

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

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I. Introduction

Ghana has made substantial progress in regulatory reforms since 1983, but there remain many "second-tier" regulatory and policy problems which are less obvious and/or more difficult to address (Foreign Advisory Investment Service (FAIS), 1995.). The use of research information in designing and implementing policies still present challenges that need to be addressed to 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. A series of papers that appeared in a special edition of *World Development* highlight the complexity of economic policy making in a developing economy context (Vol. 18, No. 8, 1990 *see* papers by Bery, Whitehead, Thomas and Grindle, and Gulhati). Increased participation of non-state actors in the process of government is the most effective way to eliminate the culture of reciprocal mistrust and suspicion on the part of business and government, and build credibility in government policy. Good policies are critical to the attainment of Ghana's goal of becoming a middle-income country by the year 2020 ("VISION 2020") (Government of Ghana, 1996).

Currently, there are favorable trends in Ghana pointing to increased roles and acceptance of the participation of economists in the policy process. The success of Ghana's economic reform program depends in part on making economic policies that are guided by objective measures of performance rather than by the dictates of an autocrat. In a memorandum to the International Monetary Fund explaining its policies in the coming year, the Minister of Finance confirmed Ghana's commitment to the use of objective measures in policy making, "I can assure you that the government is determined to fully implement the program and comply with the performance criteria. Every effort is being made to quickly carry out the agreements contained in the attached memorandum" (www.imf.org/external/np/loi/2000/gha/01/). The emergence of multi-partyism as a component of the structural reform program, for example, has encouraged open criticism of government policies. The commitment to constitutionalism and the rule of law has encouraged the emergence of several media outlets (newspapers, radio, television) that have dedicated space and time to commentary on government economic policies.

Ghana has also experienced growth in economic research institutions since the implementation of reforms. New private advocacy and research institutions such as the Private Enterprise Foundation (PEF), The Center for Economic Policy Analysis (CEPA), the Institute for Economic Analysis (IEA) have carried out research, conducted workshops, and prepared position papers all as input into the policy making process. These institutions have expanded collaboration with expatriate researchers both as a means of strengthening domestic economic policy research capabilities, and also to provide the government with critical information that otherwise could be obtained at a high cost. The activities of these private institutions are similar to those of quasi-governmental institutions such as the Institute for Statistics and Socio-Economic Research (ISSER). These observations lead to the conclusion that economic policy research is maturing in Ghana and would become even more important as the country deepens its faith in market reforms within a constitutional-democratic framework that invariably sharpens the demands of strategic groups for a share of scarce economic resources.

This paper examines the role of economists and the use of information derived from economic analysis in the policymaking process. The paper adopts the broader dictionary definition of

policy as “a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions” (*Webster’s Collegiate Dictionary, 7th Ed.*). Such a broad view of policy compels the identification of the entities responsible for deciding and selecting the alternative courses of action for society, the sources of the information input in making the selection, the adequacy of the human and financial resources that go into the decision making, and the legitimizing elements that make selected courses of policy actions a part of social life in Ghana.

Public policies are formulated through statutes, executive and legislative instruments, legal notices, regulatory orders by Independent Regulatory Agencies (IRAs), and the like. The paper therefore focuses on the legislative, executive, and regulatory agencies’ processes including the role of private entities. The paper also makes the case that Ghanaian courts are emerging as important sources of economic policymaking, a phenomenon that has received very little attention in the literature on economic policy making in Sub-Saharan Africa (SSA). To sharpen the discussion, the paper attempts to shed some light on the following questions:

1. How do Ghana's legislators and regulators originate, structure, and present legislation and rules that affect private sector activities?
2. What is the role of economists, journalists, and the civil society in the legislative/regulatory processes?
3. How do businesses learn about new laws and regulations, and changes in the rules?
4. What is the capacity and information resource available to the Parliament and IRAs to conduct studies and employ transparent protocols (benefit/cost tests, performance standards, open records rules, time limits, comment periods, etc.) in the legislative/regulatory process?
5. The prospect for adopting formal procedures such as lobbying rules to facilitate private sector participation in the legislative/regulatory processes.

To answer these questions, questionnaires were administered to (1) Members of Parliament; (2) business associations; (3) private businessmen and women; (4) the news media; and (5) the civil society, and selected independent regulatory agencies. The questionnaire administered to the IRAs explored issues related to their internal rule-making processes, their use of research information, and the cost of regulation. The objective was to determine the extent to which the internal controls within the IRAs function to raise business confidence in their operations. The underlying hypothesis is that the absence of business confidence opens the door to rent seeking and regulatory capture. In addition to these formal surveys, informal discussions were held with researchers from selected economic research institutions, and more significantly with selected members of the government’s ‘Economic Management Team’.

