in economics to improve Parliament's ability to formulate legislative proposals. In order to improve business participation, organizations such as the Private Enterprise Foundation need the support necessary to expand their research capabilities. With a research infrastructure in place, such organizations will be effective advocates of business interests. The recent partnership agreement between the Public Utilities Regulatory Commission of Ghana and the Public Service Commission of Maryland (PSC), the U.S. is a useful example of how more developed countries can help improve the processing capabilities of IRAs in Ghana. The agreement will allow the PSC to transfer its experience in market-based energy production, transmission, distribution and **regulation** to PURC (*see Text Box 4*).

The third objective of the study was to explore alternative institutional mechanisms that might increase the degree of accountability, transparency, and information openness in the legislative/regulatory process. The discussion focused primarily on the issue of monitoring

Text Box 4

PURC Signs Agreement with Maryland PSC

Accra (Greater Accra) - The Public Utilities Regulatory Commission (PURC) has signed a regulatory partnership agreement with the Public Service Commission (PSC) of Maryland, USA, under which the American Commission will transfer its experience in market-based energy production, transmission, distribution and regulation to the Ghanaian body. The agreement signed in Washington will also enable both parties to share ideas and exchange programmes that will provide a mechanism for the US energy industry to transfer other experience to the PURC. A statement issued in Accra on Thursday said Mr. Stephen N. Adu, Commissioner and Executive Secretary of PURC, and Mr. Claude Ligon, Commissioner of PSC signed the agreement.

Mr. R. B. W. Hesse, Commissioner, PURC and Dr Samuel Schweitzer, Officer of Energy, Environment and Technology, US Agency for International Development and Mr. Sam Afrifa-Kyei, Minister in charge of Consular and Welfare of the Ghana Embassy witnessed it. The statement said the partnership is part of an elaborate programme established by the US Energy Association for long-term co-operative relations between the US and foreign regulatory agencies in Africa, Asia and Latin America. The US Agency for International Development (USAID) Office of Energy, Environment and Technology is funding it.

The statement quoted Mr. Adu as saying at the ceremony that Ghana is the first African country to undertake a vigorous restructuring programme to ensure fair pricing and provision of good services in the energy sector. He said the PURC is in the process of instituting measures to protect the interest of consumers through capacity building and learning from the PSC.

Source: [Ghana Review International](#)

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Government behavior to ensure accountability, and the options for new institutions to promote openness in Governmental processes. Three monitoring options (not necessarily exclusive) were examined. The first was Parliamentary self-monitoring. It was hypothesized that Parliamentary self-monitoring would be weak in the absence of an effective information market that permits checks on members. Absenteeism in Parliament and the infrequent use of economic impact studies during the process of legislation provided some evidence in support of the hypothesis. It was difficult to document any use of feedback information by Parliamentarians. Poor documentation of the use of public input into the legislative process leaves room for regulatory capture and rent-seeking.

Over the last decade, a series of decisions by the Supreme Court of Ghana have had a major influence on the private sector. The Court has signaled its intention to protect the political and economic freedoms enshrined in the Constitution. Today, private sector entities are assured that their investments will be protected against arbitrary seizure of property. The Court has also defined limits to the exercise of the Executive power, “the Executive power to regulate economic activities must be exercised in such a way as to maintain the equilibrium between enjoyment of the individual’s rights and freedoms and preservation of law, order and welfare of the public.” From the perspective of governance, it is clear that the Court’s decisions support Ghana’s market-based economy within the framework of an accountable, open, and transparent Governmental apparatus.

The press plays a vital monitoring role in a constitutional-democratic system of Government. It was hypothesized that, while there are formal laws that guarantee access to Government and other documents, transaction costs associated with the formal procedures may be high, and in effect be a disincentive to use the procedures. The results of the survey and the review of the debate on the VAT Law support this hypothesis. For example, while the relevant Parliamentary Committee on the VAT Law pointed to ‘some documents’ that informed their deliberations, these documents have not been made public by the press or the Committee. Some press people indicated that informal (“who you know”) procedures are the preferred method of obtaining information due to the high transaction costs associated with using formal procedures. As a policy matter, there should be a more effective implementation of the open records law, the *Public Records and Archives Administration Act, 1997* (Act 535).

It was also hypothesized that inadequate training and infrastructure resources available to the press may inhibit its monitoring role. Slightly more than half of the media companies assigned reporters to cover Parliamentary proceedings, but less than half of the companies informed the public about these proceedings. In terms of the quality of media coverage, only 24% of the media companies indicated that they analyzed legislation thoroughly. The survey results also showed that only about

52% of the media companies had staff with average qualifications, while 10% did not have qualified staff. The inadequacy of human resources may be due to the large increase in demand for qualified staff due to the explosion in media outlets, and the inability of journalism schools to respond to the demand. The inadequacy of media staff largely explains the low grades assigned to the media by Parliamentarians, as well as businessmen and women when they were asked to assess the quality of news reporting. The results from the survey point to a potentially lucrative market for individuals with journalism backgrounds. Investments in a School of Journalism could help to promote the societal goal to strengthen governance in Ghana.

The study also suggested two institutional mechanisms that could be useful in promoting accountability, openness, and transparency in Ghana. There was considerable support for formal legislation on lobbying Government. Such legislation might promote effective participation of stakeholders in the legislative/regulatory process. Since lobbying laws are usually accompanied by reporting requirements, there is an opportunity to gain insights into the demand for institutional change. Informal procedures for influencing Government policy leave room for regulatory capture and rent-seeking. The survey also revealed that there is considerable support for training Parliamentarians and regulators in the use of economic information in legislation. The infrequent performance of economic impact assessments could undermine compliance with laws and regulations. The IRAs surveyed conducted very few impact assessments of their regulations. This study suggests that the Directive issued by the Office of the President (*dated* December 23, 1994) regarding proposed legislation must be strengthened to explicitly require an assessment of the impact of the proposed legislation on business. Furthermore, the Directive must also be made applicable to IRAs. Along these lines, an outline for a “Business Impact Assessment Act,” (modeled after the *Regulatory Reform and Flexibility Act*) for consideration and possible adoption by Ghana has been attached as an appendix to this study.

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APPENDICES