REPORT
OF THE
COMMITTEE OF EXPERTS (CONSTITUTION)
ON
PROPOSALS FOR A DRAFT
CONSTITUTION OF GHANA

PRESENTED TO THE PNDC

JULY 31, 1991
**PROPOSALS FOR A DRAFT CONSTITUTION OF GHANA**

**ERRATUM**


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We were appointed under PNDCL. 252 and mandated to "draw up and submit to the Council proposals for a draft Constitution of Ghana". Section 4 of the Law provided as follows:

"(1) For the purposes of section 3 the Committee shall in its deliberations take into account the following:

(a) the Report of the National Commission for Democracy of 25th March, 1991, on "Evolving a True Democracy";

(b) the abrogated Constitutions of Ghana of 1957, 1960, 1969 and 1979 and any other Constitutions;

(c) such other matters relating to proposals for a draft Constitution as the Council may refer to it;

(d) any other matter which in the opinion of the Committee is reasonably related to the foregoing.

(2) Without prejudice to the provisions of subsection(1) the proposals shall -

(a) provide for an Executive President to be elected on the basis of universal adult suffrage;

(b) provide for a Prime Minister who must command a majority in the National Assembly;

(c) provide for a National Assembly to be elected on the basis of universal adult suffrage;

(d) guarantee, protect and secure by the enforcement of the enjoyment of the fundamental human rights and freedoms including the freedom of
speech, freedom from arbitrary arrest and detention, freedom of assembly and association including the freedom to form political parties, women's rights, children's rights, workers' rights and the rights of the handicapped;

(e) provide for a free and independent judiciary;

(f) guarantee the freedom and independence of the media;

(g) provide for directive principles of state policy that shall ensure participatory democracy and the sound management of the national economy;

(h) provide for a decentralised system of national administration based on a non-partisan District Assembly system with development as its objective and including revenue-sharing clauses, and

(i) reflect a commitment to equal and balanced development of all parts of Ghana particularly in the allocation of national resources and in the distribution of the "national wealth".

The Committee commenced its deliberations on June 11, 1991.

2. **APPROACH TO OUR WORK**

As required by Law 252, the Committee took into account the following documents:


2. The above-mentioned NCD Report

3. The Constitutions of other countries
4. Several memoranda submitted to us from the public.

A reference to the above documents would have been meaningless without an evaluation of the constitutional practice and experience of Ghana and other countries. In Ghana, particular attention was paid to the constitutional practice and experience under the 1st, 2nd, and 3rd Republics; the lessons of the NRC, SMC, and the AFRC Governments and the developments within the past ten years. This necessarily involved an assessment of various laws and institutions introduced by the PNDC.

3. The Committee operated on the cardinal principle that we should not re-invent the wheel. Accordingly wherever we found previous constitutional arrangements appropriate, we built on them. In this connection, with appropriate modifications, we relied substantially on some of the provisions of the 1969 and 1979 Constitutions of Ghana to the extent that they are relevant to the general constitutional structure proposed in this report.

4. Our report, however, introduces several innovations all designed to enhance the prospects of stability. Some of these innovations attempt to strike a balance between the need for effective government and the need to inculcate constitutionalism. Others are meant to forestall and diffuse major constitutional confrontations or deadlocks that threaten stability. Some impose appropriate constraints on Executive power, while others seek to promote various avenues for achieving consensus on national issues. In particular, we explored the possibility of alternative approaches to the notion of "winner takes all".

5. The purist wedded to formal classifications of constitutional systems will derive little comfort from some of the institutions proposed in this report. Our primary concern has been to devise viable mechanisms to ensure stability and the rule of law and not to conform to the logical requirements of a particular constitutional
model. Thus we combine a presidential system with the principle of executive responsibility to Parliament, an important feature of parliamentary government. We have proposed a Council of State that draws on our traditional institution of a council of elders to enhance the prospects of national unity. In doing this we were not deterred by the strict injunctions of the principle of separation of powers. While the Supreme Court will exercise the power of judicial review, a special preventive role is assigned to the Judicial Committee of the Council of State to forestall potentially divisive constitutional confrontations that might threaten the foundations of the constitutional order. Again although we recommend that the Prime Minister and the majority of Ministers be appointed from Parliament, provision has been made for the appointment of some Ministers from without to assure the President the flexibility to fill any gaps in expertise or to redress any regional or gender imbalance. Finally we have devised checks and balances that impose appropriate restraints without stifling the effective exercise of constitutional functions.

6. With respect to the developments within the past 10 years, the guiding principle was that the essential attributes of institutions which are compatible with a constitutional order should be retained, subject to such modifications as are appropriate. The committee feels that in this regard the accent should be on substance not form. Thus, for example, the social or political values of accountability and probity and fidelity to the public interest should survive the inauguration of the constitution. On the other hand, not all mechanisms or processes that seek to promote these values are necessarily compatible with a constitutional order. Similarly, the introduction of the basic principles of decentralization and grassroots participation in decision-making is not only in consonance with the constitutional order but also reflects the concerns of the international community generally. However, the acknowledgment of the essential validity of these principles does not necessarily mean the
endorsement of all aspects of the structures instituted to implement these principles. To the extent it connotes bold, imaginative and original approaches to the solution of national problems, the term "revolutionary" should not be resisted as repugnant to a constitution. However, the basic tenets of the constitutional order must permeate all processes and procedures.

7. In preparing the constitutional proposals, the Committee went beyond the traditional notion that a constitution is essentially a static instrument for the distribution of powers between the organs of state and for distinguishing between public power and private right. The committee endorsed the current philosophy of constitution-making in several developing countries, that a Constitution is also an instrument for promoting development. We accordingly propose directive principles of State policy with respect to the management of the economy and have examined the structuring of institutions of economic significance such as the financial institutions, administration of land, and economic planning. While the Committee recognises that particular economic programmes cannot be institutionalized in the constitution, the experience of other constitutions, such as Brazil and India, demonstrates that a constitution can articulate basic principles of sound economic management that command the consensus of the nation.

8. A notable feature of the proposals is the prominence accorded to individual rights. The traditional guarantees for human rights have been extended to a wide variety of social and economic rights, in particular special rights for women, children, the disabled. The report reflects the heightened sensitivity of the public generally and special groups to the need to articulate and protect these fundamental rights and freedoms.

9. In its deliberations, the Committee kept uppermost in its mind the important principle that a catalogue of rights, however elaborate, is meaningless without an effective enforcement mechanism. We therefore propose entrusting the
enforcement of the Constitution to particular institutions including the President, the Council of State, the Judicial Committee of the Council of State, Judiciary, a Special Commission on Human Rights and Administrative Justice and the Press Commission. The enforcement process involves educating the public about their rights, sensitizing individuals to specific individual rights guaranteed under the Constitution; assisting individuals to prosecute their rights and affording access to the Courts for purposes of enforcement. The democratic order will only be meaningful if the humblest person in the remotest village has been made aware of his constitutional rights, and the prospects for enforcing such rights have been assured. Only then will the ordinary Ghanaian feel he or she has a vested interest in the preservation of the Constitution.

10. Our constitutional experience demonstrates that the assurance of independence or autonomy to key institutions such as the Judiciary, the Ombudsman and the Press Commission under the constitution can only be effective if it is reinforced by concrete powers and resources. The Committee was mindful of the need to buttress such assurances with effective mechanisms to translate the constitutionally guaranteed independence into reality. Ultimately the viability of a constitutional order hinges on the commitment of the Ghanaian people to the Constitution and their readiness to protect and defend as the custodian of their freedoms, aspirations and values.

THE AREAS COVERED

11. In view of the time constraints under which the Committee laboured, we decided that the most realistic approach to our work would be to concentrate on formulating proposals for key areas of the proposed Constitution. Our report accordingly covers the following:

(i) The Executive: This includes the provisions relating to the President,
the Prime Minister, the Council of Ministers, relations between the Executive and the Legislature, and the National Security Council.

(ii) The Council of State including the Judicial Committee of the Council of State.

(iii) The Legislature

(iv) Directive Principles of State Policy prescribing the broad political, economic and social goals. This should inform and guide all national and governmental endeavours.

(v) Fundamental Human Rights and Freedoms including social and economic rights of women and children.

(vi) Freedom and Independence of the Media.

(vii) Representation of the People and the Electoral System.

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(xv) Enforcement of the Constitution including the Commission on Human Rights and Administrative Justice.

(xvi) Citizenship.
(xvii) Amendment procedures.

Our treatment of the above subjects consists of:

1. A discussion of the relevant issues and the resulting proposals;
2. A precise formulation of the proposals providing the basis of the key constitutional provisions in the particular area.

As far as practicable, we have avoided the use of complex technical language in the drafting of the proposals.

We believe that the above mentioned formulations will provide a sufficient basis for the deliberations of the Consultative Assembly. In accordance with PNDC law 252, the Committee will be available to the Consultative Assembly during its deliberations to explain the proposals, assist in the definitive drafting of the Constitution and provide all necessary technical assistance in dealing with all aspects of the Constitution.

The Committee wishes to express its gratitude to the Government for entrusting us with this responsibility. We are also grateful to the Consultants, Research Assistants and Secretaries and other Staff for their invaluable assistance.

DR. S.K.B. ASANTE - CHAIRMAN

OSAGYEFO OSEADEEYO DR. AGYEMAN-BADU (DORMAAHENE) - MEMBER

MRS JUSTICE ANNIE JIAGGE - "

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DR. CHARLES D. JEBUNI - "

DR. E.V.O. DANKWA - "

MRS. S. OFORI-BOATENG - MEMBER/SECRETARY
CHAPTER ONE

THE EXECUTIVE

PNDC Law 252, which defines the Committee's terms of reference, introduces a constitutional novelty in Ghana with respect to the structure of the Executive. The constitutional proposals are to provide for an Executive President, elected by universal adult suffrage, and a Prime Minister, who commands a majority in Parliament. This represents a departure from the classical Westminster system, which leaves effective executive power in the hands of the Prime Minister - as in the 1957 and 1969 Constitutions of Ghana - and the Presidential system, which locates full executive power in the President - as in the 1960 and 1979 Constitutions of Ghana.

2. The executive structure envisaged here may be appropriately classified as a 'split' executive. It entails a sharing of effective executive power between the President and the Prime Minister. Variants of a 'split' executive are to be found under the Constitutions of France and many Francophone countries in Africa, some Commonwealth countries, such as Zambia, Sri Lanka, Zimbabwe and Namibia, and other countries such as the Republic of Korea. The system demands a careful demarcation of the powers and responsibilities of the President, on the one hand, and the Prime Minister and the Council of Ministers on the other.

3. Such a division of power has not always proved easy to operate in practice. Where the President and the Prime Minister belong to different political parties, a situation the French have termed "cohabitation", or where the personalities of the incumbents of the one offices differ, with the more assertive one encroaching upon the powers of the other, the possibility of conflict exists. Much depends on the good sense and co-operation of the main organs of state.
4. It is to be noted, however, that several countries have introduced this system as a deliberate way of instituting appropriate constraints on executive excesses. For example, the Constitution of Namibia vests executive power in the President and the Cabinet; the President of Zimbabwe is obliged to act in accordance with the advice of the Cabinet, a constraint which is more characteristic of a ceremonial presidency than the office of Executive President; and under the Constitutions of France, Zimbabwe, Namibia and Sri Lanka, a concept of executive responsibility to Parliament is maintained despite the adoption of the institution of Executive Presidency. The merit of the system is that the checks and balances that have been carefully built into it are conducive to stability and democracy.

5. In approaching the task of defining the areas of responsibility for the main institutions of the Executive, the Committee paid particular attention to the following aspects:

1. The role of the President.

2. The location of the executive power of the State.

3. The responsibilities of the Prime Minister and his or her relationship with the President.

4. The status of the Council of Ministers and its relationship with the President.

5. The procedure for appointing the Prime Minister and other Ministers of State.


**THE ROLE OF THE PRESIDENT**

6. It is clear that the President will be a lot more than a constitutional "monarch" or a ceremonial president. The President will, after
all, be elected directly by the people as their Chief Executive. This supreme electoral mandate invests the President with a unique quality that must make him/her the repository of the executive power of the state. He/She is therefore unquestionably the head of the Government, and should exercise the supreme executive authority in the State. However, since the President will share his/her executive powers with a Prime Minister, it is crucial to appreciate the essential character of his or her role.

7. His or her role transcends the routine tasks of governance. He or she will be the Head of State and the Commander-in-Chief of the Armed Forces. He or she will, above all, be the symbol of the unity of the nation, the guarantor of the Constitution and the defender of the independence and territorial integrity of Ghana. In this capacity, he or she should be seen more as a truly national leader than as the head of a political party. Thus the concept of a "split" executive only becomes meaningful if it is appreciated that the President will focus on these lofty functions while the Prime Minister concentrates on the tasks of government business and administration.

The President will therefore be the Head of State and the Head of the Government and Commander-in-Chief of the Armed Forces.

As Head of State, the President should symbolize and preserve the unity of Ghana. He or she should uphold, protect and defend the Constitution as the Supreme Law of the Land. He or she should safeguard and guarantee the independence and territorial integrity of Ghana, and he or she should perform with dignity and leadership all acts, necessary, reasonable and incidental to the discharge of the executive functions of the Government, subject to the provisions of the Constitution and the laws of Ghana.

THE LOCATION OF EXECUTIVE POWER

8. As pointed out above, a President who is directly elected by the People as the Chief
Executive should logically exercise the supreme executive authority of the State. However, an explicit constitutional provision for the office of a Prime Minister and a Council of Ministers should result in the modification of the executive power of the President. In some countries, this is faithfully reflected in such formulations as: 'The Executive power of the State is vested in the President and the Cabinet'; or 'The Executive Power of the State is vested in the Executive Branch headed by the President'; or 'The Executive Power of the State shall be exercised by the President in accordance with the advice of the Cabinet'.

9. The Committee is impressed by the logic of these modifications of the traditional formula of vesting the executive power unequivocally in the President. However, it is of the view that the unique quality of the President's status, emanating from the direct support of the people, should be reflected in the vesting of the executive power of the state in the President, and that the President be constitutionally required, as a general rule, to exercise his or her executive power in consultation with the Council of Ministers. Such a provision would establish the practice of Presidential consultation with the Council of Ministers, though the President would, strictly speaking, not be legally bound by the Council's advice. The explicit mention of the Council of Ministers as playing a role with respect to the exercise of executive power would not only be a logical consequence of the concept of "split executive", but would also provide some restraint on the exercise of unfettered executive power, which has been a frequent source of autocracy and instability in many developing countries.

10. Accordingly, the Committee proposes that:

1. The Executive power of Ghana should be vested in the President and exercised in accordance with the provisions of the Constitution; and

2. Except as may be otherwise provided in
the Constitution or by law, the President should in the exercise of his or her functions be obliged to act in consultation with the Council of Ministers.

THE RESPONSIBILITIES OF THE PRIME MINISTER

11. The modalities for the appointment of the Prime Minister will be considered later. For the purposes of this section, it is enough to point out that a Prime Minister could be appointed by the President either from within or from outside Parliament. In either case, the Prime Minister would have to command a majority in Parliament. However, the Committee is of the view that a Prime Minister who is to share executive responsibilities with a directly elected President must himself or herself be subject to some electoral approval. He or she should therefore be a member of Parliament in addition to the requirement of Parliamentary approval. This would strengthen his or her standing both in his or her relationship with the President and in his or her position as the Deputy Chief Executive of the nation. A Prime Minister with a constituency both within and outside Parliament is not likely to be treated as an easily expendable appointee by the President.

12. As intimated above, subject to the direction of the President, the Prime Minister should be the principal executive functionary for supervising and coordinating the tasks of government business and administration. More specifically, the Committee recommends that:

Subject to the power of the President, the Prime Minister should be the head of Government administration and should supervise and co-ordinate the work of Ministers of State and of the Council of Ministers. He or she should be the leader of Government business in Parliament, and should generally assist the President in the execution of the functions of Government. He or she should preside over the meetings of the Council of Ministers in the absence
of the President.

COUNCIL OF MINISTERS

13. The Committee recommends that the Constitution should expressly provide for a Council of Ministers which should consist of the Prime Minister and such other Ministers as the President may appoint on the recommendation of the Prime Minister. As explained below, the Constitution should provide for the appointment of some Ministers from outside Parliament, to cater for considerations of special expertise, experience, and equitable regional and gender representation.

14. The President should preside over the meetings of the Council. In his or her absence the Prime Minister should preside. Subject to the power of the President, the Council of Ministers should be charged with the general direction and control of the Government. It should deliberate on, determine and conduct the policies of the State and generally assist the President in exercising the executive power of Ghana.

15. The dissolution of the Council of Ministers in the circumstances described below should not affect the continued tenure of the President, since his or her direct mandate from the people should not be prematurely terminated by any intermediate authority.

APPOINTMENT OF MINISTERS

16. The Committee recommends that the majority of Ministers of State be appointed from among members of Parliament. We recognise that this is a departure from the strict doctrine of separation of powers between the Executive and the Legislature as practised, for example, in the United States; but we are not convinced that a rigid adherence to this aspect of separation of powers is essential to a democratic order or the
rule of law.

17. The experience of the conduct of Parliamentary business under the 1979 Constitution demonstrated the disadvantages of excluding all ministers from membership of Parliament. This exclusion substantially impeded the implementation of legislative programmes envisaged under the Constitution. The Committee is of the view that what is crucial in the doctrine of separation of powers for the purposes of the rule of law is the unqualified independence of the Judiciary from the Executive or the Legislature.

18. On the other hand, there is no reason why we should adopt the practice that membership of the Cabinet or ministerial appointment must be the exclusive preserve of members of Parliament. The public interest may demand the appointment of non-members of Parliament on grounds of expertise, experience or regional and gender balance. Ministers so appointed should, however, be subject to the approval of Parliament. They should also participate fully in the proceedings of Parliament, with all the privileges but without a right to vote or to hold parliamentary office.

19. The foregoing recommendations may be summed up as follows:

a. The President should appoint from among members of Parliament, Ministers or Deputy Ministers of State upon the recommendation of the Prime Minister.

b. Notwithstanding the foregoing, the President may appoint a number of Ministers of State, not exceeding 40% of the total number of Ministers, from outside of Parliament, upon the recommendation of the Prime Minister and subject to the approval of Parliament.

c. The said Ministers should participate fully in the proceedings of Parliament and be accorded all the privileges of Members of Parliament, except the right to vote or hold
parliamentary office.

d. The President may revoke the appointment of the Prime Minister or any other Minister or Deputy Minister of State.

APPOINTMENT OF THE PRIME MINISTER

20. The Committee recognises that there could be several ways of appointing a Prime Minister. It has already urged that the Prime Minister be appointed from the membership of Parliament. This section, however, discusses two modalities of the appointment.

1. Where the Prime Minister is appointed from Parliament:

   a. The President should be obliged to appoint as Prime Minister the leader of the political party that commands a numerical majority in Parliament, as was provided for in the 1969 Constitution.

   b. In the absence of a party with such a numerical majority in Parliament, the President should nominate for appointment as Prime Minister a member of Parliament who appears to him or her to command the support of the majority in Parliament. The nominee will be subject to the approval of Parliament.

   c. In the event that the President's nominee is rejected by Parliament, the President should submit another candidate for Parliamentary approval.

2. Where the Prime Minister is to be appointed from outside of Parliament:

   The President should nominate a person who would command the support and confidence of Parliament. A person so nominated by the President must be endorsed by Parliament by a majority vote.

   In the event of the rejection of such a nominee by Parliament, the President should nominate another person who must secure the
The Committee strongly urges that the Constitution should incorporate some concept of executive responsibility to Parliament. We are convinced that any concept that underscores the ultimate responsibility of executive functionaries to the people's representatives and serves as a constraint on executive excesses would be conducive to good governance and the rule of law. The experience of African countries, including our own, clearly demonstrates the need for appropriate constraints on executive power. The constitutions of several countries that have Executive Presidents have unequivocally enunciated the principle of executive responsibility, either in explicit terms or by way of concrete devices, that provides for Parliamentary oversight over the Executive. Thus, Articles 42 and 43 of the Sri Lanka Constitution make clear that the President and the Cabinet of Ministers are responsible to Parliament for the due exercise, performance and discharge of their responsibilities and functions under the Constitution. The Namibian Constitution recognises the principle of executive responsibility to Parliament and ordains that the Cabinet is collectively responsible to Parliament. Under the French Constitution, the concept of executive responsibility to Parliament is underscored by various provisions requiring the Government to present its programmes and policies to Parliament, which is invested with the power to reject such programmes and policies, a power that entails the right to cause the resignation of the Government. It is to be noted, however, that in the above countries, parliamentary oversight over the Executive does not involve the power to unseat the President through a vote of no confidence or a rejection of Government policy. In most countries, the dissolution of a Cabinet does not entail the termination of the President's tenure. Zimbabwe's Constitution, however, takes the principle of executive responsibility to Parliament further by providing
that a parliamentary vote of no confidence in the Government leaves the President with one of these options:

He may (1) dissolve Parliament; or

(2) dismiss the Vice-President and the Cabinet, or

(3) resign himself.

22. In the light of the above considerations, the Committee recommends that the principle of executive responsibility to Parliament be elaborated in the Constitution as follows:

i. All Ministers should be accountable individually for the administration of their own ministries, and collectively for the administration of the work of the Council of Ministers both to the President and to Parliament.

ii. The Council of Ministers should be responsible to Parliament for the due exercise, performance and discharge of their powers, duties and functions under the Constitution.

iii. The President may address Parliament at any time on the State of the Nation.

iv. The Prime Minister, as leader of Government business in Parliament, should present the Government's programmes and policies to Parliament.

v. In the event that Parliament considers the Government's statement of policy or programme or official budget unacceptable, it should give notice of the intention to reject it, and if the Government fails to revise the said programme, policy or official budget to the satisfaction of Parliament, Parliament may proceed to reject it formally. Such rejection will not lead to the resignation of the Council of
Ministers.

vi. If Parliament passes a vote of no confidence in the Government, the President would be obliged to dismiss the Prime Minister and other Ministers, dissolve the Council of Ministers and appoint a new Council of Ministers and other Ministers of State.

EFFECT OF PARLIAMENTARY DISPLEASURE ON TENURE OF THE EXECUTIVE

23. The Committee is of the view that the principle of executive responsibility to Parliament should not be pressed to the point of institutionalising instability. Accordingly, while ample provision should be made for Parliament to review the programmes and policies of the Executive and to cause them to be revised, Government should not be unseated by every expression of Parliamentary displeasure. Thus, a rejection of Government policy or programme by Parliament should not by itself result in the resignation of the Government. The same applies to the adoption of a vote of censure against the Government. The only event which would result in the resignation of the Government is the adoption of a vote of no confidence in the Government.

THE POSSIBILITY OF APPOINTING A VICE-PRESIDENT

24. The Committee considered the virtues of appointing a Vice-President in addition to the Prime Minister. A Vice-President could assist the President in discharging his ceremonial responsibilities and serve as an alter ego of the President in his capacity as Head of State and symbol of national unity. Furthermore, a Vice Presidential slot would provide an opportunity for securing regional balance, if this were considered politically desirable. While the Committee was impressed by the force of these arguments, it was apprehensive of creating a position that could possibly conflict with the role of the Prime Minister, particularly in such
areas as presiding over the meetings of the Council of Ministers in the President's absence, or indeed serving as the effective deputy Chief Executive of the State. The prospect of such a conflict dissuaded the Committee from proposing such a position.

**SPECIAL PRESIDENTIAL POWERS**

25. The President should have the power to declare a state of emergency in times of war, national disaster or other physical calamity in any part of the country that threatens the public order or the security of the State. These emergency powers are set forth in the Constitutions of 1969 and 1979, and the Committee endorses them as a necessary part of the proposed Constitution.

26. In addition, the Committee recommends that the President be given special powers to take all necessary action when the institutions of the State or the proper functioning of the Constitution or the territorial integrity and independence of the nation are threatened in some fundamental way. In these circumstances the President should be invested with full powers to take immediate steps to restore the constitutional order and inform the nation about the measures taken.

27. The exercise of these extra-ordinary powers should be contingent on the following conditions:

1. The President should consult the Prime Minister, Council of State, the Speaker, the Majority and Minority leaders in Parliament, the Chief of Defence Staff and the National Security Council prior to invoking these powers;

2. The right of Parliament to sit would not be affected by the exercise of these powers;
3. Parliament would meet within 72 hours of the invocation of these special powers to confirm or terminate the exercise of these powers.

OFFICE OF THE PRESIDENT

28. Having dealt with the salient features of the Executive Structure, the Committee turned its attention to various aspects of the office of the President, in particular:

1. The election of the President;
2. The term of his or her office;
3. Perquisites, precedence and immunities;
4. Presidential prerogatives for example, the prerogative of mercy, and the right to receive and accredit ambassadors and to conduct foreign relations on behalf of the State;
5. Presidential appointments; and
6. Removal of the President.

In doing so, the Committee relied substantially on the corresponding provisions of the 1979 Constitution (Chapter Eight), making appropriate modifications where necessary. A summary of our recommendations is as follows:

QUALIFICATIONS OF THE PRESIDENT

29. The Committee endorsed the provisions of Article 49 of the 1979 Constitution, namely, a person who:

1. is a citizen of Ghana by birth;
2. has attained the age of 40; and
3. is otherwise qualified to be elected as a member of Parliament.
30. However, the Committee saw no justification in retaining the special definition of a citizen under Article 49 (a) of the 1979 Constitution, namely, "a citizen of Ghana by birth by reason of both his parents being citizens of Ghana by birth". The Committee is of the view that a person who is a Ghanaian by birth should suffer no disability whatsoever by reason only of the fact that one of his parents was not a Ghanaian citizen by birth. Accordingly, the amended citizenship qualification for purposes of Presidential elections should read as follows:

"A person who is a citizen of Ghana by birth and does not in any way owe allegiance to any other country".

This restores the citizenship requirement under the 1969 Constitution (Article 40 (a)).

ELECTION OF THE PRESIDENT

31. The Committee endorsed the procedures prescribed in Article 50 of the 1979 Constitution and the consequential regulations made under the Constitution, subject to the removal of all references to the Vice President, and any amendment that may ensue from the reform of the electoral process.

THE TERM OF THE PRESIDENT

32. The Committee recommends the retention of the limitation of the Presidential tenure to two terms. Each term should be four years.

PERQUISITES

33. All the provisions relating to the perquisites of the President — salaries, allowances, pension, and retiring benefits — as set forth in the 1979 Constitution were endorsed, subject to one clarification. The Committee recommends that the pension and all the benefits payable to the President on his retirement from
office (Article 44(4)) should also be available to him on resigning his office. This would serve as an inducement for the President to resign when it is in the public interest for him or her to do so.

IMMUNITIES

34. The Presidential immunity from legal proceedings provided in Article 44 clauses 9-11 of the 1979 Constitution of Ghana is meant to preserve the dignity of the office of the President, but should not preclude proceedings against the state in appropriate cases. The proper procedure in such cases is to institute proceedings against the Attorney-General, as the official representative of the Republic.

ORDER OF PRECEDENCE

35. In the light of the Executive Structure, the Committee recommends that the order of precedence after the President will be the Prime Minister, the Speaker, Chief Justice, and the Chairman of the Council of State.

36. Furthermore, the entire chapter of the 1979 Constitution of Ghana on the President is to be amended to remove all references to the Vice-President.

THE PROHIBITION OF OTHER OFFICE OF PROFIT

37. The prohibition of the holding of any office of profit by the President on retirement as well as during tenure was endorsed, (Article 56) subject to the minor amendment that the Council of State, and not Parliament, should be the appropriate authority for granting the exemption from this provision upon the retirement.

PRESIDENTIAL PREROGATIVES

38. The Committee recommends that the Presidential prerogative of mercy ((Article 59 of
the 1979 Constitution) be retained, as should the President's right to receive and accredit diplomatic envoys and to execute treaties, agreements and conventions in the name of Ghana, subject to ratification by Parliament (Article 61).

39. The special procedures stipulated in Article 58 for the determination of the perquisites to certain specified officials should be retained with the Prime Minister included in Article 58(2).

PROFESSIONAL ORGANISATIONS

40. The Committee is of the view that since there is legislation governing the regulation of professional bodies, it is unnecessary to restate an elaborate constitutional provision on the matter beyond a simple affirmation that Parliament may enact appropriate laws to regulate professional, trade and business organisations.
41. The Committee considers that the sensitive and specialized functions of this Council warrant its retention as a separate entity from the Council of State. The Committee further proposes that the Council's membership be enlarged to accommodate a higher representation of the senior officers of the Security forces. Accordingly, the Committee recommends the following composition of the Council:

(a) The Minister for Foreign Affairs
(b) The Minister for Defence
(c) The Minister for Interior
(d) The Minister for Finance
(e) The Minister for Justice and Attorney-General
(f) The Minister Responsible for National Security
(g) The Chief of Defence Staff
(h) The Army Commander
(i) The Navy Commander
(j) The Air Force Commander
(k) The Most Senior Warrant Officer in the Armed Forces
(l) The IGP and two of his deputies, one of whom shall be the Commissioner of the Criminal Investigation Department
(m) The Director of External Intelligence
(n) The Director of Internal Intelligence
(o) The Director of Military Intelligence

(p) Three other persons appointed by the President, at least one of whom shall be a Woman

42. The President should preside over the meetings of the Council, and in his or her absence, the Prime Minister should. The Committee further proposes that the Council's functions set forth in Article 71 of the 1979 be prefaced with the following chapeau:

"To consider and take appropriate measures to safeguard the internal and external security of the State".
CHAPTER TWO

THE COUNCIL OF STATE

43. Recent constitutional arrangements in Ghana have recognised the validity of the case for a non-partisan advisory body, comprising eminent personalities, which would counsel and aid the principal organs of state in the discharge of their constitutional functions. This institution is analogous to the Council of Elders in our traditional political systems. However, the full potential of such a body is yet to be realized.

44. Under the 1969 Constitution, a Council of State was established "to aid and counsel" the President. There was no further elaboration of this function. The 1979 Constitution went further in entrusting the Council with specific functions, namely:

1. to consider and advise on bills;

2. to consider and advise the President or any other authority on certain appointments, where such advice was mandated by the Constitution or any other law; and

3. to make recommendations, upon request or at its own initiative, on any matter being considered by the President, Parliament, Minister or any other authority.

45. However, except for certain categories of appointments, any advice or recommendations furnished by the Council was not binding. On the whole, it can hardly be disputed that the experience of the Constitutions of the Second and Third Republics was that the Council of State was relegated to a perfunctory role, and, accordingly, proved ineffectual.

46. Yet the need for such an institution persists for several reasons.

1. Although care should be taken to avoid imposing undue limitations on effective
sort of "Privy Council", national and non-partisan in character, that will advise and assist the President in discharging the extensive executive powers conferred on him or her. It may be argued that some of the areas to be assigned to the Council of State fall within the normal purview of Cabinet advice. However, there is no assurance that the Cabinet will not be dominated by purely partisan considerations in its advisory functions.

In view of the President's role as the guarantor of the Constitution, the territorial integrity and general well-being of the nation, as well as being the symbol of unity, he or she should have the benefit of the advice of a truly national body.

2. Nearly all our constitutional experiments have experienced the convulsions of major constitutional confrontations arising from constitutional litigation in the Courts challenging some governmental act or another. But there is no reason why some of these confrontations, particularly those involving constitutional disputes between organs of state, could not be avoided by having recourse to an appropriate committee of the Council of State. Taking timely action to diffuse a potential public confrontation between major state organs, or to resolve major constitutional disputes that threaten the very basis of the political order, would be in consonance with our traditional dispute settlement traditions. It is not altogether different from the processes established in some democratic countries, such as France. In that country, the Constitutional Council has formal jurisdiction, for example:

a. to determine the constitutional validity of a
bill before it is passed by the legislature;

b. to ensure the regularity of the election of the President;

c. to rule on the regularity of elections of deputies and senators.

The foregoing, is without prejudice to the jurisdiction of the ordinary courts over litigation relating to the enforcement of the Constitutional rights of individuals. In Ghana an appropriate committee of the Council of State, comprising eminent jurists and other personalities, could be established to play a similar role.

3. With the inauguration of a split executive, involving the President and the Prime Minister, the possibility of conflict between the incumbents of the two offices cannot be dismissed altogether; particularly if they should belong to different political parties. A Council of State could therefore serve as a buffer to ensure co-operation between them in times of conflict or crisis.

4. Finally, the Council of State could serve as a unifying body, catering for the interests of all regions, all ethnic groupings and the civil and military sections of the population in Ghana. The fear of minorities that they would be swamped by a dominant majority and the concerns of particular regions and areas about being marginalized in the national development process could all be addressed by such a Council, appropriately composed to show sensitivity to all interests.

The public interest would also be reinforced by stipulating that appointments to certain national
institutions and offices like the Media Commission, Chief Justice, Public Services Commission, etc. would only be made by the President in accordance with the advice of the Council of State.

47. In the light of the above consideration, the Committee recommends the adoption of and an expanded role for the Council of State as follows:

1. There should be a Council of State which is national and non-partisan in character and consists of eminent personalities selected on the basis of experience, expertise, competence and sensitivity to national unity.

2. In addition to its functions as a plenary body, the Council of State should have committees entrusted with specialist functions. One of these would be the Judicial Committee, described below.

3. The Council of State should generally aid and counsel the principal organs of state in the discharge of their constitutional functions to ensure:

   (i) responsible and democratic governance and fidelity to the basic tenets of constitutionalism;

   (ii) effective government;

   (iii) stability; and

   (iv) national harmony and unity.

4. More particularly, the Council of State should have the following functions:

   (a) To furnish advice, to the President;

   (i) on the exercise of special Presidential prerogatives; to wit, the dissolution of Parliament and the declaration of a state of emergency or state of siege
necessitating extraordinary executive action to avoid or alleviate a serious menace to the nation;

(ii) on certain key appointments, namely,

The Chief Justice and the appointments listed in Article 57 of the 1979 Constitution;

(b) To advise on the grant of pardon, remission or reduction of sentence;

(c) To advise on and suggest amendments to bills before Parliament. Such bills should be referred to the Council by the President or the Speaker;

(d) To advise on equitable and balanced development of all parts of the country;

(e) To advise on matters that may promote or foster stability and national unity;

(f) To collaborate with the National Security Council in matters relating to the security of the nation;

(g) To make recommendations, upon request or at its own initiative, on any matter being considered by the President, Parliament, Minister or any other authority; and

(h) To encourage and promote adherence to the Directive Principles of State Policy.

COMPOSITION OF THE COUNCIL OF STATE

48. The Plenary will have a membership of about 40 of which seven will be members of the Judicial Committee.

49. PLENARY OR GENERAL MEMBERSHIP

1. All Former Presidents or Heads of State and
2. The Chief Justice;

3. The Prime Minister;

4. The Leaders of All Political Parties in Parliament;

5. General Officer Commanding the Ghana Armed Forces;

6. The Heads of each branch of the Armed Forces;

7. Not more than three representatives of None Commission Officers of the Security Services;

8. The Inspector General of Police;

9. The Governor of the Bank of Ghana;

10. One representative from each region elected by an Electoral College of the District Assemblies in the regions;

11. A representative of each Regional House of Chiefs;

12. Six distinguished personalities appointed by the President;

13. Six distinguished personalities who may not be members of Parliament nominated by Parliament;

14. President of the National House of Chiefs;

15. The Auditor-General;

16. The Attorney-General;

17. The Secretary-General of the Trades Union Congress;

18. The Council should elect its Chairman.
JUDICIAL COMMITTEE OF THE COUNCIL OF STATE

50. There should be a Judicial Committee of the Council of State which should have jurisdiction to:

(i) determine the constitutionality of a bill or part thereof prior to its adoption by Parliament;

(ii) determine the constitutionality of any proposed measure of the Executive;

(iii) determine the constitutionality of proposed regulations;

(iv) determine the validity of the election of a Speaker or a Member of Parliament;

(v) resolve constitutional disputes between the main organs and institutions of the State through mediation;

(vi) determine the validity of the revocation of the appointments referred to in paragraph 2; and

(vi) review the findings of Committees of Enquiry;

In making appointments to the Council, consideration should be given to equitable gender representation.

51. COMPOSITION OF THE JUDICIAL COMMITTEE OF THE COUNCIL OF STATE

(a) Five eminent jurists who are qualified to be Supreme Court Judges, irrespective of age;

(b) For eminent personalities including an expert in government or political science; an expert in traditional institutions or anthropology;
(c) Five members including the Chairman should be appointed by the President of the Republic;

(d) Three members should be elected by Parliament, and one member nominated by the Judicial Council. The Chairman should be appointed by the President of the Republic;

52. THE PROCEDURE FOR REFERRING BILLS WITH CONSTITUTIONAL QUESTIONS TO THE JUDICIAL COMMITTEE

(i) The President or the Speaker or the Prime Minister or the Minority leader in Parliament or any 20 Members of Parliament may refer a Bill to the Judicial Committee for ruling on its constitutionality.

(ii) Upon such a referral, the Chairman of the Judicial Committee should formally advise the Speaker that the Committee is seised of the Bill.

(iii) Thereafter, all proceedings relating to the Bill in parliament should be suspended until the Judicial Committee has delivered its final pronouncement on the constitutionality of the Bill.

(iv) A Bill which has been declared unconstitutional should no longer be processed in Parliament. However, where only part of the Bill is declared unconstitutional, the rest of the Bill may be passed and the offending part can also be revised.

(v) In the adjudication of the constitutionality of a Bill, interested parties may be represented by counsel and the Attorney-General should have the right of audience.
The ruling of the Judicial Committee should be final and binding on all authorities.

**BILLS WHICH DO NOT RAISE CONSTITUTIONAL QUESTIONS**

53. These should be referred to the plenary of the Council of State for advice, as provided for in the 1979 Constitution. The procedure in relation to this would be as set forth in the 1979 Constitution.

Disputes as well as other matters falling within the jurisdiction of the Judicial Committee should be referred to the Judicial Committee by any interested party.
CHAPTER THREE
THE LEGISLATURE

54. In considering the issues relating to the Legislature, the Committee paid particular attention to some fundamental questions raised in the NCD Report as to the character of the Legislature and the qualifications for membership of Parliament. Subject to this, the discussion revolved around the provisions of the 1969 and 1979 Constitutions on the Legislature.

THE CHARACTER OF THE LEGISLATURE

55. The Committee discussed the perennial issue as to whether the Legislature should be bicameral or unicameral. It studied the relevant part of the Report of the Constitutional Commission in 1968 (The Akufo-Addo report) and endorsed the conclusion of that report that a unicameral Legislature be retained. A major factor that weighed with the Committee was that a strengthened Council of State would play, substantially, the same role as a second chamber.

THE CONSTITUENT PARTS OF PARLIAMENT

56. Under the 1969 Constitution, Parliament consisted of the President and the National Assembly. This position changed with the inauguration of the Presidential system under the 1979 Constitution. The Legislature then did not include the President in deference to the principle of separation of powers. The Committee proposes that the President should not be designated as constituent part of Parliament, despite the constitutional provision for a Prime Minister. The formal assent of the President should, however, be an essential prerequisite to the promulgation of Acts of Parliament.
SIZE OF PARLIAMENT

57. The Committee has been advised by the NCD that the number of parliamentary constituencies has not yet been determined.

58. Elections to Parliament should be based on universal adult suffrage. The Committee does not endorse the suggestion that a number of parliamentary seats be reserved for members of the District Assemblies. All members of Parliament should be elected.

LEGISLATIVE POWER OF GHANA

59. The legislative power of the State should be vested in Parliament.

QUALIFICATIONS AND DISQUALIFICATION FOR MEMBERSHIP OF PARLIAMENT

60. The Committee considered the provisions of Article 76 of the 1979 Constitution in respect of the above, and generally endorsed them subject to the following:

THE RESIDENTIAL REQUIREMENT

61. The Committee agrees with the suggestion of the NCD Report that a prospective member of Parliament should be ordinarily resident in the constituency he or she seeks to represent, and that such a requirement should be liberally construed to include a person who actively identifies himself or herself with the constituency area by frequent visits or involvement in projects, notwithstanding the fact that he or she is physically resident in another area.

62. The requirement of proficiency in the English language. The Committee wholeheartedly agrees with the NCD Report that this qualification, which
effectively debars the majority of Ghanaians from membership of Parliament, has no place in the Constitution of modern Ghana.

63. The Committee, however, feels that the modalities for the introduction of Ghanaian languages as the media for Parliamentary business should not be settled until the Consultative Assembly has had the benefit of experience in this regard in the next few months.

64. The Committee recommends that the Consultative Assembly carefully consider the following factors in making their decision in this matter:

(i) The criteria for the selection of the Ghanaian languages to be formally designated for purposes of Parliamentary business, and the implications of such selection;

(ii) Whether there would be simultaneous translation of Parliamentary proceedings into all the designated languages and possibly other Ghanaian languages not so designated;

(iii) Whether parliamentary papers would be translated into all the Ghanaian languages; and

(iv) The need to train interpreters and translators in the use of terms for Parliamentary business and the standardization of these terms.

BANKRUPTCY

65. The Committee wondered whether the disqualification on grounds of bankruptcy was a relic of the colonial era or a prescription for financial discipline, having regard to the fact that there does not appear to be any effective law in Ghana for declaring a person bankrupt or discharging him or her from bankruptcy. In the
absence of such a law, the relevance of the disqualification was not evident to the Committee.

66. It is arguable that the disqualification was meant to promote the virtues of financial prudence and discipline. Against this is the contention that bankruptcy proceedings in many countries these days are considered as a routine part of the reorganisation of business—a process that does not necessarily carry any stigma.

**DISCHARGE OF TAX OBLIGATIONS**

67. The Committee considers that a more meaningful criterion of a citizen’s sense of responsibility is the discharge of his or her tax obligations. Accordingly, the Committee proposes that membership of Parliament should not be open to a person who is delinquent in paying his or her tax.

**ADVERSE FINDINGS OF COMMITTEES AND COMMISSIONS OF ENQUIRY**

68. While the Committee endorsed the disqualification of a public officer who has been found by a committee or commission of enquiry to have "acquired assets unlawfully, or defrauded the State or misused or abused his office, or wilfully acted in a manner prejudicial to the State," the Committee saw no reason why the sanction should not be equally applicable to transgressors who are not public officers. Any person who is guilty of the above acts should be unfit to hold public office or enter Parliament.

69. The Committee also considered the general issue as to whether the adverse findings of any committee or commission of enquiry should impose a disability irrespective of the pronouncement of a Government white paper on such findings. According to paragraphs (d) and (e) of Article 76 of the 1979 Constitution, the only exemption from this consequence is the setting aside of such
findings on appeal or judicial review. The Committee felt that a distinction has to be drawn between the findings of a judicial or quasi-judicial commission of enquiry and the findings of a less formal fact-finding enquiry. In the case of the former, the findings should result in a disqualification unless a judicial body has set them aside. With respect to the latter, the findings should not attract the disqualification stipulated in Article 76, unless a Government White Paper has confirmed such findings.

