GHANA INTEGRITY INITIATIVE (GII),

LOCAL CHAPTER OF TRANSPARENCY INTERNATIONAL

OPEN GOVERNANCE SCORECARD
COUNTRY REPORT: GHANA

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

The Ghana Integrity Initiative (GII) is the local chapter of Transparency International (TI), launched in December 1999. It is a non-partisan, non-profit civil empowerment organization focused on the delivery of the essential themes necessary for the creation of a National Integrity System. It has a Board of 8 members and a Secretariat supported by 10 full-time staff. GII can boast of being an advocacy organization dedicated to fostering public awareness on the fight against corruption. GII is an Anti-Corruption organization solely working to curb corruption in Ghana.

http://www.tighana.org

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of March the 31st, 2014. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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INTRODUCTION

Open governance means all citizens have a right to access information and to participate in government, policies are in place to promote and realise transparency, accountability and participation, and that the right tools exist to carry out these policies. Most importantly open governance should improve citizens' lives.

The Open Governance Scorecard assesses whether the legal conditions needed for open governance are in place in a country. The results of the scorecard, which are summarised in this document, help governments, civil society groups and other key stakeholders, including members of the public, to assess the legal provisions needed to ensure open governance, to identify the current legal gaps as well as to track a country's progress over time. This information will allow advocates to make recommendations and governments to pursue reforms.

The scorecard has been developed by Transparency International (TI), together with other expert organisations working in this field. To date, five Transparency International national chapters from Africa, Europe, Latin America and Southeast Asia have piloted the scorecard. These pilots took place between February and March 2014.

The Ghana *Open Governance Scorecard* has been completed by Jorge Romero León in consultation with Ghana Integrity Initiative Director, Vitus Azeem, and Project Coordinator, Linus Atarah.

ABOUT OPEN GOVERNANCE

Open governance is a concept that moves beyond the traditional notion of government and considers the relationships between leaders, public institutions and citizens, their interaction and decision-making processes. At its heart, the three elements of open governance, which are outlined in the formula below - rights, institutions and policies, and tools - must work together to bring about positive changes in citizens' lives.

RIGHT TO ACCESS INFORMATION AND PARTICIPATE IN GOVERNMENT

\+ **INSTITUTIONAL ARCHITECTURE AND POLICIES** TO PROMOTE AND REALISE TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY

\+ **TOOLS** AND SUPPORTING INFRASTRUCTURE TO CARRY OUT THESE POLICIES

= **OPEN GOVERNANCE,** AND IMPROVEMENTS IN PEOPLE'S LIVES

Open governance is based on the notion that these three elements must be in place, function and interconnected for citizens to see improvements in their lives. People need to have their rights to access information and participate in decision-making established and protected. These rights must be developed through policies that promote and realise transparency, accountability and participation and sustained by robust institutions and effective oversight. Lastly, these policies require investment in tools and supporting infrastructure, especially information and communications technologies (ICTs) for enabling voice and participation, and for advancing accountability.If these all of the elements are not present and working together, improvements in people's lives will be difficult to achieve.

About the open governance scorecard

The goal of the scorecard is to provide national civil society organisations, non-governmental institutions, governments and citizens with a quick reference guide to the conditions required for open governance and a tool to assess whether basic legal and institutional conditions are met in each country. These conditions are based on international good practices and our own Open Governance Standards.

The results of the scorecard should:

- identify gaps in a country's legal framework hindering transparency, accountability and participation;
- help national TI chapters and other civil society organisations shape and strengthen their advocacy activities aimed at governments
- give national chapters and other civil society organisations a tool to track progress in promoting open governance in each country in the medium and long term.

Methodology[1]

