

**CONSTITUTION REVIEW COMMISSION**

**ISSUES EMERGING FROM INITIAL SUBMISSIONS  
TO THE CONSTITUTION REVIEW COMMISSION  
(APRIL – SEPTEMBER 2010)**

**PART I: THE EXECUTIVE**

**ISSUE 1: A REVIEW OF THE PROVISIONS OF THE CONSTITUTION TO DETERMINE WHETHER IN ORDER TO ENHANCE THE EFFECTIVENESS OF APPOINTEES THERE SHOULD BE SOME LIMITATIONS ON THE POWERS OF APPOINTMENT OF THE EXECUTIVE PRESIDENT. (ARTICLES 70, 74, 86, 202, 207, 212, 232, 243, 183, 185, and 189).**

Under the Constitution the President is the appointing authority (sometimes on the advice or in consultation with the Council of State) for the following:

- (a) Commissioner for Human Rights and Administrative Justice and his Deputies;
- (b) Auditor-General;
- (c) District Assemblies Common Fund Administrator;
- (d) Chairmen, Deputies and other members of the National Commission for Civic Education
- (e) Chairmen and other members of the Public Services Commission;
- (f) Chairmen and other members of the Lands Commission;
- (g) Chairmen and other members of the governing bodies of public corporations;
- (h) Chairmen and other members of the National Council for Higher Education howsoever described;
- (i) Chairman, Deputy Chairmen, and other members of the Electoral Commission.
- (j) Inspector-General of Police
- (k) Director-General of the Prison Service
- (l) Chief of Defence Staff
- (m) Service Chiefs and Officers
- (n) District Chief Executives
- (o) Governor of the Bank of Ghana
- (p) Government Statistician
- (q) Chairman and Members of the Audit Board
- (r) Chairman of the National Development Planning Commission

**Other powers of appointment include the following: (Article 144)**

- (1) The President appoints the Chief Justice in consultation with the Council of State and with the approval of Parliament.
- (2) The President also appoints the other Supreme Court Justices, acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament.

(3) The President is also empowered to appoint the Justices of the Court of Appeal and of the High Court and Chairmen of Regional Tribunals, acting on the advice of the Judicial Council.

Article 195(1) vests in the President the power to appoint persons to hold or to act in an office in the public services, acting in accordance with the advice of the Governing Council of the service concerned given in consultation with the Public Services Commission, subject only to the Constitution.

1. Do you think the President's powers of appointment affect the effectiveness of the appointees ? Give reasons for your answer.
2. Do you think that the President's power to appoint these persons gives him the power to influence them in the performance of their duties? Give reasons for your answer.
3. Can you suggest any measures or checks which could be used to prevent the President from exercising any form of undue influence on public officers appointed by him?
4. Are there any persons on the list that you think should not be appointed by the President? Give reasons for your answer.
5. Can you suggest any other person or authority that you think should appoint these persons?
6. Do you think the requirement that the President should act in consultation with the Council of State is an adequate check on the President's power to appoint the persons outlined in the list above?
7. Do you think the requirement that the President, in appointing the Chief Justice should act with the approval of Parliament, is an adequate check on the President's power of appointment?
8. Do you think the requirement in the Constitution that the President, in appointing Justices of the Supreme Court should act on the advice of the Judicial Council and with the approval of Parliament and in the case of Justices of the Court of Appeal and High Court, to act on the advice of the Judicial Council is an adequate check on the President's power of appointment?
9. Do you have any other comments or suggestions for the improvement or amendment of any of the constitutional provisions relating to the President's powers of appointment?
10. Do you think that the some details of consultation processes or advice of the Council of State or relevant body should be made public?

**ISSUE 2: A REVIEW OF ARTICLE 71(1) TO REMOVE THE POWER GRANTED TO THE PRESIDENT TO DETERMINE THE SALARIES, ALLOWANCES AND FACILITIES OF MEMBERS OF PARLIAMENT AND THE SPEAKER**

The President is empowered under Article 71(1) of the Constitution to determine the salaries and allowances payable, and the facilities and privileges available, to a number of persons. The persons whose salaries are determined by the President are:

- (a) the Speaker and Deputy Speakers and members of Parliament,
- (b) the Chief Justice and the other Justices of the Superior Court of Judicature,
- (c) the Auditor-General, the Chairman and Deputy Chairmen of the Electoral Commission, the Commissioner for Human Rights and Administrative Justice and his Deputies and the District Assemblies Common Fund Administrator,
- (d) the Chairman, Vice-Chairman and the other members of
  - (i) a National Council for Higher Education howsoever described,
  - (ii) the Public Services Commission,
  - (iii) the National Media Commission,
  - (iv) the Lands Commission, and
  - (v) the National Commission for Civic Education.

In performing this function, the President is required to act on the recommendations of a committee of not more than five persons. This committee is to be appointed by the President, acting in accordance with the advice of the Council of State. “Salaries” includes allowances, facilities and privileges and retiring benefits or awards.

In reverse, Parliament is empowered under Article 71(2) to determine the salaries and allowances payable, and the facilities available, to the President, the Vice-President, the Chairman and the other members of the Council of State, Ministers of State and Deputy Ministers.

1. Do you think some other authority other than the President should determine the salaries of these persons? Why?
2. Do you think the requirement that the President should determine the salaries on the recommendations of a 5-member committee appointed by him on the advice of the Council of State is an adequate check on the exercise of the President’s powers of determination of salaries?
3. Do you think the 5-member committee should be appointed by some other authority and not the President?
4. Do you think article 71 should be retained in its current state? Give reasons for your answer.
5. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 3: A REVIEW OF ARTICLE 108 OF THE CONSTITUTION, WHICH BARS ANYONE OTHER THAN THE PRESIDENT OR SOMEONE DESIGNATED BY HIM FROM PROPOSING A BILL THAT HAS FINANCIAL IMPLICATIONS AND TO DETERMINE WHETHER AN AMENDMENT IS NEEDED TO ALLOW FOR THE TABLING AND PASSAGE OF PRIVATE MEMBER BILLS IN PARLIAMENT.**

Article 108 deals with the settlement of financial matters. It states that only the President or someone designated by him can propose to Parliament for passage a Bill or an amendment to a bill which has financial implications. Article 108(a) further states that this restriction relates to bills, which *in the opinion of the person presiding* makes

provision for: (i) the imposition or alteration of taxation; (ii) the imposition of a charge on the Consolidated Fund or other public funds of Ghana; (iii) the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any monies or (iv) the remission of any debt due to the Government of Ghana. Parliament is not allowed to proceed on any Bill which seeks to do any of the above if it was not introduced by or on behalf of the President.

In reliance on this constitutional provision, the Speaker of Parliament has ruled that every bill has financial implications, that is to say, every bill proposed to Parliament for passage directly or indirectly makes provision for the items stated in Article 108(a)(i) –(iv). As a result the practical effect of Article 108 as interpreted is that no person other than the President or a person acting on behalf of the President is entitled to propose a bill to Parliament for passage.

