

Ghana's Presidential Transition Act and the 2013 Transition

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Abstract

For the first time in the political history of Ghana since independence, a transfer of political power was regulated by a legal blueprint. The first test for implementing major aspects of Ghana's Presidential Transition Act, 2012 (Act 845) was the post-2012 election period. This paper undertakes an assessment of how the law was implemented. The approach taken involves an evaluation of what worked well, a review of what could not work to perfection and a consideration of policy alternatives. The findings drawn from the assessment provide encouraging evidence of the law being put into practice. However, several challenges emerged. To address them, reform proposals are outlined to fine-tune Ghana's future political transition process and enhance the effective implementation of the law which remains integral to good governance and possess the potential of closing a chapter in the country's dismal history of democratic transitions.

Keywords: Presidents; Transition; Power; Transfer; Law; Implementation

1. Introduction

Ghana's reputation as a model African democracy owes much to its ability to change governments through the ballot box (Ofori-Mensah, 2013). It is, then, ironic that the changes in government through the democratic process have exposed serious short coming in the country's governance institutional framework. In fact, Ghana's record on political transitions is not a proud one. Due to a history of coup d'etats, the country did not have any experience in handling democratic transitions until 2001 (Ahwoi, 2009:23; Gyampo, 2013:167) – the first time in Ghana's history when power was transferred from one democratically elected President to another through the electoral process. The second was in 2009. The transition related stories of administrative lapses, forced evictions and ad hoc seizure of cars, among others left Ghanaians polarized after the transfer of power (ibid:25). Indeed, the political transition from the National Democratic Congress (NDC) Government to the New Patriotic Party (NPP) Government represented a political and constitutional first in the country. It was the first time in the history of post-independence Ghana that political power had been constitutionally transferred from one political party to a different political party. For that very reason, there was no precedent to guide the two parties that were involved in the transition, and therefore many mistakes were made (Ahwoi, 2009; Gyampo, 2013). Those mistakes left in their wake acrimony, tension, ill-feeling and a lot of bad blood which in turn led to intense interparty hostility (Ahwoi, 2009:27). The lesson from that botched transition of 2001 was that the nation must prepare for future transitions of that nature by agreeing on a multi-partisan framework and ground rules and regulations to govern and guide the transitions of the future. Underlying that framework must be an appreciation of the difference between "y'atu aban" (we have overthrown the Government) and "y'asesa aban" (we have changed the Government). Because the only precedent available in 2001 was one of "y'atu aban", that transition was guided more by features of dealing with an overthrown Government than with a changed Government (ibid). There are a few studies on transitions in Ghana including the works of Nkansah (2012); Ofori-Mensah (2013); Ahwoi (2009); Gyimah-Boadi (2001); Ninsin (1998); Segal (1996); and Oquaye (2000). These studies have discussed how political transitions in Ghana's Fourth Republic¹ have been conducted and quintessentially, focused on the transitions prior to that of 2013. They merely discussed how administrative and political power was transferred from one leader to another with some highlighting the challenges of such transitions including uncooperative attitude of out-going leaders, scanty information about the previous administration regarding state assets, resources, funds as well as what had been accomplished and what is in progress. Others described the

¹ Fourth Republic simply refers to Ghana's Fourth attempt at constitutional Democracy which began in 1992. The First Republic spanned 1960-1966; the Second Republic was from 1969-1972; and the Third Republic was from 1991-1981.

previous transitions as façade; and fraught with acrimony, tension, and rancour.

As a response to the past transition challenges, the Institute of Economic affairs-Ghana Political Parties Programme (IEA-GPPP) began work in 2007 to prepare a multi-partisan framework of ground rules and regulations to govern future transitions² It is important to emphasize that there was a cross-party consensus that reforming the transition process in Ghana to rid it off its challenges required that it should have a statutory underpinning. In this regard, The IEA-GPPP held several discussions that culminated in the drafting of The IEA-GPPP Transition Bill³ which was passed by Parliament on March 16, 2012 and signed into law on May 31, 2012 as the Presidential Transition Act, 2012 (Act 845). This piece of legislation which draws on practical lessons from Ghana's previous transitions is the first of its kind in Ghana that served as the blueprint to guide the 2013 transfer of power from the Mills-Mahama administration (2008-2012) to the Mahama/Amissah-Arthur administration (2012-2016).

