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TEN YEARS OF CONSTITUTIONAL RULE: 1993 TO 2003, A DECADE OF CONTINUOUS CONSTITUTIONAL PRACTICE – PERSPECTIVES FROM PARLIAMENT

PART 1

By
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For the first time in the chequered political history of our Republic, we can look back on a peaceful decade. The years 1993 to 2003 produced three Presidencies, two Presidents, three Parliaments, one Republic and one Constitution.

The 1992 Constitution came into force on 7th January, 2003, and continues in force today. Against the odds, it seems set to avoid the discontinuity characteristic of the past. One indication of this is the fact that our political sucess culminated in a historic and unprecedented development. The peaceful and smooth transition, both in Executive and Legislature, from the ruling party to the minority party, has set a welcome example for the future.

Credit that we have finally come to terms with the political history of our nation goes to the makers of the Constitution, the people of Ghana. In a spirit of tolerance we have come to an understanding of the awesome reality, complexities and burdens of national development in a developing country like ours.

Our political success is a continuing rarity in our sub-region, and indeed our continent, It is therefore crucially important that from time to time we subject our constitution theory, and emerging practice to such scrutiny, review and reform. We must work out reasonable and efficient modalities for Constitutional review as an entrenched feature of our Constitutional practice.

In the early years of the Fouth Republic the mere whisper of Constitutional amendment evoked anxiety and fears. There was real apprehension that a ruling party that had at its

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that had at its disposal two-thirds or more of the Parliamentary vote would be tempted to use - or misuse - that majority to stand the Constitution on its head.

In fact only one Constitution of Ghana (Amendment) Act passed, and that was No. 527, in 1996. Passed by the first parliament of the Fourth Republic in its fourth session in 1996, it received Presidential assent on 16th December 1996, and came into force on 31st December 1996.

The most critical provisions of Act 527, in my opinion, are its sections 1 and 2. In response to the views of a large number of Ghanaians in the Diaspora these contain a new Article 8 on dual citizenship. By consent, a subsequent bill introducing fresh amendments published in 1999, was withdrawn. I would however like to point out that the Constitution of 1992 opens itself up to periodic assessment or evaluation of the effectiveness of its implementation. It does this by its very structure and design, containing as it does 299 Articles that provide a framework of government for the welfare of the people,

The monitoring evaluation and implementation process should be the common concern not only of academics, professionals and politicians, but also of all citizens. The 1992 Constitution was the result of the collective efforts of a bad representation of the people meeting in a consultative assembly. They were then aided by the intellectual inputs of a committee of distinguished experts. The results of these deliberations were finally collated and acknowledged through the authoritative endorsement of a National Referendum.

Constitutional review and, where necessary, the consequent reforms, must be the very essence of our political practice to ascertain the scope of implementation of say Chapter 5 on fundamental human rights and freedoms and, say, Chapter 6 on the broad framework of national policy guidelines, the directive principles of state policy.

To locate such a review process in its appropriate context, I suggest we take a good look, for instance, at the values of our society against the background of our history, traditions, customs and culture. I make no apology for yet again returning to this theme for which many years ago I was derided and dubbed irreverently as a traditionalist. I take inspiration and courage from the presence of Osagyefo Amoatia Ofori Panin. Even as we embrace, sometimes too effectively, the canons of modern constitutional theory and practice (invariably British or from the United States of America), we must do so with circumspection,

and not at the expense of our cherished values and socio-political organization as a people.

We must take a careful look at our social values, such as the practice of consultation, cooperation, compromise and consensus. These are the social and economic underpinnings of traditional village life (now "discovered" and repackaged in terms of the Global Village) and the traditional authority and dignity of the chief or the "Abusuapayin"

Our Constitution in Art 39 obliges the state to "encourage the integration of appropriate customary values into the fabric of national life" and "the conscious introduction of cultural dimensions to relevant aspects of national planning". This objective can be achieved through adapting and developing our cultural values, and phasing out and eliminating negative traditional practices. Even as we take pride in our excellent canvassing of ideas and debating issues using the medium of the international forum, to what extent do we heed the constitutional challenge facing us as a nation to "foster the development of Ghanaian languages and pride in Ghanaian culture "and preserve and protect places of historical interest and artefacts"? See also Art 26.

And then there are the ancient and respected institutions that encapsulate our political, social, economic, and cultural values – the Stool or Skin, the occupant and his traditional office holders.

The revered founder of our nation, in a rare moment of political miscalculation, looked into the future and saw some chiefs running away and leaving their sandals behind. Today the institution of Chieftaincy continues to attract some of the best of our human resources.

The prestige of having Osagyefo Amoatia Ofori Panin in the Chair is living proof of the new role and modern relevance of the institution of Chieftaincy. There are several other eminent examples countrywide present company not excepted.

