

PROPOSED AMENDMENTS TO THE 1992 REPUBLICAN
CONSTITUTION OF GHANA BY GNAT

PROTECTION OF RIGHTS BY THE COURTS

1.0 **ARTICLE 33(i)**

Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.

**ANY PERSON OTHER
THAN THE AFFECTED
PERSON MAY MAKE
THE APPLICATION**

1.1. **PROPOSED AMENDMENT**

“Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person or ANY OTHER PERSON may apply to the High Court for redress.

1.2. **RATIONALE**

This is to allow any other person to apply on behalf of the affected person.

2.0 **ARTICLE 60**

- (1) 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.
- (2) A candidate for the office of Vice-President shall be designated by the candidate for the office of President before the election of the President.
- (3) The provisions of article 62 of this Constitution apply to a candidate for election as Vice-President.
- (4) Candidate shall be deemed to be duly elected as Vice-President if the candidate who

designated him as candidate for election to the office of Vice-President has been duly elected as President in accordance with the provisions of article 63 of this Constitution.

- (5) The Vice-President shall, before commencing to perform the functions of Vice-President, take and subscribe the oath of allegiance and the Vice-Presidential oath set out in the Second Schedule to this Constitution.
- (6) Whenever the President dies, resigns or is removed from office, 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.
- 7) Where the unexpired term served by the Vice-President under clause (6) of this article exceeds half the term of a President, the Vice-President is subsequently only eligible to serve one full term as President.
- (8) Whenever the President is absent from Ghana or is for any other reason unable to perform the functions of his office, the Vice-President shall perform the functions of the President until the President returns or is able to perform his functions.
- (9) The Vice-President shall, before commencing to perform the functions of the President under clause (6) of this article, take and subscribe the oath set out in the Second Schedule to this Constitution in relation to the office of President.
- (10) The Vice-President shall, upon assuming office as President under clause (6) of this article, nominate a person to the office of Vice-President subject to approval by Parliament.
- (11) Where the President and the Vice-President are both unable to perform the functions of the President, the Speaker of Parliament shall

perform those functions until the President or the Vice-President is able to perform those functions or a new President assumes office, as the case may be.

- (12) The Speaker shall, before commencing to perform the functions of the President under clause (11) of this article, take and subscribe the oath set out in relation to the office of President.
- (13) Where the Speaker of Parliament assumes the office of President as a result of the death, resignation or removal from office of the President and the Vice-President, there shall be a presidential election within three months after his assumption of office.
- 14) The provisions of article 69 of this Constitution shall apply to the removal from office of the Vice-President.

PROPOSED AMENDMENT

REPLACEMENT OF VICE-PRESIDENT UPON DEATH OR RESIGNATION

2.1. The Constitution is silent on the replacement of the Vice-President who dies or resigns. Just as provision has been made for the replacement of a President who dies, resigns or is removed, the procedure for replacing a Vice-President who dies or resigns needs to be spelt out.

2.2. RATIONALE

- To supply the obvious omission.
- Constitution is silent on replacement of Vice-President.

3.0. ARTICLE 66(1)

A person elected as President shall, subject to clause (3) of this article, hold office for a term of four years beginning from the date on which he is sworn in as President.

TENURE OF PRESIDENT

3.1. PROPOSED AMENDMENT

A person elected as President shall, subject to clause (3) of this article, hold office for a term

of FIVE YEARS beginning from the date on which he is sworn in as President.

3.2. RATIONALE

- To allow the President more time to execute his agenda
- To reduce lengthening intervals of elections, and cut down on cost

CABINET

4.0. ARTICLE 76(1)

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.

**MAJORITY OF
CABINET MINISTERS
TO BE APPOINTED
FROM
PARLIAMENT**

4.1. PROPOSED AMENDMENT

“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 MAJORITY OF WHO SHALL BE APPOINTED FROM AMONG MEMBERS OF PARLIAMENT.

4.2. RATIONALE

This is to foster a closer link between Parliament and the Executive.

5.0. ARTICLE 78(1)

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 majority of Ministers of State shall be appointed from among members of Parliament.

**MAJORITY OF
MINISTERS TO BE
APPOINTED FROM
OUTSIDE
PARLIAMENT**

5.1. PROPOSED AMENDMENT

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 Ministers of States shall be appointed from OUTSIDE PARLIAMENT.

5.2. RATIONALE

- a) It would give the President a free hand to appoint Ministers of State without fetter.
- b) It will limit the number of Ministers of State to be appointed from among members of Parliament and allow a lot more Parliamentarians to devote time and energy to the core business of Parliament – i.e. legislation.