DISQUALIFICATION OF CERTAIN CATEGORIES OF PUBLIC OFFICERS

70. The Committee agrees that, as a general principle, members of the public services such as the Police Service, the Civil Service and the Armed Forces should NOT be disqualified from membership of Parliament. The Committee saw no reason why the Constitution should explicitly deprive Parliament of the expertise and experience of such officials. The Committee, however, recognised the practical difficulties that would ensue from the participation of such officers in parliamentary proceedings. Among these, as stated in the NCD Report, are:

(a) "the likelihood that a Civil Servant will spend an inordinately long time away from his desk and conceivably find himself taking a divergent position from his Minister or Head of Department;

(b) a junior military officer may well contradict the policy of the Ministry of Defence in Parliament, thereby upsetting all canons of military discipline." (p.35)

71. In view of the foregoing, the Committee recommends that members of the public services who seek election to Parliament should take leave of absence from their respective organisations for the duration of the election campaign and parliamentary
service. Furthermore, such officers should be guaranteed a right of re-entry into their respective organisations. However, the conditions for the grant of such leave of absence and the re-entry of the officials should be determined by their respective organisations.

DISQUALIFICATION ON GROUNDS OF CONTRACTUAL RELATIONSHIP WITH GOVERNMENT

The Committee is unable to appreciate the justification for the disqualification of a person who has not disclosed that he or she "is a party to, or is a partner in a firm which is a party to, a contract with the Government of Ghana for or on account of the public service" in (Article 76 2 (i)). This provision appears to assume impropriety from the mere fact of having concluded a contract for public service, which is untenable. The Committee accordingly recommends that this disqualification be deleted.

SPEAKER, DEPUTY SPEAKER, TENURE OF OFFICE OF MEMBERS AND EMOLUMENTS OF MEMBERS (ARTICLES 77, 78, 79 AND 80 OF THE 1979 CONSTITUTION)

73. The Committee recommends that the above provisions should be retained. This means that there should be no constitutional limitation of the tenure of Members of Parliament beyond the expressed wishes of the electorate.

74. The Committee recommends that Article 79(i) which imposes the sanction of removal where an MP leaves his or her original party to join another should not apply in the case of a merger of political parties or the formation of a coalition government. This restores the qualification stipulated in the 1969 Constitution (Article 75(3)).

75. In consonance with our recommendations regarding the role of the Judicial Committee of the Council of State, we recommend that the jurisdiction to determine the validity of the election of a Speaker or a member of Parliament
should be vested in the Judicial Committee. In our opinion, questions as to the validity of the election of such a high official as the Speaker, which is a precondition for the commencement of parliamentary business, should not be left to the vagaries of the normal judicial process, but be expeditiously resolved in a non-confrontational manner by the Judicial Committee. The same argument applies, perhaps to a lesser degree, to the determination of the validity of the election of a member of Parliament, but it would be expedient to vest jurisdiction in respect of both elections in the same authority.

SUMMONING AND DISSOLUTION OF PARLIAMENT

76. A critical issue is whether an Executive President should have the power to prorogue and dissolve Parliament, and if so, in what circumstances. Under the 1969 Constitution, which was based on the Westminster model, the President, who was not an Executive President, had the power to summon, prorogue and dissolve the National Assembly as follows:

Article 87(1)

"Each session of Parliament shall be held at such place within Ghana and shall commence at such time as the President may, by constitutional instrument, appoint".

Article 88

1. "Save as otherwise provided in this Constitution, the President may, acting in accordance with the advice of the Prime Minister, by constitutional instrument, at any time prorogue or dissolve the National Assembly".

2. "Subject to the provisions of clause (3) of this article, the National Assembly, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved".
3. These powers were excluded from the 1979 Constitution on the ground that the conferment of such powers on the Executive President would violate the principle of separation of powers. The rationale is spelt out in the 1978 Constitutional Commission's report as follows:

Paragraph 175

"We recommend that the term of Parliament shall be four years. At the end of this period fresh elections should be held and a new Parliament elected for a similar term. Parliament being constitutionally independent of the Executive, it would be improper and indeed subversive of that independence if the President were empowered to dissolve Parliament for whatever reason. This would place Members of Parliament in a position in which their actions and decisions will naturally have to take account of the fact that the President's power of prorogation hangs, like the sword of Damocles, over their heads. We, accordingly, propose that the term of Parliament shall be fixed and unalterable. This means that a President will be obliged to work with Parliament even when he finds it difficult or irksome to do so; just as Parliament will have to live with a President with whom it is unable to agree."

Accordingly, the pertinent provisions of the 1979 Constitution on the summoning and dissolution of Parliament were as follows:

Article 93(1)

"A session of Parliament shall be held at such place within Ghana and shall commence at such time as the Speaker may, by constitutional instrument, appoint"

Article 94(1)

"Subject to the provisions of clause (2) of this article, Parliament shall continue for five years from the date of its first sitting and shall then stand dissolved"
The proviso in clause 2 had to do with the extension of the life of Parliament in times of war. Thus, the President could not dissolve Parliament prior to the expiration of its designated term of five years.

OTHER CONSTITUTIONS

77. A comparative analysis of the pertinent provisions of the constitutions of other countries would be instructive.

INDIA

78. Although India's Constitution formally confers significant powers on the President, it is a well established convention that his or her status is comparable to that of a constitutional monarch. His or her power to dissolve Parliament is intertwined with his or her constitutional prerogative to appoint a Prime Minister who commands a majority in the Lower House and is likely to form a stable government.

79. Ordinarily, the President is required by convention to act on the advice of the Prime Minister in dissolving the House. If he or she dissolves Parliament against such advice, he or she risks being impeached by the new Parliament if it is dominated by the dominant party in the previous parliament. A new situation arises, however, if there is no dominant party in the Lower House. If government is only possible by a coalition, the President is then forced to choose between changing the Prime Minister or dissolving the House. If he or she is satisfied that he or she cannot appoint a Prime Minister who can command a majority in the House and provide a stable government, then he or she may dissolve the House in his or her own discretion.

SRI LANKA

80. The Sri Lanka Constitution empowers the President (an Executive President) to summon,
prorogue and dissolve Parliament by proclamation from time to time, subject to certain conditions. For example:
The President shall not dissolve Parliament until one year from the last general election. He is also precluded from dissolving Parliament on the rejection of the Statement of Government Policy at the commencement of the first session of Parliament after General Elections or when proceedings have been initiated for the removal of the President from office.

81. It is to be noted, however, that Sri Lanka's system of Executive President combines certain features of the Westminster parliamentary system. Thus, the President, although an Executive President, is responsible to Parliament for the due exercise of his or her functions and powers under the Constitution. The Prime Minister is appointed from members of Parliament, as is the Cabinet. The President is the Head of State, Head of Government and Head of the Executive and presides over the meetings of the Cabinet. The Cabinet is collectively responsible and answerable to Parliament. However, the President continues to hold office upon the dissolution of the Cabinet.

NAMIBIA
82. Article 57 of the Constitution of Namibia (which has an Executive President and a Prime Minister appointed from Parliament) provides as follows:
1. "The National Assembly may be dissolved by the President on the advice of the Cabinet if the Government is unable to govern effectively".
2. "Should the National Assembly be dissolved a national election for a new National Assembly and a new President shall take place within a period of 90 days from the date of such dissolution".
The President has power to determine the times for the holding of special sessions of the National Assembly, and to prorogue such sessions.

83. The Constitution underscores the responsibility of the Executive branch of Government to the Legislative branch by requiring the President and the Cabinet to attend Parliament each year during the consideration of the Budget. The President is to report on the state of the nation and on future policies of the Government, as well as the policies of the previous year, and be available to respond to questions.

84. The Ministers are accountable individually for the administration of their own ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament.

85. The President is obliged to terminate the appointment of any member of the Cabinet if the National Assembly, by a majority of all its members, resolves that it has no confidence in that member.

FRANCE

86. The French Constitution has an Executive President and a Prime Minister appointed from outside Parliament, who nevertheless must command the support of Parliament. The President may, after consultation with the Prime Minister and Presidents of the Assemblies (Upper and Lower Houses), pronounce the dissolution of the National Assembly. A General Election takes place not less than twenty days and not more than forty days after the dissolution. No further dissolution may take place within a year following this election.

87. The Constitution further provides that the Government (ie Executive, headed by the Prime Minister) is responsible to Parliament as follows:
The Prime Minister has to secure the support of the National Assembly for his programme or general statement of policy. If the National Assembly adopts a motion of censure against the Government or rejects the Government's programme or general policy statement, the Prime Minister must tender the Government's resignation to the President of the Republic.

ZIMBABWE

88. Under Zimbabwe's original Constitution of 1980, which did not provide for an Executive President, the President could dissolve Parliament prematurely as follows:

If the office of the Prime Minister is vacant and the President, acting in his own discretion, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who is able to command the support of a majority of the members of the House of Assembly, the President acting in his own discretion, may dissolve Parliament.

89. Under the amended Constitution of Zimbabwe, which provides for an Executive President, the President may dissolve Parliament as one of the options open to him or her when Parliament passes a vote of no confidence in the Executive. The other options are that he or she may remove all Ministers and Deputy Ministers, or that he or she may resign from office. It is to be noted that the Vice-President and Ministers are Members of the Legislature.

RECOMMENDATIONS

90. Since the present proposals envisage an Executive President and a Prime Minister who must enjoy the support of Parliament, the constitutional conventions that require the
President to act on the advice of the Prime Minister would not apply. The President should be equipped with powers that would assure him or her sufficient flexibility in inaugurating a government that has reasonable prospects of parliamentary support and stability. The President may therefore be confronted with a situation which demands the dissolution of Parliament as the only viable way of securing the requisite parliamentary basis for a stable government. It is acknowledged that such a power should be exercised sparingly and in narrowly circumscribed circumstances.

91. The Committee therefore proposes that the President be invested with the power to dissolve Parliament, in consultation with the Council of State, in the following circumstances:

i) When the President is satisfied that the Prime Minister has lost the support of the majority of Parliament, or the office of the Prime Minister is vacant, and the President is satisfied that there is no prospect of his or her being able within a reasonable time to appoint to that office a person who is able to command the support of a majority of Parliament, the President may dissolve Parliament in his or her own discretion and call for a general election within a short period. (say 40 days).

ii) When the Prime Minister advises the President to dissolve Parliament on the ground that Government is unable to govern effectively.

TERM OF PARLIAMENT

92. Subject to the foregoing, we propose that the term of Parliament should be five years.
CHAPTER FOUR
DIRECTIVE PRINCIPLES OF STATE POLICY

GENERAL CONSIDERATIONS

94. The NCD report speaks of the need to include in the new Constitution "core principles around which national political, social and economic life will revolve." This is precisely what the Directive Principles of State Policy seeks to do. Against the background of the achievements and failings of our post-independence experience, and our aspirations for the future as a people, the Principles attempt to set the stage for the enunciation of political, civil, economic and social rights of our people. They may thus be regarded as spelling out in broad strokes the spirit or conscience of the constitution. The Committee used Chapter Four of the 1979 Constitution as a basis for its deliberations on this subject.

95. By tradition Directive Principles are not justiciable; even so, there are at least two good reasons for including them in a constitution. First, Directive Principles enunciate a set of fundamental objectives which a people expect all bodies and persons that make or execute public policy to strive to achieve. In the present proposals, one novelty is the explicit inclusion of political parties among the bodies expected to observe the principles. The reason for this is that political parties significantly influence government policy. A second justification for including Directive Principles in a constitution is that, taken together, they constitute, in the long run, a sort of barometer by which the people could measure the performance of their government. In effect they provide goals for legislative programmes and a guide for judicial interpretation.

96. On the basis of the foregoing considerations, the Committee proposes as follows: The Directive Principles of State Policy are for the guidance of Parliament, the President, the Council of Ministers, Political Parties and other bodies and persons in making and applying public policy for the establishment of a just and free society. The Principles should not of and by themselves be legally enforceable by any Court. The Courts should, however, have regard to the said Principles in interpreting any laws based on them.

97. In view of the fact that the Principles are not justiciable, it becomes necessary to provide a standing reminder to an incumbent Government that it is expected to
take necessary measures to achieve them. For this purpose, the Committee considered it adequate to adopt the provision in the 1979 Constitution stipulating that, at least once a year, the Government should report to Parliament all the steps it has taken towards achieving the policy objectives; particularly, towards the realization of a healthy economy, the right to work, the right to good health care and the right to education.

POLITICAL OBJECTIVES

98. In a society made up of various ethnic groups, such as ours, and where the shared feeling of belonging to one nation is recent, national integration should be an imperative political objective; because it is essential for national stability and development. Accordingly, the Committee adopted the substance of Article 7(1) of the 1979 Constitution which enjoins the State to actively promote national integration and prohibit discrimination and prejudice on the grounds of place of origin, circumstance of birth, ethnic origin, gender or religion; by taking the necessary measures to:

(a) foster such spirit of loyalty to Ghana as overrides sectional, ethnic and other loyalties;

(b) achieve reasonable regional balance in appointments to public offices;

(c) provide adequate facilities for, and encourage, free mobility of people, goods and services throughout Ghana; and

(d) make democracy a reality by decentralizing the machinery of government to the Regions and Districts and by providing all possible opportunities to the People to participate in decision-making at every level of national life and of government.

99. The Committee also decided to adopt 7(2) of the 1979 Constitution requiring the State to take steps to eradicate corrupt practices, exploitation in its various forms and the abuse of power.

100. But, in all, the Committee found the political objectives articulated in the 1979 Constitution to be inadequate and therefore proposes the following in addition:
1. Ghana shall be a democratic State dedicated to the realization of freedom and justice; and, accordingly, sovereignty belongs to the People of Ghana from whom Government derives all its powers and authority through this Constitution;

2. The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the well-being of all her citizens.

3. The State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law; and

4. The State should cultivate among all Ghanaians respect for fundamental human rights and for the dignity of the human person.

**ECONOMIC OBJECTIVES**

101. The provisions of the 1979 Constitution pertaining to the economy consist of two sections of Article 8. The Committee modified these for inclusion in the economic objectives as follows; the Government should:

1. **endeavour to manage the national economy in such a manner as to increase the rate of economic development and to secure the maximum welfare, freedom and happiness of every citizen of Ghana; and to provide adequate means of livelihood and suitable employment, and public assistance to the needy; and**

2. **within two years after assuming office, present to Parliament a planned and coordinated programme of economic and social development, including agricultural and industrial programmes at all levels and in all the Regions of Ghana.**

102. But the Committee found these provisions to be inadequate to guide current concerns about the national economy.

103. In seeking to expand the economic objectives, the Committee took into particular consideration the following issues: (a) the need for a governing principle of the economy;
(b) balanced development of the Regions;
(c) the role of women in the economy;
(d) worker productivity; and
(f) foreign investment.

(A) Governing Principle

104. There was consensus on the need to see the Constitution as creating a favourable environment for economic development generally. In the view of the Committee, this requires enshrining in the Constitution the right of citizens to own property and the right of individuals, groups and private enterprises to actively participate in the economy. There was also general agreement that the State's involvement in the country's economy in the past was unwieldy and largely inefficient and needed to be reduced. At the same time, the Committee saw the need for caution in framing the governing economic principles in a manner that cannot be construed as importing wholesale some particular economic philosophy. What the Committee considers to be necessary and urgent is to create in Ghana an economic environment conducive to harnessing the individual and collective energies of the people for development. Furthermore, based on the commonly accepted view that true economic development must be reflected in concrete improvements in the general quality of life of the people, the Committee sees a clear need to emphasize the social responsibility of property. This has two aspects. First, it enjoins persons engaged in profitable economic ventures to make significant contributions toward the general development of the areas where they operate and of the country as a whole: Secondly, it focuses special attention on the necessity for fiduciaries to discharge their responsibilities to serve the interest of the larger community.

105 In the light of the foregoing considerations, the Committee recommends a formulation of the central economic principle in terms which require the state to create such a healthy economic climate in Ghana as
ensures the full participation of individual citizens and private enterprises in the economic development of the country, while also ensuring that such individuals and bodies bear a social responsibility for the overall development of the country. In addition to the foregoing, and as part of the central principles, we recommend as follows:

(a) The State should guarantees the ownership of property and the right of inheritance; and

(b) The State should recognize that ownership and possession of land carries a social obligation to serve the interest of the larger community; and, in particular, that the managers of public, stool and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit of the people of Ghana and the relevant stool and family respectively, and are accountable as fiduciaries in this regard.

(B) Balanced Development of the Regions

106 The Committee took special notice of the great disparities that have existed over time in the levels of development of the country's Regions and between urban and rural areas and proposes that concrete steps should be taken towards redressing these imbalances.

107 In the view of the committee, specific policies geared toward promoting even and balanced development of the Regions are essential to any properly coordinated national development plan. Such policies will have several beneficial effects, including: (a) unleashing the various potentialities of the Regions in furtherance of the country's overall development; (b) promoting national integration and political stability; and (c) bringing about improvements in rural living conditions.

The Committee is also of the view that even and balanced development of the country's Regions would require considerable decentralization particularly of economic decision-making and implementation, as well as paying equal attention to the development of agriculture and industry in a complementary fashion.
(C) Role of Women in the Economy

108. The Committee saw as urgent the necessity to bring women into the mainstream of the country’s economy, instead of their being largely restricted, whether by design or not, to the informal sector as at present.

109. Accordingly, the Committee proposes that the State should give equal economic opportunity to women and should take the steps required to integrate them fully into the mainstream and formal sector of the country’s economy.

(D) Worker Productivity

110. Worker productivity is a key element in sustained economic development. But worker productivity is not unrelated to conditions at work places and the rewards for work.

111. In view of this, the Committee recommends that the State’s responsibility for promoting productivity should go beyond safeguarding the health and safety of workers to include the following:

(i) ensuring that workers are paid a wage adequate for the maintenance of a decent standard of living and the enjoyment of leisure, social and cultural opportunities;

(ii) recognition of the right of workers to form trade unions to protect their rights and interests;

(iii) encouragement and promotion of sound labour relations and fair employment practices; and

(iv) encouragement of the participation of workers in the decision-making process at the work place.
(E) Protection of the Environment

Today environmental issues are matters of global concern because of the international effects of the degradation of the environment even in one country. Thus, it is necessary for the State not only to protect and safeguard the national environment, but also to cooperate with other States and bodies for purposes of protecting the wider global environment.

(F) Foreign Investment

113. As a developing nation, Ghana needs foreign investment to supplement its efforts at development. The Committee therefore recommends that foreign investment should be encouraged, subject to the country's investment laws.

SOCIAL OBJECTIVES

114. The Committee decided to adopt the Social Objectives as provided for in the 1979 Constitution, subject to modifications where necessary. The general import of those provisions is to secure and protect a social order founded on the ideals and principles of freedom, equality and justice, a social order in which fundamental human rights and freedoms will thrive.

115. The Committee, however, proposes additions to some of the provisions of the 1979 Constitution and the inclusion of some new ones.

116. The modifications are as follows:

(a) Where the 1979 Constitution enjoined the State only to ensure that provision is made for public assistance for those in need and the conditions under which such assistance may be given, the Committee recommends in addition that free legal aid should be given so that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

(b) While adopting the provision of the 1979 Constitution that traditional cultural values be adapted and developed, the Committee proposes, however, that traditional practices injurious to the health and well-being of the person should be abolished.
We recommend additional provisions on culture as follows:

(i) Subject to (b) above, the State should take steps to encourage the integration of traditional values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(ii) The State should foster the development of Ghanaian languages and pride in Ghanaian culture.

(iii) The State should endeavour to preserve and protect places and buildings of historical significance.

118. Another new provision the Committee proposes for inclusion in the Social Objectives concerns the status of women in Ghanaian society. In one form or other, discrimination against women is widespread. While the sources of such discrimination do not always lie in the immediate domain of Government, in the view of the Committee, sustained effort and concerted action by Government is an essential step towards the elimination of discrimination against women. So the Committee recommends that, in addition to other measures enjoined on the State towards the elimination of discrimination against women, the new Constitution should specifically require all authorities and persons vested with appointive powers under it to, as far as practicable, aim at the appointment of an equal number of men and women.

119. The Committee is fully aware that constitutional provisions cannot by themselves solve the multi-faceted problem of discrimination against women. Nonetheless, it considers such provisions to be crucial in providing the framework and the incentive, particularly for women's organizations, including those not set up under the Constitution, to advance the rights of women more effectively.

120. The set of Social Objectives proposed by the Committee is as follows:
1. The State should endeavour to secure and protect, as effectively as it may, a social order founded on the ideals and principles of freedom, equality, justice and accountability; and, in particular, the State should direct its policy toward securing:

(a) that every citizen has equality of rights, obligations and opportunities before the law;

(b) that the sanctity of the human person and human dignity is recognized, maintained and enhanced; and

(c) that the independence, impartiality, integrity and easy accessibility of the courts of law are secured and maintained.

2. In furtherance of the objectives contained in 1 above, it should be the obligation of the State to ensure:

(a) that all citizens, without discrimination on any ground, have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;

(b) that provision is made for public assistance for those in need and the conditions under which such assistance may be given; so, however, that free legal aid should be offered to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities;

(c) that conditions of work are just and humane, and that there are facilities for leisure and for social and cultural life;

(d) that adequate facilities for sports are provided throughout the country, and that sports are promoted as a means of fostering national integration, health and self-discipline, as well as international friendship and understanding.
(e) that there are adequate medical and health facilities for all persons;

(f) that there is no discrimination in remuneration of men and women for work of equal value;

(g) that in exercising their powers, authorities and persons vested with appointive powers under this Constitution do, as far as practicable, appoint an equal number of men and women;

(h) that children, young persons, the aged, the infirm and the handicapped are protected against exploitation and against moral and material neglect;

(i) that traditional cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; so however, that traditional practices which are injurious to the health and well-being of the person should be abolished;

(j) that adequate retiring awards are provided for all workers;

(k) that contributory schemes are instituted and maintained that would provide economic security for self-employed and other citizens of Ghana; and

(l) that old persons are entitled to, and do receive, a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities.

EDUCATIONAL OBJECTIVES

121. Two major considerations informed the Committee's consideration of this subject. One is the view that education must be seen as an investment in development, generally conceived. For instance, education enhances the individual's sense of self-worth and raises his or her social consciousness; and increases his or her capacity to
acquire new knowledge and skills that enable him or her to deal more effectively with his or her social, political and economic environment. Secondly, even though real efforts were made in the early days of our independence at reducing illiteracy, there have since been serious lapses, with the result that a lot of Ghanaians are today functionally illiterate.

122. On the basis of these considerations, the Committee came to the conclusion that, as a developing country where illiteracy is still a major problem, the State should acknowledge its paramount responsibility for the provision of educational facilities of all kinds and at all levels throughout the country for all citizens. The Committee is equally mindful of the resource constraints on the State's ability to provide free education at all levels in the immediate future.

123. However, notwithstanding any such constraints, it is the Committee's view that basic education is so important that, within two years of this Constitution coming into force, the Government should draw up a programme for free, compulsory and universal basic education to be implemented within the following ten years.

124. As regards other forms and levels of education, we propose that, subject to the availability of resources, the State should endeavour to provide:

(a) free and equal access to secondary and other appropriate pre-university education;
(b) equal access to university or equivalent education;
(c) free adult literacy programme; and
(d) free vocational training, rehabilitation and resettlement of disabled persons.

INTERNATIONAL RELATIONS

125. The Committee recommends that in her dealings with other nations the State should:

(a) promote and protect the national interest;
(b) seek the establishment of a just and equitable international economic order;
(iv) International Convention on the Elimination of all Forms of Racial Discrimination (1965);

(v) Protocol Relating to the Status of Refugees (1966);

(vi) Convention on the Elimination of All Forms of Discrimination against Women (1979);

(vii) International Convention on the Suppression and Punishment of the Crime of Apartheid (1973);

(viii) Convention on the Rights of the Child (1989); and


141. A central recommendation of the Committee in this regard is that legislation should be introduced to implement the provisions of these instruments in Ghana.

POLITICAL AND CIVIL RIGHTS

142. In relation to the civil and political rights of the individual, the Committee proposes that, regardless of his or her race, place of origin, political opinions, colour, creed or gender, every person in this country should be entitled to the right:

(i) to life; liberty, security of the person and the protection of the law;

(ii) to freedom of conscience, of expression and of assembly and association; and

(iii) to the protection of the privacy of his home and correspondence.
(h) to cooperate with lawful agencies in the maintenance of law and order;
(i) to declare his or her income honestly to appropriate and lawful agencies and to pay his or her income tax promptly; and
(j) to protect and safeguard the environment.
CHAPTER FIVE
FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

127. Among the major tasks assigned to the Committee is the formulation of proposals that would:

"guarantee, protect and secure the enforcement of the enjoyment by every person in Ghana of the fundamental human rights and freedoms including the freedom of speech, freedom from arbitrary arrest and detention, freedom of assembly and association including the freedom to form political parties, women's rights, children's rights, worker rights and the rights of the handicapped" (PNDC Law 252 S.4(2))

128. The National Commission for Democracy Report leaves no doubt that Ghanaians attach great importance to human rights. Human rights are universally regarded as inalienable and constitute the birthright of the individual as a human being. Therefore, no person may be deprived of his or her human rights.

129. The concept of human rights is by no means alien to African traditions. This is revealed in traditional social and political philosophy, as well as proverbial sayings. For example, hatred of oppression, demand for popular participation in the decision-making process, mutual respect between the ruler and the ruled, and an insistence that government must be for and in the interest of the governed underlie the admonition to an Akan chief at his installation as follows:

When we give you advice, listen to it. We do not want you to abuse us (or) to be miserly ... we do not want one who disregards advice, We do not want you to regard us as fools, we do not want aristocratic ways, we do not want bullying, we do not like beating Take the stool"
130. A chief was, and still is, subject to destoolment for refusing to heed this advice.

131. The essence of the right to life is captured in the Akan saying:

Onipa ne asem: mefre sika a, sika
nnye so: mefre ntama a, ntama nnye so;
Onipa ne asem.
(It is man that counts, I call upon gold,
it does not answer. I call upon my drapery,
there is no answer. It is man that counts).

(Translation by Dr. K.A. Busia)

132. Throughout Africa and, indeed, a significant part of the Third World, there has been, in recent years, a sustained public clamour for the promulgation and enforcement of human rights and freedoms as a critical ingredient of the democratization process. Third World countries have participated, at the international level, in reformulating and expanding the scope of human rights to include social and economic rights and to relate them to development needs. In Africa, the OAU has adopted the African Charter on Human and People's rights, while several countries are in the process of re-affirming fundamental rights in their constitutions.

133. This resurgence of interest in human rights is hardly surprising. Apart from the obvious desire for a more democratic order and the universal yearning for human dignity, there is a growing realization that the enjoyment of the basic freedoms is conducive to the development and purposeful application of human resources and, indeed, the establishment of an environment that enhances development.

134. Human rights are generally grouped under the following sub-headings: civil, political, social, economic and cultural. Civil and political rights, sometimes referred to as classical human rights, include: the right to self-determination; the right to life; freedom
from torture and inhuman treatment; freedom from slavery and forced labour; 
the right to liberty and security; freedom of movement and choice of residence; the right of 
easy access to the courts of law; the right to privacy; the right to freedom of religion or 
belief and to freedom of opinion and expression; the right to assembly and association; the right 
to marry and found a family; the right to political participation; and the right to 
nationality and equality before the law.

135. Economic, social, and cultural rights 
include: the right to work; the right to form 
independent trade unions; the right to adequate 
standard of living including food, clothing and 
housing; the right to collective bargaining; the 
right to equal pay for work of equal value; the 
right to social security; the right to property; 
the right to education; the right to health care; 
and the right to take part in cultural life.

136. Despite the division of human rights into 
the above categories, a close inspection will 
reveal the interdependence of all human rights. 
Thus, for example, the United Nations Declaration 
on the Right to Development (1986) states:

"All human rights and fundamental freedoms 
are indivisible and interdependent; equal 
attention and urgent consideration should be 
given to the implementation, promotion and 
protection of civil, political, economic, 
social and cultural rights".

In the last resort, they are all exercisable 
within a societal context and impose obligations 
on the state and its agencies as well as on the 
individual not to derogate from these rights and 
freedoms.

137. Whatever the material scope of these rights, 
one thing is clear: all persons are entitled to 
these rights, without distinction of any kind 
such as race, colour, gender, language, religion, 
political or other opinion, national or social 
origin, property, birth or other status. This 
emphasises the significance and scope of the
principle of non-discrimination. This principle is universal and finds expression in the constitution of almost every country. It emphasises also the fact that all persons are equal before the law and are entitled, without any discrimination, to equal protection of the law.

138. The 1969 and 1979 Constitutions of Ghana eloquently enshrined the classical human rights and freedoms by prescribing specific prohibitions. The Committee generally endorses these provisions, subject to some modifications, particularly where it was felt that certain stipulated qualifications would erode the essence of the rights.

139. The Committee also elaborated the social and economic aspects of human rights—aspects which are of particular relevance to the conditions of Africa and the developing world generally. Some of these rights are included in the proposed Directive Principles of State Policy, except that here they are more precisely elaborated as rights. In addition, the Committee also proposes specific provisions relating to the rights of categories of persons whose situation calls for special guarantees and protection in the Constitution.

140. Throughout its deliberations on this subject, the Committee was cognizant of the fact that Ghana is a party to several conventions and international instruments prescribing fundamental human rights and special rights, in particular those relating to women, children and workers. Among these are:

(i) Convention on the Prevention and Punishment of the Crime of Genocide (1966);

(ii) Convention Relating to the Status of Refugees (1951);

(iii) Convention on the Political Rights of Women (1952);
(iv) International Convention on the Elimination of all Forms of Racial Discrimination (1965);

(v) Protocol Relating to the Status of Refugees (1966);

(vi) Convention on the Elimination of All Forms of Discrimination against Women (1979);

(vii) International Convention on the Suppression and Punishment of the Crime of Apartheid (1973);

(viii) Convention on the Rights of the Child (1989); and


141. A central recommendation of the Committee in this regard is that legislation should be introduced to implement the provisions of these instruments in Ghana.

POLITICAL AND CIVIL RIGHTS

142. In relation to the civil and political rights of the individual, the Committee proposes that, regardless of his or her race, place of origin, political opinions, colour, creed or gender, every person in this country should be entitled to the right:

(i) to life, liberty, security of the person and the protection of the law;

(ii) to freedom of conscience, of expression and of assembly and association; and

(iii) to the protection of the privacy of his home and correspondence.
PROTECTION OF LIFE

143. The Committee considers it self-evident that the concept of human dignity revolves around the basic idea that life is sacred and must be protected. This fundamental principle was recognised under the 1969 and 1979 Constitutions of Ghana. The Committee, therefore, proposes as the first of the fundamental human rights that no person should be deprived of his or her life intentionally. The right to life should thus be respected and protected.

144. The Committee generally endorses the qualifications to this basic principle that are stipulated in Article 20 of the 1979 Constitution. However, it does not agree that the application of deadly force for the purpose of effecting a lawful arrest or preventing escape from lawful detention is justifiable. We accordingly recommend the deletion of clause 2(b) of Article 20.

PROTECTION OF RIGHT TO PERSONAL LIBERTY

145. A corollary to the right to life is the right to personal liberty. If the individual must have his or her life and enjoy it, then it is imperative that he or she is not subjected to arbitrary arrests. Accordingly, the Committee proposes that no person should be deprived of his or her right to personal liberty, except in accordance with procedures established by law. In particular, no one may be arbitrarily arrested or detained.

146. In making the above proposal, the Committee is not unmindful of the fact that to secure the liberty of the individual it is essential to provide some machinery or safeguard to prevent liberty from degenerating into licence. In the light of this observation, the Committee proposes that the right of personal liberty may be curtailed by law:
(i) in execution of the sentence or order of a Court in respect of a criminal offence of which a person has been convicted;

(ii) in execution of the order of a Court punishing a person for contempt of Court;

(iii) in execution of the order of a Court made to secure the fulfillment of any obligation imposed on a person by law;

(iv) for the purpose of bringing a person before a Court in execution of the order of a Court;

(v) upon reasonable suspicion of having committed, or being about to commit, a criminal offence under the laws of Ghana;

(vi) for the purpose of the education or welfare of a person who is under 18 years of age;

(vii) for the purpose of preventing an infectious or contagious disease from spreading; and

(viii) to such an extent as may be necessary in the execution of a lawful order requiring a person to remain within a specified area within Ghana or prohibiting him or her from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of Ghana in which, in consequence of any such order, his
or her presence would otherwise be unlawful.

147. The Committee further proposes that no person should be detained by any agency of the state for a period exceeding 48 hours without such person being brought before a Court of competent jurisdiction. Furthermore, any person who is detained must immediately be given the reasons for his or her arrest and detention in a language he or she understands. We hardly need to add that any person who is arrested and detained must be informed of his or her right to a lawyer of his or her own choice who must be given ready access to the person detained.

148. The Committee also proposes that no person should be held incommunicado and that any person who is deprived of his or her liberty must be allowed access by his or her relatives and friends and legal adviser. In this regard, the Committee proposes that the Police be required to observe the Judges' Rules which require in the main that a person arrested "should be entitled to know why he or she is arrested".

PROTECTION FROM SLAVERY AND FORCED LABOUR

149. The Committee proposes that no person should be held in slavery or servitude; and that no person should be required to perform forced labour. In this regard, the expression "forced labour" should not include:

(a) any labour required in consequence of a sentence or order of a Court;

(b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interest of hygiene;

(c) any labour that is required of a member of a disciplined force in pursuance of his duties as such, or in the case of a person who has conscientious objections
to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; and

(d) any labour that is reasonably required as part of reasonable and normal communal or other civic obligations.

PROTECTION FROM INHUMAN TREATMENT

150. The Committee endorses the statement of principle to be found in paragraph 207 of the Akufo-Addo Report which states thus:

"No more need be said than for us to propose that no person in Ghana should be subjected to torture or inhuman or degrading punishment or other ill-treatment or to any other condition that detracts or is likely to detract from his dignity and worth as a human being or which shows in whatever manner man's inhumanity to man. We must add that no law in Ghana shall make it possible for a person not convicted of a criminal offence to be kept or confined in a prison or, if so kept or confined, to be treated as a convicted person".

151. In the light of the degrading and inhuman treatment quite often meted out to old men and women accused of witchcraft, the Committee considers it useful to propose that no person accused of witchcraft should be subjected to any indecent assault of his or her person and that any such customary practice should be abolished. We accordingly propose that the prohibition of inhuman treatment stipulated under Article 23 of the 1979 Constitution be retained.

152. Article 8 of the Constitution of Namibia provides that the dignity of all persons shall be inviolable. It provides further:

"2 (a) In any judicial proceedings or in other proceeding before any organ of the state, and during the enforcement
of a penalty, respect for human dignity shall be guaranteed.

(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

153. The Committee further proposes the adoption of these provisions in the new Constitution.

PROTECTION OF PRIVACY OF HOME AND OTHER PROPERTY


THE PROTECTION OF PROPERTY

155. Property should be guaranteed in the Constitution. However, the Committee wishes to point out that in accordance with our traditional social values, property should also serve the public interest. In particular, the ownership of public, stool and family land imposes a trust to manage the land for the benefit of the people generally, the relevant stool and the family in question, respectively. Accordingly, the Committee proposes the stipulation of the following principles regarding the protection of private property:

1. Property and interests in or over property should be guaranteed. Their content and limits should be defined by Law.

2. Property imposes duties. Its use should also serve the public interest.

3. Expropriation should be permitted only in the public interest. It may be effected only by or pursuant to a law which should provide for the nature and extent of compensation. Such compensation should be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of
disputes regarding the amount of compensation, recourse may be had to the ordinary courts of the land, or to such other dispute settlement procedures as may be agreed between the State and the party concerned.

4. The management of public lands, stool lands or family lands should be subject to a trust for the benefit of the people of Ghana, the stool concerned and the family concerned respectively.

**FUNDAMENTAL FREEDOMS**

56. The Committee holds that the following proposals relating to the individual's fundamental freedoms, which were embodied in the 1969 and 1979 Constitutions of Ghana, are so fundamental that their retention in the new Constitution is imperative:

All persons shall have the right to:

(i) freedom of speech and expression, which shall include freedom of the press and other media;

(ii) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;

(iii) freedom to practise any religion and to manifest such practice;

(iv) assemble peaceably and without arms;

(v) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
(vi) withhold their labour without being exposed to criminal penalties;
(vii) move freely throughout Ghana; and
(viii) practise any profession, or carry on any occupation, trade or business.

157. The fundamental freedoms mentioned above should be exercised subject to the laws of the land, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by this Constitution, restrictions which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Ghana, national security, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

158. In view of the uncertainty surrounding the issue, the Committee wishes to stress that the right to form political parties is an indisputable consequence of the freedom of association. The Committee has elaborated this right elsewhere in the Report.

FAIR TRIAL

159. Against several odds, our Courts have, to a great extent, striven to safeguard the liberty of the individual, especially where that liberty has been threatened by the Executive. Our system of justice emphasises the innocence of an arrested person until his or her guilt is proven beyond all reasonable doubts. We, accordingly, propose the retention of this time-honoured practice. We further propose that whenever any person is charged with a criminal offence, unless the charge is withdrawn, the case should be given a fair hearing within a reasonable time by a Court.

160. In an attempt to dispel the possible impression that a right not expressly guaranteed may enjoy less protection than those specifically
set out, the Committee proposes that the provisions of Article 21 Clause 2 of the 1979 Constitution be retained.

EQUALITY AND FREEDOM FROM DISCRIMINATION

161. During its discussions, the Committee considered Article 31 of the 1979 Constitution and recommends that wherever the word "sex" appears in any of the clauses it should be replaced by the word "gender". The Committee proposes that all persons should be equal before the law. It further proposes that no person may be discriminated against on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

162. In this context, the expression "discriminatory" means:

meteing out different treatment to different persons attributable only or mainly to their respective descriptions by gender, place of origin, political opinions, colour, occupation or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

163. It is no longer disputed that human rights have economic and social aspects. In the developing world in particular, the enjoyment of the classical human rights is meaningful if it is buttressed by a regime of economic and social rights. The oft-quoted saying that freedom of expression is meaningless to a person with an empty stomach is still valid. Human dignity assumes a new significance if a person is assured entitlement to the basic necessities of life.
Similarly, fundamental human rights become particularly significant if they are translated into prohibition of social and economic practices that otherwise exploit or degrade certain sections of the population, such as women and children. The Committee, therefore, proposes major changes with regard to economic, social and cultural rights, particularly rights relating to women and children.

164. In the 1978 proposals the Constitutional Commission had this to say in relation to women and children:

In recognition of the rapid and worldwide change in attitude in these matters and in response to what we regard as the legitimate demands of the women's organisations, we have separated the provisions dealing with women from those dealing with children.

165. The Committee fully agrees with the view expressed above that the needs, interests and rights of children and women are not, and should not be considered as, either identical or even related. The Committee has, therefore, proposed in relevant articles separate provisions on the rights of women as mothers, on the right of spouses in general and on the rights of children.

166. With regard to women, the 1978 proposals paid only lip service to the rights of women on the ground that the Commission did not consider it necessary or useful to make elaborate provisions; adding that "to their credit the women's representatives asked for no more". Happily, and equally to their credit, the women members of the Committee this time around did ask for more, which in the view of the Committee is quite legitimate.

167. Although strictly according to law men and women are of equal status in Ghana, there are many social practices and prejudices which undermine this equality. For example, there are in many parts of this country, customary rites of widowhood which, in effect, abase and humiliate
the widow. Instances of these are: shaving of the hair of the head of the widow, compelling the widow to walk bare-footed, and subjecting her to other practices which can only be described as outmoded, inhuman and degrading. Whatever may have been the justification of these practices, they have no place in modern Ghana, and should be abolished. A customary practice which brings great sorrow and distress to widows and members of the families of widows is the intemperate haste with which widows are thrown out of their matrimonial homes after the death of their spouses. In order to prevent such violations of the rights of women, the Committee proposes that the laws of the land must carefully spell out the rights of women when their husbands die, and the enforcement of these rights against those who may infringe them.

168. It is common knowledge that despite legislation to enhance their status, considerable discrimination against women persists. Women are often deprived of basic rights and these deprivations are more acute in the rural areas where the bulk of the population lives. The Committee strongly urges that these practices that infringe the rights of women be unequivocally prohibited by the Constitution.

169. Accordingly, we propose that the following women's rights be stipulated:

**WOMEN'S RIGHTS**

1. All customary practices which are injurious to the physical and mental wellbeing of all persons, especially women, should be abolished.

2. Female circumcision of any form should be declared unlawful with penal consequences for non-compliance.

3. Special protection should be accorded to mothers for a reasonable period before and after childbirth. During that period, working mothers should be given paid leave.
4. Parliament should enact legislation regulating the property rights of women in marriage. With a view to achieving the full realization of these rights:

(a) women should have equal access as their spouses to property jointly acquired during marriage; and

(b) assets which are jointly acquired during marriage should be distributed equitably between the spouses upon dissolution of the marriage.

5. Facilities should be provided for the care of children below school-going age to enable women, who have traditional care for children realise their full potential.

6. Women in employment should be guaranteed conditions of work not inferior to those enjoyed by men with equal pay for work of equal value. Women should be guaranteed equal access to training and promotion without any impediment from any person, or harassment from colleagues, superior officers or employers.

7. Upon the coming into force of the Constitution, in making appointments to boards and delegations the Government should strive towards equal representation and participation of men and women. The new Constitution must take cognizance of disabilities stemming from a woman's biological functions and provide remedies accordingly. For instance, a working woman should be given sufficient time to go and have her child and nurse it, and should not suffer any discrimination in her emoluments or other benefits for that reason.
170. The Committee is convinced by the argument that there is the need to make adequate provision for the family, as the basic unit of society. The Committee recognises that marriage is the foundation of the family. The Committee accordingly proposes that:

(a) men and women of marriageable age without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status, should have the right to marry and to found a family. They should be entitled to equal rights in their capacity as spouses; and

(b) marriage should be entered into only with the free and full consent of the intending spouses.

CHILDREN’S RIGHTS

171. Any provisions on human rights to be embodied in the new Constitution must provide for the rights of children. We find ourselves in complete agreement with the United Nations Convention on Children that children constitute a weak and vulnerable group within the population. There is ample evidence that from birth until adulthood some children suffer all kinds of abuses. In some cases the simple act of registering births and deaths and giving a child a name and the acknowledgment of paternity is often not observed. Sometimes, children are even treated as possessions or commodities to be bargained with or traded. In its most extreme forms the denial of an identity to children has led to slavery, forced labour, prostitution, and forced separation from parents.

172. Some Ghanaian children live abandoned by their families on the streets of the capital towns. Almost invariably, those street children who can work are exploited or otherwise abused—economically, physically and often sexually. It
is not surprising, therefore, that the protection of the Ghanaian child from all forms of exploitation has become a national concern and has led to the establishment of the Ghana National Commission on Children. The Commission is empowered to take steps to protect children from all forms of physical or mental violence, neglect or maltreatment while in the care of parents, legal guardians or anyone responsible for their well-being.

173. In January 1990 the United Nations General Assembly adopted the convention on the rights of the child, which came into force on 2nd September, 1990. Ghana is a party to this Convention. Indeed, Ghana was the first country to ratify the Convention.