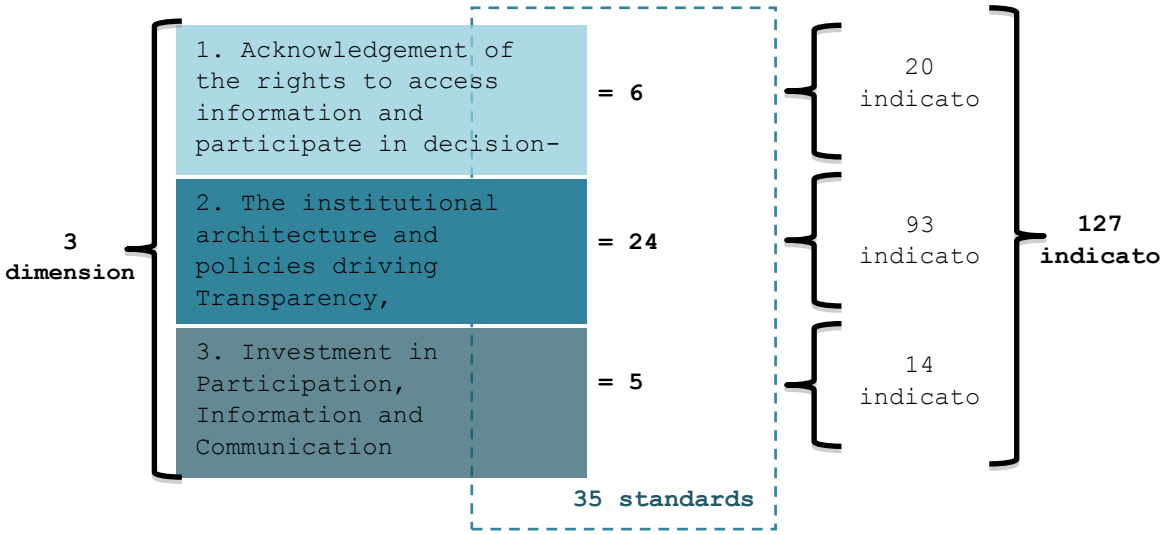
The Open Governance Scorecard is a 'baseline' assessment of whether the legal requirements for open governance are in place. This b aseline is a starting point for achieving open governance as the legal framework must be in place in order to develop policies and tools that will stand the test of time and survive political changes. The Scorecard does not assess; however, how well the legal framework is enforced or capture practices that are not included in the legal framework.

The scorecard indicators are based on a set of 35 Open Governance Standards[2] along the three dimensions of open governance: rights; institutions and policies; and tools. The Open Governance Standards were developed drawing on the wealth of international standards already published in these areas.

To assess how far the the Open Governance Standards have been met in a country, we developed 127 indicators, which are specific statements and questions for a researcher to answer about their country's legal framework. These indicators make up the content of the scorecard and draw extensively on already existing indicators, legislation and guidance documents. The scorecard adapted the formulation of 70 indicators already published to suit 60 of our full set of indicators, 67 indicators are newly developed.

[1] For the full methodology paper please refer to the Open Governance Scorecard Methodology.
[2] The full list of standards is available in Transparency International's Open Governance Standards and in the scorecard.

Open governance standards and scorecard



The scorecard records whether the indicators have been:

- Met
- Partially met, or
- Not met

Where the question refers to a specific legal provision there will be no plausible intermediate answer, and the condition will either be met or not met. Where an indicator is only partially met, the scorecard asks for further information to discover why.

ACKNOWLEDGEMENTS

In developing the Open Governance Scorecard indicators, we have used and make extensive reference to various instruments including the right to information legislation rating developed by Access Info Europe and the Canadian Center for Law and Democracy; the Global Integrity Report; the World Bank's Public Accountability Mechanisms Initiative; and the Organization for Economic Cooperation and Development (OECD) Indicators for measuring openness in government (developed by *Involve*).

