



Constitutional Review Summaries 2

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THE INSTITUTE OF ECONOMIC AFFAIRS (IEA), GHANA

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This second summary was prepared from a comprehensive constitutional review series programme carried out by the IEA from 2022 to 2023.

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The IEA supports research and promotes and publishes studies on important economic, socio-political and legal issues in order to enhance understanding of public policy.

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Reducing the Overwhelming Powers of the President

The President of the Republic is the Head of State, Head of Government and Commander in Chief of the Ghana Armed Forces. He is the foremost citizen according to Article 57(2) of the Constitution; and aside the de jure rights extensively conferred on the President as premiere, he enjoys de facto authority which accompany his popular election, wide media coverage and partisan loyalty. He has overwhelming, if not excessive, powers of appointment and patronage which severely constrain the effective development of a system of checks and balances (IEA, 2022; former Commissioner of CHRAJ, Justice Emile Short, 2022; Rev. Dr. Lawrence Tetteh – President of Worldwide Miracle Church, 2023; President of the Eastern Regional House of Chiefs, Nene Sakite II, 2023; North Tongu MP, Hon. Samuel Okudjeto Ablakwa, 2022; Dean of UPSA Law School, Prof. Ernest Kofi Abotsi, 2022; Hon Osei Kyei-Mensah-Bonsu, 2022 – MP, Suame Constituency, Minister for Parliamentary Affairs and Majority Leader; Presiding Bishop of the Methodist Church – Most Rev. Dr. Paul Kwabena Boafo, 2023; Head of Ahmadiyya Muslim Mission – Alhaji Maulvi Bin Salih, 2023; Mr. Kwesi Pratt Jr., 2023). The appointing powers of the President are also particularly extensive. Indeed, it is estimated that the President currently has the responsibility of making between 5000 to 6000 appointments under the Constitution (TUC Secretary-General Dr. Yaw Baah, 2023; Justice Emile Short, 2022). The President’s extensive powers of appointment and influence in all spheres of the State does not only give special privileges in public employment opportunities and implementation of government’s special initiatives to ruling party officials and foot soldiers, it also creates a zero-sum electoral politics or a ‘winner-take-all’ politics which makes it difficult for opposition and civil society to survive without the goodwill of the President (Justice Emile Short, 2022; Prof. Ernest Kofi Abotsi, 2022; Nana Dr. S.K.B. Asante, 2022).

In light of the above, a number of the proposals on reducing the appointing powers of the President have been advanced. A few are listed below:

Article 243(1) of the Constitution should be reviewed to make the position of MMDCEs elective.

The current practice under Articles 202 and 203, where the President appoints the Inspector-General of Police, and most members of the Police Council should be reviewed to safeguard the independence of the police service and promote the rule of law

While appointments 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. Further, parliamentary vetting and approval of the President's nominees to these bodies should be by two-thirds majority of all Members of Parliament (Justice Emile Short, 2022).

The appointment of CEOs of Public Corporations should be transparent, competitive, well-advertised, inclusive, bi-partisan and based on competence; and nominations for these positions should emanate from the State Enterprises Commission/Public Services Commission and appropriate recommendations made to the President for appointment.

Some believe Ghana needs a head of state and government, such that at any given time the country shall have a President and a Prime Minister in order to reduce the powers of the President, as well as the enormous costs of Presidential elections (Hon. Kyei Mensah- Bonsu, 2022; Nana Dr. S.K.B. Asante, 2022).

Reforming the National Development Planning Commission (NDPC)

The NDPC was established under articles 85 and 86 of the 1992 Constitution and mandated to advise the President and Parliament on Development Planning, Policy and Strategy. The Commission was set up as part of the Executive branch of Government and constituted by a Chairperson appointed by the President in consultation with the Council of State, Governor of the Bank of Ghana, a representative for each region of Ghana appointed by the Regional Coordinating Council of the Region, and such other person with knowledge and experience of the relevant areas and roles pertaining to development, economic, social, environmental and spatial planning appointed by the President (Article 86). The Commission has, however, been plagued with major challenges including government's preference for short term physical projects instead of long-term structural reforms, discontinuity in planning and inconsistencies in policies and policy formulation and coordination processes, as well as the institution's lack of ability and capacity as the apex body mandated to produce, monitor, and evaluate the implementation of national development plans (Dr Mensah-Abrampa, 2023 – Director-General of NDPC).

To ensure that the NDPC is purged of executive control and is empowered to formulate a Long-term National Development Plan (LTNDP) that binds all governments, calls have been made for Articles 86 and 87 to be reviewed to make the NDPC a professional body that puts together binding, comprehensive long-term national development plans, and monitors the implementation of the plan (Ewoenam Amenu Yakor, 2023 – student leader; Julius Anthony, 2023 – student leader; Rev. Dr. Lawrence Tetteh, 2023; Sheik Aremeyaw Shaibu – spokesperson of the National Chief Imam, 2023; Most Rev. Dr. Paul Kwabena Boafo, 2023; President of the Central Regional House of Chiefs, Odeefuo Amoakwa Buadu VIII, 2023; Dean of Armed Forces Command and Staff College, Prof Vladimir Antwi Danso, 2023; Multimedia Group Journalist, Kojo Yankson (discussant), 2023; Discussant Haruna Mohammed, 2023; Mr. Kwesi Pratt Jr., 2023; CRC Report, 2011; IEA, 2022). In this light, it will be necessary to de-politicize the Commission, as well as grant the Commission the necessary financial autonomy (Hon Osei Kyei-Mensah-Bonsu, 2022; Hon Haruna Iddrisu, 2022; Dr Mensah-Abrampa, 2023 – Director-General of NDPC; IEA, 2022). Director of Research at the IEA, Dr. John Kwakye (2023) also puts forward two specific proposals on the NDPC: As a first option, the NDPC should be removed from the Executive and made a stand-alone, independent body; or alternatively, the NDPC should be converted into a full-blown Ministry of Economic Planning or Ministry of Economy alongside the Ministry of Finance, with the mandate to formulate a LTNDP, among its functions.