1. Do you think there is any justification for the constitutional provision which allows only the President or a person designated by him to propose a bill which has financial implications to Parliament for passage? If so, state the justifications.
2. Do you think that only particular issues should be reserved for the President to propose bills on?
3. Do you think that the Constitution should be amended to allow private persons to introduce or table Bills before Parliament for passage into law? Give reasons for your answer.
4. Do you think allowing private persons to introduce Bills to Parliament will cause the Executive to live up to its responsibilities?
5. Do you think this provision should be retained in its current state? Give reasons for your answer.
6. Do you think Parliament should be given a bigger role to review, initiate and amend budgetary proposals?
7. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

#### **ISSUE 4: PROPOSAL FOR ESTABLISHMENT OF AN INDEPENDENT NATIONAL PROSECUTIONS SERVICE**

Article 88(1) of the Constitution states that there shall be an Attorney-General of Ghana who shall be a Minister of State and the principal legal adviser to the Government. The Attorney-General is responsible for (1) the initiation and conduct of all prosecutions of criminal offences; and (2) the institution and conduct of all civil cases on behalf of the State.

1. Do you think the current constitutional position, which makes the Attorney General (who is appointed by the President) responsible for the initiation and conduct of all civil and criminal cases, ensures the Attorney-General's independence in prosecuting cases on behalf of the Republic? Give reasons for your answer.
2. Should the Attorney-General also serve as a Minister of State?
3. Do you think an independent national prosecutions service should be established to be responsible for the initiation and conduct of all civil and criminal cases on behalf of the Republic? Give reasons for your answer.
4. Who should head the independent national prosecution service and how should the head be appointed?
5. Do you think that the terms and conditions of service of the DPP should be same as that of a Judge of the Court of Appeal or a Justice of the Supreme Court? Give reasons for your answer. (The current terms and conditions of service of a judge of the Court of Appeal or the Supreme Court ensure security of tenure for the judge)
6. Do you have any other comments or suggestions to make on this issue?

**ISSUE 5: A REVIEW OF THE CONSTITUTIONAL INJUNCTION IN ARTICLE 78(1) THAT A MAJORITY OF MINISTERS OF STATE SHOULD BE APPOINTED FROM PARLIAMENT**

Article 78(1) states that Ministers of State shall be appointed by the President with the prior approval of Parliament from among members of Parliament or persons qualified to be elected as members of Parliament, except that the majority of Minister of State shall be appointed from among members of Parliament. This provision mandates the President to appoint, with the prior approval of Parliament, the majority of Ministers of State from Parliament.

1. Do you think that Ministers of State should be appointed from among members of Parliament at all?
2. Do you think that there should be a strict separation of personnel between the Legislature and the Executive? Give reasons for your answer.
3. Do you think there are any disadvantages for the running of the country if a majority of the Ministers of State is appointed from Parliament? If so, what are these disadvantages?
4. Do you think there are any advantages for the nation if a majority of the ministers of state are appointed from Parliament? If so, what are these advantages?
5. Do you think that the fact that majority of ministers are appointed from Parliament tends to negatively affect the work of Parliament or the work of the Ministers of State? Give reasons for your answer.

6. Do you think that the fact that majority of ministers are appointed from Parliament positively affects the work of Parliament or the work of the Ministers of State? Give reasons for your answer.
7. Do you think the Constitution needs to stipulate the percentage of Ministers of State that should come from Parliament? If so what percentage or proportion would you suggest?
8. Do you think the stipulation in the Constitution that a majority of Ministers of State must be appointed from Parliament should be removed or retained? Give reasons for your answer.
9. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 6: A REVIEW OF ARTICLE 78(2) WHICH DOES NOT PLACE A CEILING ON THE NUMBER OF MINISTERS A PRESIDENT MAY APPOINT OR PRESCRIBE THE NUMBER OF MINISTRIES THAT MAY BE ESTABLISHED.**

Article 78(2) provides simply that the President shall appoint such number of Ministers of State as may be necessary for the efficient running of the State. The Constitution does not prescribe any ceiling or upper limit on the number of ministers that a President may appoint, neither does it prescribe the number of ministries that may be established for the running of the State.

1. Do you think that the Constitution should limit the number of Ministers of State that a President can appoint? Give reasons for your answer.
2. Do you think the number of Ministers of State responsible for each Ministry must also be prescribed by the Constitution? Give reasons for your answer.
3. Do you think the Constitution should prescribe the number of ministries that may be established for the efficient running of the state? Give reasons for your answer.
4. Do you think that placing a ceiling on the number of Ministers of State that a President may appoint or the number of ministries that should be established could disrupt government business? Give reasons for your answer.
5. Do you think this provision should be maintained in its current state? If so, state why.
6. Do you have any other comments on this provision or suggestion for the improvement or amendment of this constitutional provision?

**ISSUE 7: A PROPOSAL FOR INCREASING THE TENURE OF OFFICE OF A PRESIDENT . [ARTICLE 66]**

According to Article 66(1)&(2) of the Constitution, a person elected as President shall hold office for a term of four years beginning from the date on which he is sworn in as President and shall hold office for not more than two terms

1. Do you think that the term of office of the President should be changed in any way? Why?
  
2. Do you think the term of office of the President should be retained? Why?
  
3. Do you think the tenure of office of the President prescribed in the Constitution is sufficient to enable the president to carry out his mandate?
  
4. Do you think the period of the term of office of the president should be increased, if yes, what time frame would you suggest?
  
5. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 8: THE INCLUSION OF PROVISIONS TO REGULATE A SITUATION WHERE A SITTING PRESIDENT LEAVES THE PARTY ON WHOSE TICKET HE WAS VOTED INTO POWER.**

Article 97(1) (g) & (h) of the Constitution provides that a member of Parliament shall vacate his seat in Parliament if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or if he was elected a member of Parliament as an independent candidate and joins a political party. The Constitution contains no provisions at all to regulate the possible situation where a sitting President or Vice President leaves the party of which he was a member at the time of his election to office to join another party or seeks to remain in office as an independent office holder.

1. Do you think there is any need to include in the Constitution provisions to deal with the possible situation where a sitting President or Vice-President leaves the party on whose ticket he was voted into power? Give reasons for your answer.
  
2. What do you think should be the consequence when a sitting President or Vice-President leaves the party on whose ticket he was voted into power?
  
3. Do you think that as in the case of members of Parliament, a sitting President or Vice-President should be required to resign his position if he leaves the party on whose ticket he was voted into power? Give reasons for your answer.
  
4. Do you have any other comments or suggestions to address this issue?

**ISSUE 9: THE INCLUSION OF PROVISIONS IN THE CONSTITUTION TO REGULATE A SITUATION WHERE THERE IS A VACANCY AS A RESULT OF THE RESIGNATION OF A VICE PRESIDENT.**

The Constitution provides in Article 60 that there shall be a Vice-President of Ghana who shall perform such functions as may be assigned to him by this Constitution or by the President. The Constitution in Article 60(6) and 60(10) deals with the situation where a President dies, resigns or is removed from office. Article 60(6) states that in such



situations the Vice-President shall assume office as President for the unexpired term of office of the President with effect from the date of the death, resignation or removal of the President. Article 60(10) provides that the Vice-President, upon assuming office as President upon the death, resignation or removal from office of the President, shall nominate a person to the office of Vice-President subject to approval by Parliament.

