



REPUBLIC OF GHANA

WHITE PAPER
ON THE
REPORT OF THE CONSTITUTION
REVIEW COMMISSION
OF INQUIRY

JUNE 2012

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White Paper on the Report of the Constitution Review Commission of Inquiry

1. APPOINTMENT OF THE CONSTITUTION REVIEW COMMISSION

As a political party, the National Democratic Congress (NDC) has always been committed to a review of the Constitution at an appropriate time, after a reasonable period of its operation. This commitment, enshrined in the Party's 2008 Electoral Manifesto, was also publicly declared by the President (then candidate John Evans Atta Mills) at the Presidential Debate in Tamale which heralded the 2008 elections. H.E. President John Evans Atta Mills fulfilled the electoral promise when he inaugurated the Constitution Review Commission on the 11th of January 2010.

2. COMPOSITION OF THE CONSTITUTION REVIEW COMMISSION

The Constitution Review Commission was composed of the following eminent persons

Professor Albert Kodzo Fiadjoe (Professor (Emeritus) of Public Law)	—	Chairperson
Osabarima Kwesi Atta II (Paramount Chief of Cape Coast)	—	Member
Naa Iddirisu Abu, Kumbun Naa (Paramount Chief of Kumbungu)	—	Member
Mr. Akenten Appiah-Menka (Lawyer and Industrialist)	—	Member
Mrs. Sabina Ofori-Boateng (Consultant to the Legislative Drafting Unit, Office of Parliament)	—	Member
Very Rev. Prof. Samuel Kwasi Adjepong (President, Methodist University College, Ghana; Chairperson, African Peer Review Mechanism Governing Council)	—	Member
Dr. Nicholas Yaw Amponsah (Senior Lecturer, Political Science Department, University of Ghana)	—	Member
Mr. Gabriel Scott Pwamang (Legal Practitioner)	—	Member
Mrs. Jean Adukwei Mensa (Executive Director, Institute of Economic Affairs (IEA))	—	Member

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The President, in accordance with regulation 4(2) of the Constitution Review Commission of Inquiry Instrument, 2010 (C.I. 64), appointed Dr. Raymond Akongburo Atuguba as the Executive Secretary to the Constitution Review Commission.

3. TERMS OF REFERENCE

The Constitution Review Commission was set up under the Constitution Review Commission of Inquiry Instrument, 2010, C.I. 64, with the following terms of reference:

- (a) to ascertain from the people of Ghana, their views on the operation of the 1992 Fourth Republican Constitution and in particular, the strengths and weaknesses of the Constitution;
- (b) to articulate the concerns of the people of Ghana on amendments that may be required for a comprehensive review of the 1992 Constitution; and
- (c) to make recommendations to the Government for consideration and provide a draft Bill for possible amendments to the 1992 Constitution.

4. PRESENTATION OF REPORT

The Commission submitted its Report to Government on the 20th of December, 2011.

5. THE FINDINGS AND RECOMMENDATIONS

Government accepts most of the recommendations of the Commission. Where Government does not accept the Commission's recommendations, the reasons for the non-acceptance have been stated. Where the Commission recommended the retention of the existing provisions of the Constitution and Government agreed with the Commission, this has not been commented on at all, implying that the status quo ante stays.

For the purposes of the implementation of the recommendations that have been accepted, the Government is to set up a five-member Implementation Committee with the mandate to implement, in strict compliance with Chapter 25 of the Constitution on Amendments to the Constitution, the recommendations accepted by Government.

The Implementation Committee is to start work immediately, but because this is an election year, it is most likely that actual processes leading to the amendments may have to be deferred till after the elections.

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**6.0 GOVERNMENT'S RESPONSES TO THE RECOMMENDATIONS
OF THE CONSTITUTION REVIEW COMMISSION**

In this White Paper, no comments have been made in relation to proposals in the Constitutional Review Commission's Report where the Report accepts the constitutional or legal status quo. Such provisions should be considered to have been accepted by government except otherwise expressly stated. Government has also restricted itself to a point by point response to specific recommendations made by the Constitutional Review Commission.