The process of negotiating the Value Added Tax (VAT) Law (Act 546), and accompanying regulations, the VAT Regulations, 1998 (LI 1646) provides anecdotal evidence to verify some of the findings from the surveys. The study of the VAT law entailed reading extensive Parliamentary debates, published documents from the VAT Secretariat, and information gathered from conversations with individuals who participated in Boardroom discussions. The discussion is used to show how a failure to adhere to the principles and guidelines for effective governance in the form of public participation in policy debates could lead to costly policy reversals, and

wasted time and effort. The study is also used to verify some of the Parliamentarians' responses to questions dealing with the use of economic information in economic legislation and policy making.

Section 2 of this paper presents a general framework of the economic policy making process in Ghana. The framework emphasizes the central role of the economist as one exposing all participants in the policy market to the risks and transaction costs associated with alternative courses of action. The section closes with brief comments on policy research institutions, that is, the suppliers of economic information in Ghana. The emergence of Independent Regulatory Agencies (IRAs) and the results of a survey Parliamentarians, business entities, the media, and civil society are presented in Section 3. Conclusions and recommendations for expanding the use of economic information in the policy process are presented in Section 4.

II. A Framework of the Legislative/Regulatory Process in Ghana

A framework proposed by Meier (1991) is adapted in developing a paradigm of the regulatory/legislative process in Ghana. Conceptualize the legislative/regulatory process as 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. Ideally, as shown in Figure 1, the economist plays a central role, and is responsible for exposing *all* stakeholders to the risks and transaction costs associated with alternative policy choices. The Society-centered and State-centered forces utilize the services of economists in making predictions and offering prescriptions that are passed on to Parliament. Economists also supply information to Parliament either through Parliament's own in-house sources, or through external sources. The outcome of this competitive trading of ideas between the Parliament and the private sector is a law, regulation, or policy 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.

A. Sources of Legislation

The above description of the legislative/regulatory process points to the legislature (Parliament), State interests (Executive/Ministries), and private sector entities as possible sources of legislation. The framework explicitly accounts for the role of International and donor organizations in the process. These organizations have been the sources of some significant economic laws including (The Bank of Ghana Law (amendment, 1992), the Financial Institutions (non-banking) Law (1993), and the Free Zone Act (Act 504)) enacted in Ghana over the last decade. 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.

B. Bargaining and Information

Bargaining occurs at all stages of the legislative process. Efficient bargaining outcomes occur when Parliament and the private sector have access to symmetric information. The Parliament

must have the capacity to conduct its own set of predictions and offer prescriptions for policy change. There is a nascent research division within Parliament in Ghana, but its human and infrastructure resources are weak. With the possible exception of the Bank of Ghana, in-house research capability in 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. Private sector entities and organizations face similar constraints and are also likely to rely on third-party studies instead of their own in-house sources. 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. Even though all members of Parliament and within the regulatory agencies have had some formal education, the lack of supporting economics research infrastructure suggests that their ability to utilize economic information in decision-making is limited. These combined factors would lead one to expect very low economics research input into the legislative/regulatory process in Ghana.

C. Monitoring and Implementation of Legislation

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.

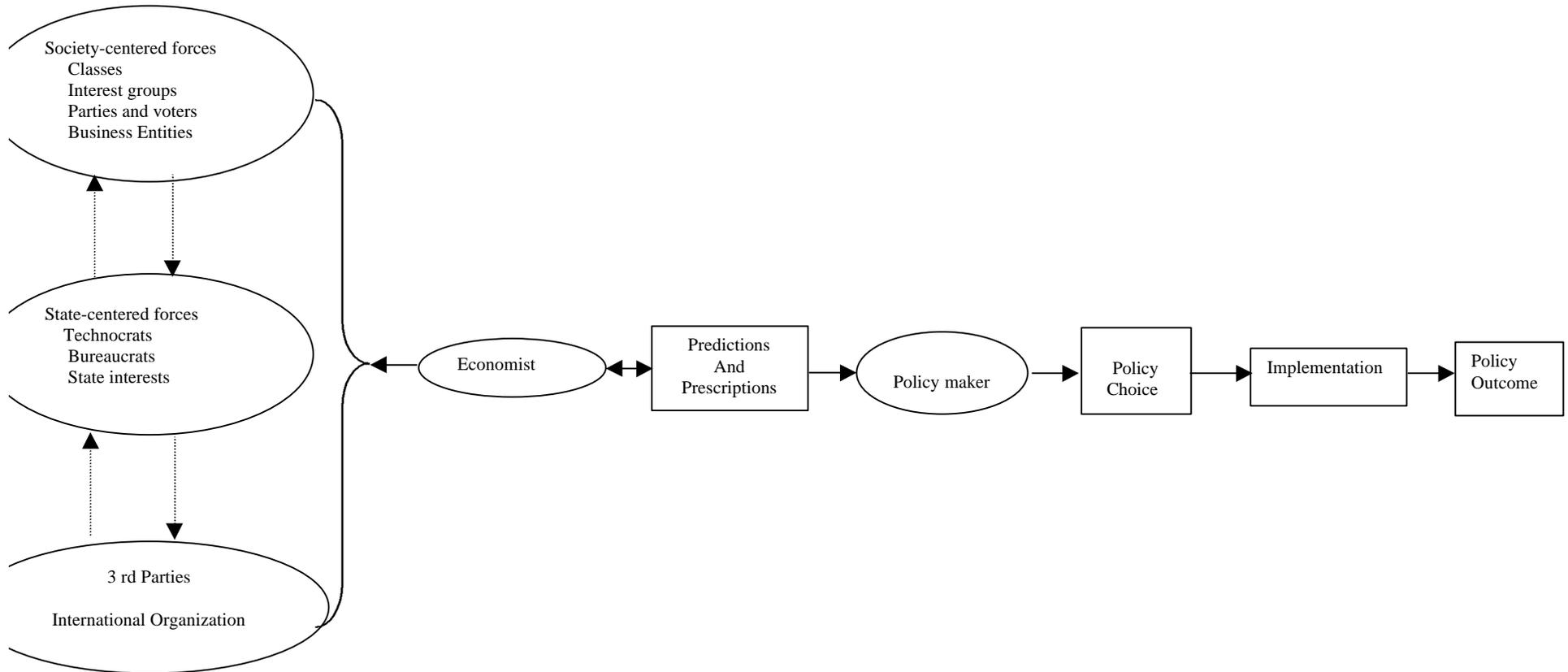
Another important monitoring institution is the judiciary. The opportunity for citizens to protect their political and economic rights is an essential ingredient in any credible governance regime. At this early stage of democratization, citizens in Ghana are using the monitoring powers of the judiciary only in a reactive sense, that is, only in reaction to an impediment placed in their way under a particular law. 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. Also, through their operation of 'loan conditionalities,' these organizations have forced developing country governments to live up to 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.