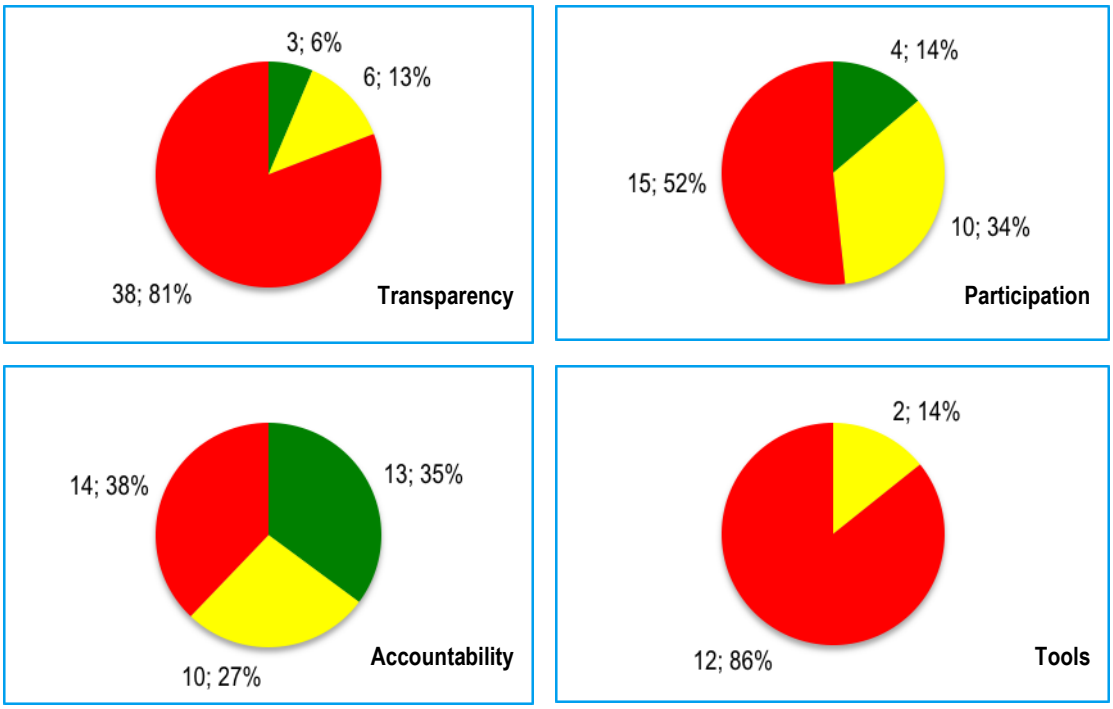
Special thanks are owed to Helen Darbishire, Maya Forstater, Nathaniel Heller, Julia Keseru, Babacar Sarr, Stephanie Trapnell, TI Secretariat staff and national chapters for their input and advice in the development of the standards and scorecard.

EXECUTIVE SUMMARY

This brief report incorporates the findings of an assessment of the conditions of open governance using Transparency International's Scorecard, described above. The assessment was carried out through a detailed analysis of Ghana's Constitution and legal framework, and the conditions they create for the legal and institutional support for baseline conditions of transparency, participation and accountability.

The findings in general are indicative of poor legal support for transparency and participation, a strong legal basis for accountability, but with weak institutional capacity to hold authorities accountable, and impending development of tools for openness in the government's information and communication technologies' strategy, recently released.

Expressed using the methodology described above, this means for both transparency and participation a majority of the indicators are red, that is, conditions are not met to meet the standards set out. Only 13% of indicators (six) related to transparency suggest condition is partially met, and only in three cases (6%) the condition is met, which means for the remaining 38 (81% of all indicators) the condition is not met. This is to be expected, as there is no Right to Information Law at this time. For participation, 15 indicators are red, which means the condition set out is not met (52%), only in 10 cases (34%) is the condition partially met, and only in 4 cases (14%) is the condition fully met.



Accountability is the strongest area of good practice, split roughly in thirds. 35% of the conditions tested were met, 27% more were partially met and 38% of the indicators were not. This is due to the fact that the constitutional and legal architecture for accountability is strong, if limited. There are bases for independent work from the Auditor General and there is a Commission in charge of preventing abuse from authority. But the legal conditions underlying financial and interest disclosure are very weak, even with the changes foreseen in the draft bill under consideration, and there are no provisions made for limiting lobbying and private sector employment after leaving public office.

The 'tools' conditions are the least robust. In no case is the condition tested met, and in 86% of the cases, or in twelve indicators, the condition is not met. Though there are policy instruments underway for developing information and communications technologies they are not open, they do not aim for openness, and they do not apply to procurement or complaints. Much can be done using existing policy instruments if the Ghanian government if its follows international best practice and makes open information the standard. But there are no indications there is willingness to do so.

These findings are consistent with other recent assessments of the country's openness, and with the criticism levied on the proposed draft right to information and public officials' conduct bills. In sum, the existing and proposed framework for transparency is insufficient, there is potential for extensive citizen participation in public affairs, stemming from a strong constitutional mandate, but the potential has yet been unrealized. Despite the good legal basis for strong accountability architecture, the institutional capacity does not allow it.