**6.1 CHAPTER THREE
NATIONAL DEVELOPMENT PLANNING**

Sub Theme One: National Development Planning

First Issue: Nature and Character of a National Development Plan

Whilst the Government accepts the Constitution Review Commission's recommendation for a comprehensive, long-term, strategic multi-year rolling National Development Plan, it does not agree with the Constitution Review Commission that:

- (a) the provision for the development of the National Development Plan should be entrenched; and
- (b) the National Development Plan so developed should be binding on all successive governments and enforceable at the instance of any person or institution.

Propositions (a) and (b) will have the effects of a command model of development planning and tie the hands of successive governments to the ideological interests and policies of a particular political party.

Second Issue: Scope of a National Development Plan

Government has taken note of the Constitution Review Commission's recommendation for the National Development Plan to have a comprehensive coverage of all areas pertinent to the economic growth of Ghana and the socio-economic welfare of its people.

Government however believes that the scope of the National Development Plan should be a matter of legislation and circumstances prevailing and not a function of constitutional prescription.

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Third Issue: Process of Development – A National Development Plan

The Government does not accept the Constitution Review Commission's recommendation for the Constitution to prescribe grass-root participation and wide range stakeholder consultation in the National Development Planning Process since these are already provided for in the National Development Planning (Systems) Act, 1994 (Act 480) and the Local Government Act, 1993 (Act 462).

Fourth Issue: Implementation of the National Development Plan

The Government agrees with the Constitution Review Commission on the maintenance of existing arrangements in which the National Development Planning Commission develops the National Development Plan and facilitates, monitors and evaluates the implementation of the National Development Plan by the Ministries, Departments and Agencies and the Metropolitan, Municipal and District Assemblies.

The Government does not accept the Constitution Review Commission's recommendation that, policies, legislation, administrative action, programmes etc, considered to be inconsistent with the National Development Plan, should be considered unconstitutional. The recommendation vitiates the executive power of the Government.

Government accepts the Constitution Review Commission's view that the National Development Plan should inform the Annual Budget and Economic Policy of the Government.

Government does not consider as necessary, the recommendation for an annual report to Parliament on the implementation of the National Development Plan since such a Report is already incorporated in the President's Annual State of the Nation Address to Parliament.

Fifth Issue: Amendment or Adaptation of the National Development Plan

The Government does not accept the Constitution Review Commission's recommendation for Parliament's authority to amend the National Development Plan. Such authorisation would have followed from the proposition to have a constitutionally entrenched process of development of the Plan which has been rejected (see First Issue). Parliament can approve the National Development Plan and its subsequent reviews by the President, for the purpose of building national consensus and ownership.

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Government accepts the Constitution Review Commission's proposal for publication of reviews and adaptation to the National Development Plan.

Sixth Issue: Monitoring and Evaluation of the Implementation of the National Development Plan

Government notes that the Constitution Review Commission's recommendation for the National Development Planning Commission to monitor and evaluate the implementation of the Plan, is already expressed and implied in Act 480 and the Constitution.

Government does not accept the Constitution Review Commission's recommendation that every citizen should have the right to judicial enforcement of adherence to the National Development Plan. Citizens' dissatisfaction can be expressed via universal adult suffrage and other legitimate means of freedom of expression.

The Government accepts the Constitution Review Commission's recommendation for the National Development Planning Commission to have a better resourced and competent Monitoring and Evaluation and Research and Development units.

Sub Theme Two: The National Development Planning Commission

First Issue: Composition of the National Development Planning Commission

Government does not accept the Constitution Review Commission's recommendation for a constitutional amendment to change the National Development Planning Commission from an advisory to independent body. The proposal would place executive power and functions in the hands of technocrats who do not have any mandate to govern and whose actions can sometimes reflect partisan political orientations. In this regard, Government is of the view that the National Development Planning Commission should have professional and nationwide representation as follows:

- (a) the Minister for Finance and other relevant Ministers of State that the President may appoint;

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- (b) the Governor of the Bank of Ghana.
- (c) the Government Statistician (or Statistician-General); and
- (d) one representative from each of the Regions of Ghana, appointed by the Regional Coordinating Council.

Second Issue: Independence of the National Development Planning Commission becomes a moot issue.

