Promoting public sector accountability in Ghana: The role of stakeholders

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Abstract
For over twenty-four (24) months, the Commission on Judgment Debts and Akin Matters has interacted with a cross-section of the Ghanaian public, made up mostly of public officials, on the issue of court cases mounted against the State and several of its institutions for the past twenty-three years leading to huge judgment debts against the people of Ghana. One of the major issues that came to the fore was Probity and Accountability on the part of public officials in the performance of their official duties for which they are paid from the tax-payers' money. The fact, however, is that one cannot talk about 'Accountability' without the idea of 'Corruption' rearing its ugly head, as the absence of the former nurtures the latter. This paper therefore examines the issue of probity and accountability by critically analysing the position of the law and the reality in the Ghanaian system.

Keywords: accountability, probity, corruption, public officials, Ghana

Introduction

Public sector is defined as that part of the economy or industry that is controlled by government. Pursuant to Article 190(1) of the 1992 Constitution of Ghana, public sector institutions refer not just to the structures that house the institutions; the structures themselves do not render or perform any services. It is the officials who work in these institutions that make up the institutions. So the question is; do all public officials who make up these institutions have integrity? If they have, then there is integrity in our public institutions. And if there is integrity in our public institutions, then there will be no problem with

accountability in its proper sense. This is because, integrity or probity in a real sense is nothing more than doing the right thing for the right reason. If you always do the right thing for the right reason all the time as a public officer, you have no problem with accountability since you have nothing to hide.

Globally, all democratic countries are striving to build new public management mechanisms or regimes within the public sector that would be more responsive to the needs and requirements of the citizenry that these public sector institutions are supposed to serve. However, corruption has become a malady of all public organisations worldwide. It is worth mentioning that corruption is an antithesis of accountability: where there is proper accountability, corruption finds it difficult to make a headway. The general presumption is that corruption has become the order of business in the Ghanaian public sector and the situation is now on the increase. The way we talk about it makes it appear to be ubiquitous; in government circles, within political groupings (particularly during primary election of candidates to represent the Parties), in churches, in all public institutions like the police, customs, immigration, educational institutions, health, the judiciary, ministries, departments, agencies (MDAs), metropolitan, municipal and district assemblies (MMDAs), in our local assemblies, communities and villages including our family set ups. Our chiefs are not even left out. The irony is that whilst everybody is talking about corruption, no one seems to accept the fact that he/she is corrupt. We point accusing fingers at others or at each other on mere perceptions and feign our non-inclusiveness. Corruption has therefore become so elusive that no one has ever ventured to find a practical antidote to bury or curb it aside workshops upon workshops that are ran to discuss it. Ghanaians generally behave as if they see it but appear not to see it because; indirectly, they seem to approve of it and indulge in it unknowingly. It appears to have assumed the posture of a norm.

The issue of corruption and its alleged pervasiveness is not something new. In 1973, a Commission of Inquiry was appointed by the government of the National Redemption Council (NRC) Government headed by the late General Kutu Acheampong to inquire into bribery and corruption in Ghana. The Commission was established on the basis of allegations of gross bribery and corruption within government and public institutions in Ghana at the time. This was about forty-three (43) years ago. Almost every public speech of the then Head of State, General Kutu Acheampong, and his Commissioners was spiced with the words: probity, accountability, integrity and prosperity.
Corruption is a human phenomenon; it exists everywhere including even the so-called civilised countries. If you give it the opportunity to thrive, it will. The phenomenon has become apparent in recent times because technology has enhanced the means of communication, making it possible for many people to obtain information than before. According to Kuffour, former president of Ghana, corruption started from the day of Adam. Consistent with the teachings of the Holy Book, when Ananias and Saphira sold their property and, instead of giving all the proceeds to the church as the claimed, they connived and concealed part of the proceeds. They did not properly account

for what they earned from the sale of their possessions and this was described by Peter as an act of Satan and a lie against the Holy Spirit. It was an act of corrupt minds that is why Peter called it Satanic {See Acts Chap. 5; Verses 1-4}. Examples abound in the Holy Book, particularly in the books of Mica, Proverbs, Amos, Isaiah, etc. including the bribe Judas took to betray his own teacher Christ Jesus.