Generally, the dearth of literature on the administrative and political aspect of transitions has been observed by a number of scholars including Rainey and Wechsler (1988); Sherwood and Chackerian (1988); and Bynander and t'Hart (2006). Even though transitions are integral to effective public sector management, the process, in many parts of the world, is often beset by lack of blueprints to regulate it, inadequate preparations and orientation (Rainey and Wechsler, (1988). This explains why the passage of the Presidential Transition Law in Ghana, was hailed as a useful attempt to regulate the transfer of power in a manner that ensures national unity, policy continuity and effective public sector management (Ofori-Mensah, 2013).

However, no study has been conducted in Ghana on the 2012 Presidential Transition Law and how it was implemented in the 2013 transition. This paper attempts to contribute to the literature on transitions by assessing how the Presidential Transition Law was implemented. It highlights the central features of the law and discusses the challenges in its implementation, lessons learnt and prescribes the way forward in a manner that strengthens the law and also contributes to the governance policy debate as well as democratic progression and consolidation in Ghana. Being a purely qualitative study, the methodology involves a presentation of an overview of the law; an evaluation of what worked well in its implementation; a review of what did not work; and a consideration of amendment proposals. Before these are done, some conceptual issues that serve as the framework of analysis are discussed.

2. Democracy, Succession, and Transition

The current theories on democracy recognize that the utopian view of democracy as self rule is no longer tenable in view of the complexity of modernity and political realities on the ground (Bohman, 2010; Warren, 2010). The new world view of democracy emphasizes self determination and reflective institutions which allow for revision of decisions and procedures by a —deliberative generation. Within the contexts of this paper, Bohman's definition of democracy is being adopted as a —set of institutions by which individuals are empowered as free and equal citizens to form and change the terms of the common life together, including democracy itself. In this sense, democracy is self reflexive and consists of procedures by which its rules and practices are made subject to the deliberation of citizens themselves (ibid:2). One of the institutional core of democracy which is generally accepted as basic to all forms of democracy is periodic elections often regulated by law. In the view of Huntington (2009:32) competitive elections should be the means of selecting principal officers of government in all democratic regimes. Thus, election is the badge of democracy and the principal apparatus that is the Executive and Legislative arms are subjected to periodic change and reconstitution. The term of office of the principal members is fixed and a process is put in place to determine the next leader (Nkansah, 2012:9).

Implicit in democracy therefore, is the element of succession. This happens when a change of the principal leader with personnel decision making power of hiring and firing as well as that of policy making powers occurs within the contemplation of the law (ibid). The trigger for succession in democracy is elections or succession without elections by virtue of the death or the removal from office of an incumbent (Abbot, 2005: 627). This should be distinguished from a situation where the maximum leader could be replaced by other means not within

² The IEA-GPPP is an inter-party group comprising representatives of the four main political parties in Ghana that have representation in Parliament. They meet once every month at the IEA Secretariat to brainstorm and discuss issues of national importance in an a-political manner. The Programme is sponsored by the Netherlands Institute for Multi-Party Democracy (NIMD) through the IEA.

³ I am the Co-ordinator of The IEA-GPPP and worked with several consultants to draft the 2012 Transition Bill. After the Bill had been drafted, I organized several workshops for members of The IEA-GPPP to discuss and to make their input into it.

the contemplation of the law. The nature of succession is a pointer to how a political system is being institutionalized. In theory, Govea and Holm (1998) distinguished between two types of leadership succession as institutionalized succession and un-institutionalized succession. Institutionalized succession is achieved by a selection process laid down by law with a peaceful and orderly transition, whereas the reverse is the case for the other type.