174. Given these considerations, the Committee makes the following proposals:

(1) Children should have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible, the right to know, and be cared for, by their parents.

(2) Children (persons under 18 years) are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.

(3) No child under the age of fourteen (14) years should be employed to work in any factory or mine, save under conditions and circumstances regulated by an Act of Parliament.

(4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to
work for or in the interest of the employer of such employee, should for the purposes of this Constitution, be deemed to constitute an arrangement or scheme to compel the performance of forced labour.

(5) Disfigurement of children, especially by way of female circumcision or infiburation, should be abolished.

(6) Children should have access to education and health facilities.

(7) Children should have the right to parental care and support, especially during the tender years of childhood.

(8) Every child is entitled to the emotional warmth and security necessary for his development into a stable adult. This warmth and security can only be given by caring and responsible parents. In this context parents need not necessarily be the natural parents of the child.

(9) The obligation to care properly for a child must be imposed on all those who have custody and control of the child.

(10) Any person who has the control of a child under 18 years of age should be under the obligation to ensure that it is properly fed, clothed, housed and provided with medical care.

DISABLED PERSONS

175. The Committee paid particular attention to the status of disabled persons and proposes the following provisions to protect them:

1. Disabled persons have the right to live with their families or with foster parents and to participate in social, creative or recreational activities.
2. No disabled person should be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom.

3. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein should be as close as possible to those of the normal life of a person of his or her age.

4. Disabled persons should be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

5. Disabled persons should be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property.

6. If judicial proceedings are instituted against them, the legal procedure applied should take their physical and mental condition fully into account.

7. Disabled persons, their families and communities should be fully informed, by all appropriate means, of the rights contained in this Constitution.

8. As far as practicable, every public building must have appropriate facilities, including a ramp, for disabled persons.

9. Special incentives, such as tax reliefs, should be given to disabled persons engaged in business and also to business organisations that employ disabled persons in significant numbers.
176. **ECONOMIC RIGHTS**

1. The right of everyone to the enjoyment of just and favourable conditions of work should be guaranteed. All workers should have fair wages and equal salaries for work of equal value, without distinction of any kind, and their working conditions should be safe and healthy.

2. Every worker should be assured of rest, leisure and reasonable limitation of working hours and a paid vacation, as well as remuneration for public holidays.

3. Workers have a right to form trade unions and to join a trade union of their choice, subject to the rules of the union concerned, for the promotion and protection of their economic and social interests.

4. Every individual should have the right to enjoy the best attainable state of physical and mental health. The State should take the necessary measures to protect the health of the people of Ghana.

**CULTURE**

177. Every person should be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion, subject to the terms of this Constitution and subject further to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

**EDUCATION**

178. 1. All persons should have the right to education.

2. Basic education should be compulsory and the State should provide reasonable facilities to render effective this right for every resident within Ghana,
by establishing and maintaining State schools at which basic education would be provided free of charge.

3. Children should not be allowed to leave school until they have completed their basic education or have attained the age of eighteen (18) years, whichever comes first, save in so far as this may be authorised by an Act of Parliament on grounds of health or other considerations pertaining to the public interest.

4. All persons should have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education provided that:

(a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration;

(b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;

(c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed.
CHAPTER SIX
FREEDOM AND INDEPENDENCE OF THE MEDIA

179. In his classic essay On Liberty John Stuart Mill observed wisely that:

"The time, it is to be hoped, is gone by, when any defence would be necessary of the "liberty of the press" as one of the securities against corrupt or tyrannical government". The liberty of the press, as J.S. Mill rightly pointed out, is an aspect of the basic liberty of thought and expression (of opinion), and that the best government has no more right to control the expression of opinion than the worst. As he put it, "if all mankind minus one were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind".

180. In the modern world, freedom of thought and expression including freedom of the press; the rule of law and the independence of the judiciary; and fair and free elections are considered to be three pillars on which the edifice of democracy stands. All these three pillars are interdependent and inter-connected. Destruction of them can undermine the whole structure of democracy and lead to its collapse.

181. The experience of modern states has demonstrated convincingly that in the absence of freedom of the press and thought, and an enlightened and vigilant public opinion, a safe future for democracy and its success cannot be ensured anywhere. The mass media, the press and platform are the means to educate the people and make them the watchdogs of their liberties inherent in a democracy. So vital is the role of the mass media that freedom of expression along with that of the press has been called "the first freedom". Indeed, any successful attack on human rights by governments often starts with a suppression of the freedom of the press. Once this freedom is denied, governments are free to abuse basic human rights without any publicity and frequently with impunity. It is the case that no dictator can tolerate freedom of thought, expression and the press.

182. Thus, the mass media play a vital, even indispensable, role in any modern society that aspires towards democracy. To ensure a bright future for democracy in Ghana's Fourth Republic, Law 225 which sets out the Committee of Experts' terms of reference, inter alia, called on the Committee to work out proposals to guarantee, as in the 1969 and 1979 Constitutions, a free and independent media and freedom of
expression. It is through responsible and independent media that objective information is disseminated, different and opposed views are presented and shared, enlightened public opinion is formed and political consensus mobilized and achieved.

183. S.E. Finer an authority on constitutions and comparative government has argued that public opinion in the sense of a reflecting and self-conscious set of ideas about allegiance and civic duty: that is, a self-conscious and critical awareness of and involvement in government activity can only flourish in an atmosphere in which free press and mass media is guaranteed.

184. In addition to the role of informing and educating the public and government on their constitutional rights and duties, the press and the mass-media would have a vital role to play as a watchdog ensuring that the constitution is respected and honoured. The free and responsible press and the mass media would be expected to expose and denounce abuses and misuse of power, defend human rights and educate, mobilize and articulate public opinion and feelings on national affairs.

185. For the government in power, a free, responsible and independent press and mass-media provides channels to obtain feedback on its performance and also acts as a safety valve by enabling citizens to freely express their views. An Akan proverb goes "He who is cutting a path through the bush cannot tell that the line behind him is crooked". A free and independent press, serving as a barometer of public opinion as well as its shaper, has a responsibility to look around the 'path-cutters' - the policy makers - to scrutinize, alert them of mistakes, check waste, inefficiency and corruption. It is through the free press and mass-media that a people become empowered and are able to exercise their basic democratic rights and assume their civic duties.

186. A good polity assumes that politicians are ordinary men and women. The essence of political democracy is that politicians are subordinate to the public in whom are vested the fundamental rights of free criticism, opposition and dismissal. A political system in which the public surrenders these rights to a political party or government cannot hope to remain democratic. The public must, therefore, be guaranteed the right to know, the right of access to information, as a basic human and constitutional right. Freedom of the press and expression also means that any citizen who has anything to say about national affairs should have access to the public sector mass-media, limited
only by practical considerations of space and time, and by existing laws of sedition, criminal libel and those protecting privacy, etc.

187. In Ghana, as in most countries of Africa, the government owned press and mass-media remain inevitably dominant. No privately owned media in the country has comparable volume of widespread circulation, readership or audience to that of the public sector media. This imbalance is not likely to change in the foreseeable future, notwithstanding important proposals stating that there must be no impediments to the establishment of private press or media.

188. Given the above considerations, the public sector media financed by public taxes must operate in such a way that they truly reflect the diverse shades of public opinion existent in the country as a whole. As things stand now, there is direct governmental (ministerial) interference in or control of the operations of the press. Editors and reporters are appointed by the Ministry of Information, and they see themselves as civil servants and feel constrained in carrying out their professional function consistent with the highest professional standards possible. This ministerial power of appointment and dismissal of reporters and governmental interference in media activities have greatly contributed to the erosion of the freedom and independence of the press and media in Ghana.

189. To reverse this erosion, and ensure the growth and strengthening of press and media freedom and independence in the Fourth Republic, the following are proposed:

(1) that an independent body like the Press Commission provided for in the Third Republican Constitution (Chapter 22) must be set up. Since this body would handle matters related to both the press and electronic media, it should be called MEDIA COMMISSION,

(2) The Media Commission is to perform the functions currently discharged by the Minister of Information as far as the public sector press is concerned. The functions of the Commission are to include the appointment of members of the governing body of any public corporation established for sound or television broadcasting, the press or other media of mass communication; it
should also be empowered to make regulations for the registration of newspapers and other publications as well as for other media of mass communication. The sole purpose of newspaper and media registration must be to provide basic statistical data, such as the name and address of the publisher(s) and printer(s), names of members of the editorial board, circulation figures, and other routine information. Where a registration fee is required, it is urged that this should be a token sum only.

(3) that the Media Commission should, in consultation with the appropriate professional association, draw up qualifications and rules of professional ethics for the professional practice of journalism; it should also take all measures to ensure the preservation of press freedom and independence.

(4) To establish and protect its independence of governmental control and interference, the size and composition of the Media Commission are of crucial importance and deserve careful handling. The following is proposed. The basic composition as provided for in the Third Republican Constitution (Chapter 22, Article 192) should be retained but the size and groups represented on the Commission should be increased. A total membership of between 20 and 25 seems reasonable. The Media Commission should be large enough to represent a broad spectrum of political opinion, as well as represent new identifiable groups and interests, such as the Ghana National Association of Farmers and Fishermen, The University Teachers Association of Ghana, Association of Advertisers and Public Relations practitioners, that exert significant influence on national affairs; and Ghana National Commission on Children and the Commission on Culture, the futherance of whose work the media could play a critical and vital role.

It is also proposed that since the Commission’s functions would include the taking of appropriate measures to ensure the establishment and maintenance of the highest professional standards possible among journalists, the Directors of the Ghana Institute of Journalism and School of Communication Studies, University of Ghana responsible for the training of journalists should be members of the Commission.
(5) The body should elect its own Chairperson, preferably a judge whose office ensures him or her security of tenure and independence. A member may serve for a period of three years and may be re-elected once; an organization may be asked to withdraw its representative from the Commission if he or she is seen to be working against the interests of free expression. Membership would be on part-time basis, though the Commission would have a full-time administrative secretariat whose expenses, including salaries, allowances and pensions payable to or in respect of persons serving with the Commission should be a charge on the Consolidated Fund.

190. To repeat, the major purpose of setting up the Media Commission is to insulate the press from direct political control and interference so that public sector editors and reporters can discharge their democratic duty of objectively informing the people and acting as constructive critics of government policies and activities without fear of reprisals and victimization from the government in power. The following specific principles of a free press and mass-media to be respected by all governments are therefore proposed:

(i) There should be no impediments to the establishment of private press or media. There should be no law requiring individuals or groups to obtain a licence for the establishment of a newspaper, journal or other mass-media.

(ii) There should be no censorship of the press and electronic media.

(iii) Editors and newspaper publishers, the press and mass-media should not be subject to governmental control, interference and harassment nor should they be penalized for their editorial opinions or views expressed in the mass media beyond the requirement of public order, morality etc. and relevant laws.

(iv) Dissenting opinions should be freely ventilated; and the courts should protect freedom of expression and the press.

(v) Positively, the government should do all it can to improve the working and service
conditions of public sector journalists, editors and broadcasters. This would contribute to raising the standards of journalism and media reporting in the country.

(vi) The government should encourage the growth of privately owned press. This is consistent with the views expressed by the 1978 Constitutional Commission. Government assistance can take the form of the removal of prohibitive customs duties on newsprints and other imported materials essential to the establishment and operation of mass-media.

191. Finally, the Committee appreciates that press and media freedom and independence has to be matched by the highest journalistic standards. A venal and irresponsible press is a danger to democracy. Newspapers which publish lies, knowing them to be lies must run the risk of being suppressed by the courts. Those who operate the media are not immune from the exacting and all pervasive standards of probity and accountability.

192. The Committee accordingly proposes that appropriate facilities and resources be provided to improve the professional standards of media men and women.
CHAPTER SEVEN

REPRESENTATION OF THE PEOPLE: MAJORITARIAN OR CONSENSUS DEMOCRACY? — DRAFT PROPOSALS

193. One crucial issue in a representative and participatory democracy is that of political representation and the type of electoral systems appropriate in each case. For this reason, the NCD Report poses for resolution by the Consultative Assembly the issue whether Ghana should retain the plurality single-member district system of electing the members of the National Assembly or consider an alternative electoral system, namely, Proportional Representation (PR).

194. In deciding which one of these electoral systems would be most appropriate for Ghana at the present stage of her political and economic development and socio-cultural conditions, it is crucial to keep in mind some general considerations of comparative political importance:

(1) in most countries, developing and developed alike, progressive, viable and stable representative democratic government can neither be considered inevitable nor taken for granted, whatever the electoral system adopted, as post-independence West African and other examples clearly attest. In ex-colonial Africa, three decades or so after political independence, nearly every country is still searching for some form of a suitable, just and viable system of representative and participatory democracy;

(2) in those states where representational institutions still exist outside the industrialized democracies, universal adult suffrage based on majoritarian philosophy has neither provided a set of consensual rules that ensure that leaders are chosen on a regular, meaningful, free and truly competitive basis, nor has it produced accountable leadership responsive to the basic socio-economic and cultural
aspirations and needs of the general public.

It is significant that of sub-Saharan Africa's 47 states only five have maintained nominal multi-party parliamentary systems with regular, more or less, free elections based on majoritarian principles and electoral methods. These countries are Botswana, the Gambia (where some form of coalition government is being advocated), the Djibouti, Mauritius and Senegal. Even in these countries, the systems tend to confirm the incumbents in power. Mauritius is the only African country that has experienced a real Western style democratic change of government! All these countries with the exception of Senegal have small populations;

(3) it is worth recalling that the plurality methods or models of representative democracy are associated primarily with Anglo-American political tradition; PR and consensual models, on the other hand are associated, predominantly, with continental European political tradition;

(4) in his more recent authoritative comparative studies of twenty-one industrialized democracies in the 1945-1980 period, Arend Lijphart found three principal factors that could explain whether these countries tended to be governed along majoritarian or consensual principles. These are (1) the degree of pluralism in the country. He defines plural societies as those "that are sharply divided along religious, ideological, linguistic, cultural, ethnic or racial lines into virtually separate sub-societies ..." (2) the size of the population and (3) the prevailing political-cultural heritage. Lijphart points out in Democracies that the third factor, unlike the other two factors, is not an important criterion in choosing an appropriate form of democracy.
THE PLURALITY SYSTEM

195. Under this system every adult citizen of sound mind has one vote, which he or she may cast for only one out of a number of competing candidates. And the candidate who receives the highest number of votes is declared the winner. Such a candidate needs not obtain the majority of all the votes cast.

The main defects often raised against this system include the following:

(a) it leaves large minority parties unrepresented;

(b) the person elected might not necessarily represent the interest of a large body of persons in that constituency;

(c) minority interest is often not represented by such a system; and

(d) it tends to establish two major parties which wield power to the exclusion of smaller parties.

196. Notwithstanding the above list of disadvantages, the system has several merits. Apart from providing a stable and workable government, it also provides, in the waiting, an alternative government capable of being strong and stable. It has the further advantage of simplicity and is relatively inexpensive to operate. In a country like Ghana with a large illiterate population, inadequate transport and communication facilities, and very limited resources, this system has a great deal to commend it.

THE CASE FOR PROPORTIONAL REPRESENTATION

197. It is noteworthy that the first important critic of the simple plurality model of democracy for 'divided societies', Sir Arthur Lewis, concludes in his classic Politics in West Africa
that majoritarianism is undemocratic, because it is a principle of exclusion. He points out that the 'primary' meaning of democracy is that "all who are affected by a decision should have the chance to participate in making that decision, either directly or through chosen representatives". Its 'secondary' meaning is that "the will of the majority shall prevail". If this means that winning parties may make all government decisions and that losers may criticise but not govern, he argues, the two meanings are incompatible: "to exclude the losing groups from participation in decision-making clearly violates the primary meaning of democracy". If the losers do not differ much in their policy preferences from the winners, and if they have a reasonable chance of winning the next election, their exclusion may not be a serious problem. However, these two conditions are rarely met in plural societies, which are by definition characterized by major disagreements, and where voters' loyalties are frequently quite inflexible, so that alternation in office does not occur easily, as the practical political experience in Ghana since before independence has shown.

198. Under such circumstances, exclusion from government power is not only unfair to the losing groups, but, in the long run, also dangerous for winners and losers alike, since it may undermine the legitimacy and stability of the democratic regime, thus contributing to coups d'etat.'

199. Indeed, Sir Arthur insists that the doctrine that the majority shall have its way and the view of politics as a zero-sum game, should be avoided, especially in plural societies. Accordingly, words like "winning" and "losing" have to be banished from the political vocabulary and replaced by the creation of institutions fostering mutual tolerance and compromise. The need here is to create political institutions which 'give all the various groups the opportunity to participate in decision-making, since only thus can they feel that they are full members of a nation, respected by their more
numerous brethren, and owing equal respect to the national bond which holds them together'.

200. It is worth mentioning that a recent lead article in The Economist (May 11th, 1991; p.13) argues that the current British first-past-the post system is both 'undemocratic' and 'archaic', and needs to be replaced by a fairer PR system. It points out that the majoritarian system tends to produce clear-cut governments, but so do some fairer PR systems used in a majority of the world's democracies. The article points out that since the perception of fairness is the acid test for a democracy -- the very basis of its legitimacy -- the unfairness argument against majoritarianism outrules all others. The fact is that consensus democracy is inherently more democratic as a result of its inclusive character.

201. The twenty-one industrialised democracies covered in Lijphart's Democracies have all shown a high degree of regime stability. There is no evidence that countries with PR are less able to solve society's problems, or that their policies are less effective than those with majoritarian systems. The PR system contributed to the failure of the Weimar Republic and to the rise of Hitler as Ferdinand A Hermin has argued. But there were several other contributory factors. In any case, since 1945 more and more countries have come to appreciate not only the democratic character of PR, but also that it is conducive to political stability.

202. All electoral systems, not just the plurality-majoritarian systems, tend to overrepresent the larger parties and under-represent the smaller ones, though the tendency is stronger in the majoritarian systems. The plurality formula is by far the simplest one: the candidate who receives the most votes, whether a majority or plurality is elected. But the formula, to stress again, does not produce necessarily a fair and democratic result.
203. In the Ghanaian context, the real problem with retaining the plurality system is the tendency towards the concentration of executive power in a cabinet composed primarily or exclusively of the members of the party which won most seats, but usually not on the basis of an overwhelming majority of the total votes cast. What the 4th Republic should avoid is a one-party, bare-majority executives, which contrast with the consensual pattern of the sharing of executive power among all the major parties represented in the legislature. The Swiss seven-member national Executive, the Federal Council, is such a broad coalition of all four large parties which together control about 85% of the seats in the lower house. The Swiss example is also characterized by a much more equal and balanced relationship between the executive and legislature.

204. Northern Ireland, Sri Lanka, and Trinidad provide contemporary examples in which the majority group uses its "democratic" voting power under a majoritarian system to impose its will on the minority; Switzerland and Malaysia illustrate the possibility of consensual democracy, in which all significant societal groups, majority and minority, share power.

205. In the specific case of Ghana, in considering whether a new electoral system based on proportional representation is desirable, it may be helpful to briefly review some of the results of our past elections against the background of PR.

206. In the general elections of 1969, Dr. K.A. Busia's Progress Party (PP) received 58.7% of the total votes cast, but got 75% (105) of the 140 parliamentary seats. K.A. Gbedemah's National Alliance of Liberals (NAL) obtained 30.4% of the total votes, but only 21% (29) of the parliamentary seats. The candidates of the remaining parties together obtained 10.9% of the votes and 4% (6) of the seats. Thus, in terms of the votes obtained by the parties, the parliamentary seats were distributed disproportionally.
If each vote had an equal weight or impact on the distribution of parliamentary seats, the PP would have obtained 82 seats instead of 105; NAL 43 seats instead of 29; and the other parties 15 seats instead of 6. Though the PP would still have received an overall majority, such a distribution of seats would have produced a more balanced and representative National Assembly.

207. The distribution of parliamentary seats in the 1979 general elections was even more disproportional. In those elections, Dr. Hilla Limann's People National Party (PNP) received 645,080 votes and secured 71 seats; Victor Owusu's Popular Front Party (PFP) received 541,659 votes and obtained 42 seats; Paa Willie's United National Convention (UNC) secured 13 seats with 310,062 votes; and Col. Bernasko's Action Congress Party (ACP) received 156,484 votes and had only 10 seats. Thus to elect one PNP member, it took 9,086 votes; to elect one PFP member, it took 12,697 votes; and to elect one UNC member, it took a huge 23,851 votes! Put another way, while the PFP, UNC and AFP together obtained 363,125 votes more than the PNP, the three parties combined received six fewer seats than the PNP.

208. If parliamentary seats had been distributed proportionally - ie. in proportion to the total votes cast, the final results of the 1979 general elections would have been: PNP - 53 instead of 71 seats; PFP - 45 instead of 42 seats; UNC - 25 instead of 13 seats; and ACP - 13 instead of 10 seats. No party could have formed a majority in parliament without a real coalition of the major parties.

METHODS OF PROPORTIONAL REPRESENTATION

209. The plurality and majority electoral formulas illustrated above have been used in Ghana since before independence. The plurality method, admittedly, is by far the simplest one: the candidate who receives the most votes, whether a majority or plurality, is elected. Majority formulas require an absolute majority
for election. One way to meet this requirement is to conduct a run-off second ballot between the top two candidates if none of the candidates in the first round of voting has received a majority of the votes. An example is the method used for the election of the President in the Third Republic of Ghana. Below we describe various methods of proportional representation.

(a) **The alternative vote (AV)** method used in Australia, is a true majority formula. The voters are asked to indicate their first preference, second preference, and so on among the candidates. If a candidate receives an absolute majority of the first preferences, he or she is elected. If there is no such majority, the candidate with the lowest number of first preferences is dropped and the ballots with this candidate as the first preference are transferred to the second preferences. This procedure is repeated by excluding the weakest candidate and re-distributing the ballots in question to the next highest preferences in each stage of the counting, until a majority winner emerges.

(b) **Two main types of PR are distinguishable.** The most common form is the LIST SYSTEM used in a majority - (14 out of 22) of the industrialized democracies discussed by Lijphart in *Democracies*, namely Austria, Belgium, Denmark, Finland, France (4th Republic); Germany, Iceland, Israel, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland. There are minor variations in list formulas, but they basically entail that the parties nominate lists of candidates in multi-member districts; that the voters cast their ballots for one party list or the other and that seats are allocated to the party lists in proportion to the number of votes they have received.

(c) The other principal form of PR is the single transferable vote (STV). It differs from LIST PR in that the voters vote for individual candidates instead of for party
lists. The ballot is similar to that of the ALTERNATIVE VOTE (AV) system. It contains the names of the candidates and the voters are asked to rank-order these. The procedure for determining the winning candidate is a bit more complicated than in the AV method. Two kinds of vote transfers take place:

(i) any surplus votes not needed by candidates who already have the minimum quota of votes required for election - usually calculated by a formula:

\[(\text{total votes cast}) + 1\]

\[(\text{number of seats} + 1)\]

are transferred to the next highest candidates;

(ii) the weakest candidate is eliminated and his or her votes are transferred in the same way. If necessary, these steps are repeated until all of the available seats are filled. The STV method is not used frequently, though its advantages include a combination that permits votes for individual candidates and that yields proportional results. The STV method is used in the Australian Senate, and in Malta and Ireland.

210. The West German Additional Member System (AMS) of PR combines the advantages of the British system (plurality-majority single-member district system) in use in Ghana - the ability of the voter to vote for a person instead of simply a party list thus providing direct local linkage between the elector and the elected - and those of the List method.

211. The AMS formula provides for the election of 50% (half) of the members of parliament from single-member constituencies (the traditional plurality method used in Ghana). The other half
are distributed as additional members to the various parties depending on the proportion of votes cast for them as parties in the election. Thus using the existing 140 single-member constituencies in Ghana as a basis, the AMS formula would mean that the 140 constituencies would be reduced by half (50%) to 70 such single-member constituencies. The other 70 members (making a total of 140) would be ADDITIONAL MEMBERS. The AMS formula operates in the following way:

1. Each voter is provided with a single ballot paper and required to make two separate choices in each of the two lists printed on the ballot paper;

1a. The first list contains the names of the individual candidates seeking election to parliament as the representative of that particular constituency. The candidates could include independents. The candidate with the most votes wins the election and a seat in parliament. This is the plurality single-member district method well-known to Ghanaians and used in Ghana and Britain;

1b. The second list contains the names of the parties contesting the elections (eg. FNP, PFP, UNC etc.). The voter's choice of party can differ from the party to which his or her choice of candidate in the first list belongs. This is called split-voting and a number of Ghanaians used it in the 1979 general elections, in order, for example, to vote for PFP in the presidential elections and for PNP in the parliamentary elections or vice-versa.

212. The votes in the second list determine the extent of party support throughout the country and is used to allocate the additional number of seats a party should have in parliament.
213. Let us use the March 1983 elections to the Bundestag in West Germany to illustrate the method in operation.

The Bundestag consisted of 496 members:

(a) 248 (50%) seats were distributed as additional members to the parties in order to reflect total party strength. The results of the March 1983 elections were as follows:

(i) The Christian Democrats had 180 members as a result of the first List preferences, that is, those directly elected by the single-member constituency formula. The Social Democrats had 68 seats and the Greens and The Free Democrats had no seats;

(ii) However, the preferences of the voters in the second, party list, showed that the parties qua parties received the following proportions of votes:

<table>
<thead>
<tr>
<th>Party</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian Democrats</td>
<td>48.8%</td>
</tr>
<tr>
<td>Social Democrats</td>
<td>38.2%</td>
</tr>
<tr>
<td>The Free Democrats</td>
<td>6.9%</td>
</tr>
<tr>
<td>The Greens</td>
<td>5.6%</td>
</tr>
</tbody>
</table>

214. Since the second party list defined the amount of party support of the various parties, the above percentages indicated the approximate number of seats (out of 248) the parties should have in the Bundestag. There is an additional requirement in the German formula that before a party can become eligible for additional members it must obtain at least 5% of the votes cast in the second list.

215. One of the most interesting features of the AMS formula is that it encourages parties to select as possible additional members persons representing special skills or interests or groups, such as (in the Ghana case) academics, chiefs, or farmers, whose presence in parliament may be beneficial, but who may not be able to win elections as candidates in the first lists.
Also, by providing that each party should list persons in the second list who will be the party's choice as additional members, it permits those voting for the party some control over candidate election. A party listing totally unattractive or objectionable candidates is unlikely to retain its party support.

216. The AMS with proportional allocation of seats ensures that party representation is spread equitably. The AMS system also encourages an efficient grass-roots party organization to ensure catching as many votes across many districts as possible. The party can thus become a focus of national unity.

217. The AMS formula may be combined with the Swiss formula for the allocation of ministerial portfolios, to bring about a fairer sharing of executive (Cabinet) power. It could be stipulated, for example, that a party receiving at least 10% of the total votes qualifies for consideration for ministerial portfolio based on the list system. It could also be stipulated that the President appoints half of the total number of Ministers and Deputy Ministers as he or she sees fit; the other half would be appointed by the President on the recommendations of the heads of the parties in parliament on the basis of the list system.

MEMBERSHIP OF ASSEMBLY

218. If the AMS form of proportional representation were adopted, we recommend that membership of the National Assembly be made 220, so that the existing districts automatically become electoral constituencies for Parliament.

219. This would mean that 110 of the 220 total parliamentary members would be elected by the simple plurality method, and the rest (110 members) on the basis of the party preferences of voters.
220. The PR method discussed above could provide a viable alternative to either a purely plurality-majoritarian system or a purely PR system. But the PR method would require further study given its newness to the Ghanaian electorate. We could profit from expert advice from countries which have actually experienced the PR system.
THE ELECTORAL COMMISSION

221. Ghana has had two forms of Electoral Commission between 1969 and 1988. In both 1969 and 1979 the Electoral Commission consisted of a sole Commissioner whose main functions were to organise public elections and to perform functions that are incidental to the electoral process. The second type of Electoral Commission in the form of a National Commission for Democracy (NCD) was provided for by PNDC Proclamation, 1981.

222. By virtue of section 6(2) of the Proclamation the NCD was to perform the functions of the Electoral Commission of 1979 and such other functions which the PNDC would determine. Under PNDCL 208 of 1988 the NCD was set up consisting of a Chairman and other members appointed by PNDC. Decisions of the Commission are arrived at by all the members of the Commission and not by a sole Commissioner as hitherto existed.

223. Furthermore, the NCD had wider functions than those of its predecessors. In addition to conducting public elections, it was further required to carry out political education and to disseminate information on government policies to the public in general, and in particular to the rural communities. The NCD was also required to monitor the implementation of government policies. For ease of comparison, and in order to better appreciate the differences between the two models their respective functions are set out below.

SOLE COMMISSIONER (MODEL 'A')

224. The main functions of the sole Commissioner in the Electoral Commission were as follows:

(i) Demarcation of boundaries of Constituencies for elections to the National Assembly and areas of Local and District Councils.
(ii) Registration of electors.

(iii) Registration and Revision of the registers of electors.

(iv) Conducting public education, referenda and plebiscites.

(v) Storage and use of election material.

(vi) Registration of Political Parties.

(vii) Revision of boundaries of constituencies.

**NATIONAL COMMISSION FOR DEMOCRACY (MODEL B)**

225. The main functions of the NCD include the following:

(i) Dissemination within the society of political awareness in the interest of Democracy.

(ii) Identification of the needs of the people particularly the rural and deprived communities; and notification to government of such needs.

(iii) Assessment of limitations to the achievement of democracy arising from inequalities of the different strata of the population, and making of recommendations for addressing them.

(iv) Monitoring of the implementation of government policies.

(v) Formulation for the consideration by government of a programme for the realisation of democracy.

226. Additionally, the Commission is to perform the following functions in relation to election:
(a) conduct and supervise all public registration of voters;

(b) conduct and supervise all public elections and referenda; and

(c) demarcate electoral boundaries.

227. Thus, in both models the Commission performs functions related to the electoral process. The main difference in functions is in respect of political education and monitoring of the implementation of government policies which the NCD (Model B) is expected to undertake.

228. The latter functions have the tendency of making the Electoral Commission an organ of government. It may be argued that political education should be undertaken by political parties during constitutional rule.

229. On the other hand, it can be argued that the partisan nature of political parties makes political education by a neutral body such as an Electoral Commission compelling; and that political education should be viewed as an essential aspect of democracy. However, it is arguable if a separate institution should not be charged with the responsibility for political education while the Electoral Commission limits itself to the traditional functions related to the electoral process.

230. Beyond the issue of what are the proper functions of the Electoral Commission, there are other considerations which should inform the selection of either of the two models. A sole Electoral Commissioner can be manipulated more easily than an Electoral Commission consisting of a number of people. Equally, the pressures and stresses of general and other elections can be borne better by a corporate body than by a single person. Furthermore, under Model B a member of the Commission can monitor much more closely and effectively the electoral process in each region than can be done by a sole Commissioner.
231. However, it is easier and quicker for a sole Commissioner to arrive at decisions than a body of Commissioners. Additionally, a sole Commissioner has a personal stake in the electoral process: the whole nation looks up to him for an honest, impartial and fair election; and there is therefore an irresistible urge to meet these expectations. Under Model B the corporate nature of the Commission deprives it of this crucial personal element.

232. With the above considerations in mind three decisions have to be made.

(1) There may be established an Electoral Commission with a sole Commissioner or an Electoral Commission consisting of a number of persons.

(2) The functions of the Electoral Commission, whether sole Commissioner or body corporate may be either;

(a) restricted to the electoral process, or

(b) extended beyond the electoral process to political education.

(3) A separate institution may be set up to undertake political education while the Electoral Commission concentrates on the traditional functions of the electoral process.
CHAPTER EIGHT

POLITICAL PARTIES

233. A democratic society assumes the value and fundamental equality of all its members, and further that they are endowed with reason and can play a part in their governance. From these cardinal assumptions flow the institutions and practices commonly associated with modern democratic governance, such as: the freedom of association; representative government and majority rule based on periodic fair and free elections; responsible government through periodic elections; the guarantee of individual and minority rights; and government by law.

234. The right of citizens to form political parties is a logical derivative of their freedom to associate. For our purposes, a political party may be defined as an organization of citizens which, among its several functions, seeks, mainly through success at elections to a representative assembly or office, to form the government of their country or, failing that, to exert influence on that government.

235. While the NCD report says that "the generality of the population is not against political parties as an ideal instrument that may give the fullest expression to the freedom of association," the Committee is nonetheless aware that several of our fellow citizens are, for good reasons, unhappy about political parties as a mechanism of representation. But given the right atmosphere, political parties can, in addition to their obvious role in elections, perform other important functions in a democratic society:

(a) they promote unity through a membership that cuts across sectional divisions in the country;

(b) they mobilize the citizenry for participation in the political process;

(c) they provide alternative choices of programmes and government personnel to the people;

(d) they generate an atmosphere for free expression and discussion of national issues;

(e) they influence the formation of public opinion; and
they provide avenues for training for public leadership.

236. Though political parties have, for the most part, been used to pursue authoritarian, sometimes totalitarian, ends in Africa, elsewhere they have been used in pursuit of genuine democracy. The reasons for the failure of political parties to achieve democracy in Africa have lain in the behaviour of our political leaders and the responses of the citizenry to that behaviour. Many an African leader has flagrantly disobeyed the proper rules by which the game of party politics is played. In effect, most African leaders have set up their own rules; and, obviously, a game cannot be better than the rules by which it is played. On the other hand, by and large, the African people have failed to hold their leaders to the observance of the correct rules of the game of party politics. In a democratic society, politics is (and must be) presaged on an assumption of the divergence of views and interests, not on the opposite assumption. Thus the necessity for free discussion and debate, so as to bring differences among the citizenry into the open and to openly seek accommodation and compromise.

237. In the light of the foregoing considerations, the Committee decided to amplify and add to the provisions on political parties in the 1979 Constitution, with a view to achieving the following objectives:

(a) making every party national in character, with its membership cutting across ethnic, religious, regional or other sectional divisions;

(b) establishing minimum standards of internal democracy in the organization and operations of a political party;

(c) preventing a political party from falling into the grips of a few powerful financiers;

(d) generating an environment for the operations of political parties such that all parties are seen as a legitimate and important part of the political process; and

(e) ensuring that political parties operate as genuine intermediate participatory organizations between the people and the process of democratic government.
ESTABLISHMENT OF POLITICAL PARTIES

238. While it may not be democratic to put a constitutional limitation on the number of parties that can operate, it is consistent with and even desirable in a democratic constitution to spell out the conditions under which political parties may be formed, taking into due consideration our past history of party politics, the need for national integration, political stability and popular participation and generally the democratic nature of the society we envisage for the future.

239. Accordingly, the Committee makes the following recommendations for the consideration of the Consultative Assembly:

1. Subject to the provisions of the Constitution, a political party should be free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and to sponsor candidates for election to public office other than to a District Assembly.

2. No organization should operate as a political party unless it has been duly recognized and registered as such by the National Electoral Commission.

3. For purposes of registration, a political party must furnish the National Electoral Commission with a copy of its constitution and the names of its national officers; and satisfy the Commission, among other things:

(a) that at least one founding member of the party is ordinarily resident or is registered as a voter in each District of the country and that he or she belongs to the ethnic group which is dominant in that District;

(b) that the party has branches in all the Regions of Ghana and is, in addition, effectively organized in not less than two-thirds of the Districts in each Region;

(c) that the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation or gives the appearance that its activities are confined only to a part of Ghana; and

(d) that the party has its headquarters in the national capital.
4. No political party should have as a founding member or leader or member of its executive a person who is not qualified to be elected as a member of Parliament or to hold any other public office under this Constitution.

5. The Executive Committee of every political party must be democratically elected at regular intervals not exceeding four years.

6. The members of the Executive Committee of a political party must be chosen from all the Regions of Ghana.

7. The objectives, programmes and activities of a political party must conform to the Directive Principles of State Policy enunciated in the Constitution.

8. Only Ghanaians who are eligible to vote can be members of a political party.

9. Being a member of the Public Services or Armed Forces of Ghana should not be a bar to membership of a political party.

10. No alien may be a member of a political party in Ghana.

11. A prospective party whose application for registration is rejected should be entitled to appeal to the High Court and the decision of the High Court should be final.

12. A political party must renew its registration every 31st December following an election; and if it fails to do so within three months it forfeits its right to renew its registration and must cease to operate as a political party.

FINANCING POLITICAL PARTIES

240. The Committee sees the wisdom in the recommendation of the NCD report that "Money must not be allowed to become the key to the control of the party machinery, and consequently the state apparatus". Even in countries more advanced than our own, political parties have, for lack of finance, been known to be easily driven into the grips of private companies and interests, who view their contributions to the parties as investments to be recouped later at greater profits. Such bodies have often sought recompense by putting pressure
on governments, particularly in the making of appointments and the award of contracts. They have been known to influence public policy in their favour.

241. Against this background, the Committee deliberated at length on the possibility of the State funding the political parties. There was general agreement that our political parties would require considerable sums of money to properly carry out such measures as:

(a) employing people to man their offices and organizational networks distributed throughout the country;

(b) purchasing vehicles and modern communications equipment to effectively reach the electorate;

(c) carrying out programmes of political and civic education through the publication of literature; and

(d) campaigning for their members contesting elections.

242. However, opinion was divided on the issue of state funding of parties. In sum, while some argued that it would reduce corruption, offer equal opportunities to all parties and thereby make them truly competitive, others argued that the enormous cost to the State, as borne out, for example, by the current Nigerian experience, could not be justifiable as one of the country’s top priorities today in view of the pressing developmental needs of the country, and that state funding would not eliminate corruption.

The Committee decided to refer the matter to the Consultative Assembly for resolution.

243. In spite of the division of opinion, there was consensus on the desirability of the State making contributions in kind to the campaign expenses of political parties. In this regard, we recommend that all candidates for the Presidency be given the same amount of time on radio and television, and the same amount of space in the State-owned newspapers. In respect of persons seeking election to Parliament, we recommend that, without prejudice to their right to conduct their own campaigns, the State should provide a common platform for all the candidates in each District to present their programmes to the people and answer questions and queries on them.
244. In the absence of state funding, the political parties would have to depend largely on membership dues and donations. The question that arises is whether, in view of the limited state support, donations by companies should be proscribed, as was done by the Supreme Military Council Decree on Political Parties in 1979 (SMCD 229). We urge the Consultative Assembly to give full consideration to this matter.

245. With specific reference to any donations to political parties, we recommend that upper limits be established by law. We also recommend generally that political parties be required by law to publicly declare their revenues and assets periodically, indicating their origins, how they were used and their general financial status.

246. In the light of the foregoing considerations, the following are the Committee's set of recommendations relating to the finances of political parties:

1. Within thirty days of its registration, a political party must submit to the National Electoral Commission a statement of its assets and liabilities as at the date of registration.

2. Only a citizen of Ghana may make a contribution or donation to a political party.

3. Within three months into any new year, a registered political party must submit to the National Electoral Commission a statement of its accounts covering the period 1st January to 31st December of the previous year, audited by an auditor approved by the Commission.

4. For purposes of (3) above, the Commission should have power to give instructions to political parties regarding the books or records of financial transactions which they should keep, as well as to examine all such books and records.

5. The National Electoral Commission should submit to Parliament a yearly report on the accounts and balance sheet of every registered political party.

6. Any citizen of Ghana should be entitled, upon payment of a fee prescribed by the Commission, to inspect or be given copies of the audited accounts of any political party filed with the Commission.
7. Within three months after every election, a political party that took part in the election, irrespective of performance, must submit to the Commission an account of its election expenses audited by an auditor approved by the Commission.

8. Parliament should enact a law providing guidelines on election expenditure and setting limits to contributions/donations to political parties.

MISCELLANEOUS

247. We recommend for consideration by the Consultative Assembly the following proposals which are also relevant to the issue of political parties.

1. Every citizen of Ghana of voting age should have the right to form or join a political party and generally to participate in peaceful political activity intended to influence the composition and policies of the Government or a political party.

2. Any activity of a person or group of persons which suppresses or seeks to suppress the lawful political activity of any other person or group of persons should be an unlawful act; and the High Court should have power for the prevention of the said unlawful act(s) to:

(a) grant an injunction against any person;

(b) bind the person to be of good behaviour for a period of five years; and

(c) in extreme cases sentence a person to imprisonment for a period not exceeding 10 years, in which case such a person would not be eligible to stand elections to Parliament or District Assembly and should not be eligible for appointment to any public office for 10 years.

3. The State should ensure that elections are seen to be free and fair.

4. It should be the obligation of the State to provide equal opportunities to all political parties to present their programmes to the public by ensuring equal access to the State-owned media of mass communication.

5. Without prejudice to the right of every candidate for election to Parliament to conduct his or her campaign
freely in accordance with law, the State should provide a common platform for all candidates in a constituency to present themselves and their programmes to the electorate and to respond to questions and queries.

6. All political parties should be entitled to equal treatment by all public authorities.

7. It should be the obligation of a political party to educate its members to defend their rights and the Constitution, and to observe the duties of a citizen.

8. The Executive and Steering Committees of the national office of a political party should not impose executive members on any local branch of the party.

9. Within three months of being registered, a political party must lodge with the National Electoral Commission a code of conduct for its members in which it outlines the disciplinary measures to be taken, against all categories of its members.

10. No member of an organization or interest group should be required to join a particular political party by virtue of his or her membership of the organization or group.

11. The National Electoral Commission may by legislative instrument make such regulations as are necessary to give full effect to the provisions of this section.

12. Subject to the provisions of the Constitution, Parliament should, by law, regulate the functioning of political parties.
CHAPTER NINE

THE JUDICIARY

247. The chequered history of the rule of law and democracy in this country hardly leaves room for doubt that a strong and independent judiciary is a critical ingredient of a viable constitutional order. As to the role of the Judiciary in sustaining the Constitution, the Committee can do no better than to invoke the ringing words of the Akufo-Addo Report in this regard:

"In considering our proposals for the Judiciary we have had one objective in view. Having proposed a Constitution in which is enshrined the sovereign will of the people and which therefore becomes the Fundamental, that is the Supreme, Law from which all persons and authorities derive their constitutional existence, duties, rights and powers, we conceive it to be indispensable for the effective operation of the Constitution to have a strong, courageous and independent Judiciary capable in all circumstances of holding the balance evenly between the over-reaching zeal of bureaucrats and politicians on the one hand and the God-given rights of the individual on the other". (Paragraph 560)

248. Courts are necessary institutions in any democratic society. They provide an impartial forum in which disputes between individual citizens or institutions and disputes between citizens and the State can be peacefully resolved. They also play the important role of declaring the rights of citizens and of providing reliefs and remedies for the protection of human rights.

249. In the protection and enforcement of the liberty of the individual the Courts play a unique role. It is in the Courts that a citizen who considers his or her human rights abused or threatened can ventilate his or her grievance and seek appropriate relief. In a properly constituted Judicial system, the Courts perform
their functions independently and impartially and free from any interference or undue influence from any quarter, particularly the government in power for the time being.

250. Any system of Courts in which Judges or Magistrates are subject to Executive directives cannot ensure that impartial and independent adjudication of disputes which constitutes the individual citizen's greatest protection against abuse of power. For the effective performance of their functions the Courts must be accessible throughout the country.