The findings of the 1972 Commission of Inquiry on the factors that account for corrupt practices in the Ghanaian society at the time would be almost the same, if not the same factors that any Commission of Inquiry appointed today with a similar task would arrive at. Any new additions would have to do with the role technological advancement plays in corrupt practices; the findings couldn't be any worse. This means that nothing has indeed changed within the forty-one (41) years of the existence of this report, notwithstanding the useful recommendations the Commission came out with. The report was emphatic that the practice of corruption involved a certain state of mind, certain habits, administrative and institutional shortcomings, weak or inoperative sanctions and uncertain natural leadership. By leadership, the Commission was not referring to only leadership at the national governance level, but leadership in all sectors of our public institutions - national, regional, district, local and even at our village committee levels. This paper therefore, examines the issue of probity and accountability by critically analysing the position of the law and the reality in the Ghanaian system.

Corruption and Accountability

Corruption is the antithesis of accountability; the two are diametrically opposed to each other. The absence of one nurtures or promotes the other. There is no way corruption can thrive in the way or manner in which we see or perceive it, if there is "proper accountability" at all levels in our public dealings. It is, therefore, no gainsaying to assert that 'proper public accountability', not just 'propagandist' or 'lip-service' public accountability, is the only panacea for the eradication of corrupt practices in our public institutions and the society in general. Public Accountability is, therefore in essence, a 'sine qua non' for Good Governance. For instance, in American political discourse, Accountability is often used interchangeably with 'Good Governance'. This is because there can never be good governance if there is no accountability.

The Concept of Accountability

Bovens (2007) described the word 'Accountability' as a golden concept increasingly used in political discourse and policy documents. According to the author, accountability conveys an image of transparency. Quoting Dubnick (2003), the author traces its etymological roots to the Anglo-Normans during the reign of William I, decades after the Norman conquest of England. From that historical account, the word 'accountability' was coined from the word 'accounting' in its literal sense of bookkeeping. Though writers and discussants on accountability agree on its importance and desirability as a vital tool to a well-functioning liberal democracy, they are unable to arrive at a universal definition of the word. Romzek and Dubnick (1987), however, agree that the basic notion of accountability points to a condition of having to answer to an individual or body for one's actions.

Mulgan (2003) observed accountability as a relationship of social interaction and exchange involving complementary rights on the part of the account-holder and obligations on the part of the accountor. According to the author, there are three defining features of accountability: i) it is external which means that the account is given to some other person or body outside the person or body being held accountable; ii) it involves social interaction and exchange; and iii) it implies some rights of authority. Bovens (2007), on the other hand, regards accountability as a relationship between an 'actor' and a 'forum', in which the actor has an obligation to explain and to justify his or her conduct; the forum can pose questions and pass judgment, and the actor may face consequences. Bovens replaced the term account-holder with the term 'forum' and then accountor with 'actor'. Like Mulgan, Boven also identified three indispensable components or features of accountability: i) the actor should be obliged to inform the forum about his conduct; ii) there should be an opportunity for the forum to debate with the Actor about his conduct as well as an opportunity for the actor to explain and justify his conduct in the course of the debate; and both parties should know that the forum is able not only to pass judgment but also to present the actor with certain consequences.