Third Issue: Organisational Structure of the National Development Planning Commission

Government does not accept the Constitution Review Commission's recommendation that the Chairman and Deputy Chairman should be elected by the members of the National Development Planning Commission. The National Development Planning Commission is an adviser to the President on development policy issues and the coordinator of national development planning. In both functions the National Development Planning Commission's frame of reference should be the President's electoral mandate and its policy and programme derivations. The President must therefore have the prerogative to appoint the chair and technocrats that the President can trust to facilitate the delivery of the electoral mandate.

The Government accepts the Constitution Review Commission's recommendation for the National Development Planning Commission to have a Technical Secretariat headed by a Director-General.

Fourth Issue: Appointment of the Chairperson, Deputy Chairperson Members and Staff of the National Development Planning Secretariat

Government maintains the position of the Presidential Appointment of members and staff of the National Development Planning Commission except where the Constitution directs regional or occupational membership.

Government does not accept the Constitution Review Commission's recommendation for the Director-General to be appointed by the National Development Planning Commission in consultation with the Public Services Commission. The President should rather appoint the Director-General in consultation with the Council of State. All

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other senior staff of the National Development Planning Commission Secretariat shall be appointed by the President through delegated authority to the Public Services Commission while junior staff shall be appointed by the National Development Planning Commission.

Fifth Issue: Tenure of Chairperson, Deputy Chairperson, Members and Director-General of National Development Planning Commission

Government accepts the Constitution Review Commission's recommendation for appointed members of the National Development Planning Commission to have a maximum of two five year terms. This facility should however apply to the chairperson, deputy chairperson and elected members while staff of the Secretariat including the Director-General shall have six year renewable contracts with the Presidency. The tenure of ex-officio members should be four years concurrent with the term of the appointing Government.

Sixth Issue: What should be the Functions of the National Development Planning Commission

- (a) Government does not accept the constitutional independence of the National Development Planning Commission.
- (b) Government does not see the need for a constitutional provision that binds every President and Government to the terms of the long-term National Development Plan, for the following reasons:
 - (i) the obligation is already implied in the Directive Principles of State Policy at article 35(7) of the 1992 Constitution which states that,
"As far as practicable, a government shall continue and execute projects and programmes commenced by the previous Government".
 - (ii) time, changing socio-economic and political circumstances and the electoral mandate of particular Presidents and Governments may dictate and justify review of the terms of the National Development Plan;
 - (iii) consequently, Government is of the view that the said article 35 (7) should be moved to the section of

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the Constitution dealing with the National Development Planning Commission and reformulated as follows:

“As far as practicable, a Government shall implement an existing national development plan and shall continue and execute projects and programmes commenced by the previous Governments”.

- (c) Government does not accept the Constitution Review Commission's recommendation for the National Development Planning Commission to develop constitutionally binding national development plans, for the same reasons as stated under paragraph (b).
- (d) Government accepts the Constitution Review Commission's recommendation that the National Development Planning Commission should not be burdened with the implementation of the plan but should rather concentrate on the monitoring and evaluation of such implementation by the Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies.
- (e) Government does not accept that amendments to the National Development Planning Commission Plan by the National Development Commission should be proposed to Parliament which does not have the power to govern or execute development policies and programmes. It is rather the President who should consider the amendment.
- (f) Government believes that the National Development Planning Commission should present its annual Monitoring and Evaluation Reports on the National Development Plan Commission to the President who in turn will incorporate it in the Annual State of the Nation Address to Parliament.

In paragraph 200 the Government does not agree with the Constitution Review Commission that Parliament should enhance the functions and powers of the National Development Planning Commission by legislation beyond what have been provided in the 1992 Constitution and Acts 479 and 480.

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Seventh Issue: How the National Development Planning Commission should be Funded

Government does not accept the Constitution Review Commission's proposition for an independent National Development Planning Commission that is funded through a special fund for independent constitutional bodies. Rather, Government will reconcile the conflict of functions between the National Development Planning Commission and the Ministry of Finance by hiving off the latter's planning functions and supporting the budget to the National Development Planning Commission.

Eight Issue: Conditions of Service of Members and Staff of the National Development Planning Commission

While Government accepts the Constitution Review Commission recommendation for remuneration of Members and staff of the National Development Planning Commission to be determined by the proposed Independent Emolument Commission, it does not accept the Constitution Review Commission's proposal that this should be done with a constitutional re-classification of the National Development Planning Commission as an independent body.

