It may be probably true to say that after the National Petroleum Authority Bill which is now law, the only Bill to generate so much debate and general public attention is the Representation of the People (Amendment Bill). The purpose of the Bill is to enable Ghanaians resident abroad to register to vote in public elections and referenda in the country. As the Memorandum to the Bill states, Section 2(1) of the Political Parties Act 2002 (Act 574) provides that every citizen of voting age has the right to participate in political activity intended to influence the governance of this country and the least of this participation is the right to vote.

The starting point in such a discussion, in my view, is the Constitution. The Constitution is the supreme law of Ghana and any other law which is inconsistent with any provision of it is, to the extent of the inconsistency, void. This provision in Article 1 (2) of the Constitution is common knowledge.

It is provided in Article 42 of the Constitution as follows:

"Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda."

To be able to register as a voter in this country three qualifications are necessary and fundamental. First the prospective voter must be a citizen of Ghana; he must be of 18 years of age or above and thirdly he must be of sound mind.
All the three qualifications must be present in the voter and once the voter passes the test he is entitled to be registered as a voter for the purpose of public elections and referenda. In other words, once he qualifies, he is entitled to vote as of right; it is not a privilege, it is a right.

Perhaps of the three qualifications the one which seemed to pose problems is the one on citizenship. Fortunately, the Citizenship Act, 2000, Act 591 has made ascertainment of who a citizen of Ghana is much easier. While section 1 of Act 591 provides that "every person who on the coming into force of the Constitution was a citizen of Ghana by law shall continue to be a citizen of Ghana", Sections 3-8 provide details of citizenship of persons born on or after 6th March, 1957 up to the present time. So, it is quite easy to ascertain the citizenship of anybody who claims to be a Ghanaian.

Section 8 of the existing law Representation of the People Law, 1992 (PNDCL 284) is not only discriminatory against some Ghanaians resident abroad but offends the Constitution as well. I will quote the relevant part of section 8 of PNDCL284.

"8 (1) A person who is a citizen of Ghana employed in a post outside Ghana
   a) in the service of the
      Republic; or
   b) in the service of the United
      Nations or of any other international organization,
      shall be entitled to be registered as a voter if he satisfies the requirements for registration prescribed under this Law other than those relating to residence in a polling station". (Emphasis mine)

The existing law confers the right to register and vote on citizens of Ghana who are employed in the service of Ghana or the United Nations or any other international organization but denies other citizens of Ghana who are also resident outside the Country but are not so lucky to be employed in the service of Ghana or the UN or any other international organization the right to vote.

It does not matter whether the citizen who is employed in the service of the UN or any other international organization secured his employment on his own or is representing Ghana. The words of section 8(1) of PNDCL 284 are clear and unambiguous. The important qualification is that if you are a Ghanaian resident outside Ghana, you only have to work for Ghana in a Mission or Embassy or in an international organization like the UN, Commonwealth, ECOWAS, The European Union, The African Union, FIFA or Confederation of African Football and presto, you have the right to vote. In bringing into the net these international organizations, I have only sought to employ the canon of interpretation-ejusdem generis - to interpret the words "any other international organization" appearing immediately after United Nations in Section 8(1)(b) of PNDCL284.

Let us consider for a moment the existing law
as it applies to two Ghanaians of full age who live in London. One is a lowly-placed worker with the Commonwealth Secretariat or the Ghana High Commission whilst the other, a Manager, works with the London Car Park or a Super Market. Under our law, the lowly-placed worker, because of his employment with the Commonwealth Secretariat or the High Commission, has the right to register and vote but not his fellow-countryman, the manager.

It is my humble submission that this piece of legislation is discriminatory and sins against the Constitution. Article 37(1) of the Constitution reads:

"37 (1) The States shall endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in Chapter 5 of this Constitution; and in particular, the State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law". (Emphasis mine)

Reading Article 37(1), Article 42 of the Constitution and section 8(1) of PNDCL, 284 together can we all boldly beat our chest and claim that as far as representation of the people is concerned we have treated all citizens of this country equally and fairly? I think not; on the contrary for the thirteen years or so that our Constitution has been in existence we have treated a certain category of citizens, those resident abroad and who are qualified under the Constitution to register and vote - with discrimination and outright disregard of their right.

My position on the Ghanaian's right to vote subject only to the qualification provided for in Article 42 of the Constitution is supported by the Supreme Court decision in Tehn-Addy V. Electoral Commissioner and Another (1996-97) SCCLR 589. In that case the Supreme Court held per Acquah, JSC, (as he then was, that):

"every sane Ghanaian citizen of eighteen years and above, had the right under Article 42 of the 1992 Constitution to be registered as a voter. The exercise of that constitutional right of voting was indispensable in the enhancement of the democratic process and it could not be denied in the absence of a constitutional provision to that effect"

The same position was reached by the Supreme Court in its decision in Apaloo V. Electoral Commissioner(2001-2002) SCCLR 1. At page 19, Bamford-Addo, JSC, had this to say:

"Ghana has adopted democracy and those principles are eloquently given force in the Preamble to and Article 1 of the Constitution. In the contemporary world, any limitation on suffrage is rejected. It is universally accepted
reason at all for exclusion of the right
to vote or any limitation to it con-
sidering that all men are created equal
and have one vote each. For this
reason, it is incumbent on the Electoral Commission to provide by all
legitimate means for the free and unlimited exercise of the citizens’ franchise in conformity with both the letter and spirit of the Constitution”.

The second matter I want to address flows from the first. Anybody who lives outside Ghana who can prove that he is a citizen of Ghana, he is 18 years or above and that he is of sound mind is entitled to seek protection under the Constitution for his right to vote in public elections and referenda.