D. Information Supply Institutions

The discussion so far suggests that the legislature, executive, judiciary, private entities, and international organizations are the key policy institutions in Ghana. Within some of these institutions are sub units primarily responsible for economic policy matters. Focusing specifically on the executive branch, the Cabinet is at the apex of the policy-making hierarchy. Beneath the cabinet is the 'Economic Management Team' (EMT), headed by the Vice-President. The operation of the EMT seems to be *ad hoc*. First, it does not have a fixed membership, that is, with the exception of the Finance Minister, Governor of the Bank of Ghana, and a few heads of ministries, any individual considered to have specialized knowledge on a particular economic issue may be invited to join the team during the discussion of that particular issue. Also, the team does not have a fixed meeting schedule, and meet only at the discretion of the Vice-President or Minister of Finance. The EMT was especially instrumental in fashioning Ghana's structural adjustment program and working with IMF staff in preparing various position papers on the economy. Decisions by the EMT are subject to cabinet approval.

Figure 1. A Framework for Legislative/Regulatory Process in Ghana



Since the inception of the adjustment program, there have emerged what may be labeled economic research information supply institutions. The Private Enterprise Foundation is a USAID-sponsored institution that advocates policies supportive of the private sector in Ghana. There is a small in-house research group but they also contract out most of their research in support of their economic policy positions. The Institute of Economic Affairs (IEA) is a privately funded organization with a considerably larger in-house research group of economists and political scientists. Through their "Associates" program, IEA has been able to tap the participation of retired experts from the civil service to boost their in-house research capability. It is not exactly clear how research, workshops, and seminar information from the IEA go to influence government policy. Conversations with some key in-house researchers indicated that while their impact on policy may not be explicit, government officials routinely attend their workshops and seminars, and always are tuned-in to what is happening at the Institute. One program organized by the IEA has the potential to considerably improve research support of Parliament's in-house economic research. The Institute sponsors university students as interns attached to selected Parliamentarians. These interns conduct background studies in support of legislation proposed by a Parliamentarian. One test of the IEA's influence on the policy process could come from their sponsorship of a 'Freedom of Information Act' proposal by a group of academics and public interest groups. A seminar on the proposal was held at the Institute in June 2000 but so far the government's position is not known.

Probably the most recognized economic policy institution in Ghana today is the Center for Economic Policy Analysis (CEPA). CEPA boasts several well-known domestic economists who work with both government and expatriate research institutions. The key to CEPA's dominant position in the economics research information market is its leadership. The center is headed by an individual widely regarded as what one government official stated to me, the "father" and principal architect of Ghana's economic reform program. The Director also serves on several key government-established boards and committees, including the Bank of Ghana Board that is responsible for monetary policy. Field information suggests that the Director is in fact the originator of the Economic Management Team on which he still serves. While CEPA is known to have made considerable contribution in shaping economic policies in Ghana, the modalities in transmitting research information to policy makers and the use of the information in actual policy decisions are unclear. Conversations with some staff members indicate that economists from the center regularly testify before Parliament, present seminars, workshops on key economic issues, and also serve on various committees established to address specific economic issues. Probably, the most direct influence of the center on policy comes from the Director himself who literally has the ear and trust of key government officials.