Succession necessarily involves a transition from one leader to another (Govea & Holm, 1998:132). By the American President Transition Act of 1963 (as amended) transition is concerned with the orderly transfer of executive power in connection with the expiration of the term of office of a President and the inauguration of a new president. In the words of Ahwoi (2009), “transition is a transfer of authority and responsibility within the Executive Arm of the State”. In a wider sense, transition refers to “... a change in regime such as from an authoritarian regime to a democratic regime. In this sense, it refers to an era in the development of a country, when conscious efforts are made to overcome a political order characterized by institutional disarray and normative incongruence, recurring political instability, institutional breakdown as well as extreme disorders by substituting it with one that is institutionally coherent and stable...” (Ninsin, 1998: 4). In this wider sense Ghana as a nation is in transition from an authoritarian rule to a democratic rule and for that matter Ghana is a transitional democracy (Nkansah, 2012). In the narrower sense, transition connotes a change from one government to the other within the same regime in a political system and the processes involved in the change (Gyampo, 2013; Ahwoi, 2009).

In this study, transition connotes a change in the narrower sense. Democratic transition within the contexts of this paper therefore refers to the process by which the new or incoming government emerges, the outgoing hands over government to the incoming leadership and the incoming president in the case of Ghana takes over power to form a new government. Therefore, transition is both administrative and political and covers a time frame, activities and processes to elect a leader and transfer the governance of a country from one administration to another. Abbot et al (2002) maintained that the processes leading to the installation of the new leader legitimizes the succession. The institutionalization of succession as shown by the nature of transition is a pointer to the prevailing condition of democratization in a given context; whether the system is progressing towards liberalism or a reverse (Govea and Holm, 1998). In the view of Huntington (2009), succession provides a test for adaptability; one of the criteria for institutionalization in terms of how a system is able to transfer power from one group to the other in the face of the changing social or political contexts. The institutionalization should be anchored in a clear and unambiguous policy, laid down processes and procedures, and guided by a culture of tolerance, accommodation, and respect for fundamental human rights. These should be reflective in the applicable laws, ideological goals, attitudes, behaviours and practices as discernible during the transitions (Nkansah, 2012:11).

In Ghana, the passage of the Presidential Transition Law testifies to the attempt at institutionalizing the transfer of power from one administration to the other. As a transitional democracy, Ghana through the conduct of “improved” and credible elections continues to demonstrate the zeal and determination to climb the ladder of democratic progression to an advanced liberal democracy as espoused by Diamond (1997). The conduct of credible elections undoubtedly suggests that there will be political succession. Transition, both in the administrative and political sense is crucial because it provides the linkage between credible and democratic elections and succession. In this regard, the need for a legal framework to smoothen transitional process is crucial to the conduct of elections and succession. With this conceptual clarity, the next section of this paper re-focuses discussions on Ghana’s Presidential Transition Act.

3. Brief Highlights of the Presidential Transition Act

As stated in the Memorandum of the law, the primary objective of the Presidential Transition Law (Act 845) is to provide a framework for managing the political and administrative transfer of power from an out-going democratically elected President to an in-coming President. But its benefits transcend regime change. This is evident in key attributes of accountability, institutional clarity and a structured time frame for managing the transition process.

3.1 Accountability

This is the centerpiece of the Presidential Transition Act. The law makes provision for periodic stocktaking and

an inventory of executive assets This requirement covers state assets in both the official and private residences of senior public officers including the President, Vice President and Ministers of State. The Law also stipulates that handing over notes covering a broad range of public offices are to be submitted to the Administrator-General not later than 30 days before a presidential election. This provision will engender good record-keeping and provide new leadership in key government institutions with essential background knowledge to undertake their functions.

3.2 Institutional Clarity

A new body established under the law-the Presidential Estates Unit (PEU) is charged with maintaining and keeping the inventory of executive assets. The Unit is headed by an Administrator-General who is granted the same terms and conditions of service as a Justice of the Court of Appeal. This enshrines in the statute the independence and security of tenure for the Administrator-General. Broadly, the Administrator-General has the role of facilitating the transition process. The law also details key officials who should comprise the Transition Team from both the sides of both the out-going and in-coming President. In fact, as the Transition Team works by consensus, the law, importantly, provides an orderly process for resolving transition related disagreements. This is through a three-member Advisory Council comprising the Speaker of Parliament as the chairperson; one eminent citizen appointed by the incumbent President and another eminent citizen appointed by the person elected as President.