VOTE OF CENSURE

6.0 ARTICLE 82

- 1) Parliament may, by a resolution supported by the votes of not less than two-third of all the members of Parliament, pass a vote of censure on a Minister of State
- 2) A motion for the resolution referred to in clause (1) of this article shall not be moved in Parliament unless -
 - a) seven days' notice has been given of the motion; and
 - b) the notice for the motion has been signed by not less than one-third of all members of Parliament,
- 3) The motion shall be debated in Parliament within fourteen days after the receipt by the Speaker of the notice for the motion.
- 4) A Minister of State in respect of whom a vote of censure is debated under clause (3) of this article is entitled, during the debate, to be heard in his defence.
- 5) Where a vote of censure is passed against a Minister under this article the President may, unless the Minister resigns his office, revoke his appointment as a Minister.

- 6) For the avoidance of doubt this article applies to a Deputy Minister as it applies to a Minister of State

**MINISTERS OF
STATE TO BE
CENSURED ON
STATED CAUSE**

PROPOSED AMENDMENT

- 6.1. Parliament may, by a resolution supported by the votes of not less than two-thirds of all members of Parliament, pass a vote of censure on a Minister of State ONLY ON STATED CAUSE.

6.2. **RATIONALE**

- To avoid arbitrariness in the process of censorship.
- To conform to the rule of law.

THE ATTORNEY-GENERAL

7.0 ARTICLE 88

1. There shall be an Attorney-General of Ghana who shall be a Minister of State and the Principal legal advisor to the Government.
2. The Attorney-General shall discharge such other duties of a legal nature as may be referred or assigned to him by the President, or imposed on him by this Constitution or any other law.
3. The Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences
4. All offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorized by him in accordance with any law.
5. The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant.
6. The Attorney-General shall have audience with all courts in Ghana.

**POSITION OF
ATTORNEY-GENERAL
TO BE SEPARATED
FROM POSITION OF
MINISTER FOR
JUSTICE**

7.1. PROPOSED AMENDMENT

- (1) There shall be an Attorney- General of Ghana who shall not be a Minister of State
- (2) The Attorney-General shall discharge such other duties of legal nature imposed on him by this Constitution or any other law.

7.2. RATIONALE

To promote the concept of the rule of law and free the Attorney-General from Political direction.

8.0. DISSOLUTION OF PARLIAMENT

ARTICLE 113(1)

Subject to clause (2) of this article, Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved.

**TENURE OF
PARLIAMENT**

8.1. PROPOSED AMENDMENT

Subject to clause (2) of this article, Parliament shall continue for FIVE YEARS from the date of its first sitting and shall then stand dissolved.

8.2. RATIONALE

To make it correspond to the amendment proposed for the tenure of the President.

9.0. RETIRING AGE FOR PUBLIC OFFICERS

ARTICLE 199(1)

A public officer shall except as otherwise provided in this Constitution, retire from the public service on attaining the age of sixty.

**RETIRING AGE
FOR PUBLIC
OFFICERS**

**9.1. MAJORITY VIEW IS TO AMEND THE
SECTION TO READ**

A public officer shall retire from the public service on attaining the age of sixty-five.

9.2. RATIONALE

To have a uniform retiring age for all public officers without discrimination

9.3. MINORTY VIEW IS TO LEAVE THE SECTION AS IT IS.

COMPOSITION OF SUPREME COURT

10.0. ARTICLE 128(1)

The Supreme Court shall consist of the Chief Justice and not less than nine justices of the Supreme Court.

**NUMBER OF
SUPREME
COURT
JUDGES**

10.1 PROPOSED AMENDMENT

The Supreme Court shall consist of the Chief Justice and not less than nine AND NOT MORE THAN TWELVE Justices of the Supreme Court.

10.2 RATIONALE

This upper limit is to avoid the situation where the government may be inclined to take “undue” advantage of lack of upper limit to flood the Supreme Court.

FUNCTIONS OF CHRAJ

11.0. ARTICLE 218

The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty –

- a) investigate complaints or 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) to 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 fair administration in relation to those services
- c) to 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.

**POWER OF CHRAJ
TO INVESTIGATE
WITHOUT
COMPLAINTS**

11.1 PROPOSED AMENDMENT

- a) To investigate 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;

11.2 RATIONALE

To make the section conform to section (e) so that CHRAJ could investigate commissions and omissions without even formal complaints.

12.0. COMPOSITION OF DISTRICT ASSEMBLY

ARTICLE 242

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 for 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.

**DISTRICT ASSEMBLIES
BASED ON PARTISAN
POLITICS**

12.1. PROPOSED AMENDMENTS

A District Assembly shall consist of the following -

- a) one person from each local government electoral area within the district elected by universal adult suffrage **ALONG PARTISAN LINES;**

- b) the member or members of Parliament for 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.

12.2. **RATIONALE**

To fully democratize local government and replicate what pertains at the national level at the district level.