The Constitution however does not specifically make provision for the situation where a vacancy is created as a result of the death or resignation of the Vice-President from office.

1. How do you think the position of Vice President should be filled if the position becomes vacant as a result of the death or resignation of the sitting Vice President?
2. Where the Vice President dies or resigns from office do you think the President should be given the mandate to replace him with the approval of Parliament?
3. Who do you think should be made to act as Vice President during the period when no other has been appointed?
4. Do you have any other comments or suggestions to address this issue?

**ISSUE 10: A REVIEW OF ARTICLE 82(5) TO ESTABLISH WHETHER IT SHOULD BE AMENDED TO MAKE IT MANDATORY, RATHER THAN DISCRETIONARY, FOR THE PRESIDENT TO REVOKE THE APPOINTMENT OF A MINISTER ONCE PARLIAMENT HAS PASSED A VOTE OF CENSURE ON THAT MINISTER.**

The Constitution provides in Article 82(1) that Parliament may, by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, pass a vote of censure on a Minister of State. The Constitution provides further in Article 82(5) that

where a vote of censure is passed against a Minister by Parliament, the President may, unless the Minister resigns his office, revoke his appointment as a Minister.

1. Do you think that this provision should be amended to make it mandatory rather than discretionary for the President to revoke the appointment of a minister once parliament has passed a vote of censure in the Minister?
2. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 11: SHOULD THE CONSTITUTION PRESCRIBE THE PROPORTION OF MINISTERS OF STATE OR PUBLIC OFFICERS OF EACH GENDER THAT SHOULD BE APPOINTED IN ORDER TO ENSURE GENDER BALANCE? [Article 35(5)]**

Article 35(5) of the Constitution states that the State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs. Towards the achievement of these objectives the State is required to take appropriate measures to foster a spirit of loyalty to Ghana that overrides sectional, ethnic and other loyalties and to achieve *reasonable regional and gender balance in recruitment and appointment to public offices*.

1. Do you think the constitution should specify the proportion of Ministers of State or public officers of each gender that should be appointed in order to achieve reasonable gender balance in recruitment and appointment to public office? Give reasons for your answer.
2. What advantages or disadvantages do you think there are in specifying these details in the Constitution?
3. Do you have any other comments or suggestions on this issue?

**PART II: LEGISLATURE**

**ISSUE 123: A RECONSIDERATION OF THE PROHIBITION IN ARTICLE 117 OF THE CONSTITUTION ON THE SERVICE OF COURT PROCESSES ON THE SPEAKER OF PARLIAMENT, A MEMBER OF PARLIAMENT OR THE CLERK OF PARLIAMENT, WHICH APPLIES EVEN WHERE (S)HE HAS LEFT THE PRECINCTS OF PARLIAMENT.**

According to the Constitution, any civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to the Speaker or a member or the Clerk to Parliament while he is on his way to, attending at or returning from, any proceedings of Parliament. This ban on service of processes on the Speaker, members or Clerk of Parliament is not restricted to service within the precincts of Parliament. Thus the prohibition applies even where the Speaker, Member or Clerk of Parliament has left the precincts of Parliament, as long as he or she is on his way to attending at or returning from proceedings of Parliament.

1. Do you think that there should be any restrictions at all in the Constitution on the service of court processes on the Speaker or a member or the Clerk of Parliament? Give reasons for your answer.
2. Do you think the prohibition on the service of court processes on the Speaker, members or the Clerk of Parliament should be limited only to the precincts of Parliament? Give reasons for your answer.
3. Do you think that this privilege accorded to the Speaker, members of parliament and the Clerk of Parliament serves any useful national purpose and should thus be preserved? If so, state what purpose you think it serves.
4. Do you think that restricting this privilege to service in the precincts of Parliament can in any way undermine their functions and powers as Parliamentarians? If so, state why and how.
5. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 13: A REVIEW OF ARTICLE 55(17) TO PROVIDE FOR SUBMISSION AND SUBSEQUENT PARLIAMENTARY DEBATE OF THE ANNUAL REPORTS OF THE ELECTORAL COMMISSION.**

According to Article 55(17) Parliament shall by law regulate the establishment and functioning of political parties.

1. Do you think that as part of the regulation of the functioning of political parties, Parliament should be mandated by the Constitution to debate the Annual reports of the Electoral commission? Give reasons for your answer.
2. How do you think that this exercise would be of benefit to the state?

3. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

### **PART III: JUDICIARY**

#### **ISSUE 14: ABSENCE OF A CEILING ON THE NUMBER OF JUDGES THAT MAY BE APPOINTED TO THE SUPREME COURT UNDER ARTICLE 128(1)**

The Constitution states in Article 128(1) that the Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court. These provisions indicate the minimum number of justices that may be appointed to the Supreme Court but place no upper limit or ceiling on the number of justices that may be appointed to the courts.

1. Do you think the Constitution should impose an upper limit or ceiling on the number of judges that may be appointed to the Supreme Court? Give reasons for your answer.
2. What do you think are the advantages and/or disadvantages of imposing a ceiling on the number of Justices that may be appointed to the Supreme Court?
3. Do you think placing a ceiling on the number of judges will strengthen the administration of justice in Ghana, If so, how?
4. Do you think placing a ceiling on the number of judges will curb the power of the Executive arm of Government to use the Judiciary to further its agenda? Explain your answer.
5. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

#### **ISSUE 15: POSSIBLE REVIEW OF THE ADMINISTRATIVE POWERS/FUNCTIONS OF THE CHIEF JUSTICE INCLUDING THE POWER TO EMPANEL THE COURT FOR ALL CASES, ASSIGN AND TRANSFER CASES ETC. (ARTICLE 125(4), SO AS TO ENHANCE EFFICIENCY AND CREATE CHECKS AND BALANCES.**

The Constitution states in Article 125(4) that the Chief Justice shall be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary. As the administrative head of the Judiciary, the Chief Justice empanels the court for all cases, assigns and transfers cases, among others. Even in cases which may involve the Chief Justice as Plaintiff or Defendant, there is no provision in the Constitution or in any enactment which curtails or limits the administrative functions and powers of the Chief Justice.

1. Do you think the Chief Justice should of the administrative head of the Judiciary?

2. Do you think that some limits should be placed on the exercise of the administrative functions of the Chief Justice (to empanel the bench, assign or transfer cases) in certain circumstances? Give reasons for your answer.
3. What kind of circumstances do you think will call for some limits to be placed on the exercise of the Chief Justice's administrative functions
4. Do you think that in cases where the Chief Justice is Plaintiff or Defendant, there should be some rule to compel the Chief Justice to allow some other individual or authority to exercise his administrative functions (to empanel the court, assign or transfer cases)?
5. If so, what other individual or authority should be mandated to exercise these administrative functions?
6. Do you think that transfers of judges should be done by the Chief Justice or a well-qualified Director of Human Resources working with a committee?
7. Do you think that the assignment of cases should be done by a well-qualified lawyer, Director of Operations (the Judicial Secretary), working with a committee?
8. Do you think there should be a President of the Court of Appeal?
9. Do you think such a President of the Court of Appeal and a committee of senior Court of Appeal Judges should be made responsible for the assigning of cases and empanelling of judges?
10. Do you have any other comments or suggestions to make on this issue?

