



# Constitutional Review Summaries 1

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# **THE INSTITUTE OF ECONOMIC AFFAIRS (IEA), GHANA**

## **Constitutional Review Summaries 1**

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

The Institute of Economic Affairs (IEA) Ghana was founded in October 1989 as an independent public policy institute dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for sustained economic growth and human development.

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.

Further information may be obtained from:

The Institute of Economic Affairs,

P.O. Box OS1936, Osu, Accra, Ghana.

Te1:+233-3022447 16 / 0599559422

Email: [iea@ieagh.org](mailto:iea@ieagh.org) Website: [www.ieagh.org](http://www.ieagh.org)

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## **The Constitution and Constitutionalism**

The 1992 Fourth Republican Constitution of Ghana confers enormous, in fact excessive, powers on the President and for that matter the Executive arm of Government. Many observers have noted that the President has overwhelming 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; NCCE, 2023; etc.). An IEA Constitutional Review Seminar speaker, Mr. Frank Davies (2023), noted that “overall, the power and authority vested in the President under the 1992 Constitution is simply too much for a good president to have and yet too much for a good president to need.” Nana Dr. S.K.B. Asante (2022), who chaired the Committee of Experts appointed by the PNDC to draft the Constitution has also pointed out that Ghana’s imperial Presidency has given birth to a culture of winner-takes-all, which can be described as pernicious, divisive, polarizing, and retrogressive, and it explains why every general election is a source of great consternation and a potential source of conflict.

Meanwhile, instead of credible checks and balances, the Constitution has imposed on the President a good number of advice givers in the form of advisory bodies, notable among them in the Council of State, and there is little evidence that Presidential powers are effectively circumscribed or limited by such advice or recommendations (Nana Dr. S.K.B. Asante, 2022). The IEA, therefore, agrees with all others that it is necessary, and in the interest of constitutionalism and sustainable democratic development, to place substantial checks on the President by reviewing the 1992 Constitution to reduce some of the overconcentrated powers legally exercisable by the President per the current provisions of the 1992 Constitution.

## **Taxation of the President**

According to Article 68(3) of the 1992 Constitution, the President of Ghana receives salaries, allowances and facilities that may be prescribed by Parliament. The President similarly receives a gratuity in addition to pension, equivalent to his/her salary and other allowances and facilities

prescribed by Parliament under Article 68(4). Unlike every other Ghanaian worker, however, the salary, allowances, facilities, pensions and gratuity of the President are exempt from tax according to Article 68(5) of the Constitution. The Fiadjoe Commission (CRC Report, 2011, p.105) noted that submissions in favor of maintaining the status quo under Article 68(5) highlighted the tasking nature of the President's job, and the fact that the President could be likened to a traditional ruler who should exact but not pay tax. Submissions received by the Commission in opposition to the provisions of Article 68(5), however, emphasized the exemplary role of a tax paying President to other taxpayers in Ghana. The Commission proceeded to recommend that the President should pay tax on his salary and emoluments as an example to the rest of the citizenry (CRC Report, 2011, p.107).

The taxation of the President came up again during IEA's Constitutional Review Seminar Series. A notable view on the subject was by a student leader, Mr. Odupong Agyapong Atta-Agyapong (2023). He argued that it was in line with the principles of the rule of law and of 'leadership by example' for the President as the first of all citizens of Ghana to be subjected to the same laws that govern taxpaying Ghanaians. The IEA agrees with this reasoning and accordingly agrees with the Fiadjoe Commission's recommendation that Article 68(5) should be reviewed to require the President to pay taxes on his salary, allowances, facilities, pensions and gratuity.

### **Placing a Ceiling on Number of Ministers of State**

Article 76 of the 1992 Constitution stipulates that there shall be a Cabinet which shall consist of the President, the Vice-President and not less than ten and not more than nineteen Ministers of State, with the mandate to assist the President in the determination of the general policy of the Government. Article 78(2) of the Constitution further empowers the President to appoint such number of Ministers of State as may be necessary for the efficient running of the State. These provisions depart from Article 65(3) of the 1979 Constitution which stipulated that the total number of Ministers of State including Cabinet Ministers shall not at any time exceed thirty (30). The failure to place an upper limit on the total number of Ministers has led to the appointment of as many as 110 in the year 2017. Meanwhile, there is consensus that the size of a government has grave cost implications.