Another major economics research institution is the Institute for Statistics and Socio-Economic Research (ISSER) attached to the University of Ghana at Legon. ISSER is the oldest economics research institution in Ghana. Being a part of the university of Ghana, it is supported by both the Government of Ghana and several donor organizations from around the world. As a government institution, it has been instrumental in conducting research that is often directly associated with a government program such as the Ghana *Living Standards* Survey organized by the World Bank. ISSER conducts studies for organizations like PEF and the Chamber of Commerce on a contract basis but it is not directly involved in lobbying activities. Economists from ISSER are sometimes invited by Parliament to present expert opinions on proposed legislation. Some of the

studies produced by economists at the institute are simply academic publications with a general audience in mind. ISSER's annual publication, *The State of the Ghanaian Economy* produced with funding from USAID/Ghana is now standard reading for policy makers and the public.

III. Results of a Survey of Policy Making Bodies in Ghana

A. Survey of IRAs

The previous sections described a framework of the policy making process in Ghana and also identified both the users and producers of economic information. In this section, we present the results of a survey of policy-making institutions, focusing particularly on the set of objectives stated in section one of this paper. The discussion begins with the results of a survey of Independent Regulatory Agencies, a major evolving source of policies. 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*. 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 sixty regulatory agencies operating in Ghana. For Ghana and other countries pursuing market reforms, an early understanding of the mechanics of regulatory agency behavior could prevent waste of valuable resources in the future.

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 (a) victimized or discriminated against for having discharged his duties faithfully in accordance with the Constitution; or (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause (Article 191). Table 1 adapted from a previous study summarizes responses by selected IRAs to a series of questions related to information use in the regulatory/policy making process. Generally, decision-making within these agencies is the responsibility of a Committee. In terms of information use, responses to questions 5, 6, and 7 indicate that all the agencies (excluding the NIC and FDB) had studies performed in support of new regulations. The responses also indicate that with the exception of the Bank of Ghana the agencies have no in-house research capability. While these agencies give notice (probably required by statute), few position papers are submitted by outside groups. As argued earlier, policy making by regulatory agencies is a fairly recent phenomenon in Sub-Saharan Africa generally. It is plausible to expect that if countries stay with a market approach to economic organization, these agencies would gain prominence, and economic information would become even more valuable in designing efficient regulations to implement policy.

B. Survey of Parliament, Private Business Organizations, and Civil Society

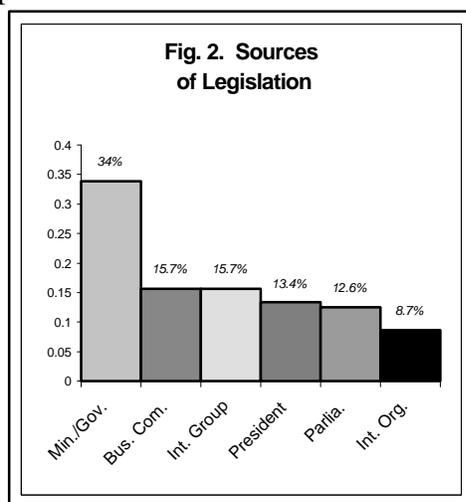
Analysis of Study Objective 1

The first objective in this paper 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:

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

1) 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. Under the Constitution, the President is responsible for introducing Bills in Settlement of financial matters (Art. 108(a)&(b)). Under Standing Order 120(2) of Parliament a Member of Parliament may introduce a bill on behalf of the President after giving notice for introducing the Bill. Legislation may also 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. 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 new laws and policies for improving the ports and customs procedures.



Ghana is only recently introducing policies for eventual transformation to a market-driven economy. This policy is being followed with the assistance of the donor community. A plausible hypothesis is that one would expect most legislation to originate from the government sector and also from donor-inspired sources. Stated another way, the private sector is expected to play a lesser role in proposing legislation for possible enactment. The hypothesis is partly supported by the results of the survey, and the process that led to the passage of the recent tax law, *The Value Added Tax (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.

2). The business community and special interest groups were the next most important sources of new legislation each 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. While the results point to the public sector as the dominant source of legislation, there is room for optimism that over time the role of private parties would be enhanced since the market reform program has not fully matured.

The hypothesis is further supported by the legislative history of the VAT law that originated from a Government ministry as part of an effort to strengthen the ERP supported by the World Bank and the IMF. The Minister for Parliamentary Affairs presented the Bill 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 (Ministries and President's Office) 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. 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 were in agreement over 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 Economic Recovery Programme (ERP) and the Structural Adjustment Programme (SAP) introduced in 1986. This conclusion is supported by the absence of any studies from the private sector that supported the Government's positions.

2) Role and Use of Information by the Private Sector

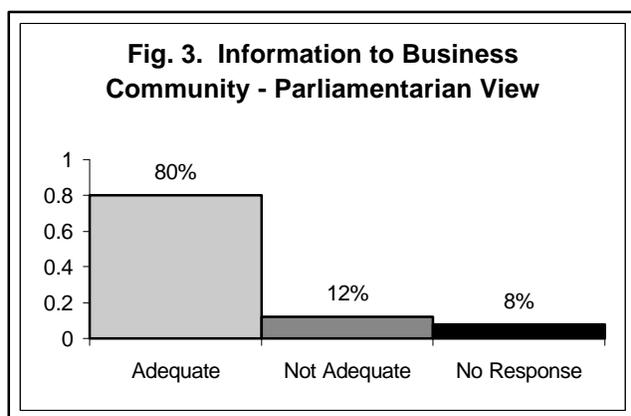
Efficient bargaining outcomes in the legislative/regulatory process are possible when parties have access to information that allows them to weigh the risks and transaction costs associated with alternative policy choices. On its face, current procedural guidelines in the legislative process in Ghana 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.