As a result of this analysis I submit that it is time to revisit the constitutional ban imposed by Art 94 Clause (3) paragraph (c) in the three brief and seemingly innocent words 'is a chief'.

The devastating effect of these words is that even if a chief is qualified to be a Member of Parliament, even if his people opt for him as their preferred choice to represent them in Parliament, even if he is unopposed, even if he stands as an independent candidate - he is constitutionally ineligible to fulfil their wishes. The ramifications of these three words reach far and wide. I draw a distinction however between Art 94 (3) and Art 276 Clause (1), which bars a chief from taking part in "active party politics". I have no real difficulty with

the injunction against active party politics, because, among other reasons, of the patently divisive nature of Ghanaian party politics.

However, irrespective of whether he is actively partisan or is sincerely independent, by being ineligible to hold office as a member of parliament a chief is also denied access to any office for which qualification for election to Parliament is a necessary precondition. I assume that for the purpose of such appointments qualification and eligibility to Parliament produce the same effect. If that is the correct position, and empirical evidence seems to suggest that it is, then a chief is debarred by the Constitution from holding certain specified offices. A chief cannot become a member of the N.C.C.E. Art 232, clause (3); nor of the Electoral Commission Art 44 Clause (1); nor of the Public Services Commission, Art 194 Clause (3) (a); nor of the Lands Commission Art 263; nor indeed a Minister of State Art 78 (1) nor even Speaker of Parliament Art 95 (1). Art 276 Clause (1) bluntly states that any chief 'seeking election to Parliament shall abdicate his stool or skin'. It makes no exception in favour of an independent or unopposed candidate who is also a chief.

Clause (2) of Art 276 seeks to provide a safety net, but this seems to me to be restrictive when applied to public office other than that of a member of Parliament or which requires qualification for election to Parliament.

This issue has been addressed eloquently over the years (e.g. Dr S.K.B. Asante, Asokorehene, Nana Otuo Siriboe, Juabenhene) and should be kept alive until determined one way or the other. For my part I would suggest that Art 94 (3) (c) be repealed by the deletion of the words 'is a chief'. This will remove the chief from the dissonant company of public servants who by the very nature of their jobs are full time members of certain public services such as the Electoral Commission, Police and Prisons Services, the Armed Forces, and Judicial Services, as well as the Legal, Civil, Audit, Parliamentary, CEPS, IRS and Immigration Services.

I would however suggest that appropriate checks and balances be maintained, principally by retaining Art 276 (1) and (2), with a proposed amendment for purposes of clarity. That amendment should take the words 'and seeking election to Parliament' out of Art 276 (1). This would place the right focus in Art 276 (1) on participation in 'active party politics' and take away any linkage with ineligibility to seek election to Parliament, especially if Art 94 (3) (c) is amended by deleting the reference to a chief as proposed earlier.

Finally I return to the Directive Prin-

ciples of State Policy, set out in great detail in Chapter 6, Articles 34 to 41 of the Constitution. These Articles set out policy guidelines for all stakeholders in the business of governance: citizens, Parliament, the President, the Cabinet, political parties and other bodies and persons involved in the application or interpretation of the Constitution or any other law and in the taking and implementation of policy decisions are all covered. One of the policy objectives is the establishment of a 'sound and healthy economy'. This fulfils the stated objectives in Art 36 (2) (e) that "the most secure democracy is the one that assures the basic necessities of life for its people as a fundamental duty".

I emphasize that undoubted progress has been made by our governments and people, and indeed as a nation, over the decade of democracy in building and strengthening the political and legal fundamentals of our democratic governance.

The focus now should be increasingly directed at the state of the economy - that is, a shift from the politics of democracy to the economics of democracy. With the Directive Principles as our guide and the bedrock of our national development policies and programmes, we should be able to distinguish national interests from basic partisan issues. We would then be able to identify collectively a national consensus based on a united commitment to the implementation of the national policy guidelines in Chapter 6 of the Constitution. We should then come to the realization that whether our economy is shored up by ERP, SAP, HIPC or PRS, the secret of success in the medium to long term is not to be found in new acronyms but in a determined approach to national unity based on national consensus in the national interest for sustainable national development. For in the final analysis constitutional governance is not only about politics, more importantly it is about the economy.

To look out for, agree on and implement such a national project would require a regime of consultations, compromises and consensus. Parliamentarians, political parties, the Executive, and former officer holders, chiefs, religious bodies, leaders of industry and labour, women's group and civil society organizations would all have a role to play. It would call for regular and systematic interface, which would draw its inspiration from the cherished values of our society as Ghanaians, and away from the traditional divisiveness of "party politics".

Is this a pipe dream? I cannot say because I do not smoke. It may be a dream, but it may come true.

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