INDEPENDENCE OF THE JUDICIARY

251. The independence of the Judiciary should be guaranteed by the State and enshrined in the Constitution. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

252. It is the view of the Committee that the concept of judicial independence has several aspects, and that there can be no meaningful constitutional guarantee for the basic integrity of the judicial process unless the following fundamental principles are acknowledged and reflected in the provisions relating to the Judiciary:

1. There should be an unequivocal prohibition of Executive interference with the judicial process. The Judiciary must not be subject to any control or directive from the Executive or any other quarter in the discharge of its judicial functions. Nor should the Executive, or indeed the Legislature, pronounce on the adjudication of cases or attempt to alter or revise the outcome of such adjudication. This principle is without prejudice to mitigation or commutation by competent authorities of sentences imposed by the Judiciary, in accordance with the law.
2. The Courts should be sensitive and impartial arbiters between the demands of the public interest and the rights of the individual.

3. The Judiciary should decide matters before them impartially, on the basis of facts and in accordance with the law, without any restriction, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

4. The Judiciary should be insulated from all subtle forms of Executive pressure or influence. In the words of the Akufo-Addo Report, the Executive should not be "placed in a position vis-a-vis the Judiciary such as would enable it, or at least would offer it the temptation, to exert any pressures, however subtle, on the Judiciary."

5. The Judiciary should be assured full financial and administrative autonomy. This means that the governmental structure should not subordinate the Judiciary to any Government Department or Ministry for the purposes of presenting or realizing its administrative or financial requirements.

6. Judges should enjoy security of tenure until constitutionally sanctioned retirement age. Their appointment and removal should be insulated from political influence and unfettered Executive discretion.

7. Judges should themselves adhere to the highest standards of personal and professional integrity and avoid any conduct that would compromise their judicial independence. The principle of the independence of the Judiciary entitles and requires the Judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
The conditions of service for the Judiciary should be conducive to the dignity and integrity of judges. The State should provide adequate resources to enable the Judiciary to perform its functions properly.

THE EXERCISE OF JUDICIAL POWER

253. A basic principle that was enshrined in the 1969 and 1979 Constitutions is that final judicial power should be vested in the Judiciary. This means the exclusive power of the Judiciary to determine all justiciable disputes. Subject to the slight modification of this principle in respect of the jurisdiction of the Judicial Committee of the Council of State, the Committee proposes that this principle be clearly affirmed in the new Constitution.

254. The rationale for this principle will be evident to all who subscribe to the rule of law. The doctrine of separation of powers, as it applies to the relations between the Judiciary and other branches of Government, would be meaningless if these other branches claimed and exercised concurrent judicial powers over the same persons and the same matters. Such a situation would clearly undermine the independence and standing of the Judiciary. Furthermore, the notion of judicial enforcement of individual rights would be illusory if the Executive and the Legislature were to dispense their own form of justice without reference to the Judiciary. There can be no guarantee of individual rights in the absence of an impartial institution that administers a universal system of justice affecting all citizens. Vesting final judicial power in the Courts must necessarily imply the power of the Courts to supervise the work of other adjudicatory bodies whose decisions affect the rights of the general citizenry.

255. The above-mentioned exception in favour of the Judicial Committee of the Council of State is justifiable on the ground that the purpose of this special jurisdiction is to address situations that have the potential to develop
into major confrontations between the organs of State that might threaten the stability of the political order. This special jurisdiction is meant to forestall, diffuse and resolve disputes before they mature into major constitutional disputes. It is not meant to encroach upon the territory of the Judiciary, but to enhance that political stability which is a precondition for the orderly and systematic exercise of normal judicial power. The jurisdiction is predicated on the premise that it is conducive to good governance and the rule of law to have a mechanism which provides a warning signal that a proposed law or measure would be unconstitutional and should therefore be abandoned or amended.

256. It has to be emphasized that the Judicial Committee will have no jurisdiction with respect to the enforcement of individual constitutional or other rights. That is the preserve of the Courts, the Supreme Court and the High Court. Nor will the Judicial Committee be involved in entertaining challenges to the constitutionality of enactments after they have passed through Parliament. The Judicial Committee's role is essentially preventive in character and would be largely confined to bills, proposed regulations and proposed Executive measures. With respect to major disputes between organs of the State, its role would be limited to mediating with a view to resolving such disputes, and not to adjudicate.

257. It is our opinion that the Constitutional history of Ghana is replete with many cases which, with a timely warning such as is proposed here, would not have degenerated into bitter, constitutional confrontations threatening the very foundations of the constitutional order. There can be little doubt that the Executive as well as the Legislature would appreciate these warning signals that do not involve confrontational challenges to their authority.

258. Subject to the above-mentioned narrowly circumscribed jurisdiction of the Judicial Committee of the Council of State in certain constitutional matters, the Supreme Court of
Ghana, as the repository of the final judicial power of the State, must exercise supervisory powers over all judicial or adjudicatory bodies in the State. This does not preclude the establishment of tribunals or courts to deal with specialist subjects such as tax, land disputes and chieftaincy disputes. With the increasing complexity of technical issues that arise in litigation, such a development is healthy. It does mean, however, that the establishment of the specialist courts or tribunals cannot oust the ultimate supervisory jurisdiction of the Supreme Court over such bodies.

259. The Committee is, therefore, of the view that the Constitution should follow the example of the 1969 and 1979 Constitutions by vesting final judicial power exclusively in the Judiciary. The Committee is, however, of the opinion that the power of judicial review should not be left to inference but should be expressly enshrined in the Constitution so as to leave no room for doubt. In other words, it is necessary that judicial review be expressly stipulated in the Constitution as one of the powers of the Judiciary.

The Committee, therefore, proposes that

1. Judicial power in Ghana should be vested in the Judiciary;

2. Except otherwise provided in the Constitution, no organ or agency of the Executive should have final judicial power. In other words, the Judiciary should be vested with the exclusive right of final adjudication on all justiciable controversies except otherwise provided in the Constitution; and

3. Judicial review shall be expressly vested in the Judiciary.
260. It should be observed that modern administration requires the setting up of various administrative bodies which perform quasi-judicial functions. The vesting of final judicial power in the Judiciary does not necessarily require that such bodies should not exist. It does mean, however, that administrative tribunals or quasi-judicial bodies must not be allowed to make final pronouncements on the interpretation of the law or the scope of their own power and authority or the correctness or reasonableness of their acts and decisions. In all these matters the last word must come from the Judiciary.

261. It is for the foregoing reasons that the Committee has proposed that Judicial power as well as the power of Judicial review be expressly vested in the Judiciary.
262. Judicial review, including the power of the Judiciary to pronounce on the constitutionality of Acts of Parliament, other enactments and also Executive action, is a potent and far-reaching aspect of judicial power. Judicial review is an established doctrine of the constitutional law of the United States and was adopted in Ghana under the 1969 and 1979 Constitutions. In view of the limited duration of these two constitutional regimes, it can hardly be denied that Ghana has had a comparatively limited experience of the doctrine in its more radical form of pronouncing on the constitutionality of actions taken by the Legislature and the Executive, and indeed any other authority.

263. The practice of this concept of judicial review in other countries, not excluding the United States, has not been free from difficulty. Many Governments and Legislatures do not welcome the prospect of their action being nullified by the unelected branch of Government. Disputes as to the constitutionality of the action taken by the Legislature or the Executive, therefore, frequently generate bitter confrontations between state organs that tend to threaten the constitutional order itself. In some cases, constitutional challenges to the Executive or the Legislature may disclose genuine philosophical differences with the Judiciary as to the issues before the Court. Thus, in the United States, there was a genuine question as to whether the Roosevelt Administration's programme of social legislation to regulate and ameliorate working conditions was violative of constitutionally guaranteed contractual rights. Similarly, the attempts of the Indira Ghandi government to introduce land reform in India were challenged as repugnant to the constitutionally protected property rights of the large landowners. Thus, what the Judiciary considers as a principled stand in defence of clear provisions of the Constitution may be seen by other branches of Government as an unduly conservative or radical posture that impedes much-needed social reforms. In Ghana, the Sallah Case and the Apaloo Case
demonstrated the extent to which constitutional confrontations could threaten the foundations of the political system.

264. Notwithstanding these difficulties, the Committee is of the considered view that judicial review in all its forms should be firmly established under the Constitution. This means (1) the power to pronounce on the constitutionality of the acts of other branches of the Government, and (2) judicial review of administrative acts. Judicial review of the latter category is necessary where there is a breach of natural justice or where administrative bodies act in excess of their powers. Nevertheless, having regard to our bitter experience of confrontations generated by the exercise of this power, the Committee strongly urges that appropriate mechanisms be instituted to minimize and diffuse the prospects of such confrontations. The special role defined for the Judicial Committee of the Council of State addresses this concern.

265. Subject to the foregoing, as well as the jurisdiction of the High Court to enforce human and other constitutionally guaranteed individual rights, the Committee fully endorses vesting the power of judicial review in the Supreme Court as set forth in Article 118 of the 1979 Constitution as follows:

"The Supreme Court shall have original jurisdiction to the exclusion of all other courts:

(a) in all matters relating to the enforcement or interpretation of any provision of the Constitution; and

(b) where a question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution".
PUBLIC TRIBUNALS

266. The Committee has carefully considered the issue as to whether the retention of the existing Public Tribunals would be compatible with the constitutional principles enunciated above with respect to the Judiciary and the administration of justice generally. The Committee's conclusion is that, whatever the merits of the Public Tribunals, they cannot be exempted from the general regime of the administration of justice inaugurated by the Constitution, which is anchored on the final judicial power of the Supreme Court. The citizens of Ghana should not be subjected to two parallel systems of administration of justice in respect of criminal matters, one of which is immune from the constraints imposed by the Constitution. The constitutional guarantees in respect of individual rights, due process of law, and fair trial must be available to every citizen of Ghana who finds himself or herself in any tribunal purporting to administer criminal justice. The ordinary citizen of Ghana should not find himself or herself in jeopardy by reason only of the fact that the authorities choose to prosecute him or her in one forum instead of another. According to the UN Declaration on Basic Principles on the Independence of the Judiciary:

"Everyone shall have the right to be tried by ordinary Courts or Tribunals using established legal procedures. Tribunals that do not use duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary Courts or Judicial Tribunals".

267. It is therefore the considered opinion of this Committee that the Public Tribunals cannot be retained in their present form. The Committee considered whether to integrate the Public Tribunals into the existing traditional court structure or to retain them, but subject to the supervisory jurisdiction of the Superior Courts. After careful consideration, the Committee opted for full integration as the most effective way of assuring the above-mentioned Constitutional
principles. The Committee believes that this is the right and proper approach.

**STRUCTURE OF THE COURTS**

268. The Committee has proposed that the Public Tribunals should be merged with the traditional Courts. The next issue which the Committee had to determine was the structure of the Courts as merged with the Public Tribunals. The Committee had two clear alternative structures which it considers must be put before the Consultative Assembly for a choice to be made.

269.

**FIRST ALTERNATIVE**

(i) Abolish the District Magistrate Grade II

(ii) Merge the District/Community Tribunals with the District Magistrate Courts Grade I;

(iii) A Court resulting from the merger is to be designated Public Tribunal, which should be operated by panels consisting of a lawyer, qualified to be a Magistrate Grade I, and two lay persons of good education and proven integrity. This would ensure the preservation of the element of popular participation which has been a salutary aspect of the operation of Public Tribunals;

(iv) The jurisdiction of such Courts should consist of the original jurisdiction of the District Magistrates Grade I, augmented by the inclusion, by appropriate legislation, of some of the matters that previously fell within the jurisdiction of the District and Community Public Tribunals. The following courts would be Public
Tribunals, District/Community Tribunals, Family Courts, Motor Courts, Tax Courts and Juvenile Courts;

(v) Regional Public Tribunals should be integrated with Circuit Courts. The Presiding Officers of the Tribunals who qualify as Circuit Court Judges may be so appointed. Presiding Officers, being lawyers, who do not so qualify may be appointed to District/Community Tribunals;

(vi) The jurisdiction of the Circuit Court would be expanded to incorporate some of the original jurisdiction of the Regional Public Tribunals;

(vii) Appeals from the Circuit Courts as merged with the Regional Public Tribunals in criminal matters on indictment will lie to the Court of Appeal and in Criminal matters tried summarily appeals will lie to the High Court;

(viii) The High Court should exercise supervisory jurisdiction over all lower courts and lower adjudicating bodies.

270. The High Court would continue to have its current jurisdiction as provided under the 1979 Constitution, including adjudicating on human rights issues. Appeals from the High Court will lie to the Court of Appeal and then to the Supreme Court. This structure, it is argued, would enable the citizen have access to two courts of appeal from a decision of the High Court.
271. The second alternative is to merge the Public Tribunals and change the existing court structure into a simple 3-tier structure consisting of:

(i) the District and Community Public Tribunals as in the first alternative;

(ii) abolish the Circuit Courts and Regional Public Tribunals and in their place have more High Courts, the reason being that the Circuit Courts currently have nearly almost identical jurisdiction as the High court although it does not have any appellate jurisdiction, but most of the judges at the Circuit Court more than qualify to be High court Judges in terms of experience. Such a move would make many more High Courts accessible to the people to which appeals from the Public Tribunals will lie.

(iii) The High Court would continue to exercise all the powers it currently has as indicated in the First Alternative, including adjudicating on human rights issues.

(iv) Abolish the Court of Appeal and leave the Supreme Court as the highest Court of appeal in the country, to which appeals from the High Court will lie. The Supreme Court would continue to have its exclusive jurisdiction for the interpretation of the Constitution and on issues whether any enactment was made in excess of power conferred by Parliament.

272. The rationale behind the suggested shortening of the hierarchy of the Courts was that the existing courts system had too many
courts and make litigation expensive. A reason for having one Supreme Court consisting of all the judges of the Court of Appeal was that this proposed Supreme Court could sit simultaneously and attend to a number of appeals.

273. It is suggested that the qualification of a Justice of the Supreme Court should be the same as currently exists for the Supreme Court - that is fifteen years standing as a lawyer.

274. The Committee proposes the retention of the existing jurisdiction of the Supreme Court, the Court of Appeal and the High Court as contained in the 1979 Constitution and the Courts Act of 1971, subject to appropriate rendition dependent on which of the two alternative court structures indicated above is adopted.

275. Whichever alternative is adopted, the Committee is proposing that there should be established two specialised courts as Divisions of the High Court, to deal with tax and land issues respectively. It is appreciated that the High Court currently has original and appellate jurisdiction in these subjects; but in view of the specialist nature of tax issues and the necessity to continue the tax awareness that the Government has created, as well as a further mode of merging the Tribunal system with the other Courts, the Committee recommends that there be created a Division of the High Court to be known as the Tax Court which should deal exclusively with tax cases and should be duly constituted by a High Court Judge and an accountant appointed by the Judicial Council.

276. In so far as the proposal for a special Land Court as a Division of the High Court is concerned, it is the considered view of the Committee that this would speed up the disposal of land cases. In this regard, the Committee has been reliably informed that there are as many as 16,000 pending land cases in the Courts of this country, and that there is little prospect of disposing of these cases in the near future. This must seriously impede the delivery of land for the purposes of development in this country,
and calls for bold, imaginative, innovative and expeditious mechanisms to salvage the situation.

277. With the integration of the Public Tribunals into the main courts system, it would no longer be feasible to retain the Public Tribunals Board, which is charged with administrative supervision of the Tribunals. It is therefore proposed that in order to vest one institution with the judicial powers of the country, as already recommended, all public tribunals and adjudicating courts in the country should come under one supervisory authority unless otherwise provided in the Constitution. To this end, it is proposed that the Judicial Council should be the supervisory body of all courts and tribunals in the country.

278. The Public Tribunals have been dealing partly with a category of offences under the general heading of economic crimes. The Committee is of the view that there is the need to seriously check and punish offenders and to the extent that some of the acts are socially undesirable, it is proposed that they should be created as specific offences and incorporated into the Criminal Code.

279. The Committee further makes the following proposal which was submitted by His Lordship the Chief Justice:

"No Justice sitting in the Supreme Court or Court of Appeal for the determination of any cause or matter shall, having heard the arguments of the parties to such cause or matter and before judgment is delivered thereon, withdraw as a member of the Supreme Court or Court of Appeal nor shall such Justice become functus officio in respect of that cause or matter until the judgment is delivered".

280. On the composition of the Supreme Court, Court of Appeal, the jurisdiction of the Court of Appeal and the composition of the High Court of Justice, the Committee did not find the need to alter the provisions in Articles 120 to 124 of
the 1979 Constitution and it is proposed that these articles be adopted subject to the structure of court adopted. Article 125 of the 1979 Constitution deals with the jurisdiction of the High Court. The Committee found the provision therein not broad enough. It is proposed that, subject to the specific limitations indicated in the Constitution, the article should be broadened to enable the High Court deal with any other subjects.

LOWER COURTS

281. Whichever alternative Court Structure is adopted, the Superior Courts need to be clearly defined in contradistinction to the Lower Courts. In the First Alternative, the Superior Courts would be the Supreme Court, Court of Appeal and the High Court. The Lower Courts would be the Circuit Courts and the Public Tribunals made up of District/Community Tribunals, Family Courts, Motor Courts, Tax Courts, Juvenile Courts, and the Traditional Courts. In the Second Alternative, the superior Courts would be the Supreme Court and the High Court and the Lower Courts would be the Public Tribunals.

APPOINTMENT, REMOVAL, AND RETIREMENT OF JUDGES

282. On the appointment of Judges, the Committee considered the manner in which judges were subjected to rather humiliating vetting processes in 1979 because Article 127 of the 1979 Constitution provided that the appointment of the Chief Justice and the other Superior Court judges were to be made with the approval of Parliament. That particular experience led to undesirable consequences, because questions were put to judges that went over and above the requisite enquiry with any bearing on their judicial functions.

283. In the light of this experience, it is proposed that the Chief Justice should be appointed by the President acting in consultation with the Council of State. The other Supreme
Court Judges are to be appointed by the President acting on the advice of the Judicial Council and in consultation with the Council of State. The deletion of Parliamentary approval, as provided for in the 1979 Constitution has been done advisedly. It is realised that the Council of State will be composed of representatives of the majority and minority parties as well as eminent citizens, and such a body will not give its approval without circumspection.

284. With regard to the tenure of office of judges of the Superior Courts, it was noted that Clause (1) (b) of Article 128 of the 1979 Constitution provided that a judge of the Superior Court should retire at the age of sixty-five. It was contended that Government had extended this retiring age for some judges at the Supreme Court and if this had been found necessary then there might be justification for moving the compulsory retirement age of the superior court judges to seventy. On the other hand, there was the argument that extending the retiring age would prevent other judges from moving up. It was further argued that retiring at 65 would leave the judge ample time to pursue other interests whilst still in relatively good health. Besides, with the general retirement age in the Public Services at sixty, there would appear to be no justification for moving the compulsory retirement age of superior court judges to seventy.

285. The Committee proposes that the compulsory retirement age of sixty-five for Judges of the Superior Courts should be maintained; but in order to avoid any untoward situation, room should be given to the President to make extension where necessary for a period not exceeding two years in respect of any Judge.

286. On the removal of Judges of the Superior Courts, the Committee, conscious of the need to ensure that judges are not arbitrarily removed from office, proposes that the Chief Justice or a Judge of the Superior Courts may be removed from office only for inability to perform the functions of his or her office, arising from
infirmity of body or mind or for stated misbehaviour or incompetence. Secondly, the method of removal should be as follows:

(a) If the President receives a petition of complaint against a judge of the Superior Courts other than the Chief Justice, he or she should refer the petition to the Chief Justice, who would determine whether there is a prima facie case.

(b) After satisfying himself or herself that there is a prima facie case, the Chief Justice should set up a tribunal consisting of three judges of the Superior Courts appointed by the Judicial Council, and two persons appointed by Parliament to go into the matter and make its recommendation to the President.

(c) Where the petition is against the Chief Justice, the President should refer the matter to the Judicial Committee of the Council of State. After satisfying itself that there is a prima facie case, the Judicial Committee should empanel a tribunal of five, three of whom should be members of the Judicial Committee of the Council of State, and the other two appointed by Parliament to examine the issue and report on it to the President.

(d) The President should act in accordance with the recommendations of the tribunal in either case.

THE JUDICIAL COUNCIL

287. The Committee examined the functions of the Judicial Council as provided under PNDCL. 228 and proposes that for the effective and proper administration of the Judicial Service, the Judicial Council should have the following functions:
(a) propose for consideration of Government, judicial reforms to improve the level of administration of justice and efficiency in the Judiciary;

(b) be a forum for consideration and discussion of all matters relating to the discharge of the functions of the Judiciary and should thereby assist the Chief Justice in the performance of his or her duties with a view to ensuring efficiency and effective realization of Justice; and

(c) perform any other function conferred on it under this Constitution or any other enactment.

288. The Committee also proposes that the Judicial Council be empowered to establish committees to which issues relating to the Judicial Service could be referred.

289. The Committee gave consideration to the following issues: appointment of officers other than judges in the Judicial Service; the Rules Committee; the payment of fines taken by the Courts into the Consolidated Fund; and discovery of official documents and proposes that the provisions on these topics as specified in the 1979 Constitution be retained since no difficulties appear to have been encountered in their implementation.

290. The Committee further proposes the composition of the Judicial Council as follows:

(i) the Chief Justice;

(ii) the Attorney-General;

(iii) the most senior judge of the Supreme Court;

(iv) the most senior judge of the Court of Appeal;
(v) the most senior judge of the High Court;

(vi) 2 representatives of the Bar Association, one of whom should be a lawyer of not less than ten years standing at the Bar;

(vii) a representative of the Association of Circuit Court Judges* and Chairman of Public Tribunals

(viii) the Judge Advocate-General of the Ghana Armed Forces; and

(ix) three other persons appointed by the President.

*Subject to which alternative structure is adopted.

291. The appointment, removal and retirement of Judges and the composition of the Judicial Council will be subject to the choice of hierarchy of the Courts adopted.

FINANCIAL INDEPENDENCE OF THE JUDICIARY

292. The members of the Committee are in no doubt that one of the most effective ways of ensuring the independence of the Judiciary is to ensure its financial autonomy. The independence of the Judiciary is seriously undermined if the Executive controls the purse strings of the Judiciary and can, therefore, interfere with its efficient operation by means of manipulating the funds made available to the Judiciary. In the light of this, the power to determine how much money the judiciary should spend must be given to the People's representatives, i.e. Parliament.

293. In this regard, it is pertinent to consider the respective provisions of the 1969 and 1979 Constitutions relating to the finances of the Judiciary.

Article 130 of the 1969 Constitution provides as follows:
"The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly in each Financial Year estimates of the revenue and expenditure for Ghana for the following financial year."

Article 141 of the 1979 Constitution dealing with the same subject-matter provides:

"Parliament shall cause to be prepared and laid before Parliament estimates of the revenue and expenditure of the Government of Ghana for the next following financial year."

294. Under the 1979 Constitution, therefore, the preparation of the estimates was made the responsibility of Parliament and not of the Executive represented by the Minister of Finance. In 1980 the question arose whether certain estimates of the Judiciary should be presented to the Ministry of Finance and be included in the Appropriation Bill. This question arose because it was the view of the Chief Justice that the estimates of the Judiciary should go straight to Parliament and that it was Parliament and not the Minister of Finance which should decide the quantum of the estimates of the Judiciary. The Attorney-General, on the other hand, took the view that since the estimates, other than salaries charged on the Consolidated Fund, were in the nature of a money bill they should be presented by the Minister responsible for Finance. This controversy was not resolved before the overthrow of the Third Republic.

295. The Committee has carefully considered the different opinions expressed on this subject and is firmly of the view that financial independence of the Judiciary from the Executive is a necessary pre-requisite for the independence of the Judiciary. The Committee accordingly proposes that the proper authority to determine the question of these estimates should be Parliament, although there is nothing to prevent the Executive, through the Prime Minister or the
Minister of Finance, from commenting on such estimates.

296. To achieve this objective, the Committee recommends that the provisions of Article 114(4) of the 1979 Constitution should be retained with a modification expressly providing that estimates of the Judiciary should be submitted directly to Parliament by the Judiciary. Clauses (3) and (10) of Article 114 are also to be retained.

297. The Committee wishes to emphasise that the Judiciary, in both its judicial and administrative functions, should be subject only to the Constitution and not be subject to the control or direction of any other person or authority.

298. The Committee also considered some of the factors inhibiting the efficiency of our Judges. It noted, in particular, certain administrative bottlenecks and short-comings arising from inadequate infrastructure which result in delays and inefficiency. For example, the Registry of many Courts of this country is not equipped with a sufficient number of up-to-date typewriters. Many High Court Judges, especially in the regions, have to operate without decent libraries. Our Judges have no Secretaries. Even in Accra, a casual inspection of the Registry will reveal how totally inadequate it is equipped to carry the burden of work. For example, a Judge of the Supreme Court who wants anything typed for him or her must go to the typing pool. It is unreasonable to expect a certain level of efficiency and competence from personnel when they are denied the facilities which will enable them to perform properly. To this day the Judicial Service has not been able to computerise its documentation with the result that files and dockets get misplaced and sometimes disappear altogether.

299. Furthermore, Judges and Magistrates are condemned to the drudgery of recording in long hand the entire Court proceedings in cases. This system subjects the Judge to unnecessary fatigue and reduces his or her capacity to critically
observe what is going on around him or her, when dealing with oral testimony. This is particularly unfortunate in a case where the demeanor of a witness is of some importance. Moreover, it unnecessarily protracts the preparation of Appeal Records. A simple system of electronic recording would eliminate this drudgery. The necessary equipments are relatively cheap and readily available now.

300. Difficulties of transportation prevent Judges from being punctual in their hours of sitting and adversely affect the pace of work. The problems which confront the Courts, however, cannot be blamed on the structures of the Courts. The solution lies essentially in attracting quality personnel not only on the Bench itself, but in the administration of the Courts, and providing the necessary inputs to ensure that the work can be done as expeditiously as circumstances will permit.

301. While conscious of the difficulties and constraints under which the Judiciary labours, the Committee's attention has been drawn to the urgent need for the Judiciary itself to institute the necessary and administrative reforms to ensure an efficient and effective administration of justice. The inordinate delays in the disposition of cases, the prevalence of cumbersome procedures and the occasional lapses in public integrity cannot entirely be attributed to the failure of other governmental authorities to provide adequate resources and facilities. The Judiciary itself should critically evaluate its own procedures and administrative practices to identify areas where it can initiate remedial action itself and then call upon other authorities to reinforce its endeavours with the necessary resources and facilities.
CHAPTER TEN

ADMINISTRATION OF LAND

302. Ghanaians need no reminder that land in this country has political, economic, social and religious implications. Our traditional political systems and our political economy revolved around our system of land ownership and tenure. Some of the earliest manifestations of nationalism in Ghana were fueled by the determined and united opposition of the people of Ghana to what was regarded as an inadmissible assertion of ownership of our lands by the colonial authorities. It is equally true that industrial and agricultural development in these modern days depends very much on a rational and effective system of land management. And yet it is all too true that in Ghana no such system has emerged. Land management in Ghana has been bedevilled by a host of factors such as insecurity of title, wasteful and protracted land litigation, lack of effective coordination among the various agencies concerned with land management, a chaotic system of land tenure and the failure to appreciate the techniques of sound land management. All this seriously impedes the delivery of land for development.

303. The Committee is of the view that this situation calls for a major reform. What follows is a preliminary attempt to identify some of the problems.

304. The Committee would stress the principle enshrined in Article 188 of the 1979 Constitution, that all public lands in Ghana are vested in the President on behalf of, and in trust for, the people of Ghana. It follows that the administration of public lands is a matter of the highest public interest and that the organisational arrangements relating to such administration should be efficient, viable and productive.
THE LANDS COMMISSION

STATUS OF THE COMMISSION

305. The 1979 Constitution charges the Lands Commission with responsibility for the management of any land or minerals vested in the President. The fusion of the management of lands and mineral resources in one state agency is not conducive to efficiency. Most countries have a separate agency dealing with mineral resources, and it is hardly surprising that the Lands Commission was divested of this responsibility by PNDCL 42. The Committee endorses this development.

306. However, we would go further to question the functional basis for the Constitutional guarantee of the autonomy of the Lands Commission. The 1979 Constitution proclaimed that the Lands Commission was subject to no authority other than the Constitution. Whatever the merits of autonomy in the abstract sense, it would seem unrealistic to insulate a vital economic agency from the entire apparatus of Government concerned with the management of the economy. One of the serious impediments to effective land management in this country is the lack of co-ordination among the various agencies with responsibility in this area. In principle, a constitutionally guaranteed autonomy of any one of such institutions seems unrealistic. The Committee, accordingly, proposes that the Lands Commission should be responsible to the Minister of Lands and Natural Resources.

THE ROLE OF THE LANDS COMMISSION

1. Centralization

307. The Lands Commission has been assigned a central role in the management of public lands and stool lands in the entire country.

308. The Committee was advised by experts in the field that the management of public lands in the country has been hampered by the failure to regionalize the Commission in accordance with
Article 189(2) of the 1979 Constitution. This means that no land transaction can be completed in the Regions without some reference to the Lands Commission in Accra. This must seriously impede the delivery of lands and it is the view of the Committee that it must be rectified. A Regional Land Commission should be established in each Region with full powers to handle land transaction and land policy in the Regions. There should, however, be coordination with the Central Lands Commission to ensure harmonization of policy and up-to-date information on developments in all the Regions.

IN Volvement IN Stool LANDS

309. It was urged upon us by land experts that the Lands Commission should not be involved in the management of Stool Lands. The present position appears to be that there can be no disposition of stool lands without the concurrence of the Lands Commission.

310. It was pointed out to us that the Lands Commission has neither the expertise nor the resources to assume any major responsibility for the management of the stool lands, and that it should concentrate its energies on public lands. The suggestion has further been made that traditional authorities themselves should be more deeply involved in the management of stool lands and that such responsibility should be reflected in adequate allocation of stool land revenues to the Stools.

311. On the other hand, it has been contended that the public interest will not be served by a laissez-faire approach that leaves the management of stool lands in the hands of stools without the control or guidance of public authorities as to the development plan for the areas concerned. Haphazard and unco-ordinated alienation of pieces of land with scant regard to the requirements of overall planning is detrimental to sound land management. This argues for some public involvement in the management of stool lands.
312. The Committee is not in a position to take a definitive position on the above. However, it would point out the following:

1. In principle, a purely bureaucratic role in giving or withholding concurrence to the disposition of stool lands has little relevance to the productive management of land.

2. The Lands Commission, together with its regional branches, could more usefully devote itself to advising the Government and local and traditional authorities on policy and modalities for the development of land so as to ensure a rational productive land management. The business of granting consent to particular land transactions could then be entrusted to the Lands Department. The Lands Commission should, in fact, develop a general land policy for the nation as already envisaged under the law.

3. As repositories of the title to the Stool Lands, stools should play a more prominent role in their management. There should be a much stronger representation of traditional authorities in regional land commissions.

4. The involvement of Chiefs and other traditional authorities in land matters should always be subject to the cardinal fiduciary principle that Chiefs are to manage stool lands in trust for the subjects of the stool. This demands the highest fiduciary standards.

SECURITY OF TITLE TO LAND

313. The Constitution may not be the appropriate place to initiate radical reforms relating to the management of lands. Yet insecurity of title to land is so basic to the whole structure of land
ownership that it must necessarily affect the constitutional order. There are two main causes of this state of affairs. First the crisis in land dispute settlement does not permit a secure basis for definitive title registration. As already pointed out, there are as many as 16,000 land cases pending in the Courts of this country. Second, the inavailability of proper maps makes title registration illusory. This makes the adjudicatory process unpredictable and calls for bold and imaginative solutions.

314. The Committee has already proposed the establishment of a division of the High Court to handle these cases, and the location of such Courts in all the regions. These could be further reinforced by the establishment of lower courts in all districts to resolve land disputes at the district level, using local expertise in land matters and employing less formal procedures. Such courts could be manned by local experts in customary law and not necessarily lawyers.

315. The second source of difficulty is the inadequacy of basic maps of the land in Ghana. A massive effort to register title to land could be launched which could involve the following elements:

1. The establishment of Land Courts in the High Court for each Region, and lower courts in all Districts to expedite settlement of disputes as to land ownership.

2. The re-mapping of the whole country to ensure that every piece of land in the country is properly located and identified to prepare the ground for title registration as has been done for example, in Malaysia.

3. Imposing a moratorium of say five years on land transactions during which all landowners would be required to register title to their land.
4. The consolidation of all laws both customary and statutory relating to land. The confusion between the principles of customary law regulating the informal land sector and statutory law which prevails in the formal sector needs to be rectified.
DECENTRALIZATION AND LOCAL GOVERNMENT

316. The history of local government in Ghana goes back to colonial times when Native Authorities performed local government functions. But for the purposes of its deliberations the Committee considered it convenient and adequate to use our post-independence experience of local government as the backdrop.

317. An important question since independence has been: What kind of local government? That this question is relevant today amounts to a general admission that the forms of local government we have experimented with in the past failed to perform satisfactorily. The reasons for the failure have been many and have included the following:

(a) low development capacity of local government areas, not unrelated to size and a weak revenue and resource base;

(b) poor financial administration and corruption;

(c) lack of technical expertise;

(d) inexperience and poor calibre of local government personnel, attributable in part to low prestige attached to, and poor remuneration for, service at the local level;

(e) unclear definition of the distribution of functions as between central government agencies and local authorities;

(f) intrusion of partisan politics into local government, with a view primarily to winning political advantage for the incumbent regime; and

(g) juggling with local government boundaries on account of differing conceptions of the relation between size and efficiency, local pressures - particularly from chiefs - and considerations of political advantage; with the result that the number of local government areas in the country has varied between a high of 282 and a low of 50.

318. We urge the Consultative Assembly to give full consideration to all these factors in trying to establish a constitutional order for an effective local government system.
319. The Committee endorses the basic idea of a decentralized system of local government. The search for such a system has been longstanding indeed. Starting from the Greenwood Report, which resulted in the Local Government Act of 1961, it has received several expressions since then, the most recent of which is found in the PNDC's Law 207.

320. The issue of decentralization is a vexed one. While decentralization may in theory be generally conceived as involving the transfer of functions, powers and resources from the central government to local government units, in practice the extent to which a system of government is decentralized depends on whether there is the political will to do so; on how much of their authority the institutions and persons at the centre are willing to divest themselves of. Ultimately, it is the extent of the political commitment to decentralize which determines:

(a) the functions given to local authorities and the extent of their jurisdiction within their specific geographical areas;

(b) the degree of initiative given to local authorities to take decisions and implement them;

(c) the degree of financial autonomy of local government bodies and the resources made available to them to carry out their tasks;

(d) the kinds of linkages that are established between the central government and local government units; and

(e) the degree of control which local authorities exercise over personnel in their service.

Depending on how it is conceived, organized and executed, decentralization may produce one of two effects;

(a) it may devolve actual power to local authorities; or

(b) it may accentuate central government control by enabling it to tighten its grip on local authorities.

In the true democratic order envisaged under our new Constitution, the Committee recommends the establishment of a system of local government which is ultimately decentralized as far as is practicable. For this
purpose and with a view to achieving efficiency, viability and reasonable autonomy of local authorities, factors critical to any decentralized system of government, the Committee recommends for consideration by the Consultative Assembly as follows:

(a) that measures are instituted such that functions, powers, means and resources are at all times transferred to local government units as a package;

(b) that a sound financial base be established with a viable revenue source, so that constant increases in the level of taxation do not become the major means of increasing revenue;

(c) that local authorities are enabled to develop a planning capacity adequate for their tasks alongside the power to initiate, coordinate, manage and execute policies in all matters affecting the people within their localities, with the clear aim of achieving a situation whereby such matters are ultimately administered by the local people themselves, instead of being administered by others on their behalf;

(d) that persons in the service of local government come under the effective control of local authorities;

(e) that maximum opportunity be created for the people to participate actively in their governance as a means of securing accountability; and

(f) that the Constitution provides a framework which would prevent the central government from exerting undue influence over local government authorities.

321. In the view of the Committee, a decentralized local government system based on the foregoing principles will have several beneficial effects:

(a) it will be an effective tool for overall national development through a more effective mobilization of local resources and better management of local development efforts to achieve sustained improvements in living conditions;
(b) it will give the local people opportunities for greater participation in their governance and thereby help to remove the feeling of their powerlessness vis-a-vis the central government;

(c) it will be a source of political education and training in democracy and political leadership;

(d) it will promote the ideals of self-reliance, accountability and political stability; and

(e) it will help to redress the imbalances that exist in the development levels of the Districts.

The Committee further recommends that the existing District Assemblies be endorsed as a basis for the decentralized system of local government.

322. The District Assemblies have deliberative, legislative and executive functions, and are designed to give the people opportunities for popular participation in their local affairs. We are particularly impressed with the development orientation and potential of the District Assemblies. They are envisaged to be important links in a coordinated national development effort, and their jurisdiction covers economic, cultural, educational and recreational activities in their areas. Their charge includes overall responsibility for the development of their respective districts, the formulation of plans, programmes and strategies for the effective mobilization of resources and the preparation of budgets. Within the broad framework of national policy, they are expected to show initiative, imagination and creativity in performing tasks related to agriculture, transport, industry, construction, communal services, trade, tourism, etc., all aimed at improving the conditions of the local people.

323. The Committee is mindful that, as they exist at present, the District Assemblies are not fully decentralized bodies. In fact, we view them as essentially evolving institutions, which, unavoidably, have to pass through a transitional period towards eventual full and effective decentralization. To this end, we see an important task facing the Consultative Assembly to be to put in place in the Constitution the essential building blocks of the evolving institutions, along with provisions seeking to guarantee what is required for them to function as envisaged.
324. There are three other issue-areas relating to the District Assemblies as they are currently set up which require the attention of the Consultative Assembly. These are:

(a) the District Assemblies and partisan politics;

(b) the links between the central government and the District Assemblies; and

(c) relations between the District Assemblies and traditional authorities.

(A) Partisan Politics

325. As we intimated earlier on, the tendency for an incumbent government to exert undue influence on local government bodies to win political advantage has been very pronounced in the politics of our past. On the other hand, the Committee notes that the non-partisan nature of the District Assemblies has tended to facilitate the mobilization of the people and to be more conducive to consensus formation, factors that are crucial to development efforts at the grassroots level.

326. Accordingly, we propose that:

(i) any candidate seeking election to a District Assembly should present himself or herself to the electorate as an individual, and should not use any symbols associated with any registered political party; and

(ii) it should be made an offence, punishable by law, for a political party to endorse, offer a platform to or in any way whatsoever campaign for a candidate seeking election to a District Assembly.

(b) Links with the Government

327. The Committee acknowledges the importance of central government's presence at the district level and the necessity of government oversight of the activities of the District Assemblies. But oversight is not synonymous with control.

328. We reiterate that the nature of the linkages which the central government establishes with local government bodies
determines the degree of autonomy of the latter. In this regard, we urge the Consultative Assembly to critically examine the role of the District Secretary, the control of personnel of decentralized sector Ministries, and the Regional Coordinating Councils in the present set up of the District Assemblies.

329. In the view of the Committee, the current role of the District Secretary in the District Assembly set-up amounts to more than oversight. Since under party politics the District Secretary is likely to be a party appointee, the role as currently constituted would offer avenues and opportunities for such control of the Assembly as would be incompatible with the desire to insulate it from partisan political considerations.

330. The Committee therefore recommends that the District Secretary should continue to be appointed by the Government, as its representative at the district level, but that he or she should be an ex-officio member of the Assembly. We also recommend that, instead of a Presiding Member in the nature of a Speaker of an Assembly, a Chairman of the Assembly be elected from among its elected members and be given such powers as give him or her an ongoing role in the affairs of the Assembly.

331. At present effective control of personnel of central Ministries and agencies serving at the district level does not reside in the District Assembly. Whereas decisions are taken by the local authorities, the administrators are subject to the direction and control of central government agencies. It would appear that as long as such personnel continue to be paid and promoted by their central organizations, their effective control by the District Assemblies will be elusive. Nor can the possibility of a conflict of allegiance on the part of such personnel be entirely ruled out should conflicts arise between the District Assembly and their sector Ministries.

332. These problems notwithstanding, the Committee is fully aware that the District Assemblies have not as yet developed sufficient capacity to be able to execute their functions entirely on their own. We therefore recommend that in the measure such capacity is developed by the District Assemblies, administrative decentralization should be brought in line with political decentralization.
333. The Committee considers the de-emphasis of the Regional level in the current set up of the District Assemblies to be consistent with the grassroots orientation of the envisaged decentralization; that is, the emphasis placed on the initiative and power of smaller local communities. However, it also considers some regional presence in the set up to be necessary, if only for purposes of coordination. We therefore recommend that the Regional Coordinating Councils be maintained, but that in their composition central government-related personnel should not outnumber representatives of the District Assemblies and that the membership should include two chiefs appointed by the Regional House of Chiefs of the Region.

(d) District Assemblies and Traditional Authorities.

334. The Committee finds the relationship between the District Assemblies and traditional authorities in the districts to be ill-defined. It must be borne in mind that there was a time in our history when local governance revolved around chiefly institutions. Since independence chieftaincy has continued, albeit with different degrees of emphasis, to receive general recognition as an important traditional institution. This recognition has often found ample expression in our central institutions.

335. The Committee sees a clear need to take due cognizance of the institution at the level of local government, where it has an even more easily perceivable role to play in offering counsel and in mobilizing the people for development.

336. The Committee therefore urges the Consultative Assembly to find ways for the effective participation of traditional authorities in the work of the District Assemblies. To this end, we recommend the following for the Assembly's consideration:

(a) a Paramount Chief as the ceremonial head of the Assembly, with the right of address;
(b) setting aside a certain percentage of the total membership of the Assembly for traditional authorities;
(c) cooptation of a number of chiefs as members of the Assembly, without the right of vote, or
The Committee does not consider any of the above measures to be incompatible with democracy. For inclusion in the Constitution, the Committee makes the following specific proposals for the consideration of the Consultative Assembly:

1. (1) For the purposes of local government, Ghana should be deemed to have been divided into the Districts which existed immediately before the coming into force of this Constitution.

2. (2) Parliament should by law make provision for the alteration of the boundary or name of a District or its abolition.

3. (3) The system of local government should be based on a democratically elected District Assembly in each District.

4. (4) A District Assembly should be the highest political authority in the District, and should have deliberative, legislative and executive powers.

2. (1) A District Assembly should consist of the following members:

(a) one person from each electoral area within the District, directly elected by universal adult suffrage;

(b) the representative of the central government in the District, as ex-officio member; and

(c) such other members as may be provided for by Law/Parliament.

(2) Subject to the provisions of this Constitution, the qualifications for membership of a District Assembly, the procedures and processes of a District Assembly and what sub-district structures may be established should be provided for by Law.