DISTRICT CHIEF EXECUTIVE

13.0. **ARTICLE 243 (1)**

- (1) There shall be a District Chief Executive for every district who shall be appointed by the President with the prior approval of not less than two-thirds majority of members present and voting at the meeting
- (2) The District Chief Executive shall
 - a) preside at meetings of the Executive Committee of the Assembly
 - b) be responsible for the day to day performance of the executive and administrative functions of the District Assembly; and
 - c) be the chief representative of the Central Government in the District.
- (3) The office of District Chief Executive shall become vacant if –
 - a) a vote of no confidence, supported by the votes of not less than two-thirds of all the members of the District Assembly is passed against him; or
 - b) he is removed from office by the President; or
 - c) he resigns or dies.

**DISTRICT CHIEF
EXECUTIVE TO
BE ELECTED**

13.1. PROPOSED AMENDMENTS

- 1) There shall be a District Chief Executive for every district who shall be elected from within or outside the Assembly by simple majority of Assembly members present and voting.

(3)b) Delete.

14.0. PRESIDING MEMBER

ARTICLE 244 (2)

The Presiding Member shall be elected by at least two-thirds majority of all members of the Assembly.

**ELECTION OF
PRESIDING MEMBER**

14.1. PROPOSED AMENDMENT

244(2) The Presiding Member shall be elected by simple majority of all the members of the Assembly.

14.2. RATIONALE

To give the meaning to the conduct and practice of democracy in local governance by replicating the practice that pertains at the national level in local governance.

**15.0. POLITICAL PARTIES AND CANDIDATES FOR
ELECTION TO LOCAL GOVERNMENT UNITS**

ARTICLE 248

- 1) 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.
- 2) A political party shall not endorse, sponsor, offer a platform to a or in anyway campaign for or against a candidate seeking election to a District Assembly or any lower local government unit.

**DELETION OF
THE ORIGINAL ARTICLE**

15.1. PROPOSED AMENDMENT
Expunge the whole of Article 248

15.2. RATIONALE

- To allow for partisan political activity in local governance
- To give constitutional backing to the de facto practice on the ground
- To curtail the high level of corruption associated with the present practice.
- To make elected officers accountable to the electorate .
- To give political direction

16.0. REVOCATION OF MANDATE BY ELECTORATE

ARTICLE 249

Subject to any procedure established by law, the mandate of a member of a District Assembly may be revoked by the electorate or the appointing body.

**REVOCATION OF
MANDATE BY
ELECTORATE**

16.1. PROPOSED AMENDMENT
Subject to any procedure established by law, the mandate of a member of a District Assembly may be revoked by the electorate.

16.2. RATIONALE
Ensure democratic practice

17.0 ARTICLE 255

1) There shall be established a Regional Co-ordinating Council in each region, which shall consist of-

- a) the Regional Minister and his deputy or deputies;
- b) the Presiding Member and the District Chief Executive from each district in the Region;
- c) two chiefs from the Regional House of Chiefs; and

- d) the Regional Heads of the decentralized ministries in the region as members without the right to vote;
- 2) The Regional Minister shall be the Chairman of the Regional Co-ordinating Council.
- 3) Subject to this Chapter, the functions of a Regional Co-ordinating Council shall be as prescribed by Act of Parliament.

**ESTABLISHMENT
OF REGIONAL
ASSEMBLIES**

17.1. PROPOSED AMENDMENT

- 1. There shall be established a Regional Assembly by an
 - a) two persons from each District within the region elected by universal adult suffrage.
 - b) the member or members of Parliament for the constituencies that fall within the area of authority of the Regional Assembly as members without voting rights
 - c) other members not being more than thirty percent of all members elected/nominated by specified identifiable groups.
- 2. A Regional Assembly shall consist of:
 - a) two persons from each District within the region elected by universal adult suffrage.
 - b) the member or members of Parliament for the constituencies that fall within the area of authority of the Regional Assembly as members without voting rights
 - c) other members not being more than thirty percent of all members elected/nominated by specified identifiable groups.
- 3. A Regional Assembly shall have and exercise authority, functions and powers to such extent as may be prescribed by an Act of Parliament that shall include:
 - a) Agriculture, Animal Husbandry
 - b) Education
 - c) Primary Health care and Maternity care
 - d) Public works
 - e) Security
 - f) Such other matters as Parliament may from time to time determine.

4. Provision shall be made by Parliament for allocation of a percentage of national revenue for the Regional Assembly.
5. Regional Assembly shall elect a Chairman from or outside the Assembly a simple majority.

17.2. RATIONALE

- There is the need to establish a strong link between the District Assemblies and the Central Government
- Some of the District Assemblies are not very viable in the discharge of their duties
- To ensure speedy development in the regions
- To reduce centralized political and administrative structure inherited from the colonial government
- To make accountability more relevant to the people

18.0. ARTICLE 266(4)

No interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a leasehold for a term of more than fifty years.

All restrictions on foreigners not to acquire leasehold of more than fifty years should be lifted.

ACQUISITION OF LEASE BY FOREIGNERS

18.1. PROPOSED AMENDMENTS

All restrictions on foreigners acquisition of lease should be lifted.

18.2. RATIONALE

To attract and retain investors who normally come with heavy investments that need to be protected.