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CHAPTER FOUR

THE EXECUTIVE

Sub-Theme One: The Presidency

First Issue: Appropriate Age Requirement for the President

Government accepts the following recommendations of the Constitutional Review Commission:

- (a) the existing minimum age requirement of forty for the Presidency should be maintained; and
- (b) there should be no maximum age requirement for the Presidency.

Second Issue: Vote Requirement for Election to the Presidency

Government accepts the recommendation of the Constitution Review Commission that the current arrangement which requires a presidential candidate to obtain more than fifty percent of all valid votes cast to become President should be maintained.

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Third Issue: The Term of office of the President

Government accepts the following recommendations of the Constitution Review Commission:

- (a) the current term of four years with re-election eligibility for another four years be retained;
- (b) the Constitution should be amended to make it clear that a person who has been President for two terms of four years shall not qualify to stand for re-election as President; and
- (c) Where the President serves for only one term of four years, the President is allowed to contest for another four year term after an interval, but may not serve for more than eight years in total.

Government takes note that the concern of the Constitution Review Commission for a smoother and faster transition from one government to the other has been addressed with the enactment of the Presidential (Transition) Act, 2012 (Act 845).

Fourth Issue: The Implication of a Sitting President Leaving the Party on whose Ticket the President is elected

Government accepts the recommendation for an amendment of the Constitution to prevent the President and Vice President from defecting from the party on whose ticket they ran for office. Government notes that the option of resignation from the office of President is expressly provided for under article 66(3) (b), and assumed for the Vice-President under article 60(13). However, Government is of the view that there should be a specific provision requiring the Vice-President to resign, as is the case for the President under article 66(3) (b).

Fifth Issue: Conditions of Service of the President.

Government accepts the recommendation of the Constitution Review Commission, originally made by participants of the National Constitution Review Conference, that end-of-service benefits or ex gratia payments be made to existing Presidents as determined by an Independent Emoluments Commission which is to be established under the 1992 Constitution.

Government also accepts the recommendation that a former President should not ordinarily be eligible for appointment to another high public office, and that article 68(2) of the 1992 Constitution should be amended with the deletion of the phrase "other than that of the State" which is at the end of the article.

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Government accepts the following recommendations of the Constitution Review Commission:

- (a) the Independent Emolument Commission be mandated to determine and review all the emoluments of all public officers to accord with the job descriptions and prevailing economic conditions; and
- (b) the Fair Wages and Salaries Commission and the Single Spine Salary Structure should form part of the institutional structure of the Independent Emoluments Commission.

Government is further of the view that the emoluments of the members of the Independent Emoluments Commission shall be determined by Parliament.

Sixth Issue: Taxation of the President

Government accepts the recommendation of the Constitution Review Commission that the President should pay tax on the President's salary and emoluments as an example to the rest of the citizenry. This will also be a reflection of the principle of equality before the law and accord with the rule of law.

Seventh Issue: The President's Power of Appointment

Government accepts the recommendation of the Constitution Review Commission that the Commissioner for Human Rights and Administrative Justice and the Deputies; the Commission's Chairman and other members of the National Commission for Civic Education; the Chairman and the Deputy Chairmen and other members of the Electoral Commission; the Auditor-General; and the Chairman and members of the Independent Emoluments Commission be appointed by the President in consultation with the Council of State and with the approval of Parliament.

Government accepts the recommendation of the Constitution Review Commission to resolve the contradictory constitutional provisions on the appointment of the District Assemblies Common Fund Administrator. Government notes that whereas by virtue of article 70 (1) (c) the President acting in consultation with the Council of State appoints the District Assemblies Common Fund Administrator, the same official is appointed by the President with the approval of Parliament as provided for by article 252(4).

The view of Government is that the procedure for appointing the above Independent Constitutional Bodies should apply to the District Assemblies

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Common Fund Administrator; in which case the appointment will be made by the President acting in consultation with the Council of State and with the approval of Parliament.

Government is aware of institutional representation on the National Development Planning Commission and therefore, accepts the recommendation of Constitution Review Commission that the appointment to the membership of this Commission shall be made by the President.