3.3 Structured Time Frame

The law also specifies a structured time-frame for the Transition Team to be formed- within 24 hours after the declaration of the presidential election results. Clear timelines are also set for out-going Ministers to vacate their official accommodation (within three months after the presidential inauguration). Finally, the law also attempts to improve the timing of presidential inaugurations. Prior to the law, Parliament has been sworn in on the same day as the President with only short interval separating the two events. This had led to a catalogue of lapses in protocol, delays and logistical challenges relating to the presidential inauguration. It is within this context that the law makes the requirement that the election of the Speaker of Parliament together with the swearing –in of Parliamentarians be conducted two days before the dissolution of Parliament – but with the aforementioned taking office on January 7. Thus January 7 under the law is solely for the inauguration ad swearing-in of the President.

4 Implementing the Law in the 2013 Transition: Lessons and Challenges

4.1 Appointment of Administrator-General

An important aspect of implementing the law came on November 9, 2012 with the appointment of Mr. Joseph Issacher as the Administrator-General by President John Mahama. This appointment is significant given the appointee’s extensive experience in public service, which culminated in his one time appointment as head of Ghana’s Civil Service. The appointee was therefore widely described as suitable for this important position (Ofori-Mensah, 2013).

4.2 The 2013 Transition Team

The post-2012 election period presented the first test for implementing major aspects of the law. It is important to emphasize that executive level transition occurs even with the re-election of an incumbent as happened in Ghana following the 2012 elections. Indeed, the law provides for this under section 1(3) of Act 845. Thus, President Mahama duly followed the provisions of the law and appointed a Transition Team after he was declared the President-elect.⁴ However, the 22-member team appointed by the President could be considered as sizeable, as this was not a transition from one democratically elected President to another. It must however be noted that the law itself does not place any cap on the number of people to be appointed to constitute the Transition Team. Again, in the case of when an incumbent is re-elected, the law simply states that the President shall designate members of the Transition Team – with no set limit.

4.3 Advisory Council

President Mahama also appointed an Advisory Council (the three-member conflict resolution body) for the transition (Daily Graphic, 2012:3). This was not necessary. Given that technically, the 2013 Transition was one of an incumbent President handing over power to himself. Consequently, there was only one chairperson for the

⁴ See <http://politics.myjoyonline.com/pages/news/201212/98511.php> for details on this.

Transition Team as opposed to co-chairs in the case of an incoming and an out-going administration. In this regard, the sole chair for the 2013 Transition Team could have ruled on conflicts. In practice, no conflict ensued in the transition process and the Advisory Council was “outmoded from birth.” In the considered opinion of these authors, the existence of the Advisory Council throughout the period of the 2013 transition was a complete waste of state resources.

4.4 Handing Over Notes

Handing over notes covering key public offices are crucial for continuity and effective operation of government business especially when a change in leadership occurs. It is in view of this that section 6(4) of the Transition Law stipulates that handing over notes covering key public offices including the Presidency, Government Ministries, Departments and Agencies “shall be presented to the Administrator-General not later than 30 days before the date of the presidential election.” Unfortunately, in the transition under review, this provision was breached. The call for handing over notes came late – on December 12, 2012 when presidential elections had taken place on December 7, 2012. Further, a press release issued by the Transition Team stated that the relevant government appointees had been directed to submit their handing over notes to the Vice President by January 1, 2013 (Ghana News Agency, 2012:2). Clearly, this was another breach as the recipient of handing over notes according to the law was the Administrator-General and not the Vice President. Again, the cut-off date announced by the Transition Team was 53 days past the deadline set by Act 845. Perhaps, the late appointment of the Administrator-General may have had a role in the delays. However, given the fact that the Transition Law was already in the statute book, handing over notes should have been prepared well ahead of time to ensure compliance with the law.

4.5 Swearing-in of Parliament

Initially, there were disagreements with regards to the implementation of section 11 of the law, which covers the election of the Speaker and wearing-in of a new Parliament. The argument was that the Transition Law was inconsistent with the 1992 Constitution. Article 113 (1) of the 1992 Constitution provides that “...Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved.” In the 2013 transition scenario, this implied that Parliament stood dissolved only after midnight of January 7, 2013.⁵ The Transition Act, however, states that a new Parliament must be sworn in two days before dissolution but assume office on January 7. The argument was that if the swearing-in went ahead, as per the Transition Law, then two Parliaments would have been in existence, a scenario which was considered unconstitutional. In view of these disagreements, Parliament was sworn in at the earliest opportunity –shortly after midnight on January 7, 2013. The midnight swearing-in nonetheless, posed its own set of challenges as the timing was not ideal and “ungodly.” Consequently, many Parliamentarians who were to participate in the inauguration and swearing-in of the President in the early hours of January 7, 2013 complained of tiredness, severe headaches and bodily pains due to the midnight sitting.⁶

