

# GOVERNANCE

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### **DEALING WITH THE WINNER-TAKES-ALL POLITICS IN GHANA: THE CASE FOR A REVIEW OF THE POWERS OF APPOINTMENT OF THE EXECUTIVE PRESIDENT**

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#### **Summary**

*One of the key manifestations of the Winner-Takes-All (WTA) politics is the exclusive manner in which the power of appointment is exercised by the President of Ghana to benefit some party apparatchiks and cronies without recourse to meritocracy. The paper therefore reviews the extensive powers of appointment of the President and examines how the exercise of these appointment powers promotes two key features of*

*WTA politics, namely, a feeling of marginalization and waste of talents, experience and expertise. It discusses previous attempts at promoting inclusive government through appointments and the challenges encountered. The paper finally proffers policy recommendations on how the power of appointment could be exercised in a manner that promotes inclusivity and meritocracy.*



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## Introduction

The powers of the executive President of Ghana have been the subject of debate by many academics, legal luminaries and scholars. It has been argued that the President's powers of appointment are too extensive and ought to be diffused<sup>2</sup>. Others have opined that such powers ought to be exercised with recourse to meritocracy and in a manner that promotes inclusivity and cross partisanship. Indeed, the Constitution Review Commission (CRC) recommended the appointment of certain key officials of state including the Chairperson of the Electoral Commission (EC), the Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ) and Auditor-General to be made by the President in consultation with the Council of State and with the approval of Parliament (CRC Report, 2011). This proposal which injects some scrutiny and cross partisanship into the appointment process, was accepted by the Government in its White Paper (2012) published thereafter.

Renowned Ghanaian scholars including Prempeh (2003), Saffu (2007) and Ninsin (2008) have also highlighted the dangers of the enormous and the virtually unbridled powers of Ghana's executive President, particularly in the areas of appointment. These scholars have succinctly argued that the unbridled exercise of such appointment powers could breed dictatorship, undermine constitutionalism and weaken important state institutions expected to play a countervailing oversight over the powers of the executive.

This paper contributes to the discourse on the dangers of the extensive powers of the executive by highlighting how they also promote WTA politics. As explained in previous series, the Winner-Takes-All (WTA) politics is simply the practice of excluding all other Ghanaians who are not part of the ruling party from national governance and decision making in a manner that polarizes the nation and wastes the much needed talents, experience and expertise for national development (Abotsi, 2013). For the sake of responsiveness and political accountability, it may not be a sustainable proposal to call for "a purely all-inclusive governance system" where virtually "everybody across the political divide" is included in the governance process<sup>3</sup>. Nonetheless, as argued in previous series, the feeling of exclusion from the governance process by those who are not members of the party in power often associated with WTA politics cannot also be part of good governance.

Unfortunately, the WTA phenomenon has characterized all the regimes of Ghana's Fourth Republic. Incoming governments have used their victory to signal a new "era" and the fact of their control over power and resources. As has oftentimes been the case under all regimes in the Fourth Republic, the assumption of political authority has been used as means of demonstrating control and the consequent marginalization of perceived political opponents from access to key resources and occupation of certain offices (Abotsi, 2013; Linton and Southcott, 1998).

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- 2 Generally, in the presidential system of government, unlike the parliamentary system, the powers of the President are quite extensive and not diffused. Ghana, combining the features of the presidential and parliamentary systems into a neo presidential/hybrid arrangement appears to have borrowed more of the features of the presidential system than the parliamentary system.
- 3 The author is grateful to Professor Aaron Mike Oquaye, Political Scientist and a former Second Deputy Speaker and current Speaker of Parliament of the Republic of Ghana for this view. According to him, it would be difficult to locate who is responsible for what and who must be accountable to Ghanaians when all across the political divide are made part of the ruling government.

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In effect, two key features of WTA are the feeling of marginalization from governance and decision making process by those who do not belong to the ruling party and the needless dissipation of brains and talents that could have otherwise been harnessed for national development (Dennis, 2007; Dyck, 2006). To achieve inclusive politics and national development, appointments by the President must be guided first by Max Weber's conception of meritocracy.<sup>4</sup> In this regard, while party functionaries who qualify and merit appointments ought to be considered, non-party functionaries and, indeed, talents and experts from across the political divide who are willing to serve the nation should also be given the opportunity to do so through appointments by the President.

Against this backdrop, this paper reviews the powers of appointment of the President of Ghana and recommends the need for such powers to be exercised in a manner that promotes inclusivity, meritocracy as well as national development. It highlights the various offices and positions that require appointment by the President and discuss how the current exercise of such powers by the President tend to promote two key features of WTA politics, i.e., a feeling of marginalization and waste of talents, expertise and experience. It

discusses previous attempts at promoting inclusive government and the challenges encountered. The paper also proffers policy recommendations on how the powers of appointment could be exercised in a manner that promote inclusivity, meritocracy as well as ensure that the right caliber of personnel are appointed. Data for this paper was generated from a series of nation-wide public consultations on WTA politics held by the Institute of Economic Affairs between 2013 and 2014. Other secondary sources such as library research were used to augment information from the public consultations.