Government does not accept the recommendation that for the enhancement of orderly transition of government, certain identified officials be classified as political appointees who should hold office at the pleasure of the President and whose tenure should end with that of each presidency.

Government is of the view that strict adherence to the recommendation will disrupt the smooth administration of the country with respect to some positions such as the Chief of Defence Staff, Commanders of the Army, Navy and the Air Force and the Inspector-General of Police. In the view of Government, it might be more appropriate for those officials to continue in office until new appointments are made by the new President.

Government notes with satisfaction however, that the list of officers who must enter and exit office with President has been agreed in a bi-partisan manner in the Presidential Transition Act, 2012 (Act 845). The following are therefore considered to be the political appointees for the purposes of this section:

- (a) persons holding office under the Presidential Office Act, 1993 (Act 463);
- (b) Ministers and Deputy Ministers of State;
- (c) Regional and Deputy Regional Ministers of State;
- (d) Special Assistants, Special Aides to the President, to the Vice-President and to the Ministers of State, Deputy Ministers, Regional Ministers and Deputy Regional Ministers;
- (e) non-career Ambassadors and High Commissioners; and
- (f) persons appointed by the President or a Minister of State as members of statutory boards and corporations.

Government further accepts the recommendation which in effect retains article 195(1) that various governing councils of public bodies

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should recommend persons to the President for appointment to offices in those public bodies in consultation with the Public Services Commission.

Eighth Issue: Determination of the Conditions of Service of some Public Officers by the President

Government accepts the recommendation that an Independent Emoluments Commission should be established to determine the salaries, allowances and emoluments of all public officers, from the President to the lowest ranking public officer.

Ninth Issue: President's power to exercise the Prerogative of Mercy

Government accepts the recommendation that the provisions of the Constitution regulating the exercise of the prerogative of mercy by the President should be retained.

Tenth Issue: Presidential Transitions

Government accepts the recommendation that the presidential and parliamentary elections should continue to be held on the same day.

Government also accepts the recommendation that article 112(4) on the timing of parliamentary elections and article 62(2) (a) on the timing of the presidential election be amended to ensure that both elections are held within sixty days of the installation of a new government.

Sub-Theme Two: The Vice-President

First Issue: Election of Vice-President

Government accepts the recommendation that the current constitutional arrangement where the President chooses a running mate as Vice-President should be retained.

Second Issue: Functions of the Vice-President.

Government accepts the recommendation that the current constitutional functions for the Vice-President be retained.

Third Issue: Circumstances where the Vice-President acts as President

Government accepts the following recommendations of the Constitution Review Commission:

- (a) the current constitutional provisions which allow the Vice-President to act in the absence of the President and to assume the Presidency when it becomes vacant should be retained.
- (b) as far as is practicable the President and the Vice-President should not both be outside the country at the same time. Where by

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necessity, they are both outside Ghana, the Speaker of Parliament should be deemed to have been sworn into office as President.

- (c) a situation where the Speaker of Parliament and in turn the Chief Justice has to act as President should be avoided as far as it is humanly possible to do so.
- (d) article 60(8) should be amended by the deletion of "absent from Ghana" to enable the President or Vice-President to act as such although either may be outside Ghana.

Tenure of office of the Vice-President

Government also accepts the recommendation that Article 60 of the 1992 Constitution be amended by the insertion of a new clause to read as follows:

"Where the office of the Vice-President becomes vacant by death, resignation or removal of the Vice-President, the President shall within a period of 14 days and with the approval of Parliament, appoint a person qualified to hold office as Vice-President; except that no such appointment shall be made when there is a period of 30 days or less to the holding of the Presidential election.

Sub-Theme Three: Minister and Deputy Ministers of State

First Issue: Qualification and nomination of Ministers of State

Government accepts the recommendation that there should be no amendment of the current constitutional provisions on the qualifications and mode of appointment of the Ministers and Deputy Ministers.

Second Issue: Gender and Regional Balance in the appointment of Ministers and Deputy Ministers

Government accepts the recommendation that there should be an amendment to the Constitution to provide that all public institutions must be composed of at least thirty percent of each gender.

Third Issue: Appointment of Majority of Ministers from Parliament

Government accepts the recommendation that the Constitution be amended to give the President a free hand to appoint Ministers from within or from outside Parliament. The related recommendation that a person appointed a Minister from Parliament may retain his or her seat in Parliament is also accepted by Government.