Article 2(1) of the Constitution offers that protection. It states:

“A person who alleges that:

(a) an enactment or anything contained in or done under the authority of that or any other enactment;
Or
(b) any act or omission of any person; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect”

(Emphasis mine)

As stated earlier on, the Constitution is the Supreme Law of the land. It represents the entirety of the aspirations of Ghanaians. Mr Chairman, in the case of Tuffour V .

Attorney-General (1980) GLR 637, the Court of Appeal, sitting as the Supreme Court, stated per Sowah, JSC, as he then was, as follows:

“A written Constitution such as ours is not an ordinary Act of Parliament. It embodies the will of the people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people’s search for progress. It contains within it their aspirations and their hopes for a better, fuller life”.

We have a right and a duty to defend the Constitution. Equally, we have a duty to obey its dictates.

It is respectfully submitted that any refusal or failure or neglect to enfranchise qualified Ghanaians living abroad as provided for in Article 42 of the Constitution would amount to an omission and any Ghanaian would be entitled to bring an action in the Supreme Court for a declaration to that effect. But should we be dragged to Court for a declaration before we do the right thing? I do not think so.

This is the legal position as I understand it. But there are some issues which have been raised in certain quarters which do not override the constitutional and legal considerations but which, nevertheless, need to be addressed in a forum like this. The first is that the NPP Government, afraid of a possible defeat in 2008, is ingeniously
bloating the Electoral Register with the enfranchisement of Ghanaians resident abroad so that it can retain power in 2008. This, with respect, is the most infantile argument anyone can advance on the subject of enfranchising qualified Ghanaian citizens living abroad.

There is no evidence, categorical or scientific, that majority of Ghanaians resident abroad are members, supporters or sympathizers of the NPP. If any one has any such evidence he should be kind enough to make it public. Simply, that proposition has no scientific basis. It must be dismissed as being vexatious and unmeritorious.

Admittedly, some Ghanaians resident abroad have exercised their inalienable right to engage in political activity and in so doing they have openly aligned themselves with various political parties in the country. But would that be a legitimate reason to disqualify them to vote when they otherwise qualify? Put differently, would it be sufficient for anybody to disenfranchise me because that person knows my political persuasion. I do not think so and such an invasion into my right guaranteed by the Constitution will be resisted with all my strength.

There is also the argument of cost. Some people are heard arguing, most unconvincingly, that we are poor and therefore we should not spend our scarce resources on registration of Ghanaians resident outside the country. Again, I will ask whether it lies in anybody's mouth to say that because it is costly a citizen of this country should be denied his right under the Constitution. Is it not our elders who say that if you stop what you are doing you will have time? We will find the money if we want to. Interestingly, the Executive Arm of State which is introducing the Bill to Parliament has not given us any reservations as to cost. The fuss about cost looks like giving a dog a bad name to hang it.

There is also the issue of timing of the Bill. This is usually canvassed together with the political consideration. The question is, what is the appropriate time to introduce such a Bill in Parliament? It will be recalled that during the last Parliament the Bill was introduced but had to be withdrawn because it was introduced too close to the elections and people had not had time to consider and debate it. Today, the Bill is being introduced three and half years to elections. In my view, the consideration of timing of the bill has now lost its appeal. Similarly, the issue of lack of logistics to facilitate the registration and voting of qualified Ghanaians resident abroad has also lost it’s appeal, if any. The truth of the matter is that if the Constitution says that qualified Ghanaians have to exercise their right to vote, so be it, we have to provide the logistics.

Another area which appears to be generating some controversy is with the appointment of the Head of a Ghana Mission or Embassy abroad or any other person or institution as a
The intended amendment provides as follows:

"8 (1) The Commission may appoint the Head of a Ghana Mission or Embassy abroad or any other person or institution designated in writing by the Commission as a registration officer to register a person to be a voter for an election

(2) The Commission may give such directions as it considers appropriate to a person appointed as a registration officer".

A similar provision is to be found in PNDCL 284, the existing law. Sections 8 (4) and (5) of PNDCL 284 provide as follows:

(4) "The Commission may appoint the Head of a Mission or Embassy abroad as a registration officer for the purpose of receiving claims from a person entitled under subsection 1, 2, or 3 of this section to be registered as a voter.

(5) The Commission may give such directions as it thinks fit to a person appointed as registration officer under subsection 4 and the person shall comply with the directions"

It is not being proposed, that once the provision is found in PNDCL 284 then its repetition in the current Bill cannot be questioned. We are entitled to subject the provision to some debate and eventually enact for ourselves the law we desire to govern our voting rights. But it is important to note that while under PNDCL 284, the Electoral Commission had the discretion to appoint "Head of a Ghana Mission or Embassy abroad as a registration officer" the Bill grants the discretion to the Electoral Commission to appoint "Head of Ghana Mission or Embassy abroad or any other person or institution designated in writing by the Commission as a registration officer".

The Bill, unlike the existing law does not restrict the Commission to consider only the Head of Mission or Embassy. The Electoral Commission is free in the appointment of its registration officers and I think that this is in accord with Article 46 of the Constitution which says:

"Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission shall not be subject to the direction or control of any person or authority".

In conclusion, it is respectfully submitted that qualified Ghanaians resident outside the country have a right to vote in public elections and referenda and they are therefore entitled to be registered as voters. To do otherwise, because of administrative problems which can easily be dealt with or because of political considerations, is to deny a people their legitimate constitutional right. Article 42 on a citizen's right to vote is an entrenched provision. It is not for nothing that we all, as a people, agreed that the Constitution ought to safeguard that.