Any institution (for example, the Ministry of Finance) that proposes new legislation may also perform background studies in support of the legislation. Under a Directive issued by the Office of the President (*dated* December 23, 1994) the Cabinet must approve all proposed legislation before it is presented to Parliament. The proposed Bill - embodied in a Memorandum, presented to the Cabinet by the Sector Minister, must state *inter alia*:

- (a) Background of the proposed legislation;
- (b) Issues for consideration by the Cabinet;
- (c) Inter-Departmental - Ministerial consultations that have been held with bodies and agencies of relevance;

- (d) Financial considerations supported by a statement that the Ministry of Finance has been consulted;
- (e) Employment consideration, if any;
- (f) Whether or not there is existing legislation.

From the perspective of Parliamentarians, the business community is adequately informed about the legislative process. A majority of the parliamentarians (80%) indicated that the business community was adequately informed about business-related legislative processes (Fig. 3).



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 requires for business associations to inform their membership of impending legislation, and to formulate a common position to present to Parliament. This is not the case in Ghana. A majority of business people learn about impending legislation through the Press. 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.

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 may be considered probably the most important business-related legislation since the inception of the economic recovery program in 1983. 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, "many institutions and individuals were of the view that the VAT should be imposed only after a well structured and meaningful educational program 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 parts 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 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 to effectively deliver information to their members.

3) Role of Strategic Groups in the Legislative Process

The participation of respondents categorized as members of civil society, and who represent a broad cross section of Ghanaian society is especially critical to the objective of good governance (Apter, 1965; Bates, 1988). Nearly all (96%) of civil society respondents consider good legislation to be very important or important in economic development. However, respondents did not consider their role in the legislative process to be important. About 45% of respondents did not find any role played by ordinary citizens in the legislative process, while 39% found only a moderate role (Table 1). Civil society respondents also found the participation of the business community in the legislative process to be poor. About 23% found business participation to be poor, while 43.2% found business participation to be below average. (See Table 2). About one-third of respondents found the participation of the business community to be average, and only about 3% found their participation to be above average. 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 was in the case of the first VAT law, reaction was spontaneous and violent, primarily due to lack of civil society participation in the process.

Table 1 Role of Civil Society in Legislative Process

Role	Frequency	%
No Role	32	45.1
Moderate	28	39.4
High	11	15.5
Total	71	100

Table 2. Civil Society Assessment of Business Role

Role	Frequency	%
Poor	17	23
Below Average	32	43.2
Average	23	31.1
Above Average	2	2.7
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 quite active in the legislative process, while a majority of the print media found the participation to be less active (44.4%), and quite active (22.2%) (See Table 3).

Table 3. Media Assessment of Business Community Participation in the Legislative Process

Media	Not Active	Less Active	Quite Active	Very Active	TOTAL
Print	2 (18.2)	1 (9.1)	5 (45.5)	3 (27.3)	11 (100.0)
Electronic	1(11.1)	4 (44.4)	2 (22.2)	2 (22.2)	9 (100.0)
TOTAL	3 (15.0)	5 (25.0)	7 (35.0)	5 (25.0)	20 (100.0)

Source: From the Survey.

The difference in civil society and news media assessment of the role of the business sector in legislation is a matter of economics. Since there are 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. Finally, there is a long historical relationship between the print media and the business community whereas electronic media outlets are only of a recent origin.

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 in this paper is that the idea of *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.

B. Analysis of Study Objective 2

1) Capacity to Conduct Assessment of Proposed Legislation

Economists often 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 survey results show that Parliamentarians in Ghana 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 Parliamentarian among the respondents with vocational/technical education has not taken any course in economics (Table 4).

Table 4 Level of Education in Economics

Level of Educ.	Trained	Not Trained	Total
Voc/Tech	0 (0.0)	1 (100.0)	1
Post Sec.	3 (42.9)	4 (57.1)	7
University	30 (71.4)	12 (28.6)	42
TOTAL	33 (66.0)	17 (34.0)	50

Table 5 Self-Assessment of Economic Knowledge

Fair in Econ.	Good in Econ.	Total
1 (100.0)	0 (0.0)	1 (100.0)
7 (100.0)	0 (0.0)	7 (100.0)
35 (83.3)	7 (16.7)	42 (100.0)
43 (86.0)	7 (14.0)	50 (100.0)

Source: From the survey

In a self-assessment of the level of knowledge in economics, 83% of those with a University education indicated their knowledge to be fair and the remaining 17% indicated it to be good. All the remaining Parliamentarians with post-secondary and vocational/technical education indicated their knowledge of economics as fair (Table 5). As discussed below, this high educational attainment did not influence the use of rigorous economic impact analysis related to the VAT legislation.

ii. *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 indicate that Parliamentarians perform some economic impact assessments both before and after implementation of 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 6).