These features or components identified by Boven are not different in substance to that of Mulgan. The relationship between the accountor/actor and the account-holder/forum is unequal, because the account-holder/forum has some kind of moral authority over the accountor/actor. Yet, this moral authority, in reality, does not necessarily entail actual or formal power. For example, the 1992 Constitution of Ghana, which is the Supreme Law of the land commences as follows:

> *"In the Name of the Almighty God, We the People of Ghana, IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity; IN A SPIRIT of friendship and peace with all people of the world; AND IN SOLEMN declaration and affirmation of our commitment to; Freedom, Justice, Probity and Accountability; The Principle that all powers of Government spring from the Sovereign Will of the People; The Principle of Universal Adult Suffrage; The Rule of Law; The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation; DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."*

The Constitution then opens up with the first article (i.e. Article 1 (1) which says:

> *"The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution."*

The People of Ghana who are the Supreme Authority, are the account-holders/forum, while the government in power (which is exercising power on the people's behalf), is the accountor/actor. Thus, the Government in Power which resides in the President is holding power in

trust for the people of Ghana so for public accountability purposes, the President has an obligation to account to the People of Ghana. He becomes the accountor/actor and he holds that position together with his executives. They have an obligation to account to the people of Ghana as account-holders/forum and this is done in various ways in compliance with laws put in place for that purpose.

Accountability as a Principal-Agent Relationship

Traditionally, accountability is seen as a principal-agent relationship. In this relationship, the principal who is either the forum or account-holder has a wide range of potential remedies. These range from grave sanctions like dismissals, termination, etc. to lesser ones like suspensions, reprimands, etc. In the Ghanaian public institutions, there are supposed to be rules and regulations that regulate behaviour of public officials in fiduciary positions.

> *Punishments and sanctions apply in most cases under such regulations but the question is; are these sanctions applied at all? If yes, are they applied to the letter?*

Where the actor or accountor is compelled or feels compelled to disclose information to the public who has very limited possibilities to ask questions or pass judgment, accountability becomes deficient. The term 'accountability' is fashioned in a way to make it appear transparent but transparency is not accountability. Informal or voluntary transparency does not amount to accountability. Accountability, in essence, serves as a conceptual umbrella that covers several other distinct concepts. It is used loosely to mean transparency, equity, democracy, effciency, responsiveness, responsibility, probity or integrity. In effect, however, it goes beyond all these synonyms. Transparency is just an instrument of accountability and does not constitute accountability. Proper accountability has now come to stand as a general term for any arrangement, relation, regime or mechanism that makes powerful institutions and individuals responsive to their respective publics.

Accountability as an Evaluative Concept

Accountability is basically an evaluative concept and not an analytical one. It is used to positively qualify a state of affairs or the purpose of an actor or accountor. It shows responsibility, that is, willingness on the part of the actor or accountor to act in a transparent, fair and equitable way to justify a conduct. Bovens called this 'active responsibility' or 'responsibility-as-virtue' because it is about the standards for proactive responsible behaviour of actors or accountors. Accountability, in a brief sense, therefore, is the obligation of an actor or accountor to explain and justify conduct and for the account-holder or forum to interact and ask questions to enable him/her pass judgment and apply sanctions.

Accountability as a Preventive Measure

Accountability is not only about control; it is also about prevention- the application of sanctions. For instance, in Ghana, rules and regulations are laid down alright for application when appropriate. However, there are no reasonable measures to effectively implement or apply these laws to the letter to deter or prevent public officials from breaching them. Occasional imple-

mentation or attempts at implementation smacks of bias and caprice. It is the duty of heads of institutions to maintain law and order in their various institutions and public places. That is why they have been employed by government and are being paid. Since they are being paid with the people's moneys to perform those duties, they are bound to account to the people. However, sometimes our cultural upbringing contributes to limiting the effectiveness of accountability in our workplaces. Sometimes when our representatives do the right thing, we complain; when they fail to act too, we complain. Sanction application is, therefore, a big problem and that makes proper accountability almost non-existent in our public administration setup.

The Concept of Public Accountability

'Public', as used in accountability refers to two things; first, the openness of the account-giving (i.e. given in public but not discreetly) and second, the spending of public funds and the exercise of public authority or the conduct of public institutions. This does not limit it to public organisations only but can extend to private bodies that exercise public privileges, receive public funding or render public services. Public accountability is, therefore, accountability in and about the public domain. It deals with public responsibilities; i.e. public money, actions of public officials and actions of public institutions or institutions with public functions. It is, therefore, about the public, by the public, done in public and for the public.