**ISSUE 16: PROPOSALS FOR EMPANELLING ALL MEMBERS OF THE SUPREME COURT TO SIT ON CONSTITUTIONAL CASES TO ENSURE FINALITY TO LITIGATION AND CONSISTENCY OF PRECEDENT.**

Article 128(2) of the Constitution states that the Supreme Court shall be duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in article 133 of the Constitution. Article 133 states that the Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court. When reviewing its decisions the Supreme Court shall be constituted by not less than seven Justices of the Supreme Court.

1. If the Supreme Court should have a fixed or maximum number of Justices, do you think that the Court should sit with all members in all cases that come before it?
2. Do you think that all the Justices of the Supreme Court should be empanelled to sit on constitutional cases? Give reasons for your answer.
3. Do you think that parties would less willing to ask for reviews of the decisions of the Supreme Court if all the Justices of the Court were required to sit on constitutional cases? Give reasons for your answer.
4. Do you think that empanelling all the Justices of the Supreme Court to sit on constitutional cases would contribute to ensure finality to litigation?

5. Do you think that empanelling all the Justices of the Supreme Court to sit on constitutional cases would help prevent conflicting decisions and ensure consistency in legal precedents?
6. Do you think there should be a constitutional court separate from the Supreme Court
7. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 17: A REVIEW OF ARTICLE 146(6) TO DETERMINE WHETHER IT SHOULD BE AMENDED TO REQUIRE THE ESTABLISHMENT OF A PRIMA FACIE CASE BEFORE THE CONSIDERATION OF A PETITION FOR THE REMOVAL OF A CHIEF JUSTICE FROM OFFICE.**

According to the Article 146(6) & (7) of the Constitution where a petition is brought for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed Chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers. The Committee shall inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office.

The Supreme Court in the case of *Frank Agyei Twum v. Attorney-General* [2005-6] SCGLR 732 has held that there is a gap in Article 146(6) in that it omits to provide for a prior determination of a prima facie case in the process of removal of the Chief Justice. The Supreme Court therefore has sought to fill this gap by interpretation. The court held therefore that a prima facie case has to be established against the Chief Justice before the President may establish a committee to consider a petition for his or her removal.

1. Do you think that the constitutional process for the removal of the Chief Justice is potentially easy?
  
2. Do you think that the process for the removal of the Chief Justice as stated in Article 146(6) has the potential to undermine judicial independence?

3. Do you think that the provision in Article 146(6) on the removal of the Chief Justice should be amended to require that the petition must establish a prima facie against the Chief Justice before the President sets up a committee to consider the petition for his or her removal?

4. What process would you propose for evaluating that the petition satisfies certain minimum threshold requirements?

5. Do you think that the provision in Article 146(6) on the removal of the Chief Justice should be amended to include Parliamentary oversight and public proceedings?

4. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 18: A REVIEW OF ARTICLES 142-147 TO DETERMINE WHETHER THE REGIONAL TRIBUNALS SHOULD BE REMOVED FROM THE COURT STRUCTURE OF GHANA**

1. Do you think Regional Tribunals should be abolished or maintained in the court structure of Ghana?

2. What specific purpose do the Regional Tribunals serve in the court system of Ghana?

3. Do you have any other comments on these provisions or suggestions for their improvement or amendment.?

**ISSUE 19: A REVIEW OF ARTICLE 99 TO DETERMINE WHETHER THE SUPREME COURT SHOULD BE MADE THE FINAL APPELLATE COURT IN MATTERS TO DETERMINE MEMBERSHIP OF PARLIAMENT (ARTICLE 99 AND 129(1))** Article 99 provides that the High Court shall have jurisdiction to hear and determine any question whether a person has been validly elected as a member of Parliament or the seat of a member has become vacant; or a person has been validly

elected as a Speaker of Parliament or, having been so elected, has vacated the office of Speaker, and that a person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal. Article 129(1) provides that the Supreme Court shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by this Constitution or by any other law. In the Supreme Court Case of **In Re Parliamentary Election for Wulensi Constituency; Zalaria v. Nyimakan** [2003-2004] SCGLR 1, the Supreme Court decided that Court of Appeal is the final appellate court in electoral petitions.

1. Do you think the Court of Appeal should be the final appellate court in electoral petitions and other matters under article 99?
2. Do you have any other comments on these provisions or suggestions for their improvement or amendment?

**PART IV: INDEPENDENT CONSTITUTIONAL BODIES (COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ); ELECTORAL COMMISSION (EC); NATIONAL COMMISSION ON CIVIC EDUCATION (NCCE); NATIONAL MEDIA COMMISSION (NMC))**

**ISSUE 20: A RECONSIDERATION OF THE PROVISIONS WHICH APPLY THE TENURE OF JUDGES TO THE HEADS OF THE INDEPENDENT CONSTITUTIONAL BODIES (CHRAJ; NCCE, EC; NMC) [ARTICLE 223(1)]**

The Constitution states in Article 223(1) that the Commissioner and Deputy Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ) shall enjoy the terms and conditions of service of a Justice of the Court of Appeal and High Court respectively. It also states that the Chairman and Deputy Chairman of the National Commission on Civic Education (NCCE) shall enjoy the same terms and conditions of service as a Justice of the Court of Appeal and a Justice of the High Court respectively. Furthermore, The Chairman and two Deputy Chairmen of the Commission of the Electoral Commission (EC) shall have the same terms and conditions of service as a Justice of the Court of Appeal and Justice of the High Court respectively.