## **The Powers of Appointment of the President**

In Ghana the President under the 1992 Constitution has the power to make several appointments. This is because the President is the Head of State, Head of Government and Commander-in-Chief of the Armed Forces. He therefore has the executive power and authority to make such appointments. Sometimes, such appointments are made in consultation with or with the advice or approval of some other bodies. Some of the key appointments are listed in table 1 below:

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<sup>4</sup> See details at <http://dpb.bitbucket.org/max-weber-on-meritocracy-in-academia-1918.html>

**Table 1: List of Presidential Appointees**

Constitutional Provision, 1992 Constitution	Type of Presidential Appointment
Article 70 (1) (a-e); Article 74 (1); Article 86 (2) (i); Article 183(4) (a); Article 185(3); Article 189 (1) (a)	<p>1. Appointment in Consultation with the Council of State</p> <p>(a) Commissioner for Human Rights and Administrative Justice and his Deputies;</p> <p>(b) the Auditor-General;</p> <p>(c) the District Assemblies Common Fund Administrator;</p> <p>(d) Chairmen and other members of -</p> <p>(i) the Public Services Commission;</p> <p>(ii) the Lands Commission;</p> <p>(iii) the governing bodies of public corporations;</p> <p>(iv) a National Council for Higher Education howsoever described; and</p> <p>(e) The holders of such other offices as may be prescribed by this Constitution or by any other law not inconsistent with this Constitution – with the President acting in consultation with the Council of State.</p> <p>f. Persons to represent Ghana abroad</p> <p>g. The Chairperson of the National Development Planning Commission</p> <p>h. Governor of the Bank of Ghana</p> <p>i. The Government Statistician</p> <p>j. The Chairman and four other Members of the Audit Service</p> <p>2. Appointment on the Advice of the Council of State</p> <p>a. Chairperson, two Deputies, and other members of the Electoral Commission</p> <p>b. Chairperson, two Deputies, and other members of the Electoral Commission</p>
Article 70 (2); Article 232 (2)	

Constitutional Provision, 1992 Constitution	Type of Presidential Appointment
Article 78(1); Article 79 (1)	<p>3. Appointments with Approval from Parliament</p> <p>a. Ministers of State</p> <p>b. Deputy Ministers of State</p>
Article 144 (1-5)	<p>4. Appointments in Consultations with Council of State and Approval of Parliament</p> <p>Chief Justice, in consultation with Council of State and approval of Parliament.</p> <p>Other Supreme Court Justices, on the advice of the Judicial Council, in consultation with the Council of State, and with the approval of Parliament.</p>
Article 86(2) (vi); Article 89 (2) (a) (i-iii); Article 89 (2) (d); Article 153 (n); Article 166(1)(c)	<p>5. Appointment with no Consultations or Advice from Council of State and with no approval by Parliaments</p> <p>(a). Members of the National Development Planning Commission, having regard to their roles pertaining to development, economic, social, environmental and spatial planning.</p> <p>(b). (i) one person who has previously held the office of Chief Justice; (ii) one person who has previously held the office of Chief of Defense Staff; one person who has previously held the office of Inspector-General of Police.</p> <p>Eleven other Members of the Council of State</p> <p>Four persons who are not lawyers to serve on the Judicial Council.</p> <p>Two persons to serve as members of the national Media Commission.</p>

Source: Constitution of Ghana's Fourth Republic, 1992

Table 1 shows the extensive powers of appointment of the President of Ghana. It must however be pointed out that there are certain key positions of state that do not fall within the appointment powers of the President. For instance, the Vice Chancellors of all public universities in Ghana are appointed by their own respective Governing Councils with no approval from the President.<sup>5</sup> There are other powerful bodies whose heads are also not appointed by the President. For instance, the chairman of the National Media Commission is not appointed by the President. In spite of these limitations, the fact, however, remains that offices and positions that are not directly under the appointing powers of the President are few.

### The Challenge of Wielding Such Enormous Powers of Appointment

The key challenge, however, is that some of the bodies that advise or are consulted by the President in making appointments, particularly the Council of State, are of doubtful independence and their capacity to act effectively in the discharge of their mandate has been questioned in recent times (IEA, 2014; Oquaye, 2013). Therefore, under the WTA politics, all these appointments are made

to benefit some party supporters and loyalists to the exclusion of real or perceived political opponents. Whether such party loyalists and cronies merit such appointments or not is not really the consideration in a WTA politics infested country like Ghana. This therefore leads to the selection and placement of “square pegs in round holes” with its disastrous consequences for development. It also confers exclusive right of appointment to only some partisan apparatchiks and marginalizes the rest of the citizenry who did not actively support the electioneering campaign of the ruling party.