(3) Subject to the provisions of this Constitution, within the broad guidelines of national policy and Law, the function which a District Assembly should perform should include:
(a) the formulation and execution of plans, programmes and strategies for the effective mobilization of the resources necessary for the overall development of the District;

(b) the levying and collection of taxes, rates, duties and fees;

(c) the construction and maintenance of public works and facilities;

(d) the provision and maintenance of educational and health facilities; and

(e) such other functions as may be conferred on a District Assembly by Law/Parliament.

(4) There should be a Chairman of each of the District Assemblies who should be elected from among the elected members of the Assembly by at least two-thirds of all the members of the Assembly.

(5) Any matters arising over the validity of the election or the continued tenure of office of an Assembly member should be determined by the District Public Tribunal established under this Constitution, with a right of appeal to the High Court.

(6) (1) There should be established an Executive Committee of a District Assembly which should perform the executive functions of the District Assembly.

(2) Without prejudice to subsection (1) the Executive Committee should:

(a) coordinate the plans and programmes of any subcommittees of the Assembly and submit these as comprehensive plans of action to the District Assembly;

(b) implement resolutions of the District Assembly;

(c) oversee the day-to-day administration of the District; and

(d) perform any functions assigned to it by Law.
(3) The composition of the Executive Committee would be as provided for by law, except that the Chairman of the Assembly should preside over the meetings of the Executive Committee, and that the central government's representative should be an ex-officio member of the Committee.

(4) The Executive Committee may coopt any person to attend any of its meetings, but a person so coopted should not have a right to vote.

(5) A District Assembly should have such other committees as may be provided for by law.

3. (1) Subject to the provisions of this Constitution, Parliament should make provision for statutory allocation of public revenue to the District Assemblies.

(2) The State should cede its revenue from the following sources to a Common Fund of the District Assemblies:

(a) Entertainment Duty;
(b) Casino Revenue;
(c) Betting Tax;
(d) Gambling Tax;
(e) Income Tax on registration of trade, business, profession or vocation;
(f) Advertisement Tax;
(g) Daily Transport Tax;

(h) any other source of revenue as may be determined by Parliament.

(3) The monies accruing to the District Assemblies in the Common Fund should be shared among all the District Assemblies on the basis of equality, population and the development needs of each District.

(4) (1) Not less than fifteen percent of the net revenue accruing to the state from dues, rents, royalties
or from the operations of any enterprise or undertaking of any person or body of persons howsoever described operating within the area of authority of a District Assembly in respect of Land water or or mineral resources should be set aside by the State for the developmental needs of the District Assemblies.

(2) Of the amount so set aside, twenty percent should be paid by the State directly to the District Assembly from whose area of authority the revenue was derived; and the remaining eighty percent should be paid into the Common Fund for the District Assemblies for distribution to all the District Assemblies on the basis of the formula contained in 3(3).

(3) Nothing in the provisions of this Constitution or any law should be deemed as prohibiting the State or other bodies from making grants-in-aid to any District Assembly.

(4) The Auditor-General of Ghana should audit annually the accounts of the District Assemblies and should lay the report thereof before Parliament.

4. (1) There should be established for each Region of Ghana a Regional Coordinating Council.

(2) A Regional Co-ordinating Council should have such membership as would be prescribed by law; so however that central government-related members should not outnumber representatives of the District Assemblies, and that the membership should include two chiefs appointed by the Regional House of Chiefs.

(3) Subject to the provisions of this Constitution, the functions of a Regional Coordinating Committee should be as prescribed by law.

5 (1) The Minister responsible for local government should exercise general oversight of the activities of District Assemblies, particularly in matters of finance, budgetting, planning, personnel training and execution of development projects; but he or she should not exercise any control over the District Assemblies incompatible with their decentralized status, and generally not in accordance with law.

(2) Any citizen resident in a District should have the right to make a complaint to the Commission on Human
Rights and Administrative Justice about the administrative actions of the District Assembly of the District or of any of its members or officials.

(3) Subject to procedure established by law, the mandate of an elected member of a District Assembly should be revoked by the electorate if they lose confidence in such a member on any of the following grounds:

(a) that he or she has abandoned the ideas and programmes for which he or she was elected;

(b) that he or she has systematically neglected his or her duties; or

(c) that he or she has committed acts incompatible with his or her office as member of the District Assembly.
CHAPTER TWELVE

CHIEFTAINCY

338. Successive Governments have recognised the importance and resilience of the institution of Chieftaincy in our social and cultural life. Although stripped of all formal powers, the chief continues to command the traditional loyalty of most Ghanaians, particularly in the rural areas. He or she remains a leader in a very meaningful sense, and is particularly well placed to mobilize and inspire the community in the execution of development projects or other social and economic ventures. Chieftaincy is often a stabilizing and often a unifying factor. However, the unique moral, spiritual and social standing of the chief has not been matched by a comparable status in the modern political system of Ghana. He or she has no formal adjudicating role; has little formal linkage within central government, and is minimally involved in the local government system.

339. It is worth recalling that Akuffo Addo Report recommended the integration of chieftaincy with the local government system. While the Committee would not go so far as to recommend such a radical step, it would nevertheless draw attention to the following:

1. Chieftaincy constitutes a major resource that could be officially tapped in reinforcing the modern governmental structure.

2. Having regard to the high intellectual and professional calibre that the institution of chieftaincy attracts these days, chiefs may now be regarded as a significant source of talent for the modern sector.

340. The Committee accordingly recommends that (1) the institution of Chieftaincy be guaranteed in the Constitution, as in the previous Constitutions; (2) appropriate steps be taken to ensure the effective participation of chiefs in the local government system; and

(3) adequate resources be made available from stool land revenues to enable chiefs to play their legitimate role as leaders and catalysts in the development process.
41. The Committee has taken cognisance of the fact that the social and economic significance of chieftaincy in our society has been significantly eroded by the proliferation of chieftaincy disputes. Much of the blame for this unhappy situation attaches to the chiefs, traditional authorities and their peoples themselves. However, the situation has been complicated by the persistence of Government involvement in the recognition of chiefs.

342. Under the 1969 and 1979 Constitutions, the institution of chieftaincy was guaranteed as established by customary law and usage. This guarantee expressly precluded the right of the Government or any authority to accord recognition to a chief or withdraw recognition from a chief. However, notwithstanding this prohibition, legislation has been introduced under various regimes giving the Government power to accord or withdraw such recognition for the purpose of exercising statutory functions.

Thus PNDC 107 provides as follows: "Notwithstanding any law to the contrary no person shall be deemed to be a chief for the purposes of any other enactment unless he has been recognised as such for the exercise of that function by the Secretary responsible for Chieftaincy Matters by notice published in the Local Government Bulletin."

343. The Committee recognises that there may be legitimate grounds for denying recognition to a chief for statutory purposes in certain cases, for example, where a chief has been convicted of a serious crime. However, the Committee is of the opinion that a general reservation of the power to accord or withhold recognition for purposes of statutory functions would undermine the basic principle that the Government should not involve itself in matters relating to the status of chiefs. Accordingly the Committee recommends that:

1. A chief should be disqualified from exercising statutory functions if he or she is convicted of a crime that would constitute a bar to membership of Parliament.
2. Subject to the above, any legislation investing the Government with a discretion to accord or withdraw recognition to or from a chief would be unconstitutional.
3. The publication of a gazette recording information on the installation or removal of a chief should be the responsibility of the National House of Chiefs. Previous experience shows that the innocuous practice of publishing such information in Government Gazette is invariably misconstrued as evidence of Government recognition or withdrawal of recognition, notwithstanding the strict legal or constitutional position.

4. The National House of Chiefs and the relevant Regional House of Chiefs should take appropriate steps to draw the attention of the relevant traditional authorities to the undesirability of retaining a convicted person as a chief.

344. The Committee considers that the above reforms would have a salutary effect on the institution of chieftaincy.

Definition of a Chief

345. The Committee also considered issues relating to the definition of a chief under Article 181 of the 1979 Constitution which reads:

For the purposes of this Chapter, the expression "Chief" means a person who, hailing from the appropriate family and lineage, has been validly nominated, elected, and enstooled, enskinned or installed as a chief or a queen-mother in accordance with the requisite applicable customary law and usage."

346. The Committee recommends the adoption of the above definition subject to the clarification that the term "Chief" includes a woman who has been properly installed as a chief in her own right in accordance with the applicable customary law and usage.

347. The Committee wishes to point out further that its attention was drawn to areas in this country where the installation of chiefs may technically satisfy the above definition but may actually amount to the imposition of an overlord from outside the community. In these areas, chiefs are by custom not indigenous but designated from a distant community without reference to the consent of the people concerned. Although this practice may have been established by custom and long usage, the Committee feels that it is repugnant to the concept of the people's sovereignty and is
ultimately subversive of peace and security in such areas, and should be discontinued. This could be accomplished by amending the relevant words as follows: "the expression "chief" means a person who, ... has been validly nominated, elected, enstooled, enskinned or installed a chief or queenmother by his or her people in accordance with the requisite customary law and usage".

Enhancing the status of chiefs

348. The Committee is of the opinion that the institution of chieftaincy could be further enhanced by involving chiefs in formal state ceremonial occasions. Thus, for example, a chief could be present in full regalia when an ambassador accredited to this country presents his or her credentials to the Head of State.
CHAPTER THIRTEEN

THE ENFORCEMENT OF THE CONSTITUTION

349. The enforcement of the Constitution involves several institutions each with a clearly defined role which is pertinent to the issue of enforcement. Some of these roles are obvious and direct. Others are less so, but no less significant in their ultimate impact.

THE PRESIDENT

350. A basic ingredient of the concept of the President in this Constitution is the President's role as the guarantor and defender of the Constitution. This is not meant to be a constitutional platitude. A President who rises to the challenge of a truly national leader, dedicated to the solemn task of upholding the Constitution, would not stand idly by if Ministers of State or other state functionaries embarked on measures that infringed or threatened to infringe the Constitution. The President would be expected to use the authority of his high office and the entire institution of the Council of State as well as informal procedures to warn and counsel against threats to the constitutional order. In a major crisis involving a more fundamental constitutional malaise, the President could assume extra-ordinary executive powers and exert all his Presidential powers to restore normalcy.

351. COUNCIL OF STATE: The Council of State as an institution encompassing representatives of all major organs of State, all regions and various walks of life, could serve as a forum for addressing potentially explosive constitutional issues which call for resolution through a national consensus. In its advisory role the Council would counsel the President, the Prime Minister, the Speaker, the Army and other high State officials about imminent infringements of the Constitution and the necessary remedial action.

THE JUDICIAL COMMITTEE OF THE COUNCIL OF STATE

352. The Judicial Committee of the Council of State has been proposed principally to initiate specific action to forestall or prevent possible violations of the Constitution. It would have specific jurisdiction to adjudicate on the constitutionality of bills (ie proposed legislation) proposed regulations or subsidiary
legislation, and of proposed Executive acts or measures. The purpose of this jurisdiction is to ensure the observance of the Constitution prior to the consummation of the offending legislative or executive proposals.

353. It would also be concerned with resolving constitutional disputes between organs of state through mediation with a view to preventing a major confrontation. It would also determine the validity of the election of the Speaker of the National Assembly to ensure that such a delicate matter is handled without the fanfare of a court proceeding.

THE SUPREME COURT

354. The Supreme Court would be the principal organ for the judicial enforcement of the Constitution. Its power of judicial review invests it with the jurisdiction to entertain all cases relating to the enforcement and interpretation of any provision of the Constitution and all questions relating to the constitutionality of any enactments or any act or omission by any person. This involves the power to pronounce any act of Parliament or any measure of the Executive unconstitutional, although it is hoped that the opportunity for exercising such powers would be substantially reduced by the preventive role of the Judicial Committee of the Council of State.

355. The Supreme Court's jurisdiction in this regard may be invoked by any citizen of Ghana. This means that any Ghanaian who alleges that any enactment or any action thereunder or any act or omission by any person contravenes the Constitution may institute an action in the Supreme court for a declaration to that effect. The Supreme Court may issue any orders or directions as it deems fit to give effect to such a declaration.

356. The foregoing restates the constitutional arrangements in this regard under the 1969 and 1979 Constitutions, with the significant exception that such actions are now only available to citizens of Ghana, and not any person. In so limiting the category of persons entitled to institute constitutional proceedings of this type, the Committee took the following factors into account:

   (1) In some countries, notably the US, constitutional litigation is circumscribed by well-defined rules. First, the dispute must be a legal
dispute. Second, it must be justiciable. Third, the complainant must have standing to bring the suit, that is to say, he must have a concrete legal interest in the outcome of the case. It was urged on the Committee that the experience of constitutional litigation in the Second and Third Republics pointed to the likelihood of the Supreme Court being inundated with cases unless some limitations were imposed on the right to invoke the original jurisdiction of the Supreme Court in constitutional matters. 

(2) Against the need to limit litigation, it was pointed out that there was a major public interest in assuring the widest possible access to the courts for purposes of constitutional litigation, and that prospect of enforcing the constitution should not be curtailed by the want of specific interest or legal standing in the strict legal sense. However, it was acknowledged that the right to institute such proceedings should not be assured to all persons, irrespective of their citizenship. We therefore propose that the entitlement to institute constitutional proceedings to invoke the original jurisdiction of the Supreme Court should be limited to citizens of Ghana. However, all persons, irrespective of their nationality are entitled to enjoy the benefits of constitutionally guaranteed individual rights.

THE HIGH COURT:

357. The High Court would be the main forum for the enforcement of individual rights guaranteed under the Constitution.

A person who alleges that his or her constitutional rights have been violated or are likely to be violated is entitled to apply to the High Court for redress. The High Court would then issue such orders and directives as would be appropriate for the purpose of enforcing the said rights.

THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE.

358. The constitutional experience of many countries, including ours, demonstrates that a catalogue of constitutional rights together with provisions for judicial enforcement is inadequate to ensure meaningful enforcement of fundamental rights and freedoms on the ground. The Committee accordingly proposes the establishment of a
Commission on Human Rights and Administrative Justice which would sensitize people to their constitutional rights, investigate violations of such rights, and assist individuals in prosecuting them. This Commission would incorporate the office of the Ombudsman.

359. With reference to fundamental rights, the Commission would have the following responsibilities, inter alia:

(a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power; unfair, harsh, insensitive or discourteous treatment of any person by an official in the employ of any organ of government (whether central or local); manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;

(b) the duty to investigate complaints concerning the functioning of the Public Services Commission; administrative organs of the State; the defence force, the police and prison services in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment into such services or fair administration in relation to such services;

(c) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place; and

(d) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding sub-articles through such means as are fair, proper and effective.

THE ROLE OF THE PEOPLE

360. While various institutions may play their respective roles in the enforcement of the Constitution, the final arbiter of the viability of the constitutional order is the
people of Ghana. No constitutional enforcement mechanism can be more potent than the resolute and passionate commitment of the people to the entirety of the constitutional regime itself. The prospects of constitutional stability will only be assured when the people of Ghana sufficiently identify themselves with the Constitution to resist massive violations or a total subversion of the fundamental law of the land. In short, the sovereignty of the people means that ultimately the effective enforcement of the Constitution rests with the people themselves.
CHAPTER FOURTEEN

ECO NOMIC AND FINANCIAL ORDER

361. It is now commonplace in the constitutions of developing countries to provide for general principles of the economic and financial order. There are two main reasons for this. First, in many developing countries the constitution is seen as an instrument of economic development, spelling out the general responsibilities of the Government in the economy. Secondly, the general principles of the economic and financial order provide guidelines to ensure, where appropriate, policy continuity and change.

362. Obviously, a constitution cannot embody details of national economic and financial policy. But Ghana's experience since independence and the realities of the current international economic environment make it imperative for the new Constitution to explicitly reflect a concern about economic and financial matters and to seek to provide a framework for this crucial area of national life.

363. The NCD Report clearly indicates that the generality of our people have concerns about "cohesive and balanced" development of the country and about the need to establish a solid economic base for the fulfillment of such human needs as health, education, water, food, shelter and clothing, without which an enduring democratic political order cannot be secured. In the words of the NCD Report:

"The most secure democracy cannot be one that depends on a massive protective military or police presence, but one that assures the basic necessities of life for its people as a fundamental duty."

364. In the light of the above considerations, the Committee proposes the following principles for the consideration of the Consultative Assembly:
(1) the economic order of Ghana should seek to develop a dynamic and diversified economy that should be responsive to the changing domestic and international economic environments;

(2) there is the need to harness individual initiative and creativity in economic activities within a context that recognizes national social responsibilities associated with such activity including responsibilities for protecting the global environment and for addressing the needs of vulnerable groups;

(3) the State should endeavour to avoid the imposition of administrative controls in the management of the economy, such as the administrative determination of the exchange rate, allocation of import license and the setting of ceiling prices;

(4) there should be fiscal, financial and monetary discipline on the part of all relevant agencies, including banks and other financial institutions;

(5) there should be a responsible approach on the part of all institutions of economic decision-making, with a strict regard for achieving an effective and efficient utilization of resources within our resource constraints;

(6) the relevant agencies should provide information and data on a regular basis as a means for policy planning, monitoring, evaluation and implementation;

(7) there should be an emphasis on the importance of cooperative efforts and constant interaction of economic institutions;
(8) there is the need to provide consultative contexts for key economic actors to provide inputs into economic decision-making; and

(9) that the development budget must be used as an instrument for generating economic activities nationally and in the various districts.
CHAPTER FIFTEEN

PUBLIC ADMINISTRATION

365. The Committee's attention was drawn to a comprehensive programme of the restructuring of the public services that had been underway for several years. Some of these changes constitute radical departures from time-honoured structures and procedures in the Ghana Public Services.

366. We were further advised that the process of reorganisation had not been completed and that certain structures and procedures were still evolving. In view of the wide-ranging nature of these reforms, the fluid state of the restructuring exercise, and the severe time constraints under which we laboured; we were not in a position to make a definitive evaluation of the structure of the Public Services. The Committee is therefore unable to make concrete detailed proposals in this regard beyond the following general principles:

1. The principal objective of any major restructuring should be to ensure a viable, efficient and productive public administration. All changes should therefore be evaluated against this overriding criterion.

2. In the light of the foregoing, the question may be raised whether certain aspects of the restructuring such as (a) the demarcation of the responsibilities of the Sector Secretary (Minister) and Chief Director, (b) the designation of the Sector Secretary as the recipient of all official correspondence addressed to the Ministry; (c) the proliferation of appointing authorities in the public services, would all comply with the above guiding principle.

3. Whatever the restructuring may be the Committee holds that the viability of
any government programme depends on the stability of the public administration. Such stability is not assured by arbitrary and summary removal of public servants. The Committee accordingly proposes that the constitutional guarantees stipulated in Article 155 of the 1979 Constitution with respect to the status of public officers be unequivocally re-affirmed. This provides that "No member of the public services shall be

(a) victimized or discriminated against for having discharged his duties faithfully in accordance with this Constitution;

(b) dismissed or removed from office or reduced in rank or otherwise punished without just cause".

4. The Committee further recommends that in making appointments to the Public services, every attempt should be made to ensure that principles of equity and justice are maintained at all times.

367. In this regard the Committee recommends that the Public Services Commission should ensure the harmonization of standards in the public services and the elimination of improper and extraneous considerations in the appointment of public officers.

5. In view of the proposed role of the Prime Minister in government administration under this Constitution, the Committee proposes that express provision should be made for the President to delegate some of his appointing powers, in his own discretion, to the Prime Minister. This would facilitate government business.
6. The Committee has been impressed by the ambitious nature of the restructuring in terms of the number of qualified personnel required to service the public services, including the proposed Local Government Service. However, the Committee wonders whether there will be the necessary manpower and resources to implement the proposed schemes.

7. The Committee has been advised that the role of the Public Services Commission is to be redefined. In view of this, the Committee is unable to make definitive proposals about the structure and functions of the Commission, beyond the above recommendation that it should continue to serve as the arbiter of general standards in the public services. Subject to this, the Committee recommends that the general constitutional guarantees for public servants stipulated in the 1979 Constitution be reaffirmed in this Constitution. This means that Articles 154 to 162 of the 1979 Constitution should, with appropriate modifications, be retained.

368. The Committee was unable to study in depth the constitutional provisions relating to particular public services such as the Prisons Service, the Audit Service, the Statistical Service. However, the above recommendations as to security of tenure and the requirement of due process in the removal of public officers must necessarily apply to all categories of the public services.

369. The Committee is also unable to recommend any change in the general retiring age for public servants stipulated in Article 162 of the 1979 Constitution which states that:

(1) a public officer shall, except as otherwise provided in this Constitution, retire from the public service on attaining the age of sixty years.
(2) a public officer may retire from the public service at any time after attaining the age of forty-five years.

(3) The pension payable to any person shall not be subject to income tax.
CHAPTER SIXTEEN

AMENDMENT PROCEDURE

370. Constitutions are considered sacred documents, embodying the fundamental laws of the land. As such, there is some disagreement among constitutional experts concerning the basic procedures and modalities for amending constitutions and their provisions, if they could be amended at all. One school argues for a rigorous and less flexible amendment procedure, while the other insists on a more flexible procedure. In the latter view, procedural rigidities tend to contribute to a constitutional crisis that could undermine the stability of the political order.

371. The Committee endorses the amendment procedure recommended by the Mensah Commission in 1978 which was less rigid and clearly out of tune with the very cumbersome amendment procedure of the 1979 Constitution of Ghana. In the words of the Mensah Commission:

"...we do not propose that none of the provisions of the Constitution should be unamendable. We do not accept that any generation has or should be deemed to have a monopoly on political wisdom nor that any Constitution, however well drafted, can be considered as constituting a perfect and unalterable blueprint for all time".

372. It is therefore proposed for the new Constitution, an amendment procedure with the following considerations in mind;

(a) The fabric and essential character of the Constitution must be preserved by excluding hasty and ill-considered amendment of the fundamental provisions of the Constitution. Such changes should only occur through procedures which would ensure adequate support and desire for the changes.
(b) Subject to the foregoing, the Constitution should be able to adjust and adapt to the changing events of our times by a less rigorous amendment procedure.

373. The following amendment procedure is accordingly proposed:

1. This Constitution should not be amended otherwise than in accordance with the provisions laid down in this Constitution.

2. This Constitution should only be amended by a Bill of amendment presented to Parliament for same.

3. The following amendment procedure should be required to amend the entrenched clauses of the Constitution:

   (a) A proposed Bill for amendment of the Constitution should be submitted to the Judicial Committee of the Council of State for its consideration; and its decision should be final.

   (b) The Bill should be published in the Gazette by the Speaker of the National Assembly for a period of not less than six months before its introduction in Parliament.

   (c) The Bill should be submitted to a National Referendum after its first reading in Parliament. (d) Where the Bill is not defeated in the Referendum, Parliament should adopt it as having been passed and must present it to the President for his or her assent, in which case the President should not refuse to assent to same.

4. For the remaining Articles of the Constitution, the following amendment procedure should be followed:
(a) Any Bill for amendment should be submitted by the Speaker of the National Assembly to the Council of State for consideration before being introduced in Parliament. Where the Council of State disapproves of the Bill, Parliament may not proceed further with the Bill.

(b) Where the Council of State approves of the Bill, it must be supported on the 2nd and 3rd readings by the votes of not less than 2/3 of all the elected members of Parliament.

(c) The proposed Bill for amendment must be published in at least two issues of the Gazette before the first reading; provided that there is 30 days interval between the 1st and 2nd publications.
CHAPTER SEVENTEEN

CITIZENSHIP

374. The Committee considered the recommendations in the NCD report that the question of prohibition of dual citizenship for Ghanaians as provided in the 1979 Constitution should be examined by it. Our law provides among others, that if a Ghanaian of full age voluntarily swears allegiance to another country and becomes a citizen of that country then he loses his Ghanaian citizenship. The issue before the Committee was whether there was any justification for altering this law so as to enable Ghanaians acquiring the nationalities of other countries to retain their status as Ghanaians citizens. On this opinion was divided.

375. One view was that the Committee could not dismiss the question of allegiance which is indeed at the root of citizenship. A country owes specific duties to its citizens; for example it is its responsibility to evacuate them in times of war or crisis from any foreign land - There is reciprocal responsibility of the citizen not to engage in acts that would put the security of his country at risk, to mention just one duty. The question of allegiance should therefore not be taken lightly.

As the Akufo-Addo report stated:

"we do not want an occasion where allegiance to Ghana is shared with allegiance to some other country".

The opposite view was that such a dual citizenship could be justified.

376. Citizenship in most countries today is a requirement for securing a job and most Ghanaian emigrants into other countries cannot avail themselves of such a facility because they do not want to lose their Ghanaian citizenship.

377. The above apart, the idea of "economic refugees" status of most Ghanaians has become a reality in Ghana today. Whatever the moral
objections that may be raised this to reality, it is an acknowledged fact that most of the these refugees invariably bring home their economic gains abroad. Some invest such gains in useful ventures which complement the domestic mobilisation of financial resources to national development.

378. This fact is underscored in the light of the constitutional proposal that if a person is to stand for election in a constituency he must be ordinarily resident in the area. Ordinary residence has been given an expanded meaning to include identification of a person with the area in terms of visits and participation in the development efforts of the area.

380. It has been observed, over the years, that most of the so-called economic refugees have made substantial contributions to the development efforts of their respective communities in Ghana.

381. Thus, a case could be made for permitting dual citizenship to Ghanaians, a situation which would not only alleviate the misery of many Ghanaians abroad, but would also open up prospects of indirect external financial mobilisation for national development.

382. The Committee found that article 15(4) of 1979 Constitution and also reproduced as section 15(9) of PNDCL 42, needs re-consideration. This article dwells on acquisition of Ghanaian citizen through registration by virtue of a woman being married to a Ghanaian.

Articles 15(3) and (4) of the 1969 Constitution provide as follows -

"(3) A woman who, after coming into force of this Constitution, marries a citizen of Ghana may, upon making an application therefore in such manner as may be prescribed by Parliament, be registered as a citizen of Ghana.

(4) Where the marriage of any such woman as is referred to in the preceding
provisions of this article is annulled, the woman having registered as a citizen of Ghana by virtue of that marriage, shall, unless she applies to the High court of Justice for such relief as shall be determined by the Court, cease to be a citizen of Ghana".

383. The Committee finds this provision unduly harsh and considers that whatever the grounds of nullity may be the woman would have acquired Ghanaian citizenship at a time when she was unaware of the invalidity of the marriage. She had shown a sufficient commitment to Ghanaian nationality by taking specific action to become a Ghanaian. Therefore it is unwarranted to impose a requirement that she should apply to the Court "for such relief as may be determined by the Court" on the annulment of the marriage or otherwise cease to be a citizen, when she may, wish to continue as a Ghanaian.

384. The Committee therefore proposes that any such annulment should not affect the citizenship status of the woman so long as she wishes to remain a Ghanaian.

385. Furthermore we recommend that the annulment of the marriage should not affect the citizenship of any children of the marriage.

386. Subject to the specific proposals made in this paper, the Committee recommends the adoption of the proposals in the 1979 Constitution on citizenship for inclusion in the draft Constitution.
CHAPTER EIGHTEEN

CONCLUSION

The Committee wishes to point out that the above chapters do not exhaust all the issues raised or discussed during our deliberations. For example, although the subject of Transitional Provisions was broached, we were unable to proceed to discuss it owing to severe constraints of time. The Committee hopes to submit proposals on this matter during the sessions of the Consultative Assembly.

Another issue which engaged the attention of the Committee for a considerable time was the military factor, that is, the prospect of military intervention in the constitutional order and the possibility of instituting devices to prevent such intervention. This further raised the question of the proper role of the Armed Forces beyond the traditional responsibilities relating to the external and internal security of the state. Members explored the possibility of institutional mechanisms for involving the Armed Forces in public affairs. The Committee identified these areas in this regard:

1. Participation in the Council of State.
3. Eligibility to become Members of Parliament with leave of absence.

The Committee is of the view that the Council of State would provide an effective forum for the President, the Prime Minister and other high officials to exchange ideas with military officers on the state of the nation, particularly the economy, the political situation and any matter that threatens the stability of the constitutional order. Furthermore, either through the Council of State or by some other procedure, the Government and leaders of Parliament could brief the Armed Forces regularly about the performance of the economy and the international and domestic constraints on such performance. We have recommended a similar procedure for the general public.

The National Security Council could also afford the representatives of the Armed Forces and other security forces ample opportunity to advise the Government about political or economic developments which, in their opinion, threaten the security of the State.
Finally, individual members of the Armed Forces who elect to become members of Parliament could constitute a useful channel of communication between the political leaders and members of the Armed Forces on public affairs generally.

In considering these mechanisms the Committee had no illusions about their effectiveness as a deterrent to military intervention. While it is clearly desirable that meaningful ways be found for involving the Military in public affairs, the Committee feels that the causes of military interventions lie much deeper than the absence of such mechanisms. Some of these clearly have to do with the stewardship of those entrusted with power. Breach of the public trust by political leaders is always a potent factor. But the military may also be motivated by other considerations which cannot be described as high-minded.

In this regard, the comment of a noted scholar is instructive.

"Motives for coups have always been much more convoluted than those officially enunciated, and include a host of personal and parochial considerations rarely voiced aloud. African armies have often not been the cohesive professional bodies that the early literature assumed them to be. Neat hierarchical command structures camouflaged deep cleavages and intra-military tensions - extensions of existing societal divisions - thus making a mockery of the alleged unity of the armed forces. Detailed cross-national empirical analyses, both of motivations and military dynamics, increasingly revealed fundamental anomalies which simply could not be accommodated by the theories developed in the 1960s, thus requiring a major reconceptualization of the civil-military tug-of-war.

Structural weaknesses and civilian failings have certainly caused disenchantment amongst more dedicated military leaders. (The twin coups by Jerry Rawlings in Ghana, the recent upheavals in Nigeria, and Seyni Kountche's coup in Niger immediately come to mind) However, in at least an equal number of cases, structural deficiencies and systemic stresses camouflage very pedestrian behavioural motivations. In other words, empirical analysis into the internal dynamics of armed forces reveals that in some instances African armies are indeed reacting to a political void so as to set the ship of state on a
more even keel; but, that in many other instances they are utilizing the void for the attainment of their own personal or corporate goals. We "grant" politicians everywhere - in Africa, Asia, Europe, the Americas - a multiplicity of motivations (some noble, some not so noble) in their quest for political power; but, we assume that military leaders are saints and immune to normal behavioural temptations of political office and power. (Samuel Decalo 1986)

It is most likely that the issue of extra-legal interruptions of the constitutional order will be debated in the Consultative Assembly.

While the Committee would not be so presumptuous as to prescribe a deterrent to military coups, we feel that stability is best assured by a constitutional order which so genuinely reflects the interests of the ordinary man or woman that it cannot be summarily set aside without provoking the wrath of the people. As intimated above, ultimately the most effective defender of the Constitution is the people of Ghana.
APPENDIX A

COMMITTEE OF EXPERTS

PROPOSALS FOR INCORPORATION IN DRAFT CONSTITUTION FOR GHANA

THE EXECUTIVE

The President

1. (1) There shall be a President of the Republic of Ghana who shall be Head of State and Head of the Government and Commander in Chief of the Armed Forces of Ghana.

   (2) The President shall be elected by universal adult suffrage.

   (3) The President shall safeguard and guarantee the independence and territorial integrity of Ghana, and shall perform with dignity and leadership all acts, necessary, reasonable and incidental to the discharge of the executive functions of the Government, subject to the provisions of this Constitution and the laws of Ghana.

   (4) The President shall take precedence over all other persons in Ghana, and in descending order, the following shall take precedence over all other persons in Ghana -

       (a) the Prime Minister;

       (b) the Speaker of Parliament;

       (c) the Chief Justice; and

       (d) the Chairman of the Council of State.

   (5) The President shall not, while in office, be personally liable to any civil or criminal proceedings in any court.

   (6) Without prejudice to clause (5) of this article, civil or criminal proceedings may be insti-
tuted against a person within three years after he has ceased to be President, in respect of things done or omitted to be done by him in his personal capacity before or during his term of office notwithstanding any period of limitation.

2. (1) The executive power of Ghana shall vest in the President and shall be exercised in accordance with the provisions of this Constitution.

(2) Except as may be otherwise provided in this Constitution or by law, the President, shall in the exercise of his functions, act in consultation with the Council of Ministers.

(3) A constitutional or statutory instrument or any other instrument made, issued or executed in the name of the President shall be authenticated by the signature of a Minister and the validity of an instrument so authenticated shall not be called in question on the ground that it is not made, issued or executed by the President.

3. (1) Where the President is unable to perform the functions of President, the Prime Minister shall perform those functions and in the absence of both the President and the Prime Minister, the Speaker shall perform the functions of the President until the President or the Prime Minister is able to perform those functions or until a new President assumes office.

(2) Where the Prime Minister or the Speaker of Parliament assumes the office of President as a result of the death, resignation or removal from office of the President, there shall be a presidential election within three months after that assumption of office.

4. No person shall be qualified for election as President of Ghana unless -

(a) he is, by birth, a citizen of Ghana, and does not in any way owe allegiance to any other country;

(b) he has attained the age of forty years; and
(c) he is a person who is otherwise qualified to be elected as a member of Parliament, except that the disqualifications set out in paragraphs (c),(d),(e) and (i) of clause (2) of article .. (ie disqualification for membership of Parliament on the basis of crime or commission or committee of inquiry finding) of this Constitution shall not be removed, in respect of any such person, by a presidential pardon or by lapse of time as provided for in clause (3) of that article.

5. (1) A person shall not be a candidate in a presidential election unless he is nominated for election as President by a document which is -

(a) signed by him;

(b) signed by not less than two persons qualified to be elected as members of Parliament and resident in the area of authority of each District Assembly; and

(c) delivered to the Electoral Commissioner on or before the day appointed as nomination day for the election.

(2) The election of the President shall subject to the provisions of this Constitution, be conducted in accordance with regulations made for the purpose by constitutional instrument by the Electoral Commissioner.

(3) The elections shall be held -

(a) where a President is in office, not earlier than four months nor later than one month before his term of office expires; and

(b) in any other case, within three months after the office of President becomes vacant.
(4) A person shall not be elected President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty per cent of the total number of valid votes cast at the election.

(5) Where at a presidential election there are more than two candidates and no candidate obtains the number or percentage of votes specified in clause (4) of this article a second election shall be held within twenty-one days after the previous election.

(6) The candidates for a presidential election held under clause (5) of this article shall be the two candidates who obtained the two highest numbers of votes at the previous election.

(7) An instrument which -

(a) is executed under the hand and seal of the Electoral Commissioner; and

(b) states that the person named in the instrument was declared elected as the President of Ghana at the election of the President, shall be prima facie evidence that the person named was so elected.

6. (1) The validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented.

(2) A declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before that declaration.

(3) The Rules of Court Committee shall, by constitutional instrument, make Rules of Court for the practice and procedure for petitions to the Supreme Court challenging the election of a President.

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

(2) A person shall not be elected to hold office as President of Ghana for more than two terms.

(3) The office of President shall become vacant -

(a) on the expiration of the period specified in clause (1) of this article; or

(b) if the incumbent dies, retires or resigns from the office or ceases to hold office under article 11 of this Constitution.

(4) The President may, by writing under his hand addressed to the Chairman of Council of State, resign from his office of President.

8. The President shall, at the beginning of each session of Parliament, deliver to Parliament a message on the state of Ghana.

9. The President, the Prime Minister, Ministers and Deputy Ministers shall, as far as practicable, each year during the consideration by Parliament of the Government's annual programmes and policies, attend Parliament.

10. (1) The President shall not, while he continues in office as President-

(a) hold any other office of profit or emolument whether private or public;

(b) hold the office of chancellor or head of any university in Ghana.

(2) Except otherwise provided in this Constitution, the President shall not, on retiring from office as President, hold any office of profit or emolument except with the permission of the Council of State, in any establishment other than that of the State.
11. (1) The President shall be removed from office if he is found -

(a) to have acted in wilful violation of the oath of allegiance and the presidential oath or of any other provision of this Constitution; or

(b) to have conducted himself in a manner -

(i) which brings or is likely to bring the office of President into hatred, ridicule or contempt; or

(ii) prejudicial or inimical to the economy or the security of the State; or

(c) to be incapable of performing the functions of his office by reason of incompetence, physical or mental incapacity;

and Parliament passes a resolution for his removal supported by the votes of not less than two thirds of all the members of Parliament.

(2) Parliament shall not pass a resolution for the removal of the President under clause (1) of this article unless -

(a) in the case of any of the matters referred to in paragraphs (a), (b) and (c) of that clause, other than physical or mental incapacity, it has been proved to the satisfaction of a tribunal composed of the Chief Justice as Chairman and four of the most senior Justices of the Supreme Court; and

(b) in the case of any allegation of physical or mental incapacity,
it has been proved to the satisfaction of a medical board convened by the Chief Justice in consultation with the Head of the Ghana Health Services.

12. The President shall, in consultation with the Council of State, appoint -

(a) Commissioner for Human Rights and Administrative Justice and his deputies;

(b) the Auditor-General;

(c) the Electoral Commissioner and the ad hoc Electoral Commissioners; and

(d) the Governor and the other members of the governing body of the Bank of Ghana and of any bank, banking or financial institution established wholly out of public funds by or under an Act of Parliament.

13. (1) The President may delegate to the Prime Minister or other person any power conferred on him to appoint a person to any public office.

(2) The exercise of any power delegated under clause (1) shall be -

(a) subject to any conditions to which the exercise of the President's power is subject; and

(b) subject to any other conditions prescribed by the President.

14. (1) The President may, acting in consultation with the Council of State -

(a) grant to a person convicted of an offence a pardon either free or subject to lawful conditions; or

(b) grant to a person a respite, either indefinite or for a specified
period, for the execution of a punishment imposed on that person for an offence; or

(d) remit the whole or part of a punishment imposed on a person or of a penalty or forfeiture otherwise due to Government on account of any offence.

(2) Where a person has been sentenced to death for an offence a written report of the case from the trial judge together with such other information derived from the record of the case or elsewhere as may be necessary shall be submitted to the President.

(3) For the avoidance of doubt, a reference in this article to a conviction or the imposition of a punishment, penalty, sentence or forfeiture includes a conviction or the imposition of a punishment, penalty, sentence or forfeiture by a court-martial or other tribunals.

International Relations

15. (1) The President shall, acting in consultation with the Council of State, appoint Ambassadors, High Commissioners, and Ministers Plenipotentiary to represent Ghana abroad.

(2) The President may receive envoys accredited to Ghana.

16. (1) The President may execute or cause to be executed treaties, conventions or agreements in the name of Ghana.

(2) A treaty, convention or agreement executed by or under the authority of the President, shall be subject to ratification -

(a) by Parliament -

(i) by Act of Parliament; or
(ii) by a resolution of Parliament supported by the votes of not less than one half of all the members of Parliament; or
(b) by a decision of the Council of Ministers;

(3) Any treaty, convention, or agreement to which this article applies which relates to armistice, neutrality or peace shall be ratified by resolution of Parliament as prescribed by clause (2) of this article.

(4) Parliament may require that any particular class of treaties, conventions or agreements shall be ratified by Act of Parliament or by a resolution as prescribed by clause (2) of this article.

17. (1) Where the institutions of the State or the proper functioning of this Constitution or the territorial integrity and the independence of the State is threatened in a fundamental way, the President shall, without prejudice to his power to declare a state of emergency under this Constitution, and subject to the other provisions of this article, take immediately all necessary measures to restore the constitutional order.

(2) The President shall, in exercising his power under clause (1) of this article, consult the Prime Minister, the Chairman and not less than nine members of the Council of State, the Speaker of Parliament, the minority leaders in Parliament, the General Officer Commanding the Ghana Armed Forces and the National Security Council.

(3) The President shall immediately upon exercising his power under clause (1) of this article, notify Parliament of the action taken by him.

(4) The exercise of the President's powers under this article shall not prejudice the right of Parliament to sit; and where Parliament is not in session it shall be summoned to sit within forty-eight hours after the exercise of those powers.

(5) Parliament shall within seventy-two hours after being notified under clause (3), consider and confirm or terminate any action taken by the President under clause (1).
(6) Where Parliament is dissolved, the President shall cause to be summoned for the purposes of this article the Parliament that has been dissolved; and the general election of members of Parliament shall proceed and the Parliament that has been recalled shall, if not sooner dissolved stand again dissolved on the date appointed for the nomination of candidates for the general election.

(7) The period of seventy-two hours referred to in subclause (5) of this article shall, in the case of a Parliament recalled under clause (6), commence from the time when Parliament commences to sit after being recalled.

PRIME MINISTER

18. (1) There shall be a Prime Minister who shall be appointed by the President with the approval of Parliament.

(2) The person to be appointed as Prime Minister shall be -

(a) the leader of the party which has the majority of members in Parliament; or

(b) where there is no party with a majority of members in Parliament, a person who appears to the President to command the support of the majority of members in Parliament.

(3) Where the person nominated for appointment as Prime Minister is not approved by Parliament, the President shall nominate another person for appointment.

(4) The President may revoke the appointment of the Prime Minister, and the Prime Minister may, by writing addressed to the President, resign his office.
19. (1) Subject to the powers of the President, the Prime Minister shall be the head of Government in administration and leader of Government business in Parliament and shall be responsible for presenting to Parliament the programmes and policies of Government.

(2) The Prime Minister shall be responsible for the supervision of Government administration, co-ordinate the work of the Council of Ministers and generally assist the President in the execution of the executive responsibilities of the President.

(3) Upon the recommendation of the Prime Minister, the President may revoke the appointment of any Minister of State or any Deputy Minister.

COUNCIL OF MINISTERS

20. (1) There shall be a Council of Ministers comprising the Prime Minister and such other ministers as the President shall determine.

(2) The Prime Minister shall be the head of the Council of Ministers.

(3) Subject to the powers of the President, the Council of Ministers shall be charged with the general direction and control of Government and shall collectively be responsible to the President for the administration of the work of the Council of Ministers.

(4) The Council of Ministers shall deliberate on, determine and conduct the policies of Government and generally assist the President in exercising the executive power of Ghana.

21. (1) The Council of Ministers shall be summoned to meetings by the President and in his absence by the Prime Minister.

(2) A meeting of the Council of Ministers shall be presided over by the President and in his absence by the Prime Minister or in the absence of the Prime Minister, by a Minister designated for that purpose by the President.
(3) The Council of Ministers shall regulate its own procedure at its meetings.

22. (1) Subject to the other provisions of this article, the President shall, on the recommendation of the Prime Minister, appoint from among members of Parliament, Ministers and Deputy Ministers.

(2) Notwithstanding clause (1) of this article, the President may, on the recommendation of the Prime Minister and with the approval of Parliament, appoint a number of Ministers or Deputy Ministers not exceeding forty per cent of the total number of Ministers or Deputy Ministers, from among persons who are not members of Parliament.

(3) A person shall not be appointed a Minister or Deputy Minister of State under this Constitution unless he is qualified to be elected as a member of Parliament.

(4) A Minister or Deputy Minister appointed under clause (2) of this article is entitled to participate fully in the proceedings of Parliament and shall be accorded all the privileges of a Member of Parliament except that he is not entitled to vote or to hold office in Parliament.

(5) The President may revoke the appointment of any Minister or Deputy Minister and a Minister or a Deputy Minister may by writing addressed to the President resign his office.