1. Do you think the tenure of judges should be applied to heads of the independent constitutional bodies? Give reasons for your answer.
2. What do you think are the advantages and/or disadvantages of applying the tenure of judges to the heads of the independent Constitutional bodies?
3. Do you think that applying the tenure of judges to heads of independent constitutional bodies is likely to reinforce the independence of the heads of these constitutional bodies? If so, how?
4. Do you think that applying the tenure of judges to heads of independent constitutional bodies is likely to undermine the independence of the heads of these constitutional bodies? If so, how?
5. Do you think that the Constitution could ensure the independence of these bodies and security of tenure by providing the heads of the constitutional bodies with relatively long fixed terms, for example, ten year terms?
6. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 21: REVIEW OF THE OVERLAPPING FUNCTIONS OF INDEPENDENT CONSTITUTIONAL BODIES SUCH AS THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ); THE NATIONAL COMMISSION ON CIVIC EDUCATION (NCCE); THE ELECTORAL COMMISSION (EC).**

Under the Constitution the functions of Commission on Human rights and Administrative Justice (CHRAJ) include:

- (a) *investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;*
- (b) *investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services;*
- (c) *investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution;*

- (d) *take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this clause through such means as are fair, proper and effective, including,*
  - (i) *negotiation and compromise between the parties concerned;*
  - (ii) *causing the complaint and its finding on it to be reported to the superior of an offending person;*
  - (iii) *bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedure; and*
  - (iv) *bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;*
- (e) *investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;*
- (f) *educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and*
- (g) *report annually to Parliament on the performance of its functions.*

The functions of the National Commission on Civic Education (NCCE) also include:

- (a) *to create and sustain within the society the awareness of the principles and objectives of this Constitution as the fundamental law of the people of Ghana.*
- (b) *to educate and encourage the public to defend this Constitution at all times, against all forms of abuse and violation;*
- (c) *to formulate for the consideration of Government, from time to time, programmes at the national, regional and district levels aimed at realizing the objectives of this Constitution;*
- (d) *to formulate, implement and oversee programmes intended to inculcate in the citizen of Ghana awareness of their civic responsibilities and an appreciation of their rights and obligations as free people; and*

(e) *such other functions as Parliament may prescribe.*

The Electoral Commission (EC) also has the following functions:

- (a) *to compile the register of voters and revise it at such periods as may be determined by law;*
- (b) *to demarcate the electoral boundaries for both national and local government elections;*
- (c) *to conduct and supervise all public elections and referenda;*
- (d) *to educate the people on the electoral process and its purpose;*
- (e) *to undertake programmes for the expansion of the registration of voters;*
- (f) *to perform such other functions as may be prescribed by law.*

1. Do you think there are any overlaps in the functions of the independent Constitutional bodies: Commission on Human Rights and Administrative Justice (CHRAJ); the National Commission on Civic Education (NCCE); the Electoral Commission (EC)?

2. Do you think there are any overlaps with particular regard to the mandates of the three bodies to educate the public in view of the following provisions?

*Article 218(f) states that the functions of CHRAJ shall include the duty to: educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia;*

*Article 233(b) states that the functions of the National Commission for Civic Education (NCCE) shall be to educate and encourage the public to defend this Constitution at all times, against all forms of abuse and violation;*

*Article 45 (d) states as one of the functions of the Electoral Commission, the duty to educate the people on the electoral process and its purpose.*

3. Do you think the constitutional mandates of the CHRAJ, NCCE and EC to educate are separate and distinct and do not overlap at all? Please give reasons for your answer.

4. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 22: POSSIBLE OVERLAPS IN THE FUNCTIONS AND MANDATES OF SOME CONSTITUTIONAL BODIES AND STATUTORY BODIES, SUCH AS THE ANTI-CORRUPTION MANDATE OF THE CHRAJ AND THE SERIOUS FRAUD OFFICE (SFO). [ARTICLE 218(a) (c) & (e)].**

Under the Constitution the functions of Commission on Human rights and Administrative Justice (CHRAJ) include the duty to:

- (a) *investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;*
- (c) *investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution;*
- (e) *investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;*

The Serious Fraud Office Act, 1993 (Act 466) states the functions of the Serious Office Act as follows:

- (a) *to investigate a suspected offence provided for by law which appears to the director on reasonable grounds to involve serious financial or economic loss to the Republic or to a state organisation or any other institution in which the Republic has financial interest;*
- (b) *to monitor the economic activities which the director considers necessary with a view to detecting criminal offences likely to cause financial or economic loss to the Republic;*
- (c) *to take any other reasonable measures that the director considers necessary to prevent the commission of criminal offences which may cause financial or economic loss to the Republic.*

1. Do you think there are any overlaps in the anti-corruption mandates of the Commission on Human Rights and Administrative Justice (CHRAJ) and the Serious Fraud Office with particular reference to Article 218(a), (c) and (e) on the one hand and section 3(1)(a) of the Serious Fraud Office Act, 1993 (Act 466) above? What are these overlaps?

2. Do you think the mandates of these two bodies are separate and distinct and do not require any amendment or review? Please give reasons for your answer.
3. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 23: PROPOSAL FOR AMENDING THE CONSTITUTION TO ALLOW THE CHRAJ TO INVESTIGATE ALL FORMS OF MALFEASANCE OF A PUBLIC OFFICER WITHOUT A FORMAL COMPLAINT BEING MADE TO IT.**

Article 218(a) of the Constitution empowers CHRAJ to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties. The Supreme Court has held in the case of *The Republic v. Fast Track High Court Ex Parte Commission on Human Rights and Administrative Justice, Dr. Richard Anane (Interested Party)* [2007-08] SCGLR 213, that this provision implies that the CHRAJ cannot investigate allegations of conflict of interest and abuse of office against a public officer in the absence of a formal complaint made to it.

1. Do you think that the current mandate of CHRAJ to investigate complaints of corruption and abuse of power of public officers should be maintained or transferred to a different body altogether? Give reasons for your answer.
2. Do you think that if this mandate is maintained CHRAJ should be allowed to investigate all allegations of malfeasance against a public officer whether or not a formal complaint has been made to it?
3. Do you think the prior requirement of a formal complaint restricts or stifles the anti-corruption functions of CHRAJ?
4. Do you think there are any advantages in requiring a formal complaint as a condition for investigation of cases of malfeasance against a public officer? If so, what are these advantages?
5. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 24: A REVIEW OF ARTICLE 221 TO DETERMINE WHETHER IT SHOULD BE AMENDED TO ALLOW FOR THE APPOINTMENT OF NON-LAWYERS TO THE MEMBERSHIP AND CHAIRMANSHIP OF THE CHRAJ.**

Article 221 of the Constitution states that the Commission on Human Rights and Administrative Justice which shall consist of a Commissioner for Human Rights and Administrative Justice, and two Deputy Commissioners. It also states that a person shall not be qualified for appointment as a Commissioner or a Deputy Commissioner for Human Rights and Administrative Justice, unless he is, in the case of a Commissioner, qualified for appointment as a Justice of the Court of Appeal, and in the case of a Deputy Commissioner, qualified for appointment as a Justice of the High Court.