Table 6. Approaches to Impact Assessment of Legislation Before Passage

	Least important				Most Important	
Approach	1	2	3	4	5	V. Imp.
Economic Analysis	42.2	30.4	32.2	0	0	33
Expert Testimony	33.3	28.3	32.5	22.7	0	30.6
Business community	17.8	32.6	22.5	36.4	100	25.2
International Body	4.4	6.5	12.5	40.9	0	9.6
Others	2.2	2.2	0	0	0	1.6
TOTAL	100	100	100	100	100	100

Source: From the survey

The weighted importance of approach 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 percentage.

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) that were deemed relevant to the VAT; 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 cannot be considered an ‘institution’ as used in this paper. The Forum is an *ad hoc* gathering of stakeholders to discuss issues of economic importance and to build consensus among strategic stakeholders in respect of overall economic policy-making and implementation in Ghana. It has no office or secretariat, and the occasional gathering may be

funded by the government itself or by a donor agency. 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 references to computations made available to the Committee by the VAT Project “computations made available to the Committee by the VAT Project suggest 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 some 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, 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 Institute for International Development and the Crown Agents from the United Kingdom, “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, “Mr. Speaker, 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 confirms the hypothesis about the negative effect of the lack of human and infrastructure resources on 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, the 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 with no counter proposals being offered. For example, one would expect private sector entities to discuss the heavy burden of the tax on firms and households based on some 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 was pointed out in the first survey (survey of regulatory agencies), no agency could tell 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.

C. Analysis of Study Objective 3 - Alternative Institutions for Promoting Governance

1) 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 in this study examines 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.

2) 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 only confirm the lack of an effective monitoring mechanism of Parliamentarians' behavior. Generally, there is no incentive for parliament to monitor itself if the cost of not monitoring is 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.

The economic impact assessment of legislation that has been applied is done 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 7).

Table 7 Economic Impact Assessment of Legislation After Implementation

	Least important			Most Important		
Approach	1	2	3	4	5	W. Imp.
Feedback from Business	54.5	30	12	8.3	33.3	35.6
Expert Testimony	18.2	16.7	44	41.7	33.3	24.3
Parliamentary Study	18.2	40	36	36.4	100	25.2
International Body	3	13.3	8	41.7	0	9.6
Others	6.1	0	0	0	0	2.6
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 percentage.

It is difficult to determine from the legislative history of the VAT any evidence in support of the results in the Table 16. That is, there is no documentation of a situation where the Parliament has used feedback from the business sector to make changes in legislation that has been passed. 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.

3) Monitoring by the Courts

Courts in democratic-constitutional systems play a critical role in monitoring the behavior of all branches of Government. Given that Ghana operates under a common law tradition, the role of courts in shaping policy may become significant in the future. There seem to be a movement towards some appreciation of the nexus between law and economics such that if the trend continues courts could emerge as potent institutions promoting accountability, openness, and transparency in Government behavior. The role of courts in promoting governance is exemplified in a series of court decisions that have been announced by the Supreme Court in recent times. These decisions suggest that the courts intend to protect both the political and economic freedoms enshrined in the Constitution of Ghana. 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* in terms of the opportunity for private companies to seek redress in court, and not be subject to arbitrary rules.

In arriving at the above decision, the Supreme Court had to determine a very important issue - very much relevant 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 trample upon the 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 be such as not to erode the individual's fundamental human rights and freedoms; that 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. 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 and policy making roles by making courts more accessible to business entities in the case of *New Patriotic Party v Attorney-General (CIBA case)* [1996-97] SCGLR 729. The court, by this decision, accorded a body corporate the same status as a natural person in enforcing the fundamental rights enshrined in the Constitution. In this case, the plaintiff, 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 defense of the constitutional order by resort to judicial review when the constitutional order is being threatened.* (Emphasis added).

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 *commerce clause* (used to check regulations by States that burden interstate commerce in the United States) to break down barriers to commerce, and 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.

4) Press Monitoring of the Legislative Process

An informed public is one of the key elements of good governance. The Press in a democratic-constitutional system is a critical institution that carries major responsibility in terms of informing the public, and also providing a forum for the general public to participate in debates

about the process and outcomes of Governmental 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 in using the formal procedures may be high, and in effect be a disincentive to use the procedures. A second hypothesis is that inadequate training and infrastructure resources available to the Press may inhibit its 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 on any matter pending before Parliament or its committees. However, there are limitations on what journalists may publish. They stand the risk of being punished or being found guilty on a charge of 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" by a journalist, constitutes a breach of privilege or contempt of Parliament. Standing Order 25 provides:

"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."