The assessment identifies this as a good opportunity for introducing changes to the legal framework because there are draft cornerstone bills being discussed for transparency and accountability. The proposed Right to Information bill can be strengthened in the following ways:

1) Extend the scope of the law to include Parliament and the Judiciary.
2) Limit the exceptions to publicity, especially making information in the Office of the President and Vice-president available, and introduce clear mechanisms for testing when the publicity of information is in the public interest.
3) Shorten the length of time for initial response and extension of time.
4) Create a comprehensive list of the information that should be proactively published
5) Create a structure of support to promoting the use of the right to information law and procedures, and report on implementation every year, that is, establish an Independent Information Commission(er)
6) Limit cost of accessing information to actual cost of producing the required information

The proposed Conduct of Public Officers Bill can also be strengthened in the following ways:

1) Create a system for asset and interest declaration filing *every year*, and make immediate family members subjects to this obligation, as well as public officers.
2) Legally enable the Auditor General to regularly audit asset and interest declarations, to ensure adhesion to the law
3) Make assets and interest declarations public.

Though there are no reforms underway to change the legal basis for participation, the assessment carried out identified the following opportunities for extending citizen participation:

1) Promote a more effective use of existing mechanisms for consultation and participation at the local level, and extend these mechanisms to education, community water and sanitation, policing and extractive industry governance.
2) Explore mechanisms for community participation in infrastructure and budget allocation discussions at the local level.

3) Improve and develop participation and consultation mechanisms in laws governing the policy process at the *national* level, to ensure national policy considers the position and opinion of stakeholders, communities and affected citizens, and clearly dissociate appointment and nomination to serve on councils from effective and open-access mechanisms for participation, which are not open only at the discretion of Cabinet Ministers.

Finally, given the fact that there are ICT and e-procurement strategies under way, should there be amenable political will to explore criteria for openness in these strategies, the information and communication tools for a more open, effective and accountable governance could be introduced.

NATIONAL CONTEXT

Ghana is currently discussing paramount changes related to open government and accountability. On September 2011, Ghana signed on to the Open Government Partnership and shortly thereafter released an action plan with strong commitments to improve its normative framework on the areas of transparency and accountability. The Action Plan contemplates discussion, consideration and enactment of legislation still pending before Parliament to regulate access to information, a new code of conduct with specific provisions on financial asset and interest declaration mechanisms, and the creation of spaces to discuss and generally improve existing participation and accountability mechanisms. Because these discussions are currently underway, we have considered the proposed changes when carrying out this assessment. Despite their scope, however, we have found they would not fundamentally change the conditions of openness in the Ghanaian government. They leave important gaps unattended, especially regarding the institutional architecture for ensuring access to information, and strict legal bases for preventing and prosecuting inappropriate behaviour by public officials.

Despite being a relative newcomer to the international open government movement, Ghana has a strong legal and institutional basis for accountability, dating back to the period immediately following the 1992 Constitution. The Constitution itself contains strong language favouring rights and affirming accountable government. It explicitly makes access to information a right, and makes extensive citizen participation in public affairs and decision-making processes one of the Directive Principles of State Policy.

The Constitution creates an independent body tasked with protecting the Human Rights of Ghanaians and supporting their claims against abuse by acts of Government. The 1993 *Commission on Human Rights and Administrative Justice Act* formally creates this Commission, makes it independent and gives it a broad mandate. The Constitution also creates a strong *Auditor-General*, nominally independent from the branches of Government—despite being appointed by the President—at the head of an independent Audit Service; and introduces an explicit code of conduct for public officers, underscoring conflict of interest and introducing asset declaration in the constitutional text itself.

The legal and institutional accountability framework stemming from the Constitution includes the Public Office Holders' Act of 1998 (Act 550) and the Whistleblower Protection Act of 2006 (Act 720). These laws lay down a solid foundation for accountability, but they represent a weaker framework than the constitutional mandate on account of three factors: 1) a lack clarity in the law about the principles and mechanisms needed for integrity, especially regarding conflict of interest and asset declarations; 2) a limited institutional basis for the Commission on Human Rights and Administrative Justice, and omissions related to auditing anti-corruption measures in government; and 3) a very limited mandate and institutional scope for protecting whistleblowers in practice, and for preventing lobbying and state capture by private interests.

In terms of transparency and participation, the Constitutional and legal framework is even less robust. Despite being one of the first and few constitutional texts to affirm the right to access public information, the Constitution does not create the institutional conditions for making access to information applicable in practice. Consequently, the right is hardly actionable and seldom realized. Outside fiscal and budget information there is no established practice of making relevant information accessible to citizens and affected stakeholders, and even here there are no legal bases for publishing the information, making the continued publication of budget information a discretionary decision by the ministers in office at any given time.