1. Do you think that the membership of CHRAJ should be expanded?
2. Do you think that the current membership (3) of CHRAJ hinders its competence in efficiently disposing off cases?
3. Do you think that its current membership which is restricted to lawyers affects its ability to draw from a wide pool of professional expertise?
4. Do you think that non-lawyers should be made members of CHRAJ?
5. Do you think the chairmanship of CHRAJ should be open to a non-lawyer?
6. What do you think would be the advantages and/or disadvantages of including non-lawyers as members of CHRAJ?
7. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 25: RECONSIDERATION OF ARTICLE 218(a) – (e) TO CHANGE THE MANDATE OF CHRAJ.**

Article 218(a) to (e) of the Constitution states the functions of the Commission on Human Rights and Administrative Justice (CHRAJ) to include the following:

*(a) investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;*

*(b) investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services;*

*(c) investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution;*

*(d) take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this clause through such means as are fair, proper and effective, including,*

- (i) *negotiation and compromise between the parties concerned;*
  - (ii) *causing the complaint and its finding on it to be reported to the superior of an offending person;*
  - (iii) *bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedure; and*
  - (iv) *bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;*
- (e) *investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations.*

1. Do you think that the three-prong mandate of CHRAJ which covers human rights, probity and accountability, administrative justice and anti-corruption is overly broad? Give reasons for your answer.
2. Do you think the effectiveness and efficiency of CHRAJ is hampered by the extent of its mandate?
3. Do you think that the mandate of CHRAJ should be amended to remove the anti-corruption functions to enable the Commission focus on human rights and traditional ombudsman or administrative justice functions?
4. Do you think that the constitutional mandate of CHRAJ should remain as it is, while the commission is properly resourced to establish specialized divisions to deal with the various constitutional functions?
5. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 26: A REVIEW OF ARTICLE 225 TO DETERMINE WHETHER IT SHOULD BE AMENDED TO IDENTIFY OR CREATE A SOURCE OF FUNDING SIMILAR TO THAT OF THE COMMON FUND TO FINANCE THE CHRAJ AND ITS COMMISSIONERS.**

Article 225 of the Constitution provides that except as provided by this Constitution or by any other law not inconsistent with this Constitution, the Commission and the Commissioners shall not in the performance of their functions, be subject to the direction or control of any person or authority. However, the Constitution states that the

administrative expenses of the Commission, including salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund.

1. Do you think that CHRAJ's reliance on the Ministry of Finance and Economic Planning for its budgetary allocations undermines its independence?
2. Do you think that a source of funding similar to that of the Common Fund should be created to finance the CHRAJ and its Commissioners?
3. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 27: A RECONSIDERATION OF ARTICLE 45 WITH A VIEW TO GRANTING THE ELECTORAL COMMISSION THE POWER TO MONITOR AND ENFORCE COMPLIANCE WITH ELECTORAL LAWS BY POLITICAL PARTIES.**

Under Article 45 of the Constitution the Electoral Commission has the following functions:

- (a) *to compile the register of voters and revise it at such periods as may be determined by law;*
- (b) *to demarcate the electoral boundaries for both national and local government elections;*
- (c) *to conduct and supervise all public elections and referenda;*
- (d) *to educate the people on the electoral process and its purpose;*
- (e) *to undertake programmes for the expansion of the registration of voters;*  
*and*
- (f) *to perform such other functions as may be prescribed by law.*

1. Do you think there are any other functions which should be added to the functions of the Electoral Commission? What are these additional functions?
2. Do you think that in addition to the functions stated in the Constitution the Electoral Commission should be given the power to monitor and enforce compliance with electoral laws by political parties?
3. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?



**ISSUE 28: WHETHER OR NOT THE CONSTITUTION SHOULD ESTABLISH AN INDEPENDENT ‘ELECTION FUND’ ALONG THE LINES OF THE DISTRICT ASSEMBLIES COMMON FUND TO INSULATE THE ELECTORAL COMMISSION AND THE ELECTORAL PROCESS FROM POSSIBLE EXECUTIVE INFLUENCE (ARTICLE 54)**

According to Article 54 of the Constitution the administrative expenses of the Electoral Commission, including salaries, allowances and pensions payable to persons serving with the Commission, shall be charged to the Consolidated Fund.

1. Do you think that the Constitution should establish an independent electoral fund? Give reasons for your answer.
2. What do you think will be the advantages or disadvantages of establishing such an independent electoral fund?
3. Do you think that establishing an independent Electoral Fund would insulate the Electoral Commission from possible executive influence? Give reasons for your answer.
4. Do you have any other comments or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 29: A REVIEW OF THE COMPOSITION OF THE ELECTORAL COMMISSION IN TERMS OF ARTICLE 43 TO DETERMINE WHETHER PART-TIME MEMBERSHIP BE REMOVED AND BE REPLACED BY FULL-TIME MEMBERS.**

Article 43 of the Constitution states that the Electoral Commission shall consist of a Chairman, two Deputy Chairmen, and four other members.

1. Do you think that the Electoral Commission should be made up of only full-time members?
2. Do you think that having only full-time members on the Commission would necessarily ensure exclusive devotion to the Commission?
3. Do you think that having only full-time members on the Commission would help foster internal cohesion within the Commission?

4. Do you think that inclusion of part-time members on the Commission is justified in any way or has any advantages?
5. Do you think that having part-time members on the Commission has the potential to undermine the effectiveness of the Commission in any way?
6. Do you think the number of executive members should be increased?
7. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

## **PART V: CHIEFTAINCY**

### **ISSUE 30: INVESTIGATION INTO WHETHER OR NOT THE BAN ON CHIEFS' PARTICIPATION IN ACTIVE PARTY POLITICS AND THEIR ELIGIBILITY AS MEMBERS OF PARLIAMENT SHOULD BE MAINTAINED. (ARTICLES 94 (3) (C) AND 276 (2)).**

Article 276(1) states that a chief shall not take part in active party politics and requires that any chief wishing to do so and seeking election to Parliament shall abdicate his tool or skin. Article 94(3) (c) of the Constitution states that a person shall not be eligible to be a member of Parliament if he is a chief. Article 276(2) states however that notwithstanding these restrictions a chief may be appointed to any public office for which he is qualified.

1. Do you think that chiefs should be allowed to take active part in party politics? Give reasons for your answer.
2. If your answer to Question (1) was yes, what kind of political activities do you think chiefs should be allowed to participate in?
3. Are you of the view that chiefs already, in practice, do take active part in party politics? Give reasons for your answer.
4. Do you think that chiefs should be eligible to be members of parliament?
5. Do you think the ban on chiefs' participation in active party politics and their ineligibility as members of parliament are justified and should be maintained? Give reasons for your answer.
6. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

## **PART VI: NATIONAL ELECTIONS AND RELATED ISSUES**

### **ISSUE 31: PROPOSAL FOR A CHANGE OF THE TIMING FOR THE HOLDING OF PRESIDENTIAL AND PARLIAMENTARY ELECTIONS (ARTICLES 63(2) AND 112(4)).**

According to the constitution, the election of the President shall not be earlier than four months or later than one month before the term of office of the sitting President expires. Regarding the election of members of parliament the constitution provides that, a general election of members of Parliament shall be held within thirty days of a session of Parliament; and a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period.