Several other directives from the Presidency and Transition Team were issued with reference to Act 845. For example, the Transition Team reminded all Ministers and political appointees occupying government accommodation that, in accordance with the Transition Law, they had up to three months after the presidential inauguration to vacate their accommodation and to hand over their official vehicles (Ghana News Agency, 2012). This directive was however not fully complied with by the appointees of the previous administration as many of them were re-appointed and re-assigned different portfolios to serve in the Mahama/Amissah-Arthur administration. Those who were not re-appointed did not vacate their official residence and hand over their vehicles, yet no one could sanction them.⁷

Overall, in spite of the challenges raised above, the 2013 Transition was orderly and much of this could be attributed to the framework provided by Act 845 (Ofori-Mensah, 2013). Indeed, the 2013 transition and presidential inauguration could be described as one of the finest in Ghana’s history. During the transition under

⁵ The Fifth (previous) Parliament’s first sitting was on January 7, 2009.

⁶ Dr. Benjamin Kumbuor, Majority Leader of the Sixth Parliament of the Fourth Republic made this point when I interviewed him in Accra on November 19, 2013

⁷ At a forum to review Ghana’s 2013 Transition organized by the IEA-GPPP in Accra on May, 17, 2013, Mr. Joseph Issachar, the Administrator-General made this point.

review, even though the transfer of power was from one administration to the other, strictly speaking, President John Mahama was a Vice President to the late President J.E.A Mills for three years and seven months. President Mahama was acclaimed to continue the term of President. J.E.A Mills when the latter died five months to the 2012 elections. Part of the reasons for the smooth transition in 2013 was therefore attributed to the fact that “Mahama handed over to himself even though the political regime and administration was to be different.”⁸ Therefore, it is worth noting that there are key aspects of the law that remain to be tested and some of these will only come into force when a transfer of power from one elected president to another from a different political party occurs.

5 The Way Forward

To address the implementation challenges and to ensure that the law is able to better regulate the transfer of power, particularly from one president to another from a different political party in a manner that truly checks rancor, acrimony and ensure a smooth transfer of power, this section sets out six reform proposals. These range from providing clarity to Act 845; making recommendations to ensure efficiency savings during transitions and proposals to obtain value for money in the administration of state assets. The case is also made for the introduction of subsidiary legislation to cover issues such as enforcement powers that will unlock the full potential of the transition reforms already in place. The reform proposals are as follows:

5.1 Capping the Transition Team

The lessons drawn from the implementation of the law suggest that there is scope for accruing efficiency savings on transition costs. In this regard, there is the need for a cap on the number of individuals appointed to constitute a Transition Team owing to the huge cost of honoraria on the public purse. The full expense of the 2013 transition was not publicly available at the time of writing this paper⁹, but evidence from the 2009 transition suggests that honoraria for members of a Transition Team and its sub-committees account for more than half of transition expenses.¹⁰ The evidence indicates that for the 2009 transition, there was a total of 151 individuals on the Transition Team and its 10 sub-committees. Out of a total of GHC 361,924.41 spent on that year’s transition, GHC 208,800 was paid as honoraria to the 151 individuals (Parliamentary Debates, 2009).¹¹ The honoraria alone represented 57 percent of the 2009 transition’s expenditure. Indeed, for the public, the cost of the transition was one of the more “eyebrow raising” elements relating to the change of government which led to a barrage of public criticism. Given that Ghana faces mounting economic challenges, which have resulted in “national belt-tightening” in key sectors and basic infrastructure shortfalls, it will be prudent to show austerity in this area.