During, IEA's Constitutional Review Seminar Series, Hon Osei Kyei-Mensah-Bonsu, 2022 and others (Hon. Samuel Okudjeto Ablakwa, 2022; Hon. Haruna Iddrisu, 2022; etc.) contended that the time has come for the 1992 Constitution to be reviewed to place in the Constitution an upper ceiling on the total number of Ministers of State. Their contention is that such a ceiling would significantly reduce public expenditure. Hon. Haruna Iddrisu (2022), for example, believes Ghana can run with a maximum of 65 Ministers of State. On the back of the flagbearers of the two main political parties under Ghana's Fourth Republic – the National Democratic Congress (NDC), and the New Patriotic Party (NPP) – promising in the run-up to election 2024 that they will work with sixty (60) and fifty (50) Ministers respectively, and coupled with the high cost of running a large government, it is time the Constitution is reviewed to cap the number of Ministers a President can appoint.

### **The Appointment of Ministers of State from Parliament**

Parliament is expected to be an independent arm of Government clothed with power to serve as a watchdog institution that countervails executive power, while making room for MPs to become dedicated career legislators who are committed and passionate about developing the country's Legislature. Meanwhile, in order to establish a formal linkage between the Executive and the Legislature so as to promote efficiency and the needed corporation between the two arms (Report of the Committee of Experts, July 1991; Nana Dr. SKB Asante, 2022), Article 78 of 1992 Constitution requires the President to appoint majority of his/her Ministers from Parliament. This provision has been found to not only undermine the independence of Parliament, but it has also diminished accountability by undermining the oversight and watchdog roles of Parliament. Allowing Members of Parliament to simultaneously serve as ministers in many ways amounts to serving two masters and evidence abounds that MP-Ministers would rather please the President at the expense of their work in Parliament (IEA, 2022; Mr. Sam Okudjeto, 2023; PNC, 2023; Dr Yaw Baah, 2023; Julius Anthony, 2023; Justice Emile Short, 2023). The temptation for MP-Ministers to prioritize their ministerial role over their legislative function has also dealt a blow to the Legislature with respect to the passage of laws, forming quorum to transact parliamentary business, and so on (Justice Emile Short, 2023; IEA, 2022).

In an IEA Constitutional Conference with His Excellency, Former President John Agyekum Kufuor (2023), the Former President acknowledged that in order to strengthen Parliament as a watchdog institution that countervails executive power, Article 78 must be reviewed to stop the appointment of Ministers from Parliament. The Fiadjoe Commission (CRC Report, 2011, p. 128) and Government (Government White Paper on CRC Report p. 16) advocated for the Constitution to be reviewed to give the President a free hand to appoint Ministers both from within and without Parliament. The CRC (2011, p. 128) noted under this proposal that the appointees from Parliament were to be no more than 30% and these appointees from Parliament should be entitled to retain their seats in Parliament. This recommendation would, however, not solve the problems created by the current provision. It is notable that an overwhelming number of speakers during IEA's Constitutional Review Seminar Series recommended a review of Article 78 with a view to promoting true Separation of Powers and an effective system of checks and balances (Ewoenam Amenu Yakor, 2023 – student leader; Gloria Nyarko, 2023 – student leader; Julius Anthony, 2023 – student leader; Mr. Sam Okudjeto, 2023 – Council of State member; PNC, 2023; Mr. Frank Davies, Esq (Chairman, NPP Constitutional and Legal Committee); 2023; Progressive People's Party, 2023; Rev. Dr. Lawrence Tetteh, 2023; Presiding Bishop of the Methodist Church of Ghana, Most Rev. Dr. Paul Kwabena Boafo, 2023; Ambassador Kabral Blay-Amihere, 2023; Mr. Kwesi Pratt Jr., 2023; etc.). Consequently, any Member of Parliament who is appointed as a Minister would resign his or her seat and a by-election held within twenty-one days to replace him or her (Justice Emile Short, 2022).

### **Members of Parliament Serving on Public Boards**

Parliament is expected to be an independent watchdog institution that countervails executive power through its oversight role over various institutions and bodies under the umbrella of the Executive arm of Government. It is, however, commonplace under the 1992 Constitution for Members of Parliament to be appointed by the President to serve on the Boards of State Corporations and other public Boards. The IEA is of the considered opinion that it is practically impossible for Members of Parliament who serve as Members and Chairpersons of Boards of State Corporations and other public institutions under the Executive to properly discharge their oversight responsibilities over these corporations and institutions at the committee level in Parliament.



There is, therefore, the urgent need for a new provision in the 1992 Constitution that prohibits Members of Parliament from serving on the Boards of Public Corporations and other public bodies under the auspices of the President. Such a prohibition clause will greatly help avoid or at least reduce conflict of interest situations where these bodies or institutions are required to account to Parliament (Mr. Frank Davies, Esq (Chairman, NPP Constitutional and Legal Committee); 2023; Julius Anthony, 2023 – student leader; Justice Emile Short, 2023; etc.).