The draft *Right to Information Bill* does not assuage the weaknesses, omissions and lack of clarity related to transparency. The proposed bill does not consider an independent oversight mechanism for assuring access to information, it does not establish clear criteria for accessing information that benefits the public interest and it makes most information in the Office of the President and other key government agencies *exempt*. It also affords government agencies excessive time to respond to requests, and creates limited review and appeals mechanisms, far from good practices in other countries.

Finally, as regards participation and consultation, there is a clear policy principle in the Constitution and strong institutional basis in the tradition of incorporating citizen and sector representatives in the governing councils and boards of many government agencies. But this participation is insufficient, because representatives are always appointed by the President or other government agents, there is no broad institutional structure to make participation in public affairs a reality, especially at the level of service delivery, and consultation is actionable in practice only at the district and regional level, but not at the national level, where it depends of ministerial discretion.

Ghana's constitution created a system of decentralized administration and delegated local governments where Executive officeholders are not elected, but appointed by the President. In the existing framework, the country is divided in 10 administrative regions, each with a coordinating Council. The country is also divided in 276 districts, each with a District Assembly that combines elected and appointed seats. Service delivery is organized by the relevant national government agencies, and citizen participation is considered for Health Services through district health committees, through district consultation in the case of development strategies, and through council and board participation at the national level only, with uncertain reach and scope.

At this level, the government has also created Sector Working Groups for policy consultation, but these are not legally established, and so, like council and board participation, remain open at the discretion of the respective sector ministers and President.

Much can be done to legally shore-up and institutionally strengthen citizen participation, and this area is especially relevant because the Open Government action plan does not consider changes beyond some key spaces for deliberation and issuance of guidelines to deepen participation in planning and budget-setting exercises. There is no consideration of incorporating participation in monitoring services, in policy implementation and through social accountability mechanisms, more broadly.

The assessment here presented looks in depth at this legal and institutional framework to identify the key gaps and opportunities for furthering the conditions of open governance. What follows presents a summary of that assessment focusing on the imbalance between acknowledgement of the rights to participate and access information and institutional conditions for its realization, on the key remaining gaps preventing the fulfilment of the open governance standards; and specific recommendations to make the most of current debates aimed at strengthening the legal bases of openness.

ASSESSMENT OF OPEN GOVERNANCE

The existing legal framework is very uneven. It acknowledges key rights but it does not create the legal and institutional basis for their realization; it creates a robust mandate for accountability with limited institutional structure to enforce the legal measures aimed at curbing corruption. Finally, it does not consider the tools for actualizing transparency, participation and openness through modern administrative structures, an open government information policy and an effective government procurement structure.

In what follows, we organize the main findings of this assessment by dimension of governance, from the strongest to the weakest in the Ghanian context: Accountability is strongest, followed by Participation, then Transparency, which has no legal basis beyond the constitutional principle incorporated in the 1992 Constitution. There are practically no tools for actualizing open governance though a modern information and communications technologies (ICT) policy, though existing ICT and e-procurement strategies create an opening for discussing effective practices.

Accountability: strong mandate, weak institutions.

The dimension of *accountability* in support of open governance is the strongest of all three dimensions in Ghana. Thirteen (13) of the 37 indicators in this dimension are green, and ten (10) more are amber. Of the eleven (11) indicators assessed as red, which means the condition does not exist in law, four (4) would change to yellow if changes being considered to existing legislation were enacted.

The main reason for the relative strength of this component in relation to the other two is the existence of a strong constitutional mandate for accountability, which includes a code of conduct in the constitutional text, and the creation of institutions for auditing and control of corruption with relative independence. The supreme audit institution (the Auditor General, and the Audit Service more broadly) is independent in the constitutional text and in law, and it has a territorial structure that gives it a robust reach. The creation of an institution tasked with investigating claims related to human right abuses, acts of corruption and other administrative abuses from government authorities is good practice, despite not being fully independent or institutionally robust (the Commission has no 'service' nor broad staff, and its capacity to investigate and sanction abuse is very limited).