(6) A Minister or a Deputy Minister of State shall not while he continues in office hold any other office of profit or emolument whether private or public.

23. The office of the Prime Minister, Minister or Deputy Minister shall become vacant if he is elected Speaker or Deputy Speaker.

24. (1) There shall be a Secretary to the Council of Ministers who shall be appointed by the President.

(2) The Secretary to the Council of Ministers shall perform such functions as may be assigned to him by the President or the Prime Minister.
(3) The Secretary to the Council of Ministers shall serve as a depositary of the records, minutes and related documents of the Council.

25. Ministers of State shall be accountable to both the President and Parliament individually for the administration of their own Ministries and collectively for the work of the Council of Ministers.

26. The Council of Ministers shall be responsible to Parliament for the due discharge of their functions under this Constitution and under any other law.

27. (1) Where the Government presents its programmes and policies to Parliament and Parliament considers them unacceptable, Parliament shall give notice of its intention to reject them and shall give the Government a period not more than thirty days to revise them.

(2) Where the Government fails to revise the programmes or policies to the satisfaction of Parliament, Parliament may proceed to reject them.

(3) A rejection of the Government's programmes or policies under clause (2) of this article shall not require the resignation or dissolution of the Council of Ministers.

28. (1) Parliament may, by a resolution supported by the majority of votes of all the members of Parliament, pass a vote of censure against a Minister of State.

(2) A motion for a resolution under clause (1) of this article shall not be moved in Parliament unless -

(a) at least seven days' notice has been given of the motion; and

(b) the notice has been signed by at least one-third of all the members of Parliament.

(3) The motion shall be debated in Parliament within fourteen days after receipt by the Speaker of the notice.
(4) A Minister of State in respect of whom a vote of censure is debated under this article shall be entitled to be heard during the debate in his defence.

(5) Where a vote of censure is passed against a Minister under this article the President shall, unless the Minister resigns his office, revoke the appointment of the Minister.

29. (1) Subject to the provisions of this article, Parliament may, by a resolution supported by not less than two-thirds of all the members of Parliament, pass a vote of no confidence in the Government.

(2) A motion for a resolution under clause (1) of this article shall not be moved in Parliament unless -

(a) at least fourteen days' notice has been given of the motion to the Government and the Speaker; and

(b) the notice has been signed by at least half of all the members of Parliament.

(3) The motion shall be debated in Parliament within fourteen days after receipt of the notice by the Speaker.

(4) Where Parliament passes a vote of no confidence in the Government, the President shall -

(a) revoke the appointment of the Prime Minister and the other Ministers;

(b) dissolve the Council of Ministers; and

(c) appoint a new Prime Minister and a new Council of Ministers and other Ministers of State.
The National Security Council

30. (1) There shall be a National Security Council which shall be responsible to the President.

(2) The National Security Council shall consist of -

(a) the President;
(b) the Prime Minister;
(c) the Minister responsible for Foreign Affairs;
(d) the Minister responsible for Defence;
(e) the Minister responsible for the Interior;
(f) Minister responsible for National Security;
(g) the Minister responsible for Finance;
(h) the Minister responsible for Justice;
(i) a representative of all the Minority parties in Parliament;
(j) the Attorney-General;
(k) the General Officer Commanding the Ghana Armed Forces;
(l) the Army Commander;
(m) the Navy Commander;
(n) the Air Force Commander;
(o) the most senior warrant officer of the Ghana Armed Forces;
(p) the Inspector General of Police and two of his deputies, one of whom shall be the Commissioner of Police responsible for Criminal Investigations Department;

(q) the Director of External Intelligence;

(r) the Director of Internal Intelligence; and

(s) the Director of Military Intelligence;

(t) three persons appointed by President at least one of whom shall be a woman.

(3) The President shall preside at meetings of the National Security Council and in his absence the Prime Minister shall preside.

(4) The President may, acting in consultation with the National Security Council, invite such persons as he may consider necessary for any deliberations of the Council and in doing so he shall take account of the need for equal gender representation.

(5) A person invited to participate in the deliberations of the Council under clause (4) shall not vote on any matter for decision before the Council.
(6) The National Security Council shall regulate the procedure at its meetings.

(7) The Secretary to the Council of Ministers shall be the Secretary to the National Security Council.

31. (1) The National Security Council shall deliberate on and take appropriate measures to safeguard the internal and external security of Ghana.

(2) There shall be a Secretary to the National Security Council who shall be appointed by the President.

32. No agency, establishment or other organisation concerned with national security shall be established except as provided for under this Constitution.

The Attorney-General

33. (1) There shall be an Attorney-General who shall be a Minister of State.

(2) The Attorney-General shall be the principal legal adviser of the Government and shall perform such other functions 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 and accordingly, all offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or some other person authorised by him in accordance with any law.

(4) The Attorney-General shall be responsible for the institution 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.

(5) The Attorney-General shall have audience in all courts and tribunals in Ghana and shall have precedence over all other lawyers.
(p) the Inspector General of Police and
two of his deputies, one of whom
shall be the Commissioner of Police
responsible for Criminal
Investigations Department;
(q) the Director of External
Intelligence;
(r) the Director of Internal
Intelligence; and
(s) the Director of Military
Intelligence;
(t) three persons appointed by
President at least one of whom
shall be a woman.

(3) The President shall preside at meetings
of the National Security Council and in his absence
the Prime Minister shall preside.

(4) The President may, acting in consultation
with the National Security Council, invite such
persons as he may consider necessary for any
deliberations of the Council and in doing so he
shall take account of the need for equal gender
representation.

(5) A person invited to participate in the
deliberations of the Council under clause (4) shall
not vote on any matter for decision before the
Council.
(6) The National Security Council shall regulate the procedure at its meetings.

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Communication with the people

34. (1) For the purposes of ensuring the maintenance of national unity, peace and stability in Ghana, the President shall ensure that there is at all times constant communication between the Government and the people.

(2) In furtherance of the objective specified in clause (1) of this article, the President shall ensure that there are regular meetings at least once in every six months, at such times and places as may be determined by the President, between the Prime Minister, Ministers and representatives of the Government and the people for the purpose of making it possible for the Prime Minister and the Ministers and such representatives to receive and respond to suggestions and questions from the people concerning the policies and performance of the Government and the performance and conduct of Ministers and other agents of Government.

(3) A meeting required by clause (2) of this article shall be in the nature of a public forum at which all members of the public are, subject to the requirements of public peace and good order, free to attend and participate by way of making suggestions and asking questions or making other lawful contribution.

(4) Subject to the directions of the President, the meeting shall be attended by one or more of the following -

(a) the Prime Minister;

(b) Ministers;

(c) authorised representatives of the Government.

(5) The President shall ensure that as far as practicable, meetings required under this article are held from time to time in every region of Ghana.
APPENDIX B
COUNCIL OF STATE

1. (1) There shall be a Council of State which shall be national and non-partisan in character and shall, in its deliberations, strive towards the maintenance of national unity.

(2) The Council of State shall consist of -

(a) all former Presidents or Heads of State or Heads of Government of Ghana able and willing to act as members of the Council of State;

(b) the Prime Minister;

(c) the Chief Justice;

(d) the General Officer Commanding the Ghana Armed Forces;

(e) the Army Commander;

(f) the Navy Commander;

(g) the Airforce Commander;

(h) the Inspector General of Police;

(i) the Governor of the Bank of Ghana;

(j) the leaders of all Political parties in Parliament;

(k) the President of the National House of Chiefs;

(l) the Auditor-General;

(m) the Attorney-General;

(n) one representative from each region of Ghana elected by an electoral college comprising all the members of the District Assemblies in the region;
(o) one representative from each Regional House of Chiefs;

(p) six persons appointed by the President; and

(q) six persons appointed by Parliament;

(r) the Secretary-General of the Trades Union Congress; and

(s) three non-commissioned officers from all the Security Services.

(3) The President or Parliament as the case may be, shall appoint persons to be members of the Council of State under paragraphs (q) and (r) of clause (2) of this article on the basis of their experience, expertise and competence and shall, in doing so, strive towards fair representation of men and women.

(4) A person shall not be qualified to serve as a member of the Council of State unless he is qualified to be a member of Parliament.

(5) The Council of State shall elect a chairman from among its members.

(6) A member of the Council of State shall, at the first meeting which he attends as a member, take and subscribe the oath of secrecy and the oath of a councillor of state set out in the Second Schedule to this Constitution.

(7) A person appointed or elected as a member of the Council of State under paragraph (q) or (r) of clause (2) of this article shall hold office until another person is elected as President or until another Parliament is elected unless -

(a) he resigns by writing under his hand addressed to the President or the Speaker as the case may be; or
(b) he becomes permanently incapacitate; or

(c) he is removed from office.

(8) A person appointed a member of the Council of State by the President or Parliament may be removed by the President or Parliament as the case may be, on any ground of stated misbehaviour.

2. (1) The Council of State may establish such committees as it considers necessary for the efficient performance of its functions.

(2) A committee of the Council of State may comprise members of the Council or non-members or both except that the chairman of each such committee shall be a member of the Council of State.

(3) The Council of State may assign to a committee appointed under this article such functions as it may think fit.

3. (1) The Council of State shall aid and counsel the President, the Council of Ministers, Parliament and other organs of State in the performance of their functions under this Constitution or under any other law.

(2) Without prejudice to clause (1) of this article, the Council of State shall have the following functions -

(a) to advise the President in the exercise of special Presidential prerogatives, namely the dissolution of Parliament and the declaration of a state of emergency;

(b) to advise the President on the appointment of the persons specified in article...... (Auditor-General etc) of this Constitution.
(c) to advise the President on the appointment of the Chief Justice and other members of the Supreme Court;

(d) to advise the President on the exercise of his powers under article (special powers etc) of this Constitution;

(e) to advise on the grant of pardon, remission or reduction of sentence;

(f) to advise on and suggest amendments to, bills referred to the Council by the President or the Speaker;

(g) to advise on an equitable and balanced development of all parts of the country;

(h) advise on matters that may promote or foster stability and national unity;

(i) to co-ordinate with the National Security Council in matters relating to the security of the State;

(j) to make recommendations, upon request or at its own initiative, on any matter being considered by the President, Parliament, Minister of State or any other public authority; and

(k) to encourage and promote adherence to the Directive Principles of State Policy.

4. (1) A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State —
(a) if the President so requests;

(b) if the chairman of the Council of State so determines;

(c) if not less than five members of the Council of State so demand; or

(d) if the bill was passed under a certificate of urgency.

(2) A request from the President for consideration of a bill may be accompanied by a statement setting out the amendments or changes which the President proposes for consideration by the Council of State.

(3) Consideration of a bill under clause (1) of this article shall be completed within thirty days after the third reading in Parliament of that bill, except that where the bill was passed under a certificate of urgency the Council of State shall consider it and report to the President and Parliament within seventy-two hours.

(4) The chairman of the Council of State shall immediately inform the President and the Speaker of Parliament whenever there is a request for consideration of a bill in accordance with the provisions of this article.

(5) Where the Council of State decides not to propose an amendment to a bill the chairman shall, within seven days after the decision of the Council, transmit the bill with a certificate to that effect addressed to the President and the Speaker of Parliament.

(6) Where the Council of State decides to propose amendments to a bill, the bill, with a memorandum specifying the amendments proposed on the bill shall be transmitted by the chairman to the President and the Speaker of Parliament within fifteen days after the conclusion of the consideration by the Council of State.
(7) Parliament shall take into consideration any amendment proposed to a bill by the Council of State under this article.

5. (1) The Council of State shall meet whenever it is requested to meet by the President or by its chairman or by at least five members, except that the Council shall meet at least four times in each year.

(2) The Chairman of the Council of State shall preside at all its meetings and in his absence a member of the Council elected by the members of the Council for that purpose shall preside.

(3) Any question for decision in the Council of State shall not be proposed for determination unless there are present in the Council not less than one-half of all the members of the Council; and except as otherwise provided in this Constitution, the question proposed shall be determined by the majority of the members present and voting.

(4) The Council of State may commission experts and consultants to advise it or to assist it in dealing with specific issues upon such terms and conditions as the Council may determine.

(5) The Council of State may act notwithstanding a vacancy in its membership, including a vacancy not filled when the Council first meets after a dissolution of the Council, and the presence or participation of a person not entitled to be present or to participate in the proceedings of the Council shall not invalidate those proceedings.

(6) Subject to the provisions of this Constitution the Council of State may regulate its own procedure.

JUDICIAL COMMITTEE OF THE COUNCIL OF STATE

6. (1) There shall be a Judicial Committee of the Council of State comprising -

(a) five eminent jurists who are qualified to be justices of the Supreme Court irrespective of age; and

(b) four other persons of whom -
(i) one shall be an expert on the subject of government or political science or both; and

(ii) one shall be an expert in traditional institutions or anthropology or both.

(2) The Chairman of the Judicial Committee shall be appointed by the President from among the jurists referred to in paragraph (a) of clause (1) of this article.

(3) Of the other members of the Judicial Committee -

(a) two members, being jurists, shall be appointed by the President;

(b) the four persons referred to in paragraph (b) of clause (1) of this article shall be appointed by Parliament; and

(c) two jurists shall be appointed by the Judicial Council.

(4) Members of the Judicial Committee of the Council of State may be appointed from among the members of the Council of State or from among persons who are not members or both.

(5) All persons appointed members of the Judicial Committee shall be members of the Council of State; and accordingly, any person appointed as a member of the Judicial Committee who is not a member of the Council of State, shall, on appointment become a member of the Council of State.

(6) A panel for the determination of any matter by the Judicial Committee under this Constitution shall be deemed to be duly constituted by five members of the Committee comprising at least three of the jurists on the Committee.
(7) The Chairman of the Committee shall preside at all sittings of the Committee and in his absence the most senior jurist shall preside.

(8) A decision of a majority of the Judicial Committee shall be taken to be the decision of the Committee.

(9) The Judicial Committee shall, as soon as practicable, report its decision to the Council of State.

7. The Judicial Committee of the Council of State shall have the following jurisdiction -

(a) to determine the constitutionality of a bill or part of a bill prior to it being passed by Parliament;

(b) to determine the constitutionality of any measure proposed by the President, the Prime Minister or the Council of Ministers;

(c) to determine the constitutionality of any constitutional instrument or any statutory instrument of a regulatory nature;

(d) to determine the validity of the election of a Speaker, Deputy Speaker or a Member of Parliament;

(e) to resolve constitutional disputes between any of the main organs and institutions of State established by or under this Constitution;

(f) to determine the validity of the revocation of any appointment made in consultation with or on the advice of the Council of State;

(g) to review the findings of any Commission or Committee of inquiry; and
(h) determine any other matter required or authorised by or under this Constitution.

8. (1) At any time before a bill is passed by Parliament, the President, the Speaker, the Prime Minister or the Minority Leader in Parliament, or any twenty or more Members of Parliament may refer the Bill to the Judicial Committee for a ruling on its constitutionality.

(2) Where any Bill has been referred to the Judicial Committee under clause (1) of this article, the Chairman of the Judicial Committee shall, within seventy-two hours after receipt of the reference inform the Speaker in writing that the Committee is seised of the bill.

(3) Upon the Speaker being informed under clause (2) of this article, all proceedings relating to the bill in Parliament shall be suspended until the Judicial Committee has delivered its final pronouncement on the constitutionality of the Bill.

(4) Where a Bill has been declared by the Judicial Committee to be unconstitutional, no further proceedings shall be taken for the passing of the bill by Parliament unless the bill is so revised as to cease to be unconstitutional in terms of the ruling on it by the Judicial Committee.

(5) Where only part of a Bill is declared by the Judicial Committee to be unconstitutional, the rest of the bill may be passed by Parliament and the part of the bill declared to be unconstitutional shall not be proceeded with by Parliament unless it is so revised as to cease to be unconstitutional in terms of the ruling on it by the Judicial Committee.

(6) In any proceedings before the Judicial Committee under this article any party may be represented by counsel; and the Attorney-General shall have a right of audience before the Judicial Committee.

(7) The matters specified in paragraphs (b), (c), (d), (e), (f) and (g) of article 7 may be
referred to the Judicial Committee for its ruling by the President, the Prime Minister, the Speaker, any five Members of Parliament, or any Organ of State, organisation, agency, class of persons or group of individuals, or person that has a concrete interest in the ruling of the Judicial Committee.

9. The ruling of the Judicial Committee on any matter falling under article 7 (general jurisdiction) of the Constitution shall be final and shall bind all parties and authorities:

10. For the purposes of the exercise of its jurisdiction under article 7 (general jurisdiction) of this Constitution and for the enforcement of any rulings made by it in the exercise of its jurisdiction, the Judicial Committee shall have all the powers conferred by this Constitution or any other law on the Supreme Court.

11. Subject to the provisions of this Constitution the Rules of Court Committee shall, by constitutional instrument, make rules to regulate the practice and procedure of the Judicial Committee.
APPENDIX C

THE LEGISLATURE

Composition of Parliament

1. (1) There shall be a Parliament of Ghana which shall consist of not less than ............
..............members elected on the basis of universal adult suffrage.

(2) Subject to the provisions of this Constitution, the legislative power of Ghana shall vest in the Parliament of Ghana and shall be exercised in accordance with this Constitution.

2. (1) Subject to the provisions of this article, a person shall not be qualified to be a member of Parliament unless -

(a) he is a citizen of Ghana and has attained the age of twenty-one years; and

(b) he is ordinarily resident in the constituency for which he stands as a candidate for election to Parliament and has been so resident for at least three years except that a person shall, for the purposes of this paragraph, be deemed to be ordinarily resident if he actively identifies himself with the constituency although he is not physically resident there; and

(c) has paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of his taxes.

(2) A person shall not be qualified to be a member of Parliament who -
(a) owes allegiance to a country other than Ghana; or

(b) has been adjudged or otherwise declared to be of unsound mind
    or is detained as a criminal lunatic under any law in force in Ghana; or

(c) has been convicted -
    (i) for high crime under this Constitution or treason or for an offence involving the security of the State, fraud, dishonesty or moral turpitude; or
    (ii) for any other offence on indictment; or

(d) has been found by a commission or committee of enquiry -
    (i) to have acquired assets unlawfully or to have defrauded the State or to have acted wilfully in a manner prejudicial to the interest of the State; or
    (ii) to have misused or abused his office as a public officer; and the findings have not been set aside on appeal or judicial review;

(e) has had his property confiscated as the result of the findings of a commission or committee of inquiry; and such findings have not been set aside on appeal or judicial review; or

(f) is under sentence of death or other sentence of imprisonment imposed on him by any court; or
(g) is not qualified to be registered as a voter under the provisions of the electoral law; or

(h) is disqualified for election by a law in force in Ghana by reason of his holding or acting in an office the functions of which involve a responsibility for, or in connection with, the conduct of an election or a responsibility for the compilation or revision of an electoral register; or

(i) has been convicted of an offence relating to, or connected with, election under a law in force in Ghana at any time; or

(j) is otherwise disqualified by a law in force at the time of the coming into force of this Constitution, not being inconsistent with a provision of this Constitution.

(3) For the purposes of paragraph (d) of clause (2) of this article, in the case of any finding made by a commission or committee of inquiry which is not a judicial or quasi-judicial commission or committee of inquiry, without prejudice to any appeal against or judicial review of that finding, the finding shall not have the effect of disqualifying a person under that paragraph unless it has been confirmed by a government white paper.

(4) For the purposes of paragraphs (c), of (d), (e) and (i) of clause (2) of this article, if ten years or more have elapsed since the end of the sentence or the date of the publication of the report of the commission or committee of inquiry or he has been pardoned, that person shall not be disqualified to be a member of Parliament by reason only of the provisions of those paragraphs.
(5) A person is not disqualified from standing for election as a member of Parliament by reason only of his being a public officer.

(6) A public officer who desires to stand for election to Parliament shall obtain leave of absence without pay from his employment commencing not less than fourteen days from the nomination day for the election.

(7) If he wins the election, he is entitled to take office as a member of Parliament and at the end of his service as a member of Parliament he is entitled to return to his employment subject to such terms and conditions as may be in force in relation to his employment.

(8) If he loses the election he is entitled to return to his employment on such terms and conditions as may be in force in relation to his employment.

3. (1) There shall be a Speaker of Parliament who shall be elected by the members of Parliament from among persons who are members of Parliament or who are qualified to be elected as members of Parliament.

(2) The Speaker shall vacate his office -

(a) if he becomes the Prime Minister, a Minister of State or a Deputy Minister; or

(b) if he resigns from office by writing under his hand addressed to the Clerk of Parliament; or

(c) if any circumstances arise that, if he were not Speaker, would disqualify him for election as a Speaker; or

(d) if he is removed from office by a resolution of Parliament supported by the votes of not less than three-quarters of all the members of Parliament.
(3) No business shall be transacted in Parliament other than an election to the office of Speaker at any time when the office of Speaker is vacant.

(4) The Speaker shall, on assuming office, make a declaration of his assets and liabilities in accordance with this Constitution.

4. (1) There shall be two Deputy Speakers of Parliament -

(a) who shall be elected by the members of Parliament from among their number; and

(b) both of whom shall not be members of the same political party.

(2) The members of Parliament shall elect a person to the office of Deputy Speaker when Parliament first meets after a dissolution of Parliament and, if the office becomes vacant otherwise than by reason of a dissolution of Parliament, at the first sitting of Parliament after the office becomes vacant.

(3) Article 3 of this Chapter shall, with the necessary modifications, apply to a Deputy Speaker.

5. (1) A member of Parliament shall vacate his seat in Parliament -

(a) upon a dissolution of Parliament; or

(b) if he is elected as Speaker of Parliament; or

(c) if he ceases to be a citizen of Ghana; or

(d) if he is absent, from fifteen sittings of a meeting of Parliament during any period that Parliament has been summoned to meet and continues to meet, without the permission in writing of the
Speaker, and he is unable to offer a reasonable explanation to the Parliamentary Committee on privileges; or

(e) if he is expelled from Parliament after having been found guilty of contempt of Parliament by a committee of Parliament; or

(f) if any circumstances arise that, if he were not a member of Parliament, would cause him to be disqualified for election as a member of Parliament; or

(g) if he resigns from office as a member of Parliament by writing under his hand addressed to the Speaker; or

(h) if he leaves the party of which he was a member at the time of his election to Parliament to join another party.

(2) Notwithstanding paragraph (h) of clause (1) of this article, a merger of parties or membership of a coalition government shall not affect the status of any person as a member of Parliament.

6. A member of Parliament shall not hold any office of profit or emolument, whether private or public, unless otherwise permitted by the Speaker acting on the recommendations of a committee of Parliament on the ground -

(a) that holding that office will not prejudice the work of a member of Parliament; and

(b) that no conflict of interest arises or would arise as a result of the member holding the office.
7. The Speaker shall preside in Parliament at all sittings and in his absence a Deputy Speaker shall preside.

8. A quorum of Parliament apart from the person presiding shall be one third of all the members of Parliament.

9. (1) Parliament shall appoint standing committees and other committees.

(2) These committees shall be charged with various functions including the administration of ministries and departments and the making of various enquiries and investigations.

(3) Every member of Parliament shall be a member of at least one of the committees.

(4) The composition of the committees shall reflect the different shades of opinion in Parliament.

(5) A committee under this article shall have the powers, rights and privileges of the High Court at a trial for –

   (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

   (b) compelling production of documents;

   (c) issuing a commission or request to examine witnesses abroad.

10. (1) Matters in Parliament shall ordinarily be determined by the votes of the majority of members present and voting, with at least half of all the members present.

(2) The Speaker shall have neither an original nor casting vote.
(3) Where the votes on any motion are equal it shall be taken to be lost.

(4) Where Parliament is considering a bill to amend the Constitution, or where the voting is in relation to the election or removal of any person under this Constitution or under any other law, voting shall be in secret.

(5) A member who is a party to or a partner in a firm which is a party to a contract with the Government shall declare his interest and shall not vote on any question relating to the contract.

11. (1) The legislative power of Parliament shall be exercised by the passing of bills by Parliament which become law upon being assented to by the President.

(2) No bill affecting the institution of chieftaincy shall be introduced into Parliament without reference to the National House of Chiefs.

(3) The Council of State shall consider all bills passed by Parliament under a certificate of urgency.

(4) Subject to the provisions of this Constitution -

(a) the President shall, upon the presentation to him of a Bill which has been passed by Parliament, signify within seven days after receipt of the bill, to the Speaker that he assents to the bill or that he refuses to assent to the bill;

(b) where the President signifies his assent to a Bill the bill shall become law;

(c) where the President refuses to assent to any bill he shall state in a memorandum to the Speaker
the specific provisions of the bill which in his opinion should be reconsidered by Parliament including recommendations for amendments;

(d) Parliament shall reconsider a bill which the President has refused to assent; and

(e) where Parliament, after reconsidering the bill passes it by a resolution supported by the votes of at least one half of all the members of Parliament, the President shall assent to it within thirty days after the passing of the resolution;

(f) a bill shall not become law until it has been duly passed and assented to in accordance with this Constitution and shall, unless otherwise stated in it, come into force on the date it is published in the Gazette.

12. Parliament shall have no power to pass any law -

(a) to alter the decision or judgment of any court;

(b) which operates retrospectively to impose a burden, obligation or liability except in the case of budget or financial legislation (under articles ).

13. Parliament shall not, unless the bill is introduced or the motion is introduced by, or on behalf of, the Government -

(a) proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for -
(i) the imposition of taxation or the alteration of taxation otherwise than by reduction; or

(ii) the imposition of a charge on the Consolidated Fund or other public fund or the alteration of any such charge otherwise than by reduction; or

(iii) the payment, issue or withdrawal from the Consolidated Fund or other public fund of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or

(iv) the composition or remission of any debt due to the Government of Ghana; or

(b) proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in paragraph (a) of this article.

14. Except as otherwise provided, Parliament may regulate its own procedure by standing orders.

15. Except as otherwise provided, Parliament shall continue for five years from the date of its first sitting after a general election and shall then stand dissolved.

16. (1) A session of Parliament shall be held at such place and at such time as the Speaker may determine.
(2) A session of Parliament shall be held at least once a year so that the period between two sessions does not amount to twelve months.

(3) Any twenty members of Parliament may request a meeting of Parliament and the Speaker shall summon Parliament accordingly.

17. (1) Notwithstanding article 15 of this Constitution, the President acting in consultation with the Council of State shall -

(a) where he is satisfied that the Prime Minister has lost the support of the majority of Parliament; or

(b) where the office of Prime Minister becomes vacant;

and in either case, the President is satisfied that there is no likelihood of his being able within a reasonable time to appoint a Prime Minister, dissolve Parliament and call a general election within a period of not more than forty days.

(2) The President may also dissolve Parliament and call for a general election where the Prime Minister advises him to dissolve Parliament on the ground that the Government is unable to govern effectively.

(3) Where Ghana is actually engaged in war, Parliament may, by resolution supported by at least two thirds of all the members of Parliament, extend the period of five years specified in article 15 of this Constitution, for not more than twelve months at a time, but the life of Parliament shall not be extended under this clause for more than five years.

(4) Where after the dissolution of Parliament but before the holding of a general election the President is satisfied that owing to the existence of a state of war or of a state of emergency in Ghana or any part of Ghana it is necessary to recall Parliament, he shall cause to be summoned to meet, the Parliament that has been dissolved.
(5) Unless the life of Parliament is extended under clause (3) of this article the general election of members of Parliament shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates for the general election.

Privileges and Immunities

18. There shall be freedom of speech, debate and proceedings in Parliament which cannot be impeached or questioned in any court or place out of Parliament.

19. (1) Civil or criminal proceedings shall not be instituted against a member of Parliament in any court or place out of Parliament for any matter or thing brought by him in or before Parliament by petition, bill, motion or otherwise.

(2) Where in the opinion of the person presiding in Parliament a statement made by a member is prima facie defamatory of any person, the person presiding shall refer the matter for inquiry to the Parliamentary Committee on Privileges which shall report its findings to Parliament not later than thirty days after the matter was referred.

(3) Where the Parliamentary Committee on Privileges reports to Parliament that the statement made by the member is defamatory of any person, the member who made the statement shall, within seven days after the report, render an apology at the bar of Parliament, the terms of which shall be approved by the Parliamentary Committee on Privileges and communicated to the person who has been defamed.

(4) Where a member refuses to render an apology in accordance with the provisions of clause (3) of this article, the Speaker shall suspend that member for the duration of the session of Parliament in which the defamatory statement was made and a member so suspended shall lose his parliamentary privileges, immunities and remuneration but they shall be restored to him if at any
time before the end of the session he renders apology as required by clause (3) of this article.

(5) A person who has made a contemporaneous report of the proceedings in Parliament, including a statement which has been the subject of an inquiry under clause (2) of this article, shall publish the apology referred to in clause (3) of this article or the suspension or the apology referred to in clause (4) of this article with the same prominence as he published the first report and where he fails to publish the apology, he shall not be protected by privilege.

20. (1) The Speaker, member and the Clerk of Parliament shall have immunity from -

(a) service or execution of civil or criminal process while on their way to, attending or returning from any proceedings of Parliament;

(b) attendance for the purpose of appearing as a witness in court or other place outside Parliament while attending Parliament;

(c) service on a jury in any court or place out of Parliament.

(2) A certificate of the Speaker that a member or the Clerk is attending proceedings of Parliament is conclusive for the purposes of this article.

21. Subject to the provisions of this Constitution, a person shall not be under any civil or criminal liability in respect of the publication of -

(a) the text of a summary of any report, papers, minutes, votes or proceedings of Parliament;

or

(b) a contemporaneous report of the proceedings of Parliament, unless it is shown that the publication was done maliciously or in bad faith.
22. (1) A witness before Parliament is entitled to enjoy the same privileges as a witness before a court of law.

(2) A Public officer shall not be required to produce before Parliament a document where —

(a) the Speaker has certified —

(i) that the document belongs to a class of documents which it is injurious to the public interest to produce; or

(ii) that disclosure of its contents will be injurious to the public interest; or

(b) the National Security Council certifies —

(i) that the document belongs to a class of documents which it is prejudicial to the security of the State to produce; or

(ii) that disclosure of its contents will be prejudicial to the security of the State.

(3) Where there is a doubt as to whether a document referred to in clause (2) of this article is injurious to the public interest or prejudicial to the security of the State, the Speaker or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for determination by the Supreme Court whether the production or the disclosure of its contents would be injurious to the public interest or prejudicial to the security of the State.

(4) An answer by a person to a question put by Parliament shall not be admissible in evidence against him in any civil or criminal proceedings out of Parliament, except in proceedings for perjury brought under the criminal law.
Contempt of Parliament

23. An act or omission which obstructs or impedes Parliament in the performance of its functions or which obstructs or impedes a member or an officer of Parliament in the discharge of his duties or which affronts the dignity of Parliament or which tends either directly or indirectly to produce that result is contempt of Parliament.

24. Where an act or omission which amounts to contempt of Parliament is also an offence under the criminal law the exercise by Parliament of the power to punish for contempt shall not be a bar to the institution of proceedings under the criminal law.
APPENDIX D

THE DIRECTIVE PRINCIPLES OF STATE POLICY

1. (1) The Directive Principles of State Policy contained in this Chapter are for the guidance of Parliament, the President, the Council of Ministers, Political Parties and other bodies and persons in making and applying public policy for the establishment of a just and free society.

(2) The principles shall not of and by themselves be legally enforceable by any court.

(3) The Courts shall, however, have regard to those Principles in interpreting any laws based on them.

(4) The Government shall report to Parliament at least once a year all the steps it has taken to ensure the realization of the policy objectives contained in this Chapter; and, in particular, the realization of a healthy economy, the right to work, the right to good health care and the right to education.

POLITICAL OBJECTIVES

2. (1) Ghana shall be a democratic state dedicated to the realization of freedom and justice; and accordingly, sovereignty belongs to the people of Ghana from whom Government derives all its powers and authority through this Constitution.

(2) The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the well-being of all her citizens.

(3) The State shall promote just and reasonable access by all citizens to public facilities and services in accordance with Law.

(4) The State shall cultivate among all Ghanaians respect for fundamental human rights and for the dignity of the human person.

(5) The State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstance of birth, ethnic origin, gender or religion.
(6) Towards the achievement of the objective stated in clause (5) of this article, the State shall take appropriate measures to:

(a) foster a spirit of loyalty to Ghana that overrides sectional, ethnic and other loyalties;

(b) achieve reasonable regional balance in appointments to public offices;

(c) provide adequate facilities for, and encourage, free mobility of people, goods and services throughout Ghana; and

(d) make democracy a reality by decentralizing the administrative machinery to the Regions and Districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government.

(7) The State shall take steps to eradicate corrupt practices, exploitation in its various forms and the abuse of power.

**ECONOMIC OBJECTIVES**

3. (1) The State shall take all necessary action to ensure that the national economy is managed in such a manner as to increase the rate of economic development and to secure the maximum welfare, freedom and happiness of every citizen of Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy.

2. The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include:
(i) the assurance of fair remuneration for production and productivity in order to encourage continued production and higher productivity;

(ii) affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy, while at the same time ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country, addressing the needs of the vulnerable groups and protecting the global environment;

(iii) undertaking even and balanced development of all regions and every part of each region in Ghana, and, in particular, improvement of the conditions of life in the rural areas, and generally redressing the imbalance in development between the rural and the urban areas;

(iv) the recognition that the most secure democracy is the one that assures the basic necessities of life for its people as a fundamental duty.

(3) The State shall take appropriate measures to promote the development of agriculture and industry.

(4) Foreign investment shall be encouraged within Ghana, subject to any law for the time being in force regulating investment in Ghana.

(5) For the purposes of the foregoing clauses of this article, within two years after assuming office, the Government shall present to Parliament a coordinated programme of economic and social development policies, including agricultural and industrial programmes at all levels and in all the regions of Ghana.
(6) The State shall afford equality of economic opportunity to all citizens; and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of Ghana's economic development.

(7) The State shall guarantee the ownership of property and the right of inheritance.

(8) The State shall recognize that ownership and possession of land carries a social obligation to serve the larger community; and, in particular, that the managers of public, stool and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit of the people of Ghana, of the stool concerned and of the family concerned, and are accountable as fiduciaries in this regard.

(9) The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other States and bodies for purposes of protecting the wider international environment for mankind.

(10) The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians.

(11) The measures to be taken by the State for the purposes of clause (10) of this article to achieve this objective shall include -

(a) ensuring that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of leisure, social and cultural opportunities;
(b) recognition of the right of workers to form trade unions at the work place to protect their rights and interests;

(c) encouragement and promotion of sound labour relations and fair employment practices; and

(d) encouragement of the participation of workers in the decision-making process at the work place.

SOCIAL OBJECTIVES

4. (1) The State shall endeavour to secure and protect as effectively as it is able to do so, a social order founded on the ideals and principles of freedom, equality, justice and accountability as enshrined in Chapter (on fundamental human rights) of this Constitution.

(2) In particular, the State shall direct its policy towards ensuring -

(a) that every citizen has equality of rights, obligations and opportunities before the law;

(b) that the sanctity of the human person and human dignity is recognized, maintained and enhanced; and

(c) that the independence, impartiality, integrity and easy accessibility of the courts of law are secured and maintained.

(3) In furtherance of the objectives contained in clauses (1) and (2) of this article it shall be the obligation of the State to ensure -

(a) that all citizens, without discrimination on any ground, have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;
(b) that provision is made for public assistance for those in need and the conditions under which such assistance may be given and in particular, that free legal aid is offered to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities;

(c) that conditions of work are just and humane, and that there are facilities for leisure and for social and cultural life;

(d) that adequate facilities for sports are provided throughout the country, and that sports are promoted as a means of fostering national integration, health and self-discipline as well as international friendship and understanding;

(e) that there are adequate medical and health facilities for all persons;

(f) that there is no discrimination in remuneration of men and women for work of equal value;

(g) that children, young persons, the aged, the infirm and the handicapped are protected against exploitation and against moral and material neglect;

(h) that in exercising their powers, authorities and persons in whom are vested powers of appointment under this Constitution do, as far as practicable, appoint an equal number of men and women;

(i) that adequate retiring awards are provided for all workers;

(j) that contributory schemes are instituted and maintained that will provide economic security for self-employed and other citizens of Ghana; and
(k) that old persons are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities.

(5) (1) The State recognizes the Human Right to Development, which means that people must be active participants in and beneficiaries of development processes, and that the state is obligated to protect and promote human rights as interdependent ends and means of development.

(2) Pursuant to this obligation the State will enact appropriate legal measures to assure:

(a) the enjoyment of rights of effective participation in development processes which include: rights of people to form their own associations free from state interference and use them to promote and protect their interests in relation to development processes; rights of access to agencies and officials of the state necessary to realize effective participation in development processes; freedom to form organizations to engage in self help and income generating projects; freedom to raise funds to support these activities.

(b) the protection and promotion of all other basic human rights, including the rights of women, children and other vulnerable groups, in development processes.

(3) In the discharge of the obligations stated above, the state will be guided by International Human Rights Instruments (such as the United Nations Convention on the Elimination of All Forms of Discrimination Against Women) which recognize and apply particular categories of basic human rights to development processes.
EDUCATIONAL OBJECTIVES

5. (1) The State shall acknowledge its paramount responsibility for the provision of educational facilities at all levels and in all the Regions of Ghana, and shall, to the greatest extent feasible, make those facilities available without discrimination as to gender.

(2) The Government shall, within two years after the coming into force of this Constitution, draw up a programme for implementation within the following ten years for the provision of free, compulsory and universal basic education.

(3) The State shall, subject to the availability of resources, provide -

(a) free and equal access to secondary and other appropriate pre-university education;

(b) equal access to university or equivalent education;

(c) free adult literacy programme;

(d) life-long education; and

(e) free vocational training, rehabilitation and resettlement of disabled persons.

CULTURAL OBJECTIVES

6. (1) That traditional cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person are abolished:

(2) Subject to paragraph (1) the State shall take steps to encourage the integration of traditional values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.
(3) The State shall foster the development of Ghanaian languages and pride in Ghanaian culture.

(4) The State shall endeavour to preserve and protect places and buildings of historical significance.

INTERNATIONAL RELATIONS

7. (1) In her dealings with other nations, the Government shall -

(a) promote and protect the interests of Ghana.

(b) seek the establishment of a just and equitable international economic and social order;

(c) promote respect for international law and treaty obligations and the settlement of international disputes by peaceful means;

(d) adhere to the principles enshrined in -

   (i) the Charter of the United Nations;

   (ii) the Charter of the Organization of African Unity;

   (iii) the Treaty of the Economic Community of West African States; and

(e) promote the effective realization of African unity.

DUTIES OF THE CITIZEN

8. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen -

(a) to enhance the prestige and good name of Ghana and respect the symbols of the nation;
(b) to uphold and defend this Constitution and the law;

(c) to foster national unity and live in harmony with others;

(d) to respect the rights, freedoms and legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;

(e) to work conscientiously in his or her chosen occupation, to protect and preserve public property and expose and combat misuse and waste of public funds and property;

(f) to contribute to the well-being of the community where that citizen lives;

(g) to defend Ghana and render national service when necessary;

(h) to cooperate with lawful agencies in the maintenance of law and order;

(i) to declare his or her income honestly to the appropriate and lawful agencies and to pay his or her income tax promptly; and

(j) to protect and safeguard the environment.
APPENDIX E

PROVISIONS ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

POLITICAL AND CIVIL RIGHTS

1. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS.

(1) The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the courts as provided for in this Constitution.

(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, creed or gender shall be entitled to the fundamental rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

(3) All citizens shall enjoy the Human Right to Development by virtue of which they are entitled to exercise and realize their basic rights in relation to development processes and projects carried on under the aegis of the state.

2. PROTECTION OF LIFE

(1) No person shall be deprived of his life intentionally except in the execution of a sentence of a court in respect of a criminal offence under the law of Ghana of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force reasonably justifiable in the particular circumstances -

(a) for the defence of any person from violence or for the defence of property; or
(b) for the purposes of suppressing a riot, insurrection or mutiny; or

3. PROTECTION OF PERSONAL LIBERTY

(1) Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been convicted; or

(b) in execution of the order of a Court punishing him for contempt of court; or

(c) for the purposes of bringing him before a court in execution of the order of a court; or

(d) for the purposes of the education or welfare of a person who has not attained the age of majority; or

(e) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Ghana; or

(f) in the case of a person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community;

(g) for the purposes of preventing the unlawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of that person from Ghana or for the purposes of restricting that person while he is being lawfully conveyed through Ghana in the course of his extradition or removal from one country to another.

(2) A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or
detention and of his right to consult counsel of his own choice.

(3) A person who is arrested, restricted or detained,

(a) for the purposes of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Ghana,

and who is not released, shall be brought before a court within forty-eight hours of the arrest, restriction or detention.

(4) Where a person arrested, restricted or detained under paragraph (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(5) A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation from that other person.

(6) Where a person is convicted and sentenced to a term of imprisonment, any period he has spent in lawful custody before the completion of his trial shall be taken into account in imposing the term of imprisonment.

(7) Where a person who has served the whole or a part of his sentence is acquitted on appeal by a court, other than the Supreme Court, the court may certify to the Supreme Court that the person acquitted be paid compensation; and the Supreme Court may, upon examination of all the facts and the certificate of the court concerned, award such compensation as it may think fit; or where the acquittal is by the Supreme Court, it may order compensation to be paid to the person acquitted.

(8) Subject to this Constitution, Parliament shall have no power to enact legislation which retroactively imposes any limitation on or adversely affects the personal rights and liberties of any person.
4. **RESPECT FOR HUMAN DIGNITY**

(1) The dignity of all persons shall be inviolable.

(2) No person shall, whether or not he is arrested, restricted or detained, be subjected to -

(a) torture or inhuman or degrading punishment; or

(b) any other condition that detracts or is likely to detract from his dignity and worth as a human being.

(3) A person who has not been convicted of a criminal offence shall not be kept or confined in a prison or treated as a convicted person and shall be kept away from convicted persons.

5. **PROTECTION FROM SLAVERY AND FORCED LABOUR**

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this Article, the expression "forced labour" shall not include,

(a) any labour required as a result of a sentence or order of a court; or

(b) any labour required of a member of a disciplined force as his duties or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(c) any labour required during any period when Ghana is at war or in the event of an emergency or calamity that threatens the life and well-being of the community to the extent that the requirement of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purposes of dealing with the situation; or
(d) any labour reasonably required as part of normal communal or other civic obligations.

6. EQUALITY AND FREEDOM FROM DISCRIMINATION

(1) All persons shall be equal before the law.

(2) No person may be discriminated against on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

(3) For the purposes of this article, the expression "discriminatory" means affording different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

7. PROTECTION OF PRIVACY OF HOME AND OTHER PROPERTY

No person shall be subject to interference with the privacy of his home, his property, correspondence or communication except in accordance with law and as may be necessary in a democratic society, public safety or the economic well-being of the country; for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedom of others.

8. FAIR TRIAL

(1) Whenever a person is charged with a criminal offence; unless the charge is withdrawn, that person shall be afforded a fair hearing within a reasonable time by a court.