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Fourth Issue: Decoupling the position of Minister for Justice and Attorney-General

The recommendation that the practice of combining the offices of Minister for Justice and Attorney-General may be continued at the discretion of the President is noted, but Government also notes that it does not require a constitutional amendment.

Sub-Theme Four: The Council of State

First Issue: Composition of the Council State

Government does not accept the recommendation that members of the Council of State appointed by the President should be reduced from eleven to five with respect to an advisory body to counsel the President in the performance of the President's functions, the President must have a significant say on who can best counsel the President. This is in spite of the fact that the Council of State may consider and make recommendations on any matter being considered or dealt with by a Minister of State, Parliament or any other authority established by the Constitution.

It follows that Government does not accept the increase in institutional representation that will be filled by the reduction from eleven to five of members of the Council of State appointed by the President.

Second Issue: Nature, Character and Functions of the Council of State

Government accepts the recommendation that the Council of State should be maintained as an advisory body to the President, Parliament, the Judiciary and other institutions of State on issues of national importance.

Government also endorses the recommendation that the constitutional provision that the Council of State should independently select its own chairperson be retained.

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CHAPTER FIVE

THE LEGISLATURE

First Issue: Type of Governance System

Government accepts the recommendation that the President should be given a free hand to appoint Ministers from within or outside Parliament.

Second Issue: Legislative Powers of the President and Parliament

Government accepts the following recommendations of the Constitution Review Commission:

- (a) the current limitation on the introduction of Bills with financial implications by private members should be maintained but limited to "money Bills"; and what amounts to "money Bills" should be clearly defined in the Constitution or legislation; and
- (b) the partial veto powers of the President should be retained.

Third Issue: Making subsidiary legislation

Government accepts the following recommendations of the Constitution Review Commission:

- (a) article 11 of the 1992 Constitution governing subsidiary legislation be amended to clarify the type of Orders, Rules and Regulations which are required to be approved by Parliament and those which do not need parliamentary approval. This distinction was drawn in *Republic v. Minister of Interior ex-parte Bombelli* (1984-86)1 GLR 204-219;
- (b) in particular, the Constitution should clarify that Orders, Rules and Regulations of a legislative nature (those which lay down the law) will need to be approved by Parliament, whilst those of an executive and administrative nature do not need to be approved by Parliament; and
- (c) article 11 should be amended to require that Orders, Rules and Regulations of a legislative nature should be read for the first time only in Parliament and approved by simple majority of the members of Parliament present and voting.

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Ninth Issue: Effect of Vote of Censure Passed by Parliament

Government accepts the recommendation that where a Minister of State has been censured by Parliament, it shall no longer be discretionary but mandatory for the President to remove the Minister from office.

Eleventh Issue: Recall of Parliament

Government does not accept the recommendation that the Constitution be amended to require at least one-third of the membership of Parliament to endorse a decision to recall Parliament from recess because of the practical difficulty of getting one-third of Members of Parliament who would most likely be in their constituencies during recess.

Fourteenth Issue: Conditions of Service of the Speaker, Deputy Speaker and Members of Parliament

Government accepts the recommendation that an Independent Emoluments Commission shall be established under the Constitution to determine the conditions of service of all public officers including Members of Parliament.

Fifteenth Issue: Immunity from Service of Process and Arrest

Government accepts the following recommendations of the Commission:

- (a) article 117 should be amended to allow civil or criminal processes coming from outside Parliament, to be served on the Speaker, Deputy Speaker or Members of Parliament through the Clerk of Parliament and on the Clerk through any Deputy Clerk of Parliament when Parliament is in session;
- (b) when Parliament is not in session, Members of Parliament may be served in the ordinary way; and
- (c) processes should be served on Deputy Clerks personally.

Sixteenth Issue: Resources for Parliament

Government shall leave to the Independent Emoluments Commission the determination of conditions of service of chairpersons and ranking Members of Parliamentary Committees.