1. Do you think that the period stipulated for the election of a president into office should be changed? What change would you recommend and why?
2. Do you think that the period stipulated for the election of members of Parliament should be changed? What change would you recommend and why?
3. Do you think that presidential and parliamentary elections should be held on the same day? Give reasons for your answer.
4. If so, should the Constitution be amended to allow these elections to be held earlier to make enough time for possible second ballots, resolution of transitional issues, preparations for handover, challenges etc.?
5. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

### **ISSUE 32: INVESTIGATION TO DETERMINE WHETHER PROVISIONS SHOULD BE INCLUDED IN THE CONSTITUTION TO DEAL WITH THE SITUATION WHERE NO POLITICAL PARTY GAINS A MAJORITY IN PARLIAMENT OR WHERE AN INDEPENDENT CANDIDATE WINS THE PRESIDENTIAL ELECTIONS.**

1. Do you think there is any need to include in the Constitution provisions to deal with a situation where no political party gains a majority in Parliament or where an independent candidate wins the presidential elections? Give reasons for your answer.
2. What impact do you think such a situation is likely to have on the running of the country?
3. What suggestions would you make to deal with a situation where an independent candidate wins the presidential elections?
4. What suggestions would you make to deal with the situation where no political party wins a majority in Parliament?
5. Do you have any other comments or suggestions to make on this issue?

**ISSUE 33: INVESTIGATION TO DETERMINE WHETHER PROVISIONS SHOULD BE INCLUDED IN THE CONSTITUTION TO DEAL WITH THE SITUATION WHERE DIFFERENT POLITICAL PARTIES WIN THE PRESIDENTIAL AND PARLIAMENTARY ELECTIONS.**

1. Do you think there is any need to include in the Constitution provisions to deal with a situation where different parties win the presidential and parliamentary elections? Give reasons for your answer.
2. What impact do you think such a situation is likely to have on the running of the country?
3. What provisions would you suggest to be made to deal with a situation where different parties win the presidential and parliamentary elections?
4. Do you have any other comments or suggestions to make on this issue?

**PART VII: DECENTRALIZATION AND LOCAL GOVERNMENT**

**ISSUE 34: A REVIEW OF THE RELEVANT PROVISIONS IN THE CONSTITUTION IN ORDER TO ENSURE REAL DECENTRALIZATION OF GOVERNMENTAL POWERS AND FUNCTIONS TO THE DISTRICT ASSEMBLIES (CHAPTER 20).**

Chapter 20 of the Constitution deals with decentralization and local government. The chapter makes provision for the features of the decentralized local government, the composition and functions of District Assemblies, the District Assemblies Common Fund, Regional Coordinating Councils and Regional Ministers. Article 252 of the Constitution provides that there shall be a fund to be known as the District Assemblies Common Fund, into which Parliament is required annually to make provision for the allocation of not less than 5% of the total revenues of Ghana to the District Assemblies for development.

Article 241 provides that for the purposes of local government, Ghana shall be divided into districts and a District Assembly shall be the highest political authority in the district and shall have deliberative, legislative and executive powers. According to Article 242 a District Assembly shall consist of : (a) one person elected from each local government electoral area; (b) the member (s) of Parliament from the constituencies that fall within the area of authority of the District Assembly as members without the right to vote; (c) the District Chief Executive of the district; and (d) other members not being more than 30% of all the members of the District Assembly, appointed by the President in consultation with the traditional authorities and other interest groups in the district.

1. Do you think the constitutional framework for decentralization is workable?
2. Do you think the decentralization process as established by the Constitution should be made more elective? Give reasons for your answer.
3. How do you think the decentralization process can be made more elective?
4. Do you think the constitutional provision which allows the President to appoint 30% of the members of the District Assembly should be amended in any way? Give reasons for your answer.
5. Do you think the power to elect 30% of the members of the District Assembly should be reserved rather for the chiefs and not the President? Give reasons for your answer.
6. Do you think the allocation of at least 5% of the total revenues of Ghana to the Common Fund is sufficient to ensure real decentralization and development for the Districts? Give reasons for your answer.
7. Do you think the provision should be amended to require the allocation of a higher percentage of the total revenues of Ghana to the Common Fund? If so, what percentage would you suggest?
8. Do you think that the constitution should reserve a percentage of presidential appointments to the District Assembly for women? Give reasons for your answer.
9. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 35: PARTISAN POLITICS AND THE DECENTRALISED LOCAL GOVERNMENT SYSTEM (ARTICLE 248(1)).**

Article 248 of the Constitution states that a candidate seeking election to a District Assembly or any lower local government unit shall present himself to the electorate as an individual and shall not use any symbol associated with any political party. It states further that a political party shall not endorse, sponsor, offer a platform to or in any way campaign for or against a candidate seeking election to a District Assembly or any lower local government unit.

1. Do you think that political parties should be allowed to endorse or sponsor candidates seeking election to District Assemblies? Why?
2. What do you think are the advantages of disallowing political parties from endorsing or sponsoring candidates seeking election to District Assemblies?
3. Do you think this ban is complied with in practice?
4. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 36: A REVIEW OF THE CONSTITUTION TO ALLOW FOR THE ELECTION OF DISTRICT CHIEF EXECUTIVES (ARTICLE 243).**

Article 243 of the Constitution states that there shall be a District Chief Executive (DCE) for every district and that the DCE who shall be appointed by the President with the prior approval of not less than two-thirds majority of the members of the Assembly present and voting at the meeting.

1. Do you think the DCEs should be elected instead of appointed? If so, why?
2. If you think they should be elected, do you think they should be elected along political party lines or just on their individual merits?

3. Do you think that DCEs should continue to be appointed by the President with the prior approval of not less than two-thirds majority of members of the Assembly? Give reasons for your answer.
4. Do you think that the election of DCEs would deepen our democracy in any way?
5. Do you think the election of DCEs would make them more accountable to their people, if so how?
6. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

**ISSUE 37: INVESTIGATION TO DETERMINE WHETHER A MEMBER OF PARLIAMENT FROM THE CONSTITUENCY THAT FALLS WITHIN THE AREA OF AUTHORITY OF THE DISTRICT ASSEMBLY SHOULD BE A MEMBER OF THE DISTRICT ASSEMBLY AT ALL [ARTICLE 242(a)] AND WHETHER HE SHOULD BE MADE A VOTING MEMBER**

Article 242 of the Constitution which deals with the composition of the District Assembly states that a District Assembly shall consist of the following members:

- (a) *one person from each local government electoral area within the district elected by universal adult suffrage;*
- (b) *the member or members of Parliament from the constituencies that fall within the area of authority of the District Assembly as members without the right to vote;*
- (c) *the District Chief Executive of the district; and*
- (d) *other members not being more than thirty percent of all the members of the District Assembly, appointed by the President in consultation with the traditional authorities and other interest groups in the district.*

1. Do you think that the Member of Parliament should also be a member of the District Assembly? Give reasons for your answer.
2. What do you think are the advantages or disadvantages of making the Member of Parliament a member of the District Assembly?
3. Do you have any comments on this provision or suggestions for its improvement or amendment?
4. If you think the Member of Parliament should be retained as a member of the District Assembly, do you think he should continue to be a non-voting member of the Assembly or should be made a voting member? Give reasons for your answer.