(2) A person who is charged with a criminal offence -

(a) shall, in the case of an offence, other than treason, the punishment for which is death or imprisonment for life, be tried by a Judge and jury and the verdict of the jury shall be unanimous; and
(b) shall be presumed to be innocent until he is proved or has pleaded guilty; and

(c) shall be informed immediately in a language that he understands, and in detail, of the nature of the offence charged; and

(d) shall be given adequate time and facilities for the preparation of his defence; and

(e) shall be permitted to defend himself before the court in person or by counsel of his own choice; and

(f) shall be afforded facilities to examine, in person or by his counsel the witnesses, called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those to witnesses called by the prosecution; and

(g) shall be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial; and

(h) shall, in the case of the offence of treason, be tried by the High Court duly constituted by three Justices thereof.

(3) The trial of a person charged with a criminal offence shall take place in his presence unless-

(a) he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the court orders him to be removed for the trial to proceed in his absence; or

(b) he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial.
(4) Whenever a person is tried for a criminal offence the accused person or a person authorised by him in that behalf shall, if he so requires, be given, within a reasonable time not exceeding six months after judgment, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of an act or omission that did not at the time it took place constitute an offence.

(6) No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(7) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(8) Notwithstanding the provisions of clause (7) of this article, an acquittal of a person on a trial for treason shall not be a bar to the institution of any proceedings for any other offence against that person.

(9) The provisions of paragraph (a) of clause (2) of this article shall not apply in the case of trials by courts-martial or other military tribunals.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(11) No person shall be convicted of a criminal offence unless that offence is defined and the penalty for it is prescribed in a written law.

(12) Nothing contained in clause (11) of this article shall prevent a court of record from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed.

(13) An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this
Constitution, be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by a person before any such adjudicating authority the case shall be given a fair hearing within a reasonable time.

(14) Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public.

(15) Nothing contained in this article shall prevent an adjudicating authority from excluding from the proceedings persons, other than the parties to the proceedings and their counsel, to such an extent as that authority—

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of majority or the protection of the private lives of persons concerned in the proceedings.

(16) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the following provisions—

(a) paragraph (b) of clause (2) of this article, to the extent that the law in question imposes upon a person charged with a criminal offence the burden of proving particular facts; or

(b) clause (6) of this article, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of the force, except that any court which tries that member and convicts him shall, in sentencing him to
any punishment, take into account any punishment
awarded him under that disciplinary law.

(17) Subject to the provisions of clause (18) of this
article, treason shall consist only

(a) in levying war against Ghana or assisting any
state or person or inciting or conspiring
with any person to levy war against Ghana; or

(b) in attempting by force of arms or other
violent means to overthrow the organs of
government established by or under this
Constitution; or

(c) in taking part or being concerned in or
inciting or conspiring with any person to
make or take part or be concerned in, any
such attempt.

(18) An act which aims at procuring by constitutional
means an alteration of the law or of the policies of the
Government shall not be considered as an act calculated to
overthrow the organs of government.

(19) Notwithstanding any other provision of this
article, but subject to clause (20) of this article,
Parliament may, by or under an Act of Parliament, establish
military courts or tribunals for the trial of offences
against military law committed by persons subject to
military law.

(20) Where a person subject to military law who is
not in active service, commits an offence which is within
the jurisdiction of a civil court, he shall not be tried by
a court-martial or military tribunal for the offence unless
the offence committed is within the jurisdiction of a
court-martial or other military tribunal under any law for
the enforcement of military discipline.

(21) For the purposes of this article, the expression
"criminal offence" means a criminal offence under the law
of Ghana.

9. Prevention of deprivation of property

(1) No property of any description, or interest in or
right over any property, shall be compulsorily taken possession of or acquired by the State unless it is done in accordance with law and it is necessary in the public interest.

(2) A law enacted for compulsory acquisition of property shall provide for prompt payment of adequate compensation and shall give to any person claiming compensation a right of access to a court or tribunal for the determination of his interest in the property and the amount of compensation to which he is entitled.

(3) Nothing in clause (1) of this article shall be construed as affecting the operation of any general law that provides for the taking of possession or acquisition of the property –

(a) for the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of winding up;

(b) for vesting of trust properties;

(c) for to vesting or administration of enemy property;

(d) for the imposition or enforcement of any tax, rate or duty;

(e) in the execution of judgements or orders of the courts;

(f) by reason of the property being in a dangerous state or injurious to the health of human beings, animals or plants;

(g) with respect to limitation of actions;

(h) for the temporary possession of property for the purposes of any examination, investigation or enquiry;
(i) for the carrying out of work on any land for the purposes of provision of public facilities or utilities; except that where any damage results from any such work there shall be paid appropriate compensation.

(4) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

(5) Where the property is not used in the public interest or for the purpose for which it was acquired the owner of the property immediately before the compulsory acquisition shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law.

10. GENERAL FUNDAMENTAL FREEDOMS

(1) All persons shall have the right to -

(a) freedom of speech and expression, which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;

(c) freedom to practise any religion and to manifest such practice;

(d) freedom of assembly including freedom to processions and demonstrations;

(e) freedom of association, which shall include freedom to form and join trade unions or other associations, national and international, for the protection of his interests;

(f) freedom to form political parties; and all citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government subject to such qualifications prescribed by law as are necessary in a democratic society;
(g) freedom of movement; and for the purposes of this article freedom of movement means the right to move freely in Ghana, the right to reside in any part of Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana;

(h) a restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with, or in contravention of, this article.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of this article to the extent that the law in question makes provision -

(a) for the imposition of restrictions, by order of a court, that is reasonably required in the interest of defence, public safety or public order, on the movement or residence within Ghana of any person; or

(b) for the imposition of restrictions, by order of a court, on the movement or residence within Ghana of any person either as a result of his having been found guilty of a criminal offence under the law of Ghana or for the purposes of ensuring that he appears before a court at a later date for trial for such criminal offence or for proceedings relating to his extradition or lawful removal from Ghana; or

(c) for the imposition of restrictions that are reasonably required in the interest of defence, public safety, public order, public morality, public health or the running of essential services, or the movement or residence within Ghana of any person or persons generally, or any class of persons, and except so far as that provision or, as the case may be, the thing done under the authority, is shown not to be reasonably justifiable in terms of the spirit of this Constitution.
(3) Whenever a person, whose freedom of movement has been restricted by the order of a court under paragraph (a) of clause (2) of this article, requests at any time during the period of that restriction not earlier than seven days after the order was made or three months after he last made such request, as the case may be, his case shall be reviewed by that court.

(4) On a review by a court under clause (3) of this article, the court may, subject to the right of appeal from its decision, make such order for the continuation or termination of the restriction as it considers necessary or expedient.

11. **RIGHT TO ESTATE OF A SPOUSE**
No spouse may be deprived of a reasonable provision out of the estate of a spouse whether the estate is testate or intestate.

12. **ADMINISTRATIVE JUSTICE**
Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation; and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or tribunal.

13. **ECONOMIC RIGHTS**

(1) Every person shall have the right to work under equitable and satisfactory condition, and shall receive equal pay for equal work without distinction of any kind, and under safe and healthy working conditions.

(2) Every worker shall be assured of rest, leisure and reasonable limitation of working hours and period of holidays with pay, as well as remuneration for public holidays.

(3) Every worker has a right to form a trade union and to join the trade union of his choice, subject to the rules of the union concerned for the promotion and protection of his economic and social interests.

(4) No restriction may be placed on the exercise of this right other than those prescribed by law and which are
necessary in the interest of national security or public order, or for the protection of the right and freedoms of others.

(5) The right of everyone to social security, including social insurance shall be guaranteed.

14. **SOCIAL RIGHTS**

**EDUCATION**

(1) All persons shall have the right to education, and with a view to achieving the full realization of this right

(a) primary education shall be compulsory and available to all;

(b) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) functional literacy shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) the development of a system of schools at all levels shall be actively pursued, and the material conditions of teaching staff shall be continuously improved.

(2) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of eighteen years, which ever is the sooner, except to the extent as may be otherwise authorised.
by Act of Parliament on grounds of health or other considerations relating to the public interest.

(3) All persons shall have the right, at their own expense, to establish and maintain private schools, or colleges or other institutions of tertiary education if -

(a) such schools, colleges or institutions of tertiary education are registered with a government department in accordance with any law authorising and regulating such registration;

(b) the standard of education maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;

(c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed; and

(d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

15. **CULTURE**

(1) Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and subject to the further condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

(2) The state shall take steps to encourage the integration of traditional values into the fabric of daily life.

(3) The State shall promote formal and informal education as vehicles of inculcating these values in consonance with our national aspirations.

(4) The state shall ensure the provision of conscious cultural dimensions to all aspects of national planning.

(5) The state shall foster the development of Ghanaian languages and pride in Ghanaian culture.
16. **WOMEN'S RIGHTS**

(1) All customary practices which are injurious to the physical and mental well-being of women shall be abolished.

(2) Female circumcision shall be an offence.

(3) Special care shall be accorded to mothers during a reasonable period before and after childbirth. During such periods, working mothers shall be accorded paid leave or leave with adequate social security benefits.

(4) Parliament shall enact legislation regulating the property rights of women in marriage soon after coming into force of this Constitution.

(5) With a view to achieving the full realization of these rights -

   (a) women shall have equal access as their spouses to property jointly acquired during marriage;

   (b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

(6) Facilities should be provided for the care of children below school-going age to enable women, who have the traditional care for children, realise their full potential.

(7) In employment, women shall be guaranteed conditions of work not inferior to those enjoyed by men with equal pay for work of equal value.

(8) Women shall be guaranteed equal rights to training and promotion without any impediment from any person, or harassment from colleagues, superior officers or employers.

(9) On the coming into force of the Constitution, Government in making appointments to boards and delegations should strive towards equal representation and participation of women and men.
17. **CHILDREN'S RIGHTS**

1. Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interest of children, as far as possible the right to know and be cared for by their parents.

2. Every child has the inherent right to life, and the child's survival and development shall be ensured.

3. Each child shall be protected from any form of discrimination.

4. Children shall have the right to parental care and support especially during the tender years of childhood.

5. Every child is entitled to the emotional warmth and security necessary for his development into a stable adult. This warmth and security can only be given by caring and responsible parents. In this context parents need not necessarily be the natural parents of the child.

6. Any person who has the control or custody of a child under 18 years of age, shall be under an obligation to ensure that he is properly fed, clothed, housed and provided with medical care.

7. Every child shall be protected from any form of maltreatment perpetrated by parents or others responsible for his care.

8. Disfigurement of children especially by way of female circumcision or infibulation is hereby abolished.

9. Every child has the right to rest and leisure, play and participation in cultural and artistic activities.

10. Each child has a right to be protected from engaging in work that constitute a threat to his health, education or development.

11. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

12. The minimum age of marriage for children is 16. For the purposes of this Article a child means a person below the age of 18 years.
18. RIGHTS OF DISABLED PERSONS

(1) Disabled persons have the right to live with their families or with foster parents and to participate in social, creative or recreational activities.

(2) No disabled person shall be subjected, as far as his residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he may derive therefrom.

(3) If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions there shall be as close as possible to those of the normal life of a person of his age.

(4) Disabled persons should be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

(5) If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

(6) Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Constitution.

(7) As far as practicable, every public building must have appropriate facilities, including a ramp, for disabled persons.

(8) Special incentives, such as tax reliefs, should be given to disabled persons engaged in business and also to business organisations that employ disabled persons in significant numbers.

19. EMERGENCY POWERS

(1) The President may, acting in accordance with the advice of the Council of State, by Proclamation published in the Gazette, declare that a state of public emergency exists in Ghana or in any part of Ghana for the purposes of the provisions of this Constitution.
(2) Notwithstanding any other provision of this article, where a Proclamation is published under clause (1) of this article, the President shall place immediately before Parliament the facts and circumstances leading to the declaration of the state of public emergency.

(3) Parliament shall, within seventy-two hours of being so notified, decide whether the Proclamation shall remain in force or shall be revoked; and the President shall act in accordance with the decision of Parliament.

(4) A declaration of a state of public emergency shall cease to have effect at the expiration of a period of seven days beginning with the date of publication of the declaration unless, before the expiration of that period, it is approved by a resolution passed in that behalf by a majority of all the members of Parliament.

(5) Subject to clause (7) of this article, a declaration of a state of public emergency approved by a resolution of Parliament under clause (4) of this article shall continue in force until the expiration of a period of three months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution.

(6) Parliament may, by resolution, extend its approval of the declaration for periods of not more than one month at a time.

(7) Parliament may, by a resolution passed by a majority of all the members of Parliament, at any time revoke a declaration of a state of public emergency approved by Parliament under this article.

(8) For the avoidance of doubt, it is hereby declared that the provisions of any enactment, other than an Act of Parliament, dealing with a state of public emergency declared under clause (1) of this article shall apply only to that part of Ghana where any such emergency exists.

(9) For the purposes of this article, a state of public emergency includes any action that has been taken or is immediately threatened by any persons or body of persons
(a) which is calculated to deprive the community of the essentials of life; or

(b) which renders necessary the taking of measures which are required for securing the public safety, the defence of Ghana and the maintenance of public order and of supplies and services essential to the life of the community.

(10) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with, or in contravention of articles 1 to 18 of this Chapter to the extent that the Act in question authorises the taking during any period when a declaration of a state of public emergency is in force, of measures that are reasonably justifiable for the purposes of dealing with the situation that exists during that period.

20. (1) Where a person is restricted or detained by virtue of a law made pursuant to a declaration of a state of emergency, the following provisions shall apply, namely -

(a) he shall as soon as practicable and in any case not later than twenty-four hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to the person restricted or detained;

(b) the spouse, parent, child or other available next of kin of the person restricted or detained shall be informed of the detention or restriction within twenty-four hours of the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity and in any case within seventy-two hours of the commencement of the restriction or detention;

(c) not more than ten days after the commencement of his restriction or detention, a notification shall be published in the Gazette stating that has been restricted or detained and giving particulars of the provision of law under which his restriction or detention is authorised and the grounds of his restriction or detention;
(d) not more than ten days after the commencement of his restriction or detention and thereafter during his restriction or detention at intervals of not more than three months, his case shall be reviewed by a tribunal composed of not less than three Justices of the Supreme Court appointed by the Chief Justice and presided over by the Chief Justice or a Justice of the Supreme Court appointed by the Chief Justice; except that the same tribunal shall not review more than once the case of a person restricted or detained;

(e) he shall be afforded every possible facility to consult counsel of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the restricted or detained person;

(f) at the hearing of his case he shall be permitted to appear in person or by counsel of his own choice.

(2) On a review by a tribunal of the case of a restricted or detained person, the tribunal shall have power to order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention and the authority by which the restriction or detention was ordered shall act accordingly.

(3) In every month in which there is a sitting of Parliament a Minister of State authorised by the President shall make a report to Parliament of the number of persons restricted or detained by virtue of such a law as is referred to in clause (10) of article 19 of this Chapter and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article.

(4) Notwithstanding clause (3) of this article the Minister referred to therein shall publish every month in the Gazette,

(a) the number and the names and addresses of persons restricted or detained;
(b) the number of cases reviewed by the tribunal;
and

(c) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article.

(5) For the avoidance of doubt, it is hereby declared that at the end of an emergency declared under clause (1) of article 19 of this Chapter, a person in restriction or detention or in custody as a result of the declaration of the emergency shall forthwith be released.

21. PROTECTION OF RIGHTS BY THE COURTS

(1) 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.

(2) The High Court shall, under clause (1) of this article, have power to issue such directions or orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus prohibition, and quo warranto as it may consider appropriate for the purposes of enforcing, or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled.

(3) A person aggrieved by a determination of the High Court may appeal to the Court of Appeal with the right of a further appeal to the supreme Court.

(4) The Rules of Court Committee may make Rules of Court with respect to the practice and procedure of the Superior Courts for the purposes of this article.

(5) The rights, duties, declarations and guarantees relating to the fundamental human rights specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in democracy and intended to secure the freedom and dignity of man.
APPENDIX F

A. FREEDOM AND INDEPENDENCE OF THE MEDIA

1. Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources.

2. Freedom of the press and freedom of reporting by means of broadcasts and other electronic media are guaranteed.

3. There shall be no censorship in Ghana.

4. There shall be no impediments to the establishment of private press or media. In particular, there shall be no law requiring any person to obtain a licence as a prerequisite to the establishment or operation of a newspaper, journal, or other media for mass communication or information.

5. Editors and publishers of newspapers and other institutions of the mass-media shall not be subject to governmental control or interference, nor shall they be penalized or harassed for their editorial opinions and views or the content of their publications.

6. (1) State-owned media for the dissemination of information to the public shall afford equal opportunities and facilities for the presentation of opposing or differing views. Dissenting opinions may be freely expressed in such media.

(2) Editors and employees of such state-owned media shall not be appointed or removed or in any way influenced by the Government or any agency thereof.

7. The above provisions are subject to laws that are reasonably required in the interests of national security, public order, and public morality and for the
purpose of protecting the reputations, rights and freedoms of other persons.

B. THE NATIONAL MEDIA COMMISSION

1. There shall be a National Media Commission which shall be non-partisan and autonomous and shall have the following functions:

a. To promote and ensure the freedom and independence of the media for mass communication or information.

b. To take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media including the investigation, mediation and settlement of complaints made against or by the press and other mass media.

c. To insulate the state-owned media from governmental control.

d. To appoint the chairman and other members of the governing bodies of public corporations managing the state-owned media.

e. To make regulations for the registration of newspapers and other publications provided such regulations shall not impose the requirement of a licence or other precondition for such publications.

2. Subject to the foregoing provision, the National Media Commission shall not exercise any control or direction over the professional functions of a person engaged in the production of newspapers or other means of mass communication.

3. In the performance of its functions, the National Media Commission shall be subject only to this Constitution and shall not be
subject to the direction or control of any other person or authority:

4. The National Media Commission shall consist of such persons as may be specified by law, but shall include:

(a) One representative each nominated by:

(i) Association of Recognised Professional bodies;

(ii) The Ghana Bar Association;

(iii) The Trades Union Congress;

(iv) The Ghana National Association of Teachers;

(v) The University Teachers Association of Ghana;

(vi) The Ghana National Association of Farmers and Fishermen;

(vii) The Catholic Secretariat;

(viii) The Christian Council;

(ix) The Federation of Muslim Councils;

(x) The National Council on Women and Development;

(xi) The National Commission on Culture;

(xii) The Ghana Armed Forces;

(xiii) The Ghana Police Services;

(xvi) The Publishers and Owners of the Private Press;

(xv) The National House of Chiefs;
(b) The Director, School of Communications Studies, University of Ghana;

(c) The Director, Ghana Institute of Journalism;

(d) Two persons nominated by the Ghana Journalists Association;

(e) Two other persons one of whom shall be a woman appointed by the President;

2. The Commission shall elect its own Chairman.
APPENDIX G

REPRESENTATION OF THE PEOPLE

THE RIGHT TO VOTE

1. Every citizen of Ghana of eighteen years of age and above and of sound mind has a right to vote, and shall be entitled to be registered as a voter for the purposes of public elections and referenda.

ELECTORAL COMMISSION

2. (1) There shall be an Electoral Commission which shall consist of a sole Commissioner;

(2) The Electoral Commissioner shall be appointed by the President acting in consultation with the Council of State.

FUNCTIONS OF THE ELECTORAL COMMISSIONER

3. (1) The Electoral Commissioner shall have the following functions -

(a) compile the registers of voters and revise the registers at such periods as is determined by law;

(b) demarcate the electoral boundaries for both national and local elections;

(c) conduct and supervise all public elections and referenda;

(d) educate the people on the electoral process and its purpose;

(e) undertake programmes for the expansion of voters registration; and

(f) perform such other functions as may be prescribed by law.

(2) A person aggrieved by a decision of the Electoral Commissioner in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons appointed by the Chief Justice.

(3) A person shall not qualify to be appointed as Electoral Commissioner unless he qualifies to be elected as a member of Parliament.
(4) The Electoral Commissioner shall have the same terms and conditions of service as a Justice of the Court of Appeal.

(5) The Electoral Commissioner shall not, whilst he holds the office, hold any other public office.

(6) In the absence or death of the Electoral Commissioner the President shall acting in accordance with the advice of the Council of State appoint a qualified person to perform those functions until the assumption of office of the Electoral Commissioner or until the appointment of a new Electoral Commissioner.

(7) In the performance of his functions the Electoral Commissioner shall be subject only to this Constitution and shall not be subject to the direction or control of any other person or authority.

(8) There shall be in every Regional capital a Regional representative of the Electoral Commissioner who shall perform such functions as shall be assigned to him by the Electoral Commissioner.

(9) The appointment of officers and other employees and staff of the Electoral Commission shall be made by the Electoral Commissioner acting in consultation with the Public Services Commission.

(10) The administrative expenses of the Electoral Commission including all salaries, allowances and pensions payable to, or in respect of persons serving with the Commission shall be a charge upon the Consolidated Fund.

(11) The Electoral Commissioner shall by legislative instrument make regulations as he considers necessary for the effective performance of his functions under this Constitution or any other law.

CONSTITUENCIES

4. (1) Ghana shall be divided into as many constituencies as there are members of Parliament in such manner as the Electoral Commissioner may prescribe.

(2) No constituency shall fall within more than one Region.
(3) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(4) For the purpose of clause (3) of this article, the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the Regions and other administrative or traditional areas.

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months of the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier and may as a result alter the constituencies.

(6) Where the boundaries of a constituency established pursuant to this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

(7) For the purposes of this article, the expression "population quota" means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided pursuant to this article.

VOTING AT ELECTIONS AND REFERENDA

5. (1) At any public election or referendum voting shall be by secret ballot.

(2) Immediately after the close of the poll, the presiding officer shall, in the presence of such of the candidates or their representatives and their polling agents who are present, proceed to count, at that polling station, the ballot papers and record the votes cast in favour of each candidate or question.

(3) The Presiding officer, the candidates or their representatives and the polling agents shall then sign a declaration stating -

(a) the total number of voters entitled to vote at that polling station; and
(b) the number of votes cast in favour of each candidate or question; and the presiding officer shall, there and then, announce the results of the voting at that polling station before communicating them to the returning officer.

(4) Subject to this Constitution, at any referendum, no results shall be declared by the Electoral Commission unless thirty-five per cent or more of the persons entitled to vote cast their votes, and at least seventy per cent of those who voted, cast their votes in favour of or against the issue for determination at the referendum.

**ELECTION OF CANDIDATES**

6: (1) Subject to the provisions of this article, where at the close of nominations on the nomination day before a public election -

(a) two or more candidates have been nominated the election shall be held and the candidates receiving the largest number of votes cast shall be declared elected;

(b) where only one candidate is nominated there shall be no election and that candidate shall be declared elected.

(2) Where for the purposes of a public election two or more candidates are nominated but at the close of the nominations on the nomination day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

(3) Where at the close of nominations under clause (2) of this article only one candidate stands nominated there shall be no election and that candidate shall be declared elected.

(4) Where at the close of nominations but before the election one of the candidates dies, a further period of ten days shall be allowed for nominations and where the death occurs at any time within twenty-five days of the election, the election in that constituency or unit shall be postponed.
7. (1) The right to form political parties is hereby guaranteed.

(2) Every citizen of Ghana of voting age shall have the right to form or join a political party.

(3) Subject to the provisions of this article a political party shall be free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, sponsor candidates for elections to any public office other than to District Assemblies.

(4) Every political party shall have a national character and membership shall not be based on ethnic, religious, regional or other sectional divisions.

(5) The internal organisation of a political party shall conform to democratic principles, and its actions and purposes shall not contravene, or be inconsistent with this Constitution or any other law.

(6) No organization shall operate as a political party unless it is registered as such under the law for the time being in force for the purpose.

(7) For purposes of registration, a prospective political party shall furnish the Electoral Commissioner with a copy of its constitution and the names and addresses of its national officers; and shall satisfy the Commissioner—

(a) that at least one founding member of the party is ordinarily resident or is registered as a voter in each district of Ghana, and that he belongs to the ethnic group which is dominant in that District;

(b) that the party has branches in all the regions of Ghana and is, in addition, effectively organised in not less than two-thirds of the districts in each region.
(c) that the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation or gives the appearance that its activities are confined only to a part of Ghana; and

(d) that the party has its headquarters in the national capital.

(7) No political party shall have as a founding member, a leader or a member of its executive, a person who is not qualified to be elected as a member of Parliament or to hold any other public office.

(8) The members of the executive committee of a political party shall be chosen from all the regions of Ghana.

(9) The objectives, programmes and activities of a political party shall be aimed at achieving the aims of the Directive Principles of State Policy specified in this Constitution.

(10) Membership of the Public Services shall not prevent anyone from membership of a political party.

(11) Every citizen of Ghana of voting age shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government or a political party.

(12) Any activity of a person or group of persons which suppresses or seeks to suppress the lawful political activity of any other person or group of persons shall be an unlawful act; and the High Court shall have power to prevent the said unlawful act.

(13) the State shall provide equal opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media.

(14) Without prejudice to the right of every candidate for election to Parliament to conduct his campaign freely in accordance with law, the State shall provide common platforms for all the candidates in a constituency to present themselves and their programmes to the electorate and to respond to questions and queries.
(15) All presidential candidates shall be given the same amount of time on radio and television and the same amount of space in the newspapers owned by the State to present their programmes to the people.

(16) Political parties shall be required by law to declare to the public their revenue and assets.

(17) Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.

(18) No member of an organization or interest group shall be required to join a particular political party by virtue of his membership of the organization or group.

(19) Subject to this chapter, Parliament shall by law, regulate the establishment and functioning of political parties.

RESTRICTIONS ON CERTAIN PROPAGANDA

8. (1) Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose a common programme or a set of objectives of a religious or political nature for the country.
APPENDIX H
JUDICIARY
INDEPENDENCE OF THE JUDICIARY

1. Except as otherwise provided in this Constitution, the Judicial power of Ghana shall be vested in the Judiciary of which the Chief Justice shall be the Head; accordingly no organ or agency of the Executive or Legislature shall have final judicial power.

2. In the exercise of the judicial power of Ghana, the Judiciary in both its judicial and administrative functions including financial administration, shall be subject only to the Constitution and shall not be subject to the control and direction of any other person.

3. No member of the Executive or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord to the courts such assistance as the courts may require to protect their independence, dignity and effectiveness, subject to this Constitution or any other law.

4. The Judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law without any restriction, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

5. The Judiciary shall have jurisdiction in all matters civil and criminal including matters relating to the Constitution and such other jurisdiction as Parliament may confer on it.

6. Except as otherwise provided in this Constitution or as may be ordered by a court in the interest of public morality, safety or public order, the proceedings of every court including the announcement of its decision shall be in public.

7. A justice of the Superior Court or any person exercising judicial power shall not be liable to any action or suit for any matter or thing done by him in the performance of his functions.

8. Judges shall be persons of high moral character with the requisite professional qualifications.
9. The conditions of service in the Judiciary shall be conducive to the dignity and integrity of judges.

10. The salaries allowances, gratuities and pension of the Justices of the Superior Courts, and other officers of the Judicial Service shall be a charge upon the Consolidated Fund.

11. The salary, allowances and privileges, rights in respect of leave of absence, gratuity or pension and other conditions of service of a Justice of the Superior Court shall not be varied to his disadvantage.

12. All judges shall declare their assets within six months of the coming into force of this Constitution or upon assuming office.

PART II - JUDICIAL SYSTEM

13. There shall be one Judicial System in the Country.

14. The Chief Justice shall, subject to this Constitution, be responsible for the administration and supervision of the Judiciary and all adjudicating authorities in Ghana.

(TWO ALTERNATIVE STRUCTURES OF THE COURTS ARE PRESENTED)

PART III A - STRUCTURE OF THE COURTS - ALTERNATIVE ONE

15. The Judiciary shall consist of -

(a) the Superior Court comprising -

(i) the Supreme Court;

(ii) the Court of Appeal; and

(iii) the High Court;

(b) the Lower courts comprising the Circuit courts and the Public Tribunals; and

(c) such other lower courts as Parliament may be law establish.

THE SUPREME COURT

16. The Supreme Court shall consist of the Chief Justice and not less than six other justices of the Supreme Court.
17. Judges of the Supreme Court shall be lawyers of at least 15 years standing as lawyers.

18. The Supreme Court shall be duly constituted for its work by not less than five Supreme Court Judges.

19. The Chief Justice shall preside at the sittings of the Supreme Court and in his absence the most senior of the Justices of the Supreme Court as constituted shall preside.

20. Except as otherwise provided in the Constitution the Supreme Court shall be the final court of appeal in Ghana and shall have appellate and other jurisdiction as may be conferred on it by this Constitution or any other law.

21. Subject to the jurisdiction of the Judicial Committee of the Council of State in constitutional matters and the jurisdiction of the High Court in the enforcement of fundamental human rights and freedoms as provided in this Constitution, the Supreme Court shall have exclusive original jurisdiction in:

(a) all matters relating to the enforcement or interpretation of the Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

22. The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority unless expressly excluded under this Constitution and shall in the exercise of this supervisory jurisdiction have power to issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power.

23. An appeal shall lie from a judgement of the Court of Appeal to the Supreme Court as of right in civil matters; as of right in criminal matters in respect of which an appeal has been brought from a judgement of a High Court; and with the leave of the Court of Appeal in any other criminal matter where the Court of Appeal is satisfied that the case involves a substantial question of law or of public importance.
24. The Supreme Court shall have appellate jurisdiction, to the exclusion of the Court of Appeal, to determine matters relating to the conviction or otherwise of a person for treason by the High Court.

25. An appeal from the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court.

26. The Supreme Court shall not be bound to follow the decisions of any other court.

27. The Supreme Court may, while treating its own previous decision as normally binding depart from a previous decision when it appears right so to do; and all other Courts shall be bound to follow the decisions of the Supreme court on questions of law.

**COURT OF APPEAL**

28. The Court of Appeal shall consist of -

   (a) the Chief Justice;
   
   (b) not less than five Justices of the Court of Appeal; and such other Justices of the Superior Court as the Chief Justice may, for the determination of a particular cause or matter by writing under his hand, request to sit in the Court of Appeal for any specified period.

29. Judges of the court of Appeal shall be lawyers of at least 12 years standing as lawyers.

30. The Court of Appeal shall be duly constituted by not less than three Justices of the Court of Appeal and when so constituted the most senior of the Justices shall preside.

31. The Chief Justice may create such divisions of the Court of Appeal as he considers necessary to sit in such places as the Chief Justice may determine.

32. Subject to paragraph 27, the Court of Appeal shall be bound by its own previous decisions and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law.
33. The Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of this Constitution, appeals from a judgment, decree or order of the High Court; civil appeals from the circuit courts; criminal appeals from trials on indictment from the circuit courts; and such other appellate jurisdiction as may be conferred upon it by this Constitution or any other law.

34. Except as otherwise provided in this Constitution, an appeal shall lie as of right from a judgement, decree or order of the High Court to the Court of Appeal.

35. An appeal shall lie as of right from the Land Court and Tax Court Divisions of the High Court to the Court of Appeal.

HIGH COURT

36. The High Court shall consist of the Chief Justice, not less than twelve High Court Judges and other Justices of the Superior Court as the Chief Justice may by writing under his hand request to sit as High Court Judges for any period.

37. The High Court Judges shall be lawyers of at least ten years standing as lawyers.

38. Except as otherwise provided in this Constitution the High Court shall be duly constituted by a single judge or a single judge and a jury.

39. There shall be in the High Court such Divisions consisting of such number of Justices respectively as may be assigned for the purpose by the Chief Justice; and sitting in such places in Ghana as the Chief Justice may determine.

40. There shall be a Division of the High Court to be known as the Land Court which shall have jurisdiction to hear and determine land cases only.

41. There shall be a Division of the High Court to be known as the Tax Court which shall have jurisdiction to hear and determine tax cases and to which appeals relating to tax cases from the lower tax court shall lie.

42. The Tax court Division of the High Court shall be constituted by a high Court judge and an accountant appointed by the Chief Justice.
43. The High Court shall have jurisdiction in civil and
criminal matters and such other original, appellate
and other jurisdiction as may be conferred upon it by
this Constitution or any other law.

44. The High Court shall have jurisdiction to enforce the
fundamental human rights and freedoms guaranteed under
this constitution.

45. The High Court shall have jurisdiction to hear and
determine any matter relating to industrial and labour
disputes and administrative complaints and in respect
of such other subjects as may be provided by law.

46. The High Court shall have supervisory jurisdiction
over all lower courts and any lower adjudicating
authority and shall in the exercise of this
supervisory jurisdiction have power to issue orders
and directions for the purpose of enforcing or
securing the enforcement of its supervisory powers.

PART III B - STRUCTURE OF THE COURTS

ALTERNATIVE TWO

47. The Judiciary shall consist of

(a) the Superior Courts comprising -
    (i) the Supreme Court; and
    (ii) the High Court; and

(b) the Lower courts comprising the Public
    Tribunals and such other lower courts as
    Parliament may by law establish.

The Supreme Court

48. The Supreme Court shall consist of the Chief Justice
    and not less than six other Justices of the Supreme
    Court.

49. Judges of the Supreme Court shall be lawyers of at
    least 15 years standing as lawyers.

50. The Supreme Court shall be duly constituted for its
    work by not less than five Supreme Court Judges.

51. The Chief Justice shall preside at the sittings of the
    Supreme Court and in his absence the most senior of
    the Justices of the Supreme Court as constituted shall
    preside.
52. Except as otherwise provided in this Constitution the Supreme Court shall be the final court of appeal in Ghana and shall have appellate and other jurisdiction as may be conferred on it by this Constitution or any other law.

53. Subject to the jurisdiction of the Judicial Committee of the Council of State in constitutional matters and the jurisdiction of the High Court in the enforcement of the fundamental human rights and freedoms as provided in this Constitution, the Supreme Court shall have exclusive original jurisdiction in:

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

54. An appeal shall lie from a judgement of the High Court to the Supreme Court as of right in both civil and criminal matters.

55. An appeal from the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court.

HIGH COURT

56. The High Court shall consist of the Chief Justice, not less than twelve justices of the High Court and such other Justices of the Superior Court as the Chief Justice may by writing under his hand request to sit as High Court Judges for any period.

57. The High Court Judges shall be lawyers of at least ten years standing as lawyers.

58. Except as otherwise provided in this Constitution the High Court shall be duly constituted by a single judge or a single judge and a jury.

59. There shall be in the High Court such Divisions consisting of such number of Justices as may be assigned for the purpose by the Chief Justice; and sitting in such places in Ghana as the Chief Justice may determine.

60. There shall be a Division of the High Court to be known as the Land Court which shall have jurisdiction to hear and determine land cases only.
61. There shall be a Division of the High Court to be known as the Tax Court which shall have jurisdiction to hear and determine tax cases and to which appeals relating to tax cases from any lower tax court shall lie.

62. The Tax Court Division of the High Court shall be constituted by a High Court judge and an accountant appointed by the Chief Justice.

63. The High Court shall have jurisdiction in civil and criminal matters and such other original, appellate and other jurisdiction as may be conferred upon it by this Constitution or by any other law.

64. The High Court shall have jurisdiction to enforce the fundamental human rights and freedoms guaranteed under this Constitution.

65. The High Court shall have jurisdiction to hear and determine any matter relating to industrial and labour disputes and administrative complaints and in respect of such other subjects as may be provided by law.

66. The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority or any law and shall in the exercise of this supervisory jurisdiction have power to issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers.

PART IV - APPOINTMENT, REMOVAL AND RETIREMENT OF JUDGES

67. The Chief Justice shall be appointed by the President acting in consultation with the Council of State.

68. The other Supreme Court Judges shall be appointed by the President acting on the advice of the Judicial Council and in consultation with the Council of State.

69. All other Superior Court Judges shall be appointed by the President on the advice of the Judicial Council.

70. A person shall not qualify to be appointed a Justice of the Superior Court, unless he is a person of high moral character and has practised or has been entitled to practice as counsel in a court with unlimited jurisdiction in civil and criminal matters in Ghana or any other country that has a system of law analogous to that of Ghana and approved by the Judicial Council.
71. Where the office of the Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his office, then,

(a) until a person has been appointed to and has assumed the functions of that office, or

(b) until the person holding that office has resumed the functions of that office, as the case may be, those functions shall be performed by the most senior for the time being of the Justices of the Supreme Court.

72. The office of a Justice of the Superior Court of Judicature shall not be abolished while there is a substantive holder thereof.

73. Judges of the Superior Courts may retire at 60 years and shall retire on the attainment of the age of 65 unless the President on the recommendation of the Judicial Council extends the appointment which shall not exceed two years in respect of any such judge.

74. A Justice of the Superior Court shall not be removed from office except on stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.

75. The method for the removal of a Justice of the Superior Courts shall be as follows—

(a) if the President receives a petition of complaint against a judge of the Superior Courts other than the Chief Justice, he shall refer the petition to the Chief Justice, who will determine whether there is a prima facie case;

(b) where the Chief Justice decides that there is a prima facie case he shall set up a tribunal consisting of three judges of the superior Courts appointed by the Judicial Council and two persons appointed by Parliament to investigate matter and make its recommendation to the President;

(c) where the petition is against the Chief Justice, the President shall refer the matter to the Judicial Committee of the Council of State which shall after having satisfied itself that there
is a prima facie case against the Chief Justice empanel a tribunal of five, three of whom shall be members of the Judicial Committee of the Council of State, and two persons appointed by Parliament to examine the issues;

(d) the proceedings shall be held in camera and the Justice concerned shall be entitled to be heard in his defence by himself or by a lawyer or other expert;

(e) the President shall act in accordance with the recommendations of the tribunal in both cases;

(f) Where the case before the tribunal is against the Chief Justice, the President may acting in accordance with the advice of the Council of State by warrant under his hand suspend the Chief Justice; and where the case is against any other superior court judge, the President may acting in accordance with the advice of the Judicial Council suspend the judge.

76. Appointment of other judicial officers shall vest, subject to the approval of the President, in the Chief Justice who shall exercise the power in accordance with the advice of the Judicial Council.

Judicial Council

77. There shall be a Judicial Council which shall comprise the following persons -

(i) the Chief Justice;

(ii) the Attorney-General;

(iii) the most senior judge of the Supreme Court;

*(iv) the most senior judge of the Court of Appeal;

(v) the most senior judge of the High Court;

(vi) 2 representatives of the Bar Association one of whom shall be a lawyer of not less than ten years standing as a lawyer;

(vii) a representative of the Association of *Circuit Court judges and Public Tribunals Panel Members.
(viii) the Judge Advocate-General of the Ghana Armed Forces; and

(ix) three other persons appointed by the President.

*Subject to which of the alternatives is adopted.

78. The Judicial Council may establish such Committees as it deems fit to which it shall refer matters relating to the Judiciary.

79. The Judicial Council shall have the following other functions -

(a) propose for consideration of government, judicial reforms to improve the level of administration of justice and efficiency in the Judiciary;

(b) be a forum for consideration and discussion of all matters relating to the discharge of the functions of the Judiciary and shall thereby assist the Chief Justice in the performance of his duties with a view to ensuring efficiency and effective realization of justice; and

(c) perform any other function conferred on it under this Constitution or any other enactment.

MISCELLANEOUS

80. The Supreme Court shall have exclusive jurisdiction to determine whether an official document shall not be produced in Court because its production will be prejudicial to the security of the State or is injurious to the public interest.

81. When any issue arises as to the production or otherwise of an official document in an action before any court other than the Supreme Court, the proceedings in that action shall be suspended while the Supreme Court examines the document and determines whether the document should be produced or not; and the Supreme Court shall make the appropriate order which shall be final.

82. The proceedings of the Supreme Court as to whether an official documents should be produced shall be held in camera.
83. There shall be a Rules of Court Committee which shall consist of the Chief Justice, the members of the Judicial Council and two practising lawyers of ten and five years standing respectively as lawyers.

84. The Rules of Court Committee shall make rules and regulations for regulating the practice and procedure of all courts in Ghana.

85. A person holding a judicial office shall be removed from office by the chief Justice on grounds of stated misbehaviour, incompetence or infirmity of mind or body upon a resolution passed in that behalf and supported by the votes of not less than two-thirds of all the members of the Judicial Council.

86. A person holding office as a judge or Chairman of a Public Tribunal may retire from office at any time after attaining the age of sixty years and shall retire from office on attaining the age of sixty-five years.

87. The appointment of other officers of the Court shall be made by the Chief Justice or such justice or officer of the Court as the Chief Justice may in writing direct.

88. The Chief Justice acting in accordance with the advice of the Judicial Council and with the approval of the President may make regulations for the efficient performance of the function of the Judicial Service and the Judicial Council under this Chapter.

89. The fee, fines and other money paid to the courts shall form part of the Consolidated Fund.

90. All judges shall take the judicial oath.

TO FORM PART OF TRANSITIONAL PROVISIONS

PUBLIC TRIBUNALS

The Public Tribunals existing immediately before the coming into force of this constitution are hereby integrated with the main courts system as follows:

1. The District/Community Tribunals are hereby merged with District Magistrate Grade I Courts. They shall be known as Public Tribunals and shall exercise the jurisdiction of District Magistrate Grade I Courts.
2. The following courts shall also be designated as Public Tribunals: Family Courts, Motor Courts, Juvenile Courts and District Tax Courts.

3. District Magistrate Grade II Courts are hereby abolished.

4. There shall be a merger of Regional Public Tribunals and Circuit Courts, to be known as Circuit Courts which shall exercise the jurisdiction of the Circuit Courts.

5. Public Tribunals established under this constitution shall be constituted by a panel of three persons consisting of a chairman who shall be a lawyer of at least three years standing as a lawyer and two laymen.

6. National Public Tribunals and the Public Tribunals Board are hereby abolished.

7. Persons employed as Chairmen of District/Community Public Tribunals, Regional and National Public Tribunals who qualify for appointment as chairmen of the Public Tribunals established under this constitution, Circuit Court Judges or High Court Judges, as the case may be, shall be so appointed on the recommendations of the Judicial Council.

8. Persons employed as District Magistrates Grade II who qualify for appointment as lay members of the panels of Public Tribunals shall be so appointed.

9. All other persons employed at the Public Tribunals who qualify for appointment into the Judicial Service shall be so appointed.
APPENDIX I

ADMINISTRATION OF LAND

1. Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by territorial waters or continental shelf is the property of the Republic of Ghana and shall be vested in the President in trust for, and on behalf of, the people of Ghana.

2. (1) All public lands in Ghana shall be vested in the President in trust for, and on behalf of, the people of Ghana. For the purposes of this Article the expression 'public lands' includes any land which, immediately before the coming into force of this Constitution, was vested in the Government of Ghana in trust for, and on behalf of, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest for the purposes of the Government of Ghana, before, on or after that date.

3. Subject to the provisions of this Constitution, Parliament may by law provide for the establishment of such Commissions or bodies as it may determine which shall be responsible for the regulation and management of the natural resource concerned.

LANDS COMMISSION

4. There shall be established a Lands Commission which shall, in coordination with the relevant public agencies and governmental bodies, perform the following functions:—

(a) on behalf of the Government, manage public lands and any lands vested in the Commission by any law or acquired
by the Government;

(b) advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of the country to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area concerned;

(c) formulate and submit to Government recommendations on a national policy with respect to land use and capability;

(d) advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Ghana.