Seventeenth Issue: Settlement of Parliamentary Election Disputes

Article 99(2) makes the Court of Appeal the final appellate court over parliamentary electoral disputes. The Supreme Court decision that the Court of Appeal is the final appellate court in these disputes settles the matter. However, Government notes that in article 48 (2) where a similar

appeal to the Court of Appeal is allowed, it is expressly stipulated that the decision of the Court of Appeal shall be final. To ensure consistency therefore, Government accepts the recommendation that a constitutional amendment is required to make the decision of the Court of Appeal final.

Government endorses the recommendation of short time frames for the adjudication and resolution of parliamentary electoral disputes but considers six months too short a time in all disputes. Government is of the view that twelve months would be more appropriate.

Eighteenth Issue: Timing of Parliamentary Elections

Government accepts the recommendation that the period of conducting parliamentary elections should be coterminous with the period for presidential elections and not later than sixty days to the inauguration of a new President and Parliament.

Nineteenth Issue: Composition of the Parliamentary Service Board

Government accepts the recommendation that article 124 be amended to broaden representation on the Parliamentary Service Board to include the Majority and Minority Leaders of Parliament and representatives of organised labour, the Public Services Commission and civil society organisations.

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**CHAPTER SIX
THE JUDICIARY**

Sub-Theme One: Administrative of Justice

Second Issue: Corruption in the Judiciary

Government accepts the recommendation that the Judicial Council be strengthened to enable it play an effective role in curbing judicial corruption and improving justice delivery in Ghana.

Third Issue: The Adjudication of Electoral Disputes

Government accepts the recommendation that the constitutional provision making the Court of Appeal the final appellate court over parliamentary electoral disputes should be maintained.

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While Government endorses the recommendation for amendment of the Rules of Court to ensure speedy delivery of judgments in electoral disputes, Government does not think that all such cases can be determined within six months. Government considers that a twelve month period is more appropriate.

Sub-Theme Two: The Supreme Court

First Issue: Composition of the Supreme Court

Government accepts the recommendation that Article 128(1) be amended to provide for a maximum of fifteen Justices, and it should remain non-entrenched.

Second Issue: Quorum of the Supreme Court

Government accepts the recommendation that the current constitutional provision mandating a minimum of five Justices of the Supreme Court to form a quorum be maintained.

Third Issue: The automatic right to the Supreme Court

Government accepts the recommendation that the provisions of the Constitution on the automatic right of appeal to the Supreme Court be amended to ensure that all interlocutory appeals end at the Court of Appeal.

Fourth Issue: Composition of the Review Panel of the Supreme Court

Government accepts the recommendation that the current constitutional arrangement on the review panel of the Supreme Court should be amended to ensure that the original panel that decided the case at first instance should, as far as practicable, be the same panel to constitute the review panel.

Eight Issue: Removal from Office of Justices of the Supreme Court

Government does not accept the recommendation that the Chief Justice, in determining whether a petition for the removal of a Justice of the Supreme Court discloses a prima facie case, should do so in consultation with the Council of State. The Chief Justice as the most senior judge is quite capable of determining if a prima facie case has been made out.

Sub-Theme Three: The Chief Justice

Second Issue: The Empanelling Powers of the Chief Justice

Government accepts the recommendation that the current constitutional provision be retained.

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Government also endorses the following recommendations of the Constitution Review Commission that:

- (a) where the Chief Justice has a personal interest in a case, the Chief Justice should cede the authority to empanel, to the most senior Justice of the Supreme Court. In this regard, Government is of the view that it is the Constitution that should be amended to achieve the desired effect and not the administrative change as recommended because of the decision in **Akufo-Addo v Quarshie-Idun** [1968] GLR 667, and
- (b) the Chief Justice should adopt guidelines, elaborating mechanisms, including the use of electronic methods of empanelling the Superior Courts, to ensure transparency in that respect.

Third Issue: Removal of the Chief Justice from Office

Government accepts the recommendation that the Constitution be amended to explicitly require that a prima facie case be established as a prerequisite for the commencement of any proceedings for the removal of the Chief Justice.

Sub-Theme Four

The other Superior Courts (The Court of Appeal, High Court and the Regional Tribunal)

Second Issue: The Establishment of the Position of the President of the Court of Appeal.

Government accepts the recommendation that the provisions of the Constitution which do not provide for a President of the Court of Appeal be retained.