In the case where an incumbent is re-elected, the law states that the President shall designate members of the Transition Team. The 22 member Transition Team in 2013 is almost identical to the number of individuals specified in the law if a transfer of power to a completely different administration occurs. In the case when an incumbent is re-elected, a statutory cap of about 12 could help limit the cost relating to Transition Team appointees. Further, while section 4(2) of the law provides a cap for sub-committee membership (not more than five persons), there is no limit on the number of sub-committees which may be formed in addition to the three

⁸ Mr. P.V. Obeng, a member of the 2013 Transition Team made this point in a personal communication with him in Accra on November 10, 2013.

⁹ Several efforts to ascertain the full cost of the 2013 transition from the Transition Team proved futile due to unwillingness to release such information by officials of the Team. Two main reasons may account for this. First, anecdotal evidence abounds that the cost of the 2003 transition far exceeds that of the 2009 and given the barrage of public criticism of the huge cost of the 2009 transition, the fear of more negative public reaction has compelled officials to be tight-lipped on the cost of the 2013 transition. Secondly, governmental activities continue to be shrouded in opacity as the nation has been denied the benefits of a Right to Information Law (RTI). The RTI bill was initiated by The IEA in 1996 but remained a bill as at the time of writing this paper.

¹⁰ Interview with Mr. Kwadwo Mpiani, former Chief of Staff and member of the 2009 Transition Team in Accra on November 13, 2013.

¹¹ The Memorandum to the Presidential Transition Bill, 2012 indicates that there were 10 sub-committees for the 2009 Transition. The Finance Ministers statement in Parliament, noted above, is what stated that the cost incurred was attributed to the Transition Team and its ten sub-committees.

statutory sub-committees under the law.¹² Section 4(d) of the law leaves the establishment of additional sub-committees to the discretion of Transition Team. To check the cost of transitions, there is a strong case for also imposing a limit on sub-committees that may be formed to a maximum of five. The Administrator-General, working together with the Head of Civil Service, could design a scheme whereby a team of senior civil servants from key ministries are seconded to support the work of the Transition Team where necessary. This will provide much needed expertise and also limit the need for extra appointees on the Transition Team and its sub-committees.

5.2 Clarity on the Establishment of an Advisory Council

The Advisory Council is a valuable aspect of the law with its role clearly defined as a conflict resolution body. The Council becomes relevant when Transition Team co-chairs, in the case of an in-coming and out-going administration, fail to find common ground on a core issue relating to the transition. This is clearly stated in the Memorandum to the *Presidential Transition Bill, 2010*. On the other hand, when an incumbent is retained in office, the sole Transition chairperson can rule on disagreements within the Team when they arise. In this respect, it is proposed that Act 845 be amended to nullify the establishment of an Advisory Council when an incumbent is re-elected. In addition to providing clarity to this part of the legislation, the proposal will also prevent the recurrence of the 2013 transition experience and overall, save the nation from the potential cost of allowances paid to the Council.

5.3 Swearing-in- of Parliament

As indicated above, the early swearing-in of Parliament under section 11 of Act 845 had been deemed unconstitutional. But the legality of the swearing-in issue was carefully examined during the consideration stage of the Presidential Transition Bill by Parliament's Committee on Constitutional, Legal and Parliamentary Affairs.¹³ It is, then surprising that the same Parliament, which debated and passed Act 845 deemed a section it approved as unconstitutional. Further, the same administration which enacted the legislation has also cited legal opinion which views section 11 as unconstitutional. Given this backdrop, it is, perhaps unsurprising that there exists a palpable sense of hesitation among some political leaders on the unconstitutionality issue.

A settled view on this matter is therefore required. Swearing-in Parliament in the early hours of January 7 (which is deemed constitutional) certainly contributed to the smooth presidential inauguration of 2013. But the midnight sitting of Parliament poses its own logistical and practical difficulties and a plausible alternative may be required. The proposed approach to settling this issue is, first, to consider the school of thought of a Supreme Court interpretation of Article 113 vis-à-vis section 11 of Act 845. In the event of the Court ruling that Act 845 is unconstitutional, the alternative step will be the option of a constitutional amendment which will enable the next Parliament to be sworn in on January 5, 2017 (after the upcoming 2016 elections). This option will require dissolving the current Parliament two days short of its four-year term, which in the view of the authors of this paper would do no harm to the nation's democracy.