McCandless (2004) described public accountability as the obligation of authorities to explain publicly, fully and fairly, before and after the fact, how they are carrying out responsibilities that affect the public in important ways. It means that decision-makers will publicly explain what outcomes they intend to bring about, for whom and why. McCandless contends that accountability must be both ex-ante (i.e. explanation before the fact) and ex-post (i.e. explanation after the fact) – as against others who see it as basically ex-post. According to McCandless, some citizens contend themselves by holding blind trust in authorities or blind partisan trust in a political party until something goes wrong that could have been prevented. Citizens must require their elected representatives and decision-makers to give full and fair public account or explanations of their intentions and reasons before they act. Fairly holding public officials to account does not mean giving undue deference to people in authority; requesting, urging, calling for or demanding something is basically not more than supplication.

For instance, using government as an actor or accountor and the people as the forum or account-holder, a political party with a clear majority in a legislature can bring about a certain outcome, yet we as a people have developed no effective means of holding legislative majority members publicly to account for their intentions and reasons for supporting the outcome even though it is opposition parties' duty to do exactly that. He calls the conduct of opposition parties by yelling across the floor in a legislature as just 'theatre' that diverts legislators from doing their parliamentary work for citizens. Legislative debates could be respected if each of the proponents and opposers in debate were

required by parliamentary procedure to answer the two basic public accountability questions for an intention brought before the legislature (i.e. 'intention' and 'reason').

Perspectives of Public Accountability

Public Accountability is important in three ways: to provide a democratic means to monitor and control government conduct; for preventing the development of concentrations of power; and finally in enhancing the learning capacity and effectiveness of public administration.

The Democratic Perspective of Accountability – Popular Sovereignty

Public accountability is extremely important from a democratic perspective, as it makes it possible to account in a democratic fashion those holding public office.

The Constitutional Perspective of Accountability – Prevention of Corruption and Abuse of Power

The main concern underlying this perspective is the prevention of the tyranny of absolute rulers, overly presumptuous elected leaders or an expansive and privatised executive power. The remedy against an overbearing, improper or corrupt government is the organization of institutional countervailing powers like, the Judiciary with its powers of judicial review in the judicial forum, Commission for Human Right and Administrative Justice (Ombudsman), Economic and Organised Crime Office, Auditor General, Parliament and its Committees, etc. These are given powers to request that accounts are rendered over particular aspects. Good governance arises from a dynamic equilibrium between the various powers of the state.

The Cybernetic Perspective of Accountability - Enhancing the Learning Capacity

The purpose of accountability lies more in maintaining and strengthening the learning capacity of the public administration. Accountability is not only useful as a check, it also leads to prevention. An administrator who is called to account is confronted with his policy failures and he is aware that in the future, he can be called upon again to render account. The media, interest groups, and citizens are all adopting an increasingly more critical attitude towards the government. Respect for authority is fast dwindling and the confidence in public institutions is under pressure in a number of democratic countries including Ghana. Processes of public accountability in which administrators are given the opportunity to explain and justify their intentions and in which citizens and interest groups can pose questions and offer their opinion, can promote acceptance of government authority and the citizens' confidence government's administration. In the case of tragedies, fiascos and failures, processes of public account-giving may also have an important ritual, purifying function. It can help to provide public *catharsis* (Public purging or cleansing).

Conclusion

If truly as a country, we have solemnly declared to commit ourselves to Probity and Accountability and then Equality and Justice as is expressly stated in our Constitution, then it behoves on all of us to hail this law on causing financial loss to the state that seeks to ensure that these qualities actually exist and apply in all our public dealings. Article 41(f) of our Constitution (1992) under the Directive prin-

ciples of State Policy provides:

> *"it shall be the duty of every citizen to protect and preserve public property and expose and combat misuse and waste of public funds and property"*