These two institutions, while facing clear limitations in terms of their capacity and reach, are complemented with a clear legal mandate. There are whistleblower protection mechanisms enacted and basic financial disclosure obligations. There are basic procurement mechanisms in place, despite some shortfalls, again, in the institutional capacity to carry out oversight. Yet without sound institutions to effectively enact existing law, it is very difficult to fight corruption effectively. The discussion over institutional capacity has dragged on for years, and it is not yet explicitly being discussed in connection to existing drafts of Bills, nor to the Open Government Partnership *Action Plan.*

In addition to the limited institutional capacity to carry out the existing legal mandate, there are some gaps in the law. Though a bill to introduce specific conflict of interest mechanisms and more effective regulation of asset and financial disclosure mechanisms, it does not incorporate international best practices here considered by the proposed indicators. Furthermore, the bill under consideration completely leaves out additional regulations, especially social accountability mechanisms, and the participation of communities in monitoring service delivery and policy implementation. There are very limited lobbying control and regulation mechanisms, and there seems to be little or no control over Parliamentary conduct, at least in law. There is no lobbying registry nor any restrictions to conflict of interest in MP's.

Participation: strong in theory, unclear realization in practice

Though not acknowledged as a right in the constitutional text, citizen participation in public affairs is one of the *Directive Principles of State Policy*. This gives participation sound constitutional support and creates a mandate for participation beyond elections. Though participation is not explicitly fleshed out through specific legislation, it is incorporated in several key legal instruments.

At the National level, there is participation in principle through policy councils and governing boards, from the Council of State, which directly advises the president, to sectoral boards including Health, Education, Security (including policing), Environmental Protection, Natural Resources and Energy policy. Although the creation of independent governing bodies in which sectoral, civic organization and regulated industry representation is good in principle, the fact that most of these spaces are only open through Presidential appointments detracts from the intention and mission of creating spaces for broad deliberation. In addition, exclusive focus on governing bodies makes participation in policy implementation and evaluation more difficult, and less likely.

While there are good practices for consultation at the local level, this is not the case at the national level. There are no spaces for consultation and filing complaints over policy actions and omissions at the national level, with the exception of the Commission on Human Rights and Administrative Justice, which has limited capacity to investigate and sanction policy administration (see above). Where these spaces exist, specifically at the district level for regional and district planning strategies, no mechanisms are clearly laid out in law to ensure participation takes place, to promote participation, make decisions accountable to those participating and reporting on the dynamics and results of participation.

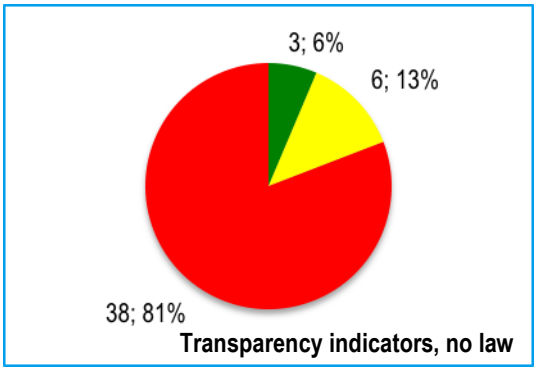
As regards participation at the service delivery level, it is only legally mandated in the Health service, through participation in the district health committees. This is good practice that should be replicated for other services coordinated at the regional and national level, especially education, water and sanitation, regulation of extractive industries and policing.

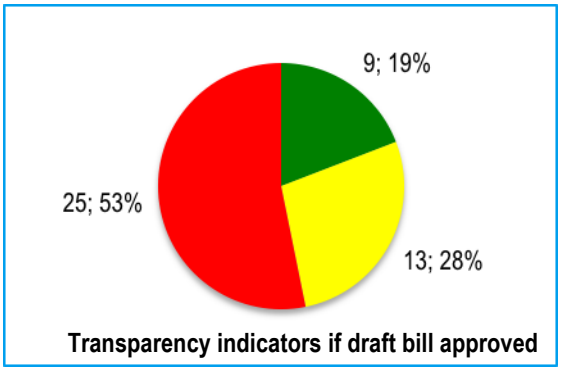
In addition, key spaces where participation and consultation are relevant are not considered in law, especially in Parliament and in the budget process. Though there are some participation spaces for consultation of the overall budget and fiscal policy, these take place at the national level, and they are not warranted in law, which means they are open at the discretion of the Minister in turn. Because participation in the budget process is identified as a specific goal in the Open Government Partnership Action Plan, it would be important to discuss at length what that participation would mean in the Ghanian context, what legal changes need to be made to shore up this participation in law at the national level, and what legal and institutional changes are required to enable participation in planning and budget discussions at the community and service level.

Transparency: bridging the largest gap

The conditions for transparency and access to information are the most wanting of the lot considered in the standards for open governance. Despite being a frontrunner in acknowledging the *right* to access information in the constitutional text of 1992, the right to information is yet unlegislated in Ghana, which makes it almost impossible to effectively access government information through requests from communities, citizens, civic organizations and sectoral agencies.