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 (a) by any public office, other than the security services, (b) by any court with jurisdiction within Ghana, and (c) 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 about Press 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 key documents that inform debate 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 the transaction cost associated with gaining access to documents. Conversations with an investigative reporter for a major newspaper indicated that it was more efficient to rely on informal processes ("who you know"), than to use the formal rules to gain access to documents (*private conversation*). 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 the 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 8). 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 9).

Table 8: Media Coverage of Parliamentary Debate

	Frequency			
Media	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 9 Informing Clients About Legislation

	Frequency			
Media	A	S	N	Total
Print	6 (50)	6 (50)	0(0.0)	12
Elect.	3 (33)	5 (56)	1 (11)	9
Total	9 (43)	11 (52)	1 (5)	21

Source: From the survey. % totals may not add to 100 due to rounding.

A=Always; S=Sometimes; N=Never

An unresolved puzzle is the response to the question of keeping clients informed on legislative proceedings. Even though many of the news media companies covered legislative proceedings, the proportion of those who kept their clients always informed was only about 43%; about 52% only sometimes informed their clients and the remaining 5% have never informed their clients on legislative proceedings (Table 9). 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 the political orientation of a particular media. Newspapers especially have tended to espouse a particular political viewpoint that is either pro- or anti-government positions. For these media outlets, it is unlikely to 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.

The hypothesis about the human and infrastructure resources available to the Press helps in explaining why the Press is not informing clients about Parliamentary deliberations. This is implied by the Press responses to the thoroughness in terms of analyzing legislation. 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 10). Among the print media, 92% analyzed legislation moderately to thoroughly compared to 67% of the electronic media and the

remaining 8% of the print media and 33% of the electronic media did not analyze legislation thoroughly (Table 10).

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 0.0	1 8	5 42	5 42	1 8	12
Electro	2 22	4 44	2 22	1 11	9	1 11	0 0.0	6 67	2 22	0 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. Figures in bold are percentages.

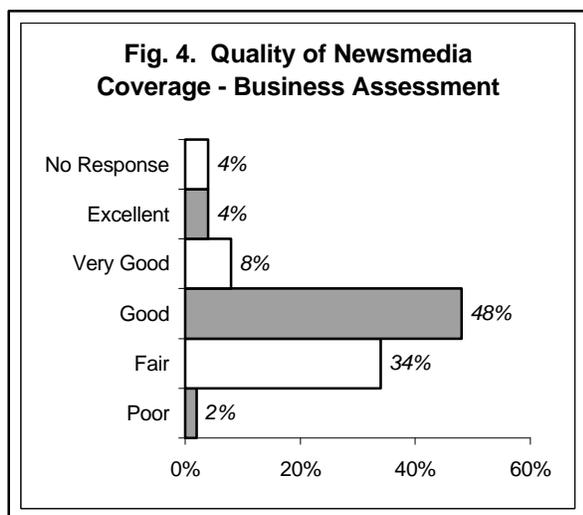
T= Thoroughly; M=Moderate; NT= Not thorough
NAA= Not At All.

NQ= Not Qualified; BA=Below Average; A=Average
AV= Above Average; VQ=Very Qualified.

With regard to qualification of staff to analyze legislation, the hypothesis in this study is supported by the response from Press respondents. 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 11). 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 the 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 since about 68% of the 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.

Among the businessmen and women, 36% ranked the proficiency of the news media report on business-related legislation as fair or poor, 48% ranked it as good and only 14% ranked it as very good to excellent (Fig. 4). The quality of news media coverage of legislative process in the country falls short of the expectation of parliamentarians, 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.



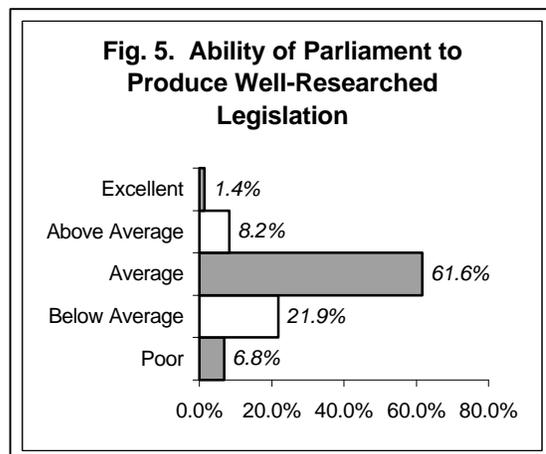
For effective dissemination of information on legislative process to the business community, some of the print media have special sections in their respective newspapers to highlight business-related news; and some of the electronic media devoted some air time for business issues, particularly reporting on parliamentary proceedings. About 81% of the media devoted space or airtime for business-related news and the remaining 19% did not.

The discussion of assessments of media monitoring of the legislative process suggests an urgent need to strengthen the media's role. Strengthening the media entails both training of press people and

availability of infrastructure for information processing purposes. But probably the most critical need is to put teeth in the implementation of the access law 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.

4) Lobbying Parliament

One of the objectives in this study was to explore the prospects of adopting formal rules for lobbying the 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 those societies where the information market is weak, there is a tendency towards distrust of Government intentions, which may open the door to rent-seeking (Kreuger, 1974).