It is truism that for quite a long time, some of Ghana's political, administrative and economic elites working in our public institutions have constantly lived above the law, protected by self-serving culture of impunity -be it at the national level, regional level, district level, local level or community/village level. Some public officials at all levels and in all capacities, engage in misconducts without the least attention to the interest of the state. The notion of public officials as fiduciaries who have a duty (moral and social) to account to the people they represent is alien to many public officials. The term 'Public Servant' has lost its real meaning. It now implies 'Public Master'. Directors and Senior of-ficers appointed to sit on Public Boards and Commercial entities in which the State has interests draw very handsome if not huge allowances, but suffer no risk of personal liabilities when their wilful, fraudulent or reckless acts, conducts or inactions cause the state (i.e. the People of Ghana) to suffer financial losses running into millions of cedis, dollars and pounds. For instance, the annual reports of the Auditor General routinely carry pages and pages of similar financial and administrative misconducts of public officials in our ministries, departments, agencies, commercial institutions of State, Metropolitan, Municipal and District Assemblies, etc. with suggested recommendations to nib the practices in the bud, but nothing happens after these reports are submitted to Parliament.

Some of the arguments of the proponents for the repeal of this very good law (i.e. the anti 179A (3)(a)) proponents are that the law is vague and too elastic; its application is going to put fear in public officers in taking decisions at their places of work; it will restrain a public officer whose duties include risk-taking from taking good decisions due to the risk factors involved since he could be dragged to court and jailed on account of any financial loss from his decision to take that risk or action; it would be selectively applied against political opponents, etc. All these arguments appear romantic but are like a cane basket that cannot hold water. What we must remember is that having a good law or legislation on one hand and applying it properly as intended by the legislature or the law maker on the other hand, are two different things. If a good law is administered negatively by a bad judge, it becomes a bad law in the eyes of the public. On the other hand, if a seemingly bad law is applied positively by a good judge to the satisfaction of the general public, it is clothed in the garbs of a good law. It is for this reason that Haynes (2013) once argued that the quality of Justice depends more on the quality of the men who administer the law than on the content of the law that they administer.

Recommendations for Promoting Public Accountability

Major deficits exist in the Ghanaian Public Accountability arrangements in almost all our public institutions. In some cases, people and institutions are called upon to explain their conduct before a superior authority. They are questioned on their conduct and given opportunity to explain (i.e. there is interaction). Judgments are passed on their conducts, though not in all

cases. However, in most cases where judgments are passed, no punishments follow the judgments (i.e. sanctions are not applied after the judgment). In other cases there is no accountability at all for conducts that have led to the state losing millions of cedis or dollars. There is no explanation of conduct to anybody, nobody questions anyone, there is no passage of judgment and therefore the question of sanctions doesn't come in at all. Meanwhile, we have laws, rules and regulations that are there to ensure that there is proper accountability in our public institutions.

Even though Sections 56, 61(6), 62, 66 and 67 of the Financial Administration Act, 2003 [Act 654] provides pragmatic framework and related sanctions for effective accountability in Ghana, the question is; do these laws apply in reality? Do Directors of all public boards and corporations perform their function in ensuring that proper accounts are submitted to them by the management of the corporations they preside over? Do some of them even know of the existence of this Act? Even the Financial Administration Tribunal, which is supposed to hear and determine cases arising from offences committed under this Act and to enforce recommendations of PAC has not yet been established almost twelve (12) years after the passage of the Act. How effective are these laws then and where is the Sanction element of Accountability? Again, our procurement law; i.e. the Public Procurement Act, 2003 [Act 663] has provisions on how public procurement is to be done {See Sections 35 to 40 of the Act}. However, these provisions of the Act are seriously abused by public institutions but nothing happens; nobody questions anybody. The reality is that; in our jurisdiction, there is some form of accountability; particularly when the Actor or Accountor happens to be a small fly. This is because, the small fly is easily caught in the cobwebs of 'judgment passing' and 'sanctions application' making the accountability cycle complete. But where the Actor or Accountor happens to be a big fly, there is normally a break in the cycle since the big fly, in most cases, manages to break through the cobwebs of 'judgment passing' and 'sanctions application', granted he is called upon to explain conduct.