5.4 Enforcement Powers for the Administrator-General

Although the Transition Act confers a range of duties on the Administrator-General's office, it does not empower the office to deal with possible breaches. For the Act to be effective, powers that can strengthen the hand of the Administrator-General in carrying out the statutory duties conferred on that office remain crucial. For example, the Administrator-General must be able to surcharge public officials for missing or damaged state assets and impose penalties in the scenario where public officials fail to leave their state accommodation at the specified time. A subsidiary legislation may be promptly considered to address this.

5.5 Administrator-General Reporting to Parliament

There ought to be a statutory requirement for the Administrator-General to submit an annual report to Parliament within a set time frame, such as "not later than six months after the end of each financial year." The report should provide an update on the national register of executive assets; timelines of inventories taken; cost of maintaining the assets portfolio, etc¹⁴. Given that the cost of government is a critical public policy issue that reverberates in

¹² The three sub-committees specified in Act 845 are the Government, Inauguration and Presidency Sub-Committees.

¹³ Interview with Alban Bagbin, Chairman of the Parliamentary Committee on Constitutional, Legal and Parliamentary Affairs in Accra on November, 20, 2013.

¹⁴ Security concerns may require concealing assets such as "safe-house" from the national register section in the proposed

the minds of many Ghanaians, the Transition Act can be tightened to ensure value for money. For example, effective management and maintenance of the large portfolio of executive assets, which the Administrator-General and the Presidential Estates Unit will oversee, could accrue huge savings to the nation. This approach will also promote transparency in the management of state assets and provide a periodic opportunity to evaluate and debate value for money in the management of the executive estate.

5.6 Addressing Potential Legal Technicalities

Section 1(3) of the law states that “where an incumbent President is re-elected for a second term, the President shall designate members of the Transition Team.” The case of President Mahama, who assumed office as President in July 2012 upon the death of President J.E.A. Mills is evidence of a scenario whereby an “incumbent” who wins a general election may not necessarily have been elected for a “second term”. To avoid any potential legal challenges relating to strict adherence of this section, it is important to reflect the Mahama scenario in the law. One possible approach could be tweaking the first part of section 1(3) to simply state “where the incumbent is elected” – with the reference to second term deleted.¹⁵ Alternatively, another sub-section could be added to section 1 to provide for the Mahama scenario where an incumbent is elected for a first term.

5.7 Changing the Date for General Elections

Finally, it is important to mention that if the transition process is to be effective, changing the current general election date of December 7 is essential. This is due to the potentially short transition time-frame in the event of a presidential election run-off which per the 1992 Constitution is held 21 days after the declaration of the first presidential election results. Given that Ghana’s presidential inauguration is constitutionally set for January 7, there would be a limited transition period and the transfer of power may occur in haste in a manner that may compromise the quality of the process.¹⁶ Thankfully, resolving this issue is a work in progress, as the *Government White Paper on the Constitutional Review Commission* has accepted recommendations for the presidential elections to be held on November 7 to allow ample transition period in the event of a presidential run-off.

6 Conclusion

Transition, both in the administrative and political sense is crucial because it provides the linkage between democracy, elections and succession. The Presidential Transition Act remains integral to smoothen transition process as well as the conduct of elections (which is a badge of democracy) and succession. In the implementation of the law, there have been challenges and some lessons learnt. If fine-tuned, the law may not necessarily remove all the challenges relating to the democratic transfer of power. Nevertheless, it would provide an opportunity for Ghana to close a chapter on its dismal history of democratic transitions. Indeed, the framework provided by the law to guide the transfer of power guarantees a radical departure from the past rancorous and acrimonious transition process. There is cause for much optimism given the unanimous cross-party support for the law. In charting the way forward, policy makers must act on the proposals set out in this paper in order to unleash the full potential of the law.

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annual report. Using code names, without specifying location, would be a useful approach in such as instance.

¹⁵ The word “re-elected” should also be avoided as that similarity implies that the incumbent was previously elected.

¹⁶ Only a brief transition period preceded the change in government in both 2001 and 2009. For the 2001 transition, the Joint Transition Team was inaugurated on January 1, 2001 – only four days after the run-off election which J.A. Kuduor won. For the 2009 transition too, the Joint Team met for the first time on January 6, 2009 –three days after the declaration of Professor J.E.A Mills as the winner of the run-off.

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