### Previous Attempts at Promoting Inclusive Government and Challenges Encountered

It must be noted that an attempt has been made in the history of Ghana’s Fourth Republic in appointing people from other political parties to serve in the public service. Indeed, under the aegis of an “All Inclusive Government”, President J.A. Kufuor appointed three people from the minor opposition parties to serve in his government (Table 2).

**Table 2 List of Appointees by President Kufuor Outside the New Patriotic Party**

Name	Political Party	Portfolio
Mallam Issah	Peoples’ National Convention	Minister for Youth and Sports
Papa Kwesi Nduom	Convention Peoples’ Party	Minister for Energy and later, Public Sector Reform
Moses Dani Baah	Peoples’ National Convention	Deputy Minister for Health

<sup>5</sup> I am grateful to Professor Atsu Ayee, Senior Adjunct Fellow of the IEA, for this contribution.

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President John Atta Mills also appointed Dr Kwabena Duffuor of the Convention Peoples' Party (CPP) as finance minister and Hajia Hajara Ali of the Peoples' National Convention (PNC) as a member of the Council of State. These gestures were largely described as a façade in order to create a veneer of inclusivity as the majority of appointments were offered to party sympathizers and there was no genuine political will to bring others on board. The practice of WTA politics has been perpetuated by politicians in Ghana to the extent that the phenomenon is so deeply ingrained in the psyche of the ordinary party supporter. Consequently, when President Mills appointed a technocrat, Mr. Henry Martey Newman as his Chief of Staff, he received several criticisms from both the top echelons and party foot-soldiers because in their view that he was not an active party supporter and was nowhere during the electioneering campaign of the National Democratic Congress (NDC) (Gyampo, 2010). Such sentiments expressed by some party foot-soldiers and apparatchiks have tended to undermine efforts to ensure that emphasis is placed on competence, and meritocracy in public appointments.

## Policy Recommendations

As argued, the powers of appointment by the President under the 1992 Constitution are too extensive. The exercise of these powers in a manner that benefits only some party supporters facilitates the WTA politics as it deepens the feeling of marginalization among a cross section of the population who do not belong to the ruling party. This invariably also leads to a waste of manpower as it deprives and drains the nation of the needed human resources for development. Appointment of only party cronies as heads of institutions and ministries without recourse to meritocracy has the potential of adversely affecting the independence, professional competence and performance of

these institutions, particularly those established under the constitution to protect citizens and act as agents of restraint on executive power.

The Constitution Review Commission (CRC), perhaps, for good reasons, recommended that the Commissioner for Human Rights and Administrative Justice and the Deputies; the Chairperson and other members of the National Commission for Civic Education; the Chairperson, Deputy Chairpersons and other members of the Electoral Commission; the Auditor General; and the Chairperson and members of the Independent Emoluments Commission be appointed by the President in consultation with the Council of State and with the approval of Parliament (Republic of Ghana, 2011). Prior parliamentary approval of such appointees, which hitherto, did not exist is useful in ensuring consensus and boosting support, legitimacy and meritocracy in the appointment of such high-level officials of state (ibid). These recommendations were accepted by the President in its White Paper (Republic of Ghana, 2012:12). There were no recommendations on other equally important areas of appointment of the President.

The challenge as pointed out by Oquaye (2013), is that the Council of State is not only perceived as a "lame duck" whose advice is not binding on the President but also incapable of providing independent advice to the President, given its partisan composition and the fact that the President has a hand in the selection of majority of its members. The Council of State is a twenty-five member body with the President directly appointing eleven members. Apart from the eleven the President appoints, he has enormous influence in the selection of ten representatives on the Council from the ten regions of the country, who are elected by an electoral college consisting of two representatives from each of the districts in the region nominated by the Metropolitan, Municipal and District Assemblies (MMDAs)



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in the region (IEA, 2014). If there are two or more former Inspector Generals of Police, Chief Justices and Chiefs of Defense Staff, the president has the prerogative to appoint one each from among them. In this regard the president wields enormous power and control over the Council of State (Oquaye, 2013). In addition, executive control over Parliament as a result of Ghana's constitutional hybridity and its attendant excessive partisanship that tends to characterize debates on the floor seem to have rendered Parliament ineffective in ensuring that the right caliber of persons are appointed.