Strengthening Institutional Structures

We can promote proper accountability if and when government strengthens and tightens institutional structures in the public service by putting in place control measures and ensuring that these measures are adhered to by all categories of public officials, be they small flies or big flies. This could be done through proper monitoring and evaluation. For instance, heads and other government officials must be held accountable for their actions or inactions that lead to financial and other losses to the state; they must be held accountable for the negative acts or inactions of their subordinates where they fail to hold such subordinates accountable for such acts or inactions. Again, employment letters of public office holders should clearly state the rules regarding their jobs and applicable sanctions when breaches occur (including confiscation of financial benefits and properties, etc.) if and when it becomes necessary. Thus, sanctions must strictly be made part of the accountability arrangements.

Adequate and Proper Record-Keeping

There should be good public sector record management. There cannot be proper public sector accountability and transparency if there is no proper public sector record management to check and reconcile facts, figures and events. Effective public sector records management ensures among others, maintenance of accountability and protection of citizen's rights, transparency and trust in government, reduction in corruption while boosting integrity, monitoring, evaluating and effective oversight responsibility for all financial transactions, good governance and ability to formulate, implement and sustain policies. State records in respect of important financial transactions are not properly classified and stored for research and reference purposes. Procedures provided for in Act 535 (i.e. Public Records and Archives Administration Act, 1997) have not been strictly followed. Evidence available to the Commission indicated that this state of affairs led to the State making double payments for transactions already paid for.

Enforcement of the Law

The laws put in place to ensure Accountability in all public institutions must strictly be enforced; particularly the Financial Administration Act, the Public Procurement Act and then Sections 179A and 179C of the 'Special Offences' enacted as part of our Criminal Offences Act to check acts of persons that cause financial losses to the State.

Decoupling of the Duties of the A-G from that of the Minister of Finance

Article 88 (1), (3), (4) & (5) of our Constitution (1992), places the duty of prosecuting and defending all actions for and against the State (both Civil and Criminal) on the Attorney-General). Meanwhile, our Attorney-General plays a dual role as a Minister of State and Cabinet member, plus that of a Prosecutor-General. The Attorney-General takes the final decision to either prosecute or not to prosecute any person or public official whose act or conduct results in financial or property loss to the state. Because of this dual position of the Attorney-General, the office is crippled in sufficiently performing this function because of political solidarity. In order that sanctions could be made part of our accountability regime in all spheres of our public life and properly applied, irrespective of the individual or institution involved, the state has to take a second look at this dual role of the Attorney-General. I hold the view that, an independent Attorney-General, who has no direct political lineage, with appointment and working conditions similar to that of the Commissioner of CHRAJ or the Electoral Commissioner, would be in a better position to play this role for and on behalf of the Sovereign people of Ghana without any external strings. With our current constitutional arrangements where the Attorney-General is always one of the big fishes of the ruling Government as a Cabinet member, and again the only one who decides to either apply sanctions or not in a number of cases as the representative of the People, achieving Proper Accountability in our major public institutions would be a mirage.

The Role of the Elite

The 'elite' should also re-examine themselves. Almost all the big fishes who can break through fishing nets or big flies who can break through cobwebs in our public

institutions and usually manage to break through after contributing to causing financial losses to the good people of Ghana, have one time or the other passed through great institutions of learning within and outside our jurisdiction. We are educated partially with the tax-payers' money to enable us acquire knowledge for the development of our society for the betterment of our people. Let us use the knowledge that we acquire or have acquired to help raise our poor masses from the economic malaise in which they find themselves by being more sensitive, altruistic and proactive to their plight. We can do that by doing the right thing when we are entrusted with power or authority to act on their behalf. We can do that by eschewing misanthropy. We should not become leeches to drain their blood instead of infusing more blood of life in their veins to make them function properly. We should not divert funds ('donor' or otherwise) meant for the rural poor farmers or the vulnerable to build mansions for ourselves and our immediate families to their detriment.

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