There is a draft bill under consideration, which has also been assessed at length in the scorecard, but it has important shortfalls, explored at length in the next section. Because the draft bill under consideration is so weak, action to amend the bill is relevant before enactment, especially regarding the creation of an independent oversight institution in charge of access to information, by limiting the number of exempt classes of information, and by creating the institutional capacity to promote and facilitate access to information, to report on implementation of the law every year and to make this an actionable and accountable policy, in addition to the acknowledged right.





The team assessed the draft bill under consideration, and as can be seen in the graphs above, even if it were enacted, a majority of the conditions tested would not be met. This is primarily because the bill does not consider an independent oversight institution in charge of ensuring the right to access information is realized, but there are other reasons, including the long times considered for responding to requests and the limited appeals mechanisms.

Finally, it is important to stress that the proposed legislation does not consider transparency in Parliament, and the legislative process. An entirely new set of regulations is necessary to ensure parliamentary transparency, which is especially important because the conditions of access to information in Parliament are specially wanting. There are some key provisions for transparency in the Judicial branch, stemming from the constitutional principle of making all court proceedings open, and the judiciary has been very proactive in promoting transparency and accountability by creating conditions to access judicial information, including the publication of schedules, basic administrative staff information and concluded court cases.

At least, Parliament should follow the example of the judicial branch and make basic information easily accessible. At best, the necessary conditions of transparency, and the information all branches should publish proactively, should be discussed at length, and be the basis for a national conversation on the scope, and reach of transparent government, in all branches. There are many details of administrative, organizational budgetary and process information missing in all branches.

Tools for open governance.

We found evidence of strategies and policies for developing governmental information and communication technologies and e-procurement, which is positive, and the appointment of specific government agencies to lead in the implementation of these, which is indispensable, but there is no consideration of principles of openness in these polices yet.

The indicators related to these tools are a good place to start ‘opening’ government strategies, which could align well with the explicit objectives of existing strategy. Of special import are creating standards for developing new government information in ‘open’ formats, and for ensuring all information produced by the government is proactively and consistently published by the government on-line.

CONCLUSIONS AND RECOMMENDATIONS

Based on the above breakdown of the open governance scorecard assessment, we have identified several specific gaps that must be addressed before the conditions of governance are more open.

As regards **transparency**, the gap is clear and unambiguous: there is no right to information law, and one should be enacted soon. Beyond this reference point, however, applying the criteria of the scorecard to the existing draft of the right to information bill reveals it too would leave large gaps unattended. The proposed bill is still very weak, on five counts:

1) it does not consider an oversight institution;

2) it exempts a vast amount of information with no justification, and it leaves out the legislative and the judiciary -- the judiciary is actually very transparent, but the legislature is not;

3) it considers very generous timelines (over twenty days), for both initial response and extension of time, and it creates limited review and appeals procedures that are excessively discretionary (ministerial review), or lengthy (judicial review);

4) it does not explicitly address what information should be proactively published, making even the good practices in place in Ghana subject to administrative discretion; and

5) it does not consider any mechanisms for promoting the use of the right to information law and procedures, which would be desirable to enhance the application of the law and move forward to effective realization of the right in the medium and long term.

On the dimension of **participation**, there are three large gaps that should be addressed, with no immediate legislation under consideration to address them. This makes it all the more relevant to underscore and discuss these gaps, and emphasize the need to develop legislation proposals that would create the institutional basis for effective participation.

1) There is no consultation or extensive participation at the national level. Participation takes place, mostly, through council and board participation, and it is not tied to policy implementation. This makes participation *secondary,* as nomination and appointment can be used for fulfilling political patronage commitments at a remove from the intended effect of the constitutional emphasis on participation in policy councils and boards.

2) While participation and consultation mechanisms exist at the local level, they are not generalized, and they should be. The outstanding good practice of incorporating citizens to district health bodies can and should be replicated in other key government services, especially education, policing and local development strategies. There should also be more policy consultation in general. As things stand now, consultation is only considered for local development strategies and not for infrastructure or budget allocations in districts, villages, towns and cities.