5. Do you have any comments on this provision or suggestions for its improvement or amendment?

## **PART VIII: PUBLIC SERVICES**

### **ISSUE 38: A REVIEW OF ARTICLE 190(1) WHICH LISTS THE PUBLIC SERVICES OF GHANA TO MORE FULLY TAKE ACCOUNT OF CHANGES IN THE PUBLIC SERVICES.**

According to Article 190(1) of the constitution, the Public Services of Ghana shall include the Civil Service, the Judicial Service, the Audit Service, the Education Service, the Prisons Service, the Health Service, the Statistical Service, the National Fire Service, the Customs, Excise and Preventive Service, the Internal Revenue Service, the Police Service, the Immigration Service, and the Legal Service. It shall also include public corporations other than those set up as commercial ventures; public services established by this Constitution; and such other public services as Parliament may by law prescribe.

1. Do you think that this constitutional provision should specifically list the bodies that constitute the Public Service in view of the fact that any of these bodies could cease to exist or other bodies could be created as a result of changes in legislation or policy?
2. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

### **ISSUE 39: A REVIEW OF THE PROVISION ON RETIRING AGE AND PENSION TO ALLOW PUBLIC OFFICERS TO RETIRE AT THE AGE OF SIXTY-FIVE (ARTICLE 199(1)).**

Article 199(1) of the Constitution indicates that a public officer shall, except as otherwise provided in the Constitution; retire from the public service on attaining the age of sixty years.

1. Do you think the retiring age of public officers should be fixed by the Constitution?
2. Do you think the retiring age of 60 for public officers should be maintained?
3. Do you think that the retiring age for all public officers should be made amended to 65 years?



4. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

## **PART IX: OTHER CONSTITUTIONAL ISSUES**

### **ISSUE 40: HIGH TREASON AND THE DEATH PENALTY (ARTICLES 13, 3(3) & 19 (2)).**

According to Article 3(3) and 19(2) of the Constitution, a person who by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates the Constitution or any part of it, or attempts to do any such act commits the offence of high treason and shall, on conviction, be sentenced to suffer death.

Also, article 13(1) says that no one shall be deprived of his life intentionally except in exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana.

1. Do you think that the death penalty should be retained in the Constitution or abolished? Give reasons for your answer.
2. Do you have any other comments on this provision or suggestions for the improvement or amendment of this constitutional provision?

### **ISSUE 41: A RECONSIDERATION OF THE EXCLUSION OF EXECUTIVE INSTRUMENTS FROM THE CATEGORY OF SUBSIDIARY LEGISLATION WHICH REQUIRE PRIOR PARLIAMENTARY APPROVAL FOR THEIR VALIDITY (ARTICLE 11(7)).**

According to article 11(7) of the Constitution, subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law shall, among others be laid before Parliament; and come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Orders, Rules or Regulations by the votes of not less than two-thirds of all the members of Parliament. According to Article 11(7) this procedure applies to any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law. An Executive Instrument does not qualify as an order, rule or regulation within the meaning of the Constitution and therefore does not have to receive Parliamentary approval in order to be valid.

1. Do you think that Executive Instruments should be subjected to parliamentary approval in order to be valid?
2. Do you think that subjecting Executive Instruments to parliamentary approval has the potential to undermine the power of the Executive

3. Do you think that subjecting Executive Instruments to Parliamentary approval could slow down government business unduly?
4. Do you think subjecting Executive Instruments to parliamentary approval would violate the principle of separation of powers?
5. Do you think there are any real benefits to be derived by the State from subjecting Executive Instruments to Parliamentary approval?
6. Do you think that this power of the executive should be curbed in any way? If so, how?
7. Do you have any other comments on these provision or suggestions for the improvement or amendment of this constitutional provision?

## **PART X:HUMAN RIGHTS**

### **ISSUE 42: A REVIEW OF CHAPTER 5 OF THE CONSTITUTION RELATING TO FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS**

The Constitution sets out in Chapter 5 some fundamental human rights and freedoms and provides, through the High Court, a means for ensuring the protection of those rights. Article 33(5) provides that the rights, duties, declarations and guarantees specifically mentioned in Chapter 5 are not exhaustive and do not exclude others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the dignity and freedom of man.

Ghana is signatory to several international human rights instruments but the rights in some of those instruments have not found expression in any law or by the courts. Some of these rights include the right to housing, the right to employment, and environmental rights.

1. Do you think the Constitution should be reviewed to expressly guarantee all or some of these rights?
2. What other rights and freedoms do you think the Constitution should guarantee?
3. Do you think the Constitution should be reviewed so that whenever Ghana signs an international human rights instrument the rights contained in that instrument will automatically be enforceable in Ghanaian courts?
4. Can you suggest any right that should be expressly guaranteed by the Constitution?

### **ISSUE 43: A REVIEW OF CHAPTER 6 OF THE CONSTITUTION TO EXPRESSLY MAKE ITS PROVISIONS DIRECTLY ENFORCEABLE**

Article 34(1) of the Constitution provides that the Directive Principles of State Policy contained in that Chapter shall guide all citizens, Parliament, the President, the Judiciary,

the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society. In their proposals, the drafters of the Constitution intended these Principles not to have a separate existence. They were intended to serve as measures by which laws are assessed and to afford a yardstick by which policy decisions are taken and implemented for the establishment of a just and free society. It was, therefore, proposed that the Principles should not, of and by themselves, be legally enforceable by any Court.

However, in the recent case of **Ghana Lotto Operators Association v. National Lottery Authority** [2007-2008] SCGLR 1089, the Supreme Court ruled that there is a presumption of justiciability of the provisions of Chapter 6. In its previous case of **New Patriotic Party v. Attorney-General** [1997-1998]1 GLR 378, the Supreme Court had earlier held that until they are read and applied in conjunction with any substantive guaranteed human rights and freedoms set out in chapter 5 of the Constitution, the Principles remain only guidelines, and are not enforceable rights by themselves. When they are read together or in conjunction with other enforceable parts of the Constitution, they then in that sense, become enforceable.

1. Do you think the Constitution should be reviewed to expressly make all the Directive Principles of State Policy justiciable?
2. Do you think the Constitution should be reviewed to expressly make all the Directive Principles of State Policy non-justiciable?
3. Do you think the Constitution should be reviewed to expressly make some of the Directive Principles of State Policy justiciable and others non-justiciable?
4. Which of the Directive Principles of State Policy should be made justiciable and which should be made non-justiciable
5. What advantages or disadvantages do you think there are in specifying these provisions to be justiciable or otherwise?

#### **ISSUE 44: THE INDEMNITY PROVISIONS IN THE TRANSITIONAL PROVISIONS OF THE 1992 CONSTITUTION**

The transitional provisions seek to ensure a smooth transition from the government of the PNDC to the democratic framework under the fourth republic by providing for the continuation in office of certain officers and institutions, among other things. However, section 34 of the transitional provisions indemnify all coup-makers and their functionaries against any liability for acts and omissions during their administration.

Some submissions received, are to the effect that the indemnity clauses are not compatible with a democratic dispensation and so they should be removed from the Constitution.

Others are to the effect that the removal of the indemnity clauses will badly affect our democracy by bringing up issues that have been settled within the constitutional framework.

1. What are your views about these two competing opinions?
2. Do you have a different opinion about the indemnity clauses?