It is therefore recommended that while appointment to constitutional bodies should remain under the President, recommendations for these appointments should emanate from certain clearly designated bodies that have the capacity to identify suitable persons using clearly pre-determined criteria. These constitutional bodies and institutions include the Electoral Commission (EC), Commission on Human Rights and Administrative Justice (CHRAJ), Chief Justice, Supreme Court Judges, Governor of the Bank of Ghana, National Commission for Civic Education (NCCE), Economic and Organized Crime Office (EOCO), and the Inspector-General of Police and Auditor-General.<sup>6</sup>

A duly constituted body comprising professional bodies, institutions, political party representatives and identifiable groups shall recommend appropriate individuals of at least five persons from among whom the President shall make a nomination to Parliament. This process ensures broader acceptance and legitimacy of the appointees. For instance, in appointing the chairperson of the EC, the body could comprise:

a representative of the following:

- Political Parties with representation in Parliament
- Judiciary
- Ghana Bar Association
- National House of Chiefs
- Trades Union Congress
- Civil Society in the areas Governance and Democracy
- Christian Council, Catholic Bishops Conference and Ghana Pentecostal and Charismatic Council
- Muslim Council and Ahmadiyya Mission

Similarly, in appointing the Inspector General of Police, the body may comprise a representative of the following:

- Political Parties with representation in Parliament
- Security Agencies apart from the Police Service
- Ghana Journalists Association
- Ghana Bar Association
- Trades Union Congress
- Governance and Human Right Civil Society Organizations

Again, in appointing the Chief Justice / Justices of the Supreme Court, the body may comprise a representative of the following:

- Judicial Council
- Ghana Bar Association
- National House of Chiefs
- Trades Union Congress

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<sup>6</sup> These were the direct recommendations of the IEA-WTA Advisory Committee following their nation-wide public consultations on WTA Politics in Ghana between 2013 and 2014



- Political Parties with representation in Parliament
- Christian Council , Catholic Bishops Conference and Ghana Pentecostal and Charismatic Council
- Muslim Council and Ahmadiyya Mission

Similar arrangements could be put in place to recommend appropriate individuals to serve as heads of the other constitutional bodies. As indicated earlier, allowing representatives of the various bodies to play a role in the appointment process ensures ownership of the process, consensus-building, acceptance and legitimacy of the appointee. Moreover, parliamentary vetting and approval of the President's nominees shall be by two-thirds majority of all Members of Parliament as against the current practice of simple majority. These stringent and elaborate appointment measures are intended to help check the practice of WTA politics as they promote inclusivity and ensure that the right caliber of persons are appointed to positions for which they are best suited.

Another key recommendation is that the practice of appointing chief directors by the President to head the public service must be halted as it compromises the efficiency and neutrality of the public service. It undermines the role of the public service as an administrative machinery of the state and renders them as pliable and manipulable tools in the hands of the executive (Oquaye, 2013; Prempeh, 2003). A strong tenure-track and technocratic public service must be established.

This should be an efficient body staffed by competent people that can manage the affairs of the country in the absence of an elected government or coalition.

Furthermore, appointments of Chief Executive Officers of public corporations and institutions and other analogous positions should be transparent, competitive, well-advertised, inclusive, bi-partisan and based on competence. Nominations may emanate from the State Enterprises Commission/ Public Service Commission and appropriate recommendations made to the President for appointment.<sup>7</sup>

Finally, the President must be encouraged to reach out to the main opposition political parties in search of competent people to help govern the country. The goal of national development must be a shared one and in this regard, the opposition must also be willing to serve the interest of the country when called upon to do so. In May 2014, a National Economic Forum was convened by the NDC government to discuss the economic challenges plaguing the country with a view to reaching a consensus on the way forward and finding solutions to the challenges.<sup>8</sup> Even though a former minister of finance, Yaw Osafo Marfo was invited and he had actually confirmed his participation to share insight and expertise at the forum, he was prevailed by the opposition New Patriotic Party to rescind his decision.<sup>9</sup> This was certainly a great disservice to the national interest. It is recommended that such overtures from the ruling party must not be disingenuously interpreted as a lack of personnel to govern; it must not be interpreted as bankruptcy of ideas on

<sup>7</sup> This would also entail revisiting the legal instruments which have set up these enterprises or institutions and possibly reducing the role and influence of the President in their composition.

<sup>8</sup> For more details, see <http://graphic.com.gh/news/general-news/22828-speech-what-president-mahama-said-at-national-economic-forum.html>

<sup>9</sup> See more details at <http://graphic.com.gh/news/politics/22848-npp-s-boycott-of-economic-forum-unfortunate-nyaho-tamakloe.html>

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the part of the ruling party. Rather, it must be seen as a call and opportunity to serve the country and promote national cohesion.

## Conclusion

The exercise of the extensive appointment powers of the President to the benefit of only some party apparatchiks and foot-soldiers, does not only promote WTA politics. It could also undermine meritocracy and place “square pegs in round holes” in the public service. The recommendations of this paper therefore suggest the need to exercise such appointment powers in a manner that promotes inclusivity and meritocracy in the public service. It also relieves the President of the work load and burden to appoint so many people into office. With this relief, the President can focus on other critical issues and areas of governance.

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