Funding for Independent Constitutional Bodies

Under the current constitutional arrangement, the National Media Commission (NMC), Electoral Commission (EC), Commission on Human Rights and Administrative Justice (CHRAJ), National Commission on Civic Education (NCCE), National Development Planning Commission (NDPC), and other similar institutions created under 1992 Constitution draw their funding from the Consolidated Fund. This has meant that, these bodies are often at the mercy of the Executive arm of Government's ability to release funds for the running of their budgets. There is the need for key reforms to ensure that all Independent Constitutional Bodies are not only adequately funded, but also that their financial autonomy and independence is guaranteed.

During the IEA's Constitutional Review Seminar Series, Ambassador Kabral Blay-Amihere (2023) argued strongly that, there is the need for an independent fund for the funding of all Independent Constitutional Bodies, including the NMC, to guarantee the independence of these bodies. It is noteworthy that the Fiadjoe Commission (CRC Report, 2011, p. 359) has recommended the establishment of an Independent Constitutional Bodies Fund to finance the operations of all Independent Constitutional Bodies, noting that the budget estimates of the Independent Constitutional Bodies should be submitted directly to Parliament without ministerial clearance or approval. The IEA believes the establishment of a fund for running of all Independent Constitutional Bodies will greatly enhance the independence and the effectiveness of these institutions.

The Council of State

Chapter nine (9) of the 1992 Constitution and in particular Article 89 indicates that there shall be a Council of State to counsel the President in the performance of his functions. Among other things under Article 91, the Council is expected to consider and advise in respect of appointments as well as consider and make recommendations on matters being considered by various institutions under the Constitution. It is important to note that the composition of the Council of State under the 1992 Constitution marks a departure from the proposal of the Committee of Experts which sought to make the Council a much larger forum for national deliberations (Nana Dr. S.K.B. Asante, 2022). The Council of State has, indeed, been a major source of controversy since its creation with some calling for the Council to be scrapped (Julius Anthony, 2023 – student leader; Ambassador Kabral Blay-Amihere, 2023; Mr. Kwesi Pratt Jr., 2023). There have also been concerns about the number of the President's appointees on the Council of State, given that it was modelled in line with the country's traditional system where Chiefs rule with their traditional councils. Various speakers during the IEA's Constitutional Review Seminar Series, identified the need for a body that can moderate the excesses of the country's current democratic system.

Given that the elders and advisors of a Chief are the heads of various lineages and that they come to the Traditional Council by right, there is the need for the introduction of institutional representation in addition to the elected members of the Council of State instead of allowing the

President to choose his own advisors (IEA, 2022; Mr. Frank Davies, 2023). In this light, there is the need to adopt the recommendation of the Committee of Experts which provided that “the Council of State shall aid and counsel the President, the Council of Ministers, Parliament and other organs of State in the performance of their functions under the Constitution or under any other law (Section 3(i)); and all former Presidents who are able and willing to act as members of the Council of State should do so (IEA, 2022; PNC, 2023). An alternative argument is that the Council of State should be replaced with a second Parliamentary Chamber composed not necessarily based on democratic elections, but rather on the basis of proven experience, public spiritedness, prudence, maturity, patriotism and care for the nation (His Excellency Former President John Agyekum Kufuor, 2023; Nana Dr. SKB Asante, 2022; Mr. Sam Okudjeto, 2023; President of the Eastern Regional House of Chiefs, Nene Sakite II, 2023; etc.). Former President Kufuor (2023) also opines that in order to provide some countervailing authority and a credible system of checks and balances, perhaps the terms of a second chamber or Council of State should not run concurrently with the term of the President.

Private Members’ Bill

Article 108 of the 1992 Constitution states that “Parliament shall not, unless the Bill is introduced or the motion is introduced by, or on behalf of, the President; proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for any imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction, or the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any monies not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal.” This provision has been broadly interpreted to not only limit the introduction of private members’ bills, but it has also been employed to even debar Parliament from taking appropriate measures to provide funds for its own purposes. Nana Dr. SKB Asante (2022) has contended that the conferment of an exclusive right on the President to introduce legislation in Parliament pursuant to Article 108 is not only repugnant to Parliament’s constitutional control of the purse, it also effectively reduces Parliament to submitting appeals to the Ministry of Finance and Economic Planning for her own budgetary requirements.

The IEA agrees with the Fiadjoe Commission (CRC Report, 2011, p. 148) recommendation that the current limitation on the introduction of bills with financial implications by private members should be maintained but limited to “money bills”, and what amounts to “money bills” should be clearly defined in the Constitution or other law. More so, given that Parliament, like the Judiciary, is an arm of Government, and the Judiciary has been granted financial autonomy to protect its independence such that its budget is submitted to the President and not the Minister of Finance (Article 179(3)(4) and (5)), Parliament should be given a similar treatment (Hon Osei Kyei-Mensah-Bonsu, 2022). Whereas a requirement of prior consultation with the President may be warranted, Article 108 of the Constitution needs urgent review to strengthen Parliament’s primary role of law making.