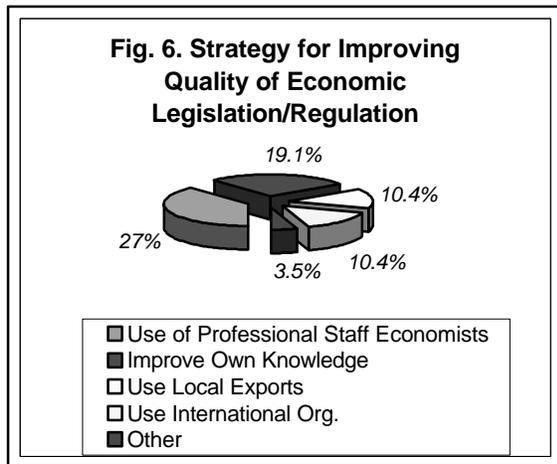
Formalized procedures make it possible to account for the expenditure of resources on institutional change. Formal lobbying laws are usually accompanied by reporting requirements so that the system can be monitored. Lobbying is important as a means of promoting effective participation of stakeholders in the legislative process. Associations, Unions and other groupings are more able to lobby successfully than individuals. All the business associations, in the survey except the Ghana Bar Association (GBA) indicated a need for a formal law on lobbying Government. Also, a majority of the news media companies (65%) will support formal procedures to lobby the parliament (Table 12). The need for formal procedures for influencing legislation is best understood by reflecting on the historical practices in the country. At independence, Ghana like most countries in Sub-Saharan Africa (SSA) inherited a "nascent civil society" which permitted participation of groups 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. The post-independence period is characterized as a period of "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 12 News media Attitude to Formal Procedure for Lobbying

Type of Media	Support	No Support	TOTAL
Print	7(63.6)	4(36.4)	11(100.0)
Electronic	6(66.7)	3(33.3)	9(100.0)
TOTAL	13 (65.0)	7(35.0)	20(100.0)

Source: From the survey

A second recommendation for promoting accountability, openness, and transparency is to improve the capacity of Parliament to utilize economic information. Both the civil society respondents and the media found Parliament's ability to pass good legislation to be very weak. Note that the concern is the ability of Parliament to either utilize its own internal research sources, or to use the services of outside expertise to examine proposed legislation. 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 only average. Almost one-third found Parliament's ability to be below average or poor (Fig. 5). 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 also be the case that their lack of confidence in Parliament's ability to produce good legislation is the reason for 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.



It is reassuring to note that the major stakeholders recognize a key role to be played by economists in improving governance in the country through efficient rulemaking practices (Fig. 6). About 27% of respondents indicated a need to employ professional economists to participate in conducting studies to assess the impact of legislation. Many (29%) reinforce the public involvement theme by focusing on the importance of public feedback in the legislative/regulatory process. Respondents also pointed to the need for legislators to improve their own knowledge.

5) 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, an opportunity is presented to grow one of the most efficient governance regimes in a developing economy. The government may want to also consider hiring staff experts to assist on economic analysis of proposed legislation.

V. 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 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. There was additional support for the hypothesis based on an in-depth review of the legislative history of the Value Added Tax (VAT) legislation.

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 Parliament and the IRAs have not performed well in terms of informing the public about impending legislation/regulation. Also the results show that the participation of the business community, organizations, and civil 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. There should be a concerted effort on the part of Government and the IRAs to publicize meetings to encourage participation by 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 non-governmental entities 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, the specific information required, is a useful starting point for building a transparent and open mechanism for public debate on issues of national concern. Business organizations can strengthen the efforts by Government by educating their members with respect to proposed legislation and its impact on business performance.

The second objective addressed issues related to the capacity and availability of information processing resources available to the Parliament and Independent Regulatory Agencies (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 does not support the claim that the Parliament and IRAs undertake some 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 better formulate legislative proposals. To improve business participation, organizations such as the Private Enterprise Foundation need support to expand research capabilities to be effective advocates of business interests. In terms of the IRAs, the recent partnership agreement between the Public Utilities Regulatory Commission of Ghana and the Public Service Commission of Maryland, USA is a useful example for improving the information processing capabilities of IRAs in Ghana.

The third objective explored alternative institutional mechanisms to increase the degree of accountability, transparency, and information openness in the legislative/regulatory process. The discussion focused primarily on the issue of monitoring 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 in legislation 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 would 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 in using the formal procedures may be high, and in effect be a disincentive to use the procedures. The results of the survey and 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’ relied on in 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 used more regularly to obtain information due to the high transaction costs associated with using the 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 show 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 as a result of the explosion in media outlets, and the inability of the journalism schools to respond to the demand. The inadequacy of media staff largely explains the low grades assigned to the media by Parliamentarians, 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 a formal law on lobbying government. Such a law could promote effective participation of stakeholders in the legislative/regulatory process. Since such 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 always leave room for regulatory capture and rent seeking. There was also 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 in this study hardly conducted any 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.

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