3) There are important omissions in existing law for making even those participation mechanisms now under use more effective, including

    a. clear timelines, which are not considered, and could facilitate citizen access by making it clear when new participation processes open up, and what results they lead to;

    b. reporting mechanisms, which would allow policy makers, civic organizations and communities to be aware of the results of participation, prevailing problems and gaps, and detailed justification;

c. assistance, to ensure equal participation regardless of economic status, gender or condition, and

d. promotion, which is necessary to mainstream new institutional practices and would facilitate citizen awareness of the mechanisms carried out.

As regards **accountability,** despite being the strongest dimension assessed, due to the institutional robustness of the key institutions behind is (the Auditor-General, the Audit Service and the Commission on Human Rights and Administrative Justice), there are also important gaps:

1) Key legal omissions remain, hindering the effective regulation of integrity through financial asset and interest disclosure mechanisms. To close this gap, the laws under discussion must be strengthened and enacted. To incorporate standing good practice and facilitate the prosecution and sanction of corruption, the laws should specifically consider these areas of opportunity:

   - The existing legal framework and the bill under consideration afford too much time between declarations, making it more difficult to monitor and track anomalies; declarations should be filed every year.

   - Neither the existing legal framework nor the bill under consideration extend the obligation to declare to family members, making it less likely to use them as beneficiaries of improper activity and compensation.

   - There is no clarity on who would audit financial and interest declarations, to ensure adhesion to the law. The draft bill should be amended make this explicit—this is an action point in the OG action plan, but it is still not fully developed, and no mechanisms are explicit in the draft bill.

   - There is no mandate to publish declaration of assets and interests, and the principle of secrecy is explicitly laid out, making auditors liable for making this information public. This position is questionable because it goes against international good practice, and also because it is not wholly warranted in the bill or in its justification memorandum.

2) There are no employment regulations preventing 'revolving door' access to regulated private sector jobs straight out of public office, either in the executive or Parliament. These provisions are recommended to prevent state capture and to ensure public interest prevails over private interest, and they should be incorporated in law, while existing institutions should be empowered to investigate and prosecute related violations.

3) The existing institutional structure of the Commission on Human Rights and Administrative Justice is insufficient to support citizen claims against corruption, and there is no mechanism to allow the Audit Service to support investigation of corruption claims stemming from citizens and public officials. This lack of clarity about institutional capacity and responsibility makes the good whistleblower protection legislation difficult to apply in practice, and makes it impossible to actually protect whistleblowers who face retribution for their complaints.

4) There are no social accountability mechanisms considered in law or applied in practice, making it difficult to monitor policy and the provision of public services from communities.

To round up existing deficiencies in the legal and institutional framework of open governance, there are no tools to support openness in the existing policy directives and strategies. The ICT strategies underscored in the recent past were not aimed at strengthening and opening government ICT particularly, and there is no position on creating open-access government information in the future, to facilitate stakeholder and community engagement. There are no specific documents to assess the changes underway to introduce an e-procurement system, and there is no clarity about the scope and reach of this strategy.

Despite these shortfalls, there is an opportunity to take advantage of existing projects to develop ICT tools, and make them open. Government agencies have named to lead the efforts to develop ICT, complaints and procurement tools, and existing strategies are at an early stage of implementation, which makes it possible to introduce innovative strategy components to improve openness.

Given existing conditions and the efforts to transform the legal landscape underway, we have prioritized five specific recommendations.

1) **Strengthen and pass the laws currently under discussion.** Do not fear institutional and legal best practices. There is ample evidence of the fact that these practices work work, and why.

2) Make **more effective use of existing mechanisms for consultation and participation** at the local level. Extend these mechanisms to education and policing governance, not only the health service, and explore mechanisms for community participation in infrastructure and budget allocation discussions at the local level.

3) **Improve and develop participation and consultation mechanisms at the national level**, to ensure national policy considers the position and opinion of stakeholders, communities and affected citizens, and to clearly dissociate appointment and nomination to serve on councils from effective and open-access mechanisms for participation.

4) Create an **institutional structure to strengthen and facilitate the work of the Commission on Human Rights and Administrative Justice**, which currently has a strong mandate but no structure to carry out its work. This would make existing law (the whistleblower protection act, especially) more effective, and enable anti-corruption activities for impending legislation as well (mechanisms contemplated in the draft Conduct of Public Officers' Bill).

5) **Develop open tools** as part of on-going exploration of ICT and e-government strategies. The conditions exist to develop these tools, since there are already strategies underway with lead agencies in charge of cross-sectoral implementation. What is missing if political will to explore openness. The standards and principles here developed can lead the way to greatly enhance these tools, and their support for open governance.

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