(e) perform such other functions as the Minister responsible for Lands and Mineral Resources may assign to the Commission.

5. The Lands Commission shall have regional branches each of which shall be responsible for the performance of the above functions in respect of the region concerned.

6. (1) The Lands Commission shall consist of such members as the President shall appoint, but shall include:

(a) a representative of the National House of Chiefs;

(b) a representative of the Ghana Institution of Surveyors;

(c) not less than 10 other members each of whom shall come from each region of Ghana.
(2) The regional branches of the Lands Commission shall consist of such members as the Minister responsible for Lands and National Resources may appoint, but shall include the person appointed from the region to serve on the Lands Commission under the forgoing clause 1(c).

STOOL LANDS

7. (1) All stool lands in Ghana shall vest in the appropriate stool in trust for, and on behalf of, the subjects of the stool.

(2) There shall be established the office of the Administrator of Stool Lands which shall be responsible -

(a) for the establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands;

(b) for the collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital and to account for them to the stool concerned and other bodies and authorities specified in clause 9 of this Article;

(c) for the disbursement of such revenues in accordance with the formula provided in clauses 4 and 5 of this Article;

8. There shall be no disposition or development of any stool land unless the Regional Branch of the Lands Commission has certified that such disposition or development is consistent with the development plan drawn
up or approved by the Commission for the area concerned.

9. There shall be paid out of the stool lands account revenues accruing from the stool land in the following proportions:

(a) 20% to the stool, through the traditional authority for the maintenance of the stool in keeping with its status;

(b) 25% to the traditional authority;

(c) 55% to the District Assembly; within whose area of authority the stool lands are situated.

10. For the purposes of this chapter the expression "stool" includes a "skin".

11. The Administrator of Stool Lands and the Regional Branch of the Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land and shall make available all relevant information and data to them.

12. The Lands Commission and the Administration of Stool Lands shall coordinate with all relevant public agencies and traditional authorities and stools in preparing a policy frame-work for the rational and productive development and management of stool lands.
APPENDIX J

DECENTRALIZATION AND LOCAL GOVERNMENT

1. There shall be a system of local government and administration which shall be decentralized as far as practicable, and shall have the following basic features:

   (i) Appropriate measures shall be taken to ensure that functions, powers, responsibilities and resources are at all times transferred from the Central Government to local government units in a co-ordinated manner as a package.

   (ii) There shall be established for each local government unit a sound financial base with adequate and reliable sources of revenue.

   (iii) Appropriate measures shall be taken to enhance the capacity of local government authorities to plan, initiate, coordinate, manage and execute policies in respect of all matters affecting the people within their areas, with a view to ultimately achieving localization of such activities.

   (iv) As far as practicable, persons in the service of local government should be subject to the effective control of local authorities.

   (v) To ensure the accountability of local government authorities, people in particular local areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance.

2. For the purposes of local government, Ghana shall be deemed to have been divided into the Districts which existed immediately
before the coming into force of this Constitution.

3. Parliament may by law make provision for the redrawing of the boundaries of Districts or for reconstituting Districts.

4. The system of local government shall be based on a democratically elected District Assembly in each District.

5. A District Assembly shall be the highest political authority in the District, and shall have deliberative, legislative and executive powers.

6. A District Assembly shall consist of the following members:

(a) one person from each electoral area within the District, directly elected by universal adult suffrage;

(b) the chief representative of the Central Government in the District as ex-officio member; and

(c) such other members as may be provided for by Law.

7. Any candidate seeking election to a District Assembly shall present himself to the electorate as an individual, and shall not use any symbols associated with any political party. No political party shall endorse, sponsor, offer a platform or in anyway whatsoever campaign for a candidate seeking election to the District Assembly.

8. Subject to this Constitution, the qualifications for membership of a District Assembly, the procedures of a District Assembly and the sub-district structures that may be created shall be provided for by law.

9. Parliament shall by law prescribe the functions of District Assemblies which shall
include -

(a) the formulation and execution of plans, programmes and strategies for the effective mobilization of the resources necessary for the overall development of the District;

(b) the levying and collection of taxes, rates, duties and fees;

(c) the construction and maintenance of public works and facilities; and

(d) the provision and maintenance of educational and health facilities.

10. There shall be a Chairman for every District Assembly who shall be elected from among the elected members of the Assembly by a majority of at least two-thirds of all the members of the Assembly.

11. There shall be established an Executive Committee of a District Assembly which shall perform the executive and administrative functions of the District Assembly.

12. The composition of the Executive Committee shall be provided by law, except that the Chairman of the Assembly shall preside over the meetings of the Executive Committee. The chief representative of the government in the District shall be an ex-officio member of the Executive Committee.

13. The Executive Committee may co-opt any person to attend any of its meetings, but a person so co-opted shall not have a right to vote.

14. A District Assembly shall have such other committees as may be provided by law.

15. Subject to the provisions of this constitution, Parliament shall make provision for allocation of public revenue to the District Assemblies.
16. There shall be a fund to be known as the District Assemblies Common Fund into which revenue from the following sources in every district shall be paid:

(a) Entertainment Duty;
(b) Casino Revenue;
(c) Betting Tax;
(d) Gambling Tax;
(e) Income Tax on registration of trade, business, profession or vocation;
(f) Advertisement Tax;
(g) Daily Transport Tax;
(h) any other source of revenue as may be determined by Parliament.

(2) The monies accruing to the District Assemblies in the Common Fund shall be shared among all the District Assemblies on the basis of equality, population and the development needs of each District.

17. (1) Not less than fifteen percent of the net revenue accruing to the state from dues, rents, royalties or from the operations of any enterprise or undertaking of any person or body of persons operating within the area of authority of a District Assembly in respect of land and mineral resources shall be set aside by the State for the developmental needs of the District Assemblies.

(2) Of the amount so set aside, twenty percent shall be paid by the State directly to the District Assembly from whose areas of authority the revenue was derived; and the remaining eighty percent shall be paid into the District Assemblies Common Fund for distribution to all the District Assemblies on the
basis of the formula specified in 17
(2).
Parliament shall by law provide for the
custody and management of the District
Assembly Common Fund.

18. Nothing in this Constitution or any other
law shall be considered as prohibiting the State
or other bodies from making grants-in-aid to any
District Assembly.

REGIONAL CO-ORDINATING COUNCILS

19. (1) There shall be established for each
Region of Ghana, a Regional Co-
ordinating Council.

(2) A Regional Co-ordinating Council shall
have such membership as shall be
prescribed by law, except that members
representative of the Central
government shall not outnumber
representatives of the District
Assemblies.

(3) The membership of a Regional Co-
ordinating Council shall include two
chiefs appointed by the Regional House
of Chiefs.

(4) Subject to this Constitution, the
functions of a Regional Co-ordinating
Council shall be as prescribed by
Parliament.

20. The Auditor-General shall audit annually the
accounts of the District Assemblies and
shall lay the report before Parliament.

21. Parliament shall enact such laws and take
steps such as may be necessary for further
decentralization of administrative functions
of the central government projects, but
shall not exercise any control over the
District Assemblies that is incompatible
with their decentralized status, or
otherwise contrary to law.
22. Any citizen resident in a District shall have the right to make a complaint to the Commission on Human Rights and Administrative Justice about the administrative actions of the District Assembly or of any of its members or officials.

23. (1) Subject to the procedure established by law, the mandate of an elected member of a District Assembly shall be revoked by the electorate if they lose confidence in such a member on any of the following grounds:

(a) that he has abandoned the ideas and programmes for which he was elected;

(b) that he has systematically neglected his duties; as a member of the District Assembly or

(c) that he has committed acts incompatible with his office as member of the District Assembly.
APPENDIX K

CHIEFTAINCY

1. The institution of chieftaincy together with its traditional councils as established by customary law and usage is hereby guaranteed.

Parliament shall have no power to enact any legislation—

(a) which confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or

(b) which in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the above provisions if the law makes provision—

(a) for the determination, in accordance with the appropriate customary law and usage, by a traditional council, a Regional House of Chiefs or the National House of Chiefs or a chieftaincy tribunal thereof, of the validity of the nomination, election, installation or deposition of a person as a chief;

(b) for a traditional council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana;

3. National House of Chiefs

(1) There shall be a National House of Chiefs.
(2) The House of Chiefs of each Region shall elect as members of the National House of Chiefs five paramount chiefs from the Region.

(3) Where in a Region there are less than five paramount chiefs, the House of Chiefs of the Region shall elect such number of divisional chiefs as shall make up the required representation of chiefs for the Region.

4. **Functions of the National House of Chiefs**

The House of Chiefs shall -

(a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy;

(b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law;

(c) undertake an evaluation of traditional customs and usages with a view to eliminating such customs and usages as are outmoded and socially harmful;

(d) assist in the clarification of issues and the resolution of disputes relating to landownership and land tenure in various traditional areas with a view to ensuring security of title to land in the country generally;

(e) perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a Region, as Parliament may confer on it or otherwise refer to it.
5. National Chieftaincy Tribunal

(1) The National House of Chiefs shall have appellate jurisdiction in any matter relating to chieftaincy which has been determined by the Regional House of Chiefs in a Region, from which appellate jurisdiction there shall be an appeal, with the leave of the Supreme Court or of the National House of Chiefs, to the Supreme Court.

(2) The appellate jurisdiction of the National House of Chiefs shall be exercised by a National Chieftaincy Tribunal consisting of five persons appointed by that House from among its members.

(3) The National Chieftaincy Tribunal shall be assisted by counsel of not less than seven years' standing as a lawyer appointed by the National House of Chiefs on the recommendations of the Attorney-General.

(4) A member of a National Chieftaincy Tribunal may be removed from office on the grounds only of stated misbehaviour or of infirmity of mind or body by the votes of not less than two-thirds of all the members of the National House of Chiefs.

(5) A National Chieftaincy Tribunal established under this article shall have original jurisdiction in any matter relating to chieftaincy –

(a) which lies within the competence of two or more Regional Houses of Chiefs, or

(b) which is not properly within the jurisdiction of a Regional House of Chiefs, or

(c) which cannot otherwise be dealt with by a Regional House of Chiefs
(d) Appeal shall lie in respect of any matter dealt with by a National Chieftaincy Tribunal under clause(5) to the Supreme Court.

6. **REGIONAL HOUSE OF CHIEFS**

(1) There shall be established in and for each Region a Regional House of Chiefs.

(2) The Regional House of Chiefs shall -

(a) perform in and for the Region such other functions as may be conferred upon it by or under the authority of any Act of Parliament;

(b) advise any person or authority charged with a responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy in the Region;

(c) establish a regional chieftaincy tribunal or hear and determine appeals from the highest traditional council within the area of authority of the traditional authority within which they are established in respect of the nomination, election, installation or deposition of a person as a chief;

(d) have original jurisdiction in all matters relating to a paramount stool or the occupant of a paramount stool, including a queenmother to a paramount stool;

(e) assist in the clarification of issues and the resolution of disputes relating to landownership and land tenure in the Region with a view to ensuring security of title to land;

(f) undertake a study and make such general recommendations as are appropriate for the resolution or expeditious
disposition of chieftaincy disputes in the Region;

(3) The regional chieftaincy tribunal shall consist of three chiefs appointed by the Regional House of Chiefs from among its members.

(4) A regional chieftaincy tribunal shall be assisted by counsel of not less than five years' standing appointed by the Regional House of Chiefs on the recommendations of the Attorney-General.

(5) A member of the regional chieftaincy tribunal may be removed from office on the grounds only of stated misbehaviour or infirmity of mind or body by the votes of not less than two-thirds of all the members of the Regional House of Chiefs.

7. THE STATUS OF WOMEN AS TRADITIONAL LEADERS

Women duly installed as chiefs or queenmothers shall be adequately represented on the statutory bodies created for chiefs, and shall be entitled to all the statutory perquisites and facilities available to chiefs.

8. DEFINITION OF CHIEF

For the purpose of this Chapter, the expression "chief" means a person (whether male or female) who, hailing from the appropriate family and lineage, has been validly nominated, elected, and enstooled, enskinned or installed as a chief or queenmother by his or her people in accordance with the requisite applicable customary law and usage; provided that no person shall be recognised as a Chief for the purpose of exercising any statutory functions if he or she has been convicted for treason or convicted for an offence involving the security of the State, fraud, dishonesty or moral turpitude.
APPENDIX L

ENFORCEMENT OF THE CONSTITUTION

THE PRESIDENT

1. The President shall be the guarantor and defender of the Constitution by upholding it.

2. The President shall act within the powers allocated to him under the Constitution.

3. While not encroaching upon the Powers of the Prime Minister, Ministers of State and other State functionaries, the President shall call attention of these State officials with infringe the provisions of the Constitution.

4. The President shall use the authority of his high office, the Council of State and informal procedures to counsel against any threat to the constitutional order.

5. The President shall invoke the special Presidential powers where there is a major crisis threatening the fundamental basis of the Constitutional order. Thereafter he shall exert all his presidential powers to restore normalcy.

The Council of State

It shall counsel the President, the Prime Minister, the Speaker, other high State officials about infringement or imminent infringement of the Constitution and the remedial action which should be taken.

The Judicial Committee of The Council of State

1. It shall initiate preventive action to forestall or diffuse violations of the Constitution.
2. It shall have jurisdiction to and

(i) adjudicate on the Constitutionality of bills, proposed regulations or subsidiary legislation;

(ii) determine the constitutionality of proposes; executive acts or measures;

(iii) resolve constitutional disputes between organs of state with a view to preventing any major constitutional confrontation.

THE SUPREME COURT

1. It shall be the main organ for the judicial enforcement of the Constitution.

2. It shall have the jurisdiction to entertain all -

(i) cases relating to the enforcement and interpretation of the Constitution; and

(ii) interpretation of any provision of the Constitution and all questions relating to the constitutionality of any enactment or any act or omission by any person.

The foregoing jurisdiction of the Supreme Court may be invoked by any citizen of Ghana.

THE HIGH COURT

1. The High Court shall have jurisdiction to enforce individual rights guaranteed under the Constitution.

2. In the exercise of this jurisdiction the High Court shall have power to issue orders and directives as are appropriate for the purpose of enforcing the right in question.
1. The Commission shall promote the observance of human rights.

2. It shall be the duty of the Commission to -
   (a) investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, corruption or conduct of any official of an organ of government which would properly be regarded as unlawful, oppressive or unfair in a democratic society; and
   (b) the duty to investigate complaints about practices and actions by private institutions, enterprises and persons where the complainants allege that the fundamental rights and freedoms enshrined in the Constitution have been violated.

3. The Commission shall draw the attention of Parliament to legislation which has adverse impact on human rights.

4. The Commission shall also enter into communication with Government to avert violations of human rights, and where they persist the Commission shall have power to publish the violation.

5. The Commission shall publish an annual report stating the Human Rights position in Ghana.
1. (1) There shall be established a Commission on Human Rights and Administrative Justice which shall consist of -

(a) a Commissioner for Human Rights and Administrative Justice; and

(b) two Deputy Commissioners for Human Rights and Administrative Justice.

(2) An Act of Parliament enacted pursuant to clause 1 of this article shall provide for the creation for regional branches of the Commission.

(3) (a) A person shall not be qualified for appointment as a Commissioner for Human Rights and Administrative Justice, unless he or she is a person of high moral character and has practised as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Ghana or any other country having a system of law analogous to that of Ghana and approved by the Judicial Council, and has been entitled to practise as such counsel, with at least twelve years standing at the Bar.

(b) And in the case of a Deputy Commissioner, with at least ten years standing at the Bar.

For the purpose of sub-clause 3 of this article, a person shall be regarded as entitled to practise or as having practised if he has been called, enrolled or otherwise admitted as such and has not subsequently been disbarred or removed from the Role of Counsel on legal practitioners.

(4) The Commissioner and Deputy Commissioners shall not hold any other
public office or be a Member of Parliament; and they must not have attained the age of sixty-five years.

(5) The Commissioner and Deputy Commissioners shall enjoy the terms and conditions of service, other than such terms and conditions as relate to awards, of a Justice of the Court of Appeal and High Court respectively.

4. Whenever the Commissioner dies, resigns or is removed from office or is for any other reason unable to perform the functions of his office, the President shall, acting in accordance with the advice of the Council of State, appoint a person qualified to be appointed Commissioner to perform those functions until the appointment of a new Commissioner.

5. In the performance of their functions the Commissioner shall be subject only to this Constitution and shall not be subject to the direction and control of any other person or authority.

6. The appointment of officers and other employees of the staff of the Commission shall be made by the Commissioner acting in consultation with the Public Services Commission.

7. The administrative expenses of the Commissioner, including all salaries, allowances and pensions payable to, or in respect of, persons serving with the Commissioner shall be a charge upon the Consolidated Fund.

8. The procedure for the removal of the Commissioner and Deputy Commissioners shall be the same as that provided for the removal of Justice of the Superior Court of Judicature under the provisions of the Constitution.
9. For the purposes of performing his functions under this Constitution and any other law, the Commissioner may bring actions before any court in Ghana and to seek any and all remedies which may be available for such court.

10. Subject to the provisions of this Constitution and to an Act enacted by Parliament pursuant to the provisions relating to the Commissioner, the Commissioner shall make, by constitutional instrument, Regulations regarding the manner and procedure for bringing complaints before him and the investigation thereof.

FUNCTIONS

(1) The functions of the Commissioner shall be defined and prescribed by an Act of Parliament and shall include the following:

(a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Ghana by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;

(b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring
of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;

(c) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place;

(d) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Sub-Articles through such means as are fair, proper and effective, including:

(e) negotiation and compromise between the parties concerned;

(f) causing the complaint and its finding thereon to be reported to the superior of an offending person;

(g) 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 procedures;

(h) bringing proceedings to interdict 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 grossly unreasonable or otherwise ultra vires;
(i) the duty to investigate vigorously 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, pursuant thereto;

(j) the duty to report annually to the Parliament on the exercise of his or her powers and functions;

(k) to educate the public as to human rights by such means as publications; lectures and symposia.

POWERS OF INVESTIGATION

The powers of the Commissioner shall be defined by Act of Parliament and shall include the power:

(a) to issue subpoenas requiring the attendance of any person before the Commissioner and the production of any document or record relevant to any investigation by the Commissioner;

(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent Court;

(c) to question any person;

(d) to require any person to co-operate with the Commissioner and to disclose truthfully and frankly any information within his or her knowledge relevant to any investigation of the Commissioner.

The Commissioner shall not investigate -

(i) a matter which is sub-judice before a Court or Judicial tribunal;
or

(ii) a matter involving the relations or dealings between the Government or an international organisation; or

(iii) a matter relating to the exercise of the prerogative of mercy.
"APPENDIX M"

ECONOMIC AND FINANCIAL ORDER
PART I

GENERAL OBJECTIVES

1. (1) The economic order of Ghana shall seek to develop a dynamic and diversified economy that is responsive to the changing domestic and international economic environment.

(2) The State shall endeavour to avoid the imposition of administrative controls in the management of the economy such as the administrative determination of the exchange rate of the currency of Ghana, allocation of import licence and the setting of ceiling prices.

(3) Government shall ensure that macro-economic policies from year to year are managed so as to increase the economy's adaptability to external shocks.

(4) For the purposes of clause (3), Parliament may pass laws requiring the establishment of a stabilization reserve fund.

(5) In the management of key sectors of the economy measures shall be taken to provide for consultation with key actors in the economy.

(6) Any advisory board set up for any Ministry shall include representatives from private and public sector agencies whose operations relate to the Ministry concerned.

(7) The State shall pursue prudent, fiscal and monetary policies.

(8) Development budgets of all public institutions including Ministries shall be based on programmes and activities taking into consideration the long-term development objective of Ghana and the development of their respective areas of jurisdiction.
(9) District Assemblies shall maintain fiscal discipline.

2. Workers shall be paid a fair wage as an incentive for increased production and productivity.

3. (1) State policy shall create in Ghana an environment that is conducive to the development and deployment of individual initiative and creativity in economic activities.

(2) For the achievement of the objectives stated in clause (1) of this article -

(a) the State shall encourage the development and participation of the private sector of the economy and in particular, the development, consolidation and participation of small scale enterprises;

(b) public sector companies and joint ventures, other than those in utilities, shall not enjoy any special privileges or exemptions to the exclusion of the private sector.

4. (1) Economic and financial management by all Ministries and public institutions shall be based on the principles of efficient and effective utilisation of resources.

(2) All spending ministries, public corporations and parastatal organizations including state-owned financial institutions and banks shall operate in such a manner as to maintain fiscal, financial and monetary discipline.

(3) For the purposes of clause (2) of this article, all institutions referred to in that clause shall endeavour to operate within their budgetary and resource constraints.

(4) An institution referred to in clause (2)
of this article shall not over-run its budget without prior approval by Parliament.

(5) Public corporations set up as commercial ventures shall -

(a) operate in such a manner that it is at all times commercially viable;

(b) pay all appropriate taxes and shall not be exempted from any such tax from which other enterprises operating in similar circumstances are not exempted;

(c) pay dividends to Government out of its profits;

(d) make adequate provision for its future growth.

5. The Bank of Ghana and the Statistical Service Board shall, in respect of each quarter, and not later than two months after the end of the quarter, publish and make available to Parliament, the Government and the public key indicators on the performance of the economy of Ghana.

PART II

NATIONAL ECONOMIC DEVELOPMENT COMMISSION

6. (1) There shall be a National Economic Development Commission.

(2) The Commission should consist of -

(a) the Prime Minister, who shall be Chairman;

(b) the Minister responsible for Finance;

(c) the Minister responsible for Education;

(d) the Governor of the Bank of Ghana;
(e) one representative from each region of Ghana elected by the Regional Co-ordinating Council;

(f) one representative each of identified private sector trade and industrial organizations;

(g) one representative of the Trades Union Congress;

(h) a representative each of the minority parties in Parliament;

(i) such other persons as may be appointed by the President on the recommendation of the Prime Minister having regard to their knowledge and experience of the relevant areas of economic or social planning and the need for gender balance.

7. The Commission shall be responsible for -

(a) the strategic analysis of macro-economic and structural reform options and the development of multi-year rolling plans taking into consideration the resource potential and comparative advantage of the different districts of Ghana; and

(b) the monitoring, evaluation and coordination of development policies, programmes and projects.

8. (1) The Commission shall have a Secretariat which shall have professionals with the necessary expertise in the various aspects of economic development including social and physical planning.
(2) The Secretariat of the Commission shall be headed by an Executive Director appointed by the President on the advice of the Prime Minister on the basis of his professional expertise in economic and development issues.

9. The Commission shall be under the Prime Minister.

10. The President shall have the right to address the Commission from time to time.

PART III
FINANCE
General

11. (1) Taxation shall not be imposed except by or under the authority of an Act of Parliament.

(2) Where an Act, enacted under clause (1) of this article, confers power on any person or authority to waive or vary a tax imposed by that Act, the exercise of the power of waiver or variation, in favour of any person or authority, shall be subject to the prior approval of Parliament by resolution.

(3) Parliament may by resolution, supported by the votes of not less than two thirds of all members of Parliament exempt the exercise of any power from the provisions of clause (2) of this article.

12. (1) There shall be a Consolidated Fund into which shall be paid, subject to the provisions of this article —

(a) all revenue or other moneys raised or received for the purposes of, or on behalf of, the Government; and
(b) any other moneys raised or received in trust for, or on behalf of, the Government.

(2) The revenues or other moneys referred to in clause (1) of this article shall not include revenues or other moneys -

(a) that are payable by or under an Act of Parliament into some other fund established for a specific purpose; or

(b) that may, by or under an Act of Parliament, be retained by the department of Government that received them for the purposes of defraying the expenses of that department.

13. (1) Moneys shall not be withdrawn from the Consolidated Fund except -

(a) to meet expenditure that is charged on that Fund by this Constitution or by an Act of Parliament; or

(b) where the issue of the moneys has been authorised -

(i) by an Appropriation Act; or

(ii) by a supplementary estimate approved by a resolution of Parliament passed for the purpose; or

(iii) by an Act of Parliament enacted under article 15 of this Chapter; or
(iv) by rules or regulations made under an Act of Parliament in respect of trust moneys paid into the Consolidated Fund.

(2) A public fund other than the Consolidated Fund and the Contingency Fund shall not be established except by or under the authority of an Act of Parliament.

(3) Moneys shall not be withdrawn from a public fund other than the Consolidated Fund and the Contingency Fund unless authorised by or under an Act of Parliament.

14. (1) The Prime Minister shall cause to be prepared and laid before Parliament at least one month before the end of each financial year, estimates of the revenues and expenditure of the Government of Ghana for the next following financial year.

(2) For the purposes of clause (1) of this article, the estimates of expenditure of all public offices and also those of public corporations, other than those set up as commercial ventures, shall be classified under programmes or activities which shall be included in a bill to be known as an Appropriation Bill.

(3) The Appropriation Bill shall be introduced into Parliament to provide for the issue from the Consolidated Fund or other appropriate fund of sums of money necessary to meet the expenditure referred to in clause (2) of this article and the appropriation of those funds for the purposes specified in that bill.

(4) The Chief Justice shall, in consultation with the Judicial Council, cause to be submitted to the Prime Minister at least two months before the end of each financial year, and thereafter as and when the need arises -

(a) the estimates of administrative expenses of the Judiciary charged on the Consolidated
fund under article ( )
of this Constitution
(i.e. article which charges
administrative expenses
including judges' salaries
on the Consolidated Fund);
and

(b) estimates of development expenditure
of the Judiciary.

(5) The Prime Minister shall, at the time
specified in clause (1) of this article, or
thereafter, as and when submitted to him under
clause (4) of this article, cause the
estimates referred to in clause (4) of this
article to be laid before Parliament.

(6) The estimates shall be laid before
Parliament under clause (5) by the Prime
Minister without revision but with any recom-
mendations that the Government may have on them.

(7) In the case of the development
expenditure of the Judiciary, the Prime Minister
shall seek the approval of Parliament for it; and
if approved by Parliament by resolution, it shall
be a charge on the Consolidated Fund.

(8) The Prime Minister shall cause to be
laid before Parliament for its information,
all payments charged on the Consolidated Fund.

(9) Where in respect of a financial year,
it is found that the amount of moneys appro-
priated by the Appropriation Act for any
purpose is insufficient or that a need has
arisen for expenditure for a purpose for which
no money has been appropriated by that Act, a
supplementary estimate showing the sum of
money required shall be laid before Parliament
for its approval.

(10) Where, in respect of a financial year,
a supplementary estimate has been approved by
Parliament in accordance with clause (9) of
this article, a Supplementary Appropriation Bill
shall be introduced into Parliament in the financial year next following the financial year to which the estimate relates, providing for the appropriation of the sums so approved for the purposes specified in that estimate.

(11) Notwithstanding the other provisions of this article, the Prime Minister may -

(a) cause to be presented to Parliament programmes and plans such as referred to in article ..... of this Constitution (requiring Government to present to Parliament a planned and co-ordinated programme of economic and social development) covering periods exceeding one year;

(b) cause to be prepared and laid before Parliament estimates of revenue and expenditure covering periods exceeding one year.

15. Where it appears to the Prime Minister that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that year, he may, with the prior approval of Parliament signified by a resolution, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring three months from the beginning of the financial year or on the coming into operation of the Act whichever is earlier.

16. (1) There shall be a Contingency Fund into which shall be paid moneys voted for that purpose by Parliament and from which advances may be authorised by the committee responsible for financial measures in Parliament appointed under article of this Constitution, whenever that committee is satisfied that there has arisen an urgent or unforeseen need for expenditure for which no other provision exists to meet that need.
(2) Where an advance is made from the Contingency Fund a supplementary estimate shall be presented as soon as possible to Parliament for the purpose of replacing the amount so advanced.

(3) Whenever in the estimates prepared under clauses (1) and (9) of article 14 of this Constitution provision is made for an item or vote other than for the Contingency Fund, not relating to a specific item of expenditure, any moneys voted by Parliament in respect of that item or vote shall be under the control and supervision of a committee which shall consist of the Prime Minister, the Speaker and the Chairman of the Council of State.

17. (1) Parliament may, by a resolution supported by the votes of a majority of all the members of Parliament, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement entered into under clause (1) of this article shall be laid before Parliament and shall not come into operation unless it has been approved by a resolution of Parliament.

(3) A loan shall not be raised by the Government on behalf of itself or any other public institution or authority except authorised by or under an Act of Parliament.

(4) An Act of Parliament enacted in accordance with clause (3) of this article shall provide -

(a) that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament; and
(b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that fund or into some other public fund either existing or created for the purpose of the loan.

(5) This article shall, with the necessary modifications, apply to an international business or economic transaction to which the Government is a party as it applies to a loan.

(6) For the purposes of this article, the expression "loan" includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which -

a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or

b) moneys from any fund by whatever name called established for the purposes of payment or repayment whether in whole or in part and whether directly or indirectly may be used for payment or repayment.

(7) The Minister responsible for Finance shall, at such times as Parliament may determine, present to Parliament any information concerning any discrepancies relating to -

a) the granting of loans, their repayment and servicing;

b) the payment of proceeds into the Consolidated Fund or special fund in respect of loans, raised on institutions outside Ghana.

18. (1) The public debt of Ghana is charged on the Consolidated Fund and other public funds of Ghana.
(2) For the purposes of this article, the public debt includes interest on that debt, sinking fund payments and redemption moneys in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

19. (1) The Bank of Ghana shall be the central bank of Ghana and shall be the only authority to issue the currency of Ghana.

(2) The Bank of Ghana shall –

(a) promote and maintain the stability of the value of the currency of Ghana and direct and regulate the currency system in the interest of the economic progress of Ghana;

(b) be the sole custodian of State funds of Ghana both in and outside Ghana and may, by notice published in the Gazette, authorise any other person or authority to act as a custodian of any such fund as may be specified in the notice;

(c) encourage and promote economic development in, and the efficient utilization of, the resources of Ghana through effective and efficient operation of a banking and credit system in Ghana; and

(d) do all other things not inconsistent with this article as may be prescribed by law.

(3) The Governor of the Bank of Ghana may, for the purposes of this article, disallow any transaction or transfer of any foreign exchange whether in Ghana or outside Ghana which is contrary to law.

(4) The following shall apply to the Governor of the Bank of Ghana –
(a) he shall be appointed by the President acting in consultation with the Council of State for a period of five years which shall be renewable for periods of five years each;

(b) his emoluments shall not be reduced while he continues to hold office as Governor;

(c) he shall not be removed from office except on like grounds and in the like manner as a Justice of the Superior Court of Judicature, other than the Chief Justice, may be removed.

20. (1) The committee of Parliament responsible for financial matters shall monitor the foreign exchange receipts and payments or transfers of the Bank of Ghana in and outside Ghana and shall report to Parliament once in every six months.

(2) The Bank of Ghana shall, not later than three months -

(a) after the end of the first six months of its financial year; and

(b) after the end of its financial year, submit to the Auditor-General for audit a statement of its foreign exchange receipts and payments or transfers in and outside Ghana.

(3) The Auditor-General shall, not later than three months after the submission of the statement referred to in clause (2) of this article, submit his report to Parliament on the statement.

(4) Parliament shall debate the report of the Auditor-General and appoint where necessary in the public interest, a committee to deal with any matters arising from the report.
The Statistical Service

21. (1) There shall be a Statistical Service which shall form part of the public services of Ghana.

(2) The head of the Statistical Service shall be the Government Statistician.

(3) The Government Statistician shall be appointed by the President in consultation with the Statistical Service Board.

22. (1) There shall be a Statistical Service Board which shall consist of -

(a) a chairman and not more than five other members all of whom shall be appointed by the President having regard to their expert knowledge, in consultation with the Council of State; and

(b) the Government Statistician who shall be an ex-officio member of the Board.

(2) The Government Statistician, under the supervision of the Statistical Service Board, shall be responsible for the collection, compilation, analysis and publication of socio-economic data on Ghana and shall perform such other functions as may be prescribed by or under an Act of Parliament.

(3) The Statistical Service Board may prescribe the manner in which data may be compiled and kept by any person or authority in Ghana.

The Auditor-General

23. (1) There shall be an Auditor-General of Ghana whose office shall be a public office.

(2) The public accounts of Ghana and of all public offices, including the Courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation or other
body or organisation established by an Act of Parliament shall be audited and reported on by the Auditor-General.

(3) For the purposes of clause (2) of this article, the Auditor-General or any person authorised or appointed for the purpose by the Auditor-General, shall have access to all books, records, returns and other documents relating or relevant to those accounts.

(4) The public accounts of Ghana and of all other persons or authorities referred to in clause (2) of this article shall be kept in such form as the Auditor-General shall approve.

(5) The Auditor-General shall, within six months after the end of the immediately preceding financial year, to which each of the accounts mentioned in clause (2) of this article relates, submit his report to Parliament and shall, in that report, draw attention to irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament.

(6) Parliament shall debate the report of the Auditor-General and appoint where necessary in the public interest, a committee to deal with any matters arising from the report.

(7) In the performance of his functions under this Constitution or any other law, the Auditor-General-

(a) shall not be subject to the direction or control of any other person or authority;

(b) shall have power to disallow any item of expenditure which is contrary to law and to surcharge -

(i) the amount of any expenditure disallowed upon the person responsible for incurring or authorising that expenditure; or
(ii) any sum which has not been duly brought into account upon the person by whom the sum ought to have been brought into account; or

(iii) the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

(8) The provisions of paragraph (a) of clause (7) of this article shall not prejudice the President, acting in consultation with the Council of State, from requesting the Auditor-General in the public interest to audit, at any particular time, the accounts of any body or organisation referred to in clause (2) of this article.

(9) A person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal to the High Court.

(10) The Rules of Court Committee may, by constitutional instrument, make Rules of Court for the purposes of clause (9) of this article.

(11) The salary and allowances payable to the Auditor-General shall be a charge on the Consolidated Fund.

(12) The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring award or retiring age shall not be varied to his disadvantage during his tenure of office.

(13) The provisions of article (tenure of office of Superior Court Justices) of this Constitution relating to the removal of a Justice of the Superior Court of Judicature from office shall apply to the Auditor-General.

(14) The administrative expenses of the office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the Audit Service shall be a charge on the Consolidated Fund.
(15) The accounts of the office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament.

The Audit Service

24. There shall be an Audit Service which shall form part of the Public Services of Ghana.

25. (1) There shall be an Audit Service Board which shall consist of a chairman and four other members all of whom shall be appointed by the President, acting in consultation with the Council of State, the Auditor-General and the Head of the Civil Service or his representative who shall be ex-officio members of the Audit Board.

(2) The appointment of officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission.

(3) The Audit Service Board shall, acting in consultation with the Public Services Commission, and with the prior approval of the Council of State, make regulations by constitutional instrument, prescribing the terms and conditions of service of officers and other employees in the Audit Service and generally for the effective and efficient administration of the Audit Service.

(4) A member of the Audit Service Board, other than an ex-officio member, may be removed from office by the President, acting in consultation with the Council of State, for inability to perform the functions of his office arising from infirmity of mind or body or for any other sufficient cause.
APPENDIX N

AMENDMENT OF THE CONSTITUTION

1. (1) Subject to the provisions of this Constitution, Parliament may, by an Act of Parliament, amend any provision of the Constitution.

(2) This Constitution shall not be amended by an Act of Parliament or altered whether directly or indirectly unless -

(a) the sole purpose of the Act is to amend the Constitution; and

(b) the Act has been passed in accordance with this Chapter.

2. (1) This article applies to the amendment of the following provisions of this Constitution, which are in this Constitution referred to as "entrenched provisions" -

(a) Supremacy of the Constitution;

(b) The Legislature;

(c) The Laws of Ghana;

(d) The territories of Ghana;

(e) The Judicial Power of Ghana;

(f) Tenure of Office of Judges of the Superior Courts of Judicature;

(g) Taxation;

(h) The Armed Forces of Ghana;

(i) Institution of Chieftaincy;

(j) Independence of the Media;

(k) Human Rights and Commission for Human Rights and Administrative Justice;
(1) Decentralisation;

(m) Salaries etc. (Art. 129 of 1979 Constitution);

(n) Amendment of the Constitution;

(o) Declaration of Assets;

(p) Directive Principles of State Policy;

(q) Enforcement of the Constitution;

(r) The Right to Vote.

(2) An entrenched provision shall not be amended except in accordance with this article.

(3) A Bill for the amendment of an entrenched provision shall, before Parliament proceeds to consider it, be referred by the Speaker to the Council of State for its consideration.

(4) The Council of State shall, after considering the Bill, decide whether or not the Bill shall proceed to be passed and its decision on the Bill shall be final.

(5) Where the Council of State does not approve the Bill, no further steps shall be taken for the passing of the Bill.

(6) Where the Council of State approves the Bill, it shall be published in the Gazette until the expiry of six months after the clause.

(7) After the Bill has been read the first time in Parliament it shall not be proceeded with further unless it has been submitted to a referendum held throughout Ghana and at least thirty-five percent of the persons entitled to vote voted at the referendum and
at least seventy percent of the persons who voted cast their votes in favour of the passing of the Bill.

(8) Where the Bill is approved at the referendum Parliament shall pass it.

(9) Where a Bill for the amendment of an entrenched provision has been passed by Parliament in accordance with this article the President shall not refuse to assent to it.

3. (1) A Bill to amend a provision of the constitution which is not an entrenched provision shall not be introduced into Parliament unless –

(a) it has been published twice in the Gazette with the second publication being made at least thirty days after the first; and

(b) at least ten days have passed after the second publication.

(2) The Speaker shall, after the first reading of the Bill in Parliament, refer it to the Council of State for consideration and the decision of the Council of State on it shall be final.

(3) Where the Council of State does not approve the Bill, Parliament shall not proceed further with the passing of the Bill.

(4) Where Parliament approves the Bill, it shall not be presented to the President for his consent unless it was approved at the second and third readings of it in Parliament by the votes of at least two thirds of all the members of Parliament.

(5) Where the Bill has been passed in accordance with this article, the President shall not refuse to assent to it.
4. A Bill for the amendment of the Constitution which has been passed in accordance with this Constitution shall be assented to by the President only if—

(a) it is accompanied by a certificate from the Speaker that the provisions of this Constitution have been complied in relation to it; and

(b) in the case of a Bill to amend an entrenched provision, it is accompanied by a certificate from the Electoral Commissioner that the Bill was approved at a referendum in accordance with this Chapter.
APPENDIX 0

CITIZENSHIP

1. (1) Every person who, on the coming into force of this Constitution, is a citizen of Ghana by law shall continue to be a citizen of Ghana.

(2) Subject to the provisions of this Chapter, a person born in Ghana after the coming into force of this Constitution shall become a citizen of Ghana at the date of his birth if either of his parents or grandparents is or was a citizen of Ghana.

(3) Subject to the provisions of this Chapter, a person born outside Ghana after the coming into force of this Constitution shall become a citizen of Ghana at the date of his birth if either of his parents is or was a citizen of Ghana.

(4) A child of not more than seven years of age found in Ghana whose parents are not known shall be presumed to be a citizen of Ghana by birth.

(5) A child of not more than sixteen years of age neither of whose parents is a citizen of Ghana who is adopted by a citizen of Ghana shall, by virtue of the adoption, be a citizen of Ghana.

2. (1) A woman who, on the coming into force of this Constitution, is or has been married to a person —

(a) who is or becomes a citizen of Ghana by virtue of clause (1) of article 1 of this Chapter; or

(b) who, would have become a citizen of Ghana by the operation of that clause but for his death before the coming into force of this Constitution,
may, upon making an application in the manner prescribed by Parliament, be registered as a citizen of Ghana.

(2) A woman who is married to a person who subsequently becomes a citizen of Ghana may, upon making an application in the manner prescribed by Parliament, be registered as a citizen of Ghana.

(3) A woman who, after the coming into force of this Constitution, marries a citizen of Ghana may, upon making an application in the manner prescribed by Parliament, be registered as a citizen of Ghana.

(4) Where the marriage of any woman is annulled after the woman has been registered as a citizen of Ghana by virtue of the marriage, she shall, unless she renounces the citizenship, continue to be a citizen of Ghana.

(5) Any child of a marriage to which clause (4) of this article applies shall continue to be a citizen of Ghana unless he renounces that citizenship.

(6) A man who, on or after the coming into force of this Constitution, is married to, or marries, a woman who is a citizen of Ghana may, upon making an application in the manner prescribed by Parliament, be registered as a citizen of Ghana.

(7) Where upon an application for registration it appears to the authority responsible for such registration that a marriage has been entered into primarily with a view to obtaining such a registration, the authority may request the applicant to satisfy him that the marriage was entered into in good faith and the authority may only effect the registration upon being so satisfied.

(8) Clause (6) of this article shall apply only where the applicant is permanently resident in Ghana.
3. (1) Subject to this article, a citizen of Ghana shall cease forthwith to be a citizen of Ghana if as a person of majority age, he by a voluntary act, other than marriage, acquires or retains the citizenship of a country other than Ghana.

(2) A person who becomes a citizen of Ghana by registration and is immediately after the day on which he becomes a citizen of Ghana is also a citizen of some other country shall cease to be a citizen of Ghana unless he has renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by law, or unless he has obtained an extension of time for taking those steps and the extended period has not expired.

(3) A Ghanaian citizen who loses his Ghanaian citizenship as a result of the acquisition or possession of the citizenship of a country other than Ghana shall, on the renunciation of his citizenship of that other country become a citizen of Ghana.

(4) Where the law of a country, other than Ghana, requires a person who marries a citizen of that country to renounce the citizenship of his own country by virtue of that marriage, a citizen of Ghana who is deprived of his citizenship of Ghana by virtue of that marriage shall, on the dissolution of that marriage if he thus loses his citizenship acquired by that marriage, become a citizen of Ghana.

4. (1) Parliament may make provision for the acquisition of citizenship of Ghana by persons who are not eligible or who are no longer eligible to become citizens of Ghana under the provisions of this Chapter.

(2) Except as otherwise provided in this article, no person shall be registered as a citizen of Ghana unless at the time of his application for registration he is able to speak
and understand an indigenous language of Ghana.

(3) The High Court may, on an application made for that purpose by the Attorney-General, deprive a person who is a citizen of Ghana, otherwise than by birth, of that citizenship on the ground—

(a) that the activities of that person are inimical to the security of the State or prejudicial to public morality or the public interest; or

(b) that the citizenship was acquired by fraud, misrepresentation or any other improper or irregular practice.

(4) There shall be published in the gazette by the appropriate authority and within three months after the application or the registration as the case may be, the name, particulars and other details of a person who, under this article applies to be registered as a citizen of Ghana, or has been registered as a citizen of Ghana.

(5) Parliament may make provision for the renunciation by any person of his citizenship of Ghana.

5. (1) A reference in this Chapter to the national status of the parent of a person at the time of the birth of that person shall, in relation to a person born after the death of the parent, be construed as a reference to the national status of the parent at the time of the parent's death.

(2) For the purposes of clause (1) of this article, where the death occurred before the coming into force of this Constitution, the national status that the parent would have had if he or she had died on the coming into force of this Constitution shall be deemed to be his or her national status at the time of his or her death.