Government also endorses the recommendation that administrative guidelines should be developed which allow the practice where the most senior Justice of the Court of Appeal acts as the de facto President of the courts, and cede some of the administrative functions of the Chief Justice, such as the empanelling of the Court of Appeal, to the office of the de facto President of the Court of Appeal.

Third Issue: Maintenance of Regional Tribunals in the Court Structure

Government accepts the recommendation that Regional Tribunals be abolished and matters handled by them incorporated into the regular

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courts' schedule. Government however holds the view that the Chairmen of the Regional Tribunals (if any) should be absorbed into the Judiciary as High Court judges.

Sub-Theme Five: The Lower Courts

Second Issue: The Tenure of Office and Conditions of Service of Judges and Magistrates of the Lower Courts

Government accepts the recommendation that the conditions of service of Judges and Magistrates of the lower courts should be determined by the proposed Independent Emoluments Commission.

Sub Theme Six: The Judicial Council

First Issue: Composition of the Judicial Council

Government accepts the recommendation that article 153(g) of the Constitution be amended so that the "representative of the Chairmen of Regional Tribunals" on the Council would be substituted with a "representative of the Ghana Prisons Service".

Government does not, however, accept the recommendation for representation of religious bodies nominated by the various identifiable religious groups as well as a representative of the private sector. Rather, Government's opinion is that the composition of the Council should be more functionally constructive and less amorphous with a representative each from the National House of Chiefs and civil society organisations.

Government does not accept that a balance between technical persons or those who operate the justice system and consumers of the services of the justice system justifies the substitution of "a representative of the Ghana Police Service" for "the Head of the Legal Directorate of the Police Service". Government, therefore, opts for the retention of the latter official on the Judicial Council.

Government does not object to the usage of neutral expressions instead of names of particular associations, but Government also notes that Associations can be qualified in a manner which will not create any constitutional crisis. Section 9(d) (i) of the Transitional Provisions is an illustration: "the National Council for Higher Education however described".

6.5

**CHAPTER SEVEN
PUBLIC SERVICES**

First Issue: Composition of the Public Services of Ghana

Government upholds the principle that appointments to the Public Service should be devoid of political party patronage and, therefore, accepts the Constitution Review Commissions recommendations for:

- (a) a broad and inclusive categorisation of the Public Services in a Schedule to the Constitution, and
- (b) a legislation that affirms the quasi-security status and functions of the Immigration Service and the Customs Division of the Ghana Revenue Authority.

Second Issue: Recruitment and Appointment to Public Officers

Government does not accept the Constitution Review Commission's recommendation that, "Appointments by the President should be restricted to only political appointees" whose tenure should terminate with that of the President because the list of political appointees defined by the Constitution Review Commissions excludes Judges of the Superior Courts, Chairmen and members of the Electoral Commission, National Commission for Civic Education, Commission on Human Rights and Administrative Justice, Auditor-General, Controller and Accountant-General and the Governor of the Bank of Ghana.

The restriction and the recommendation, if accepted, would nullify existing constitutional provisions in articles 70 (1), 195 (1) and 144 which empower the President to appoint public officers who are excluded from the Constitution Review Commissions's list.

Besides, there is a proposal for a constitutional definition of political appointees which is provided on page 12 of this White Paper.

Government also accepts the recommendation that the Chief Executives, chairpersons and members of the governing councils of state-owned media corporations should be appointed by the National Media Commission.

Third Issue: Gender Balance in Appointments to Public Office

Government is committed to the principle of affirmative action towards the achievement of the constitutional objectives of national integration

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and equal treatment of all Ghanaians (Article 35) and regional and gender balance in public appointments (Article 35(6)(b)).

Government therefore accepts the Constitution Review Commission recommendation for a constitutional amendment for Parliament to enact, within twelve months of the coming into force of the Amendment of the 1992 Constitution, an Affirmative Action Act that guarantees thirty percent representation of men and women in all public institutions and offices in as far as it is practicable.

Government does not, however, agree with the Constitution Review Commission that the Political Parties Act, 2000 (Act 574) should be amended to impose a women-oriented affirmative action on political parties, for the following reasons:

- (a) the purposes of the Political Parties Act are to prevent policies and activities that inhibit national integration and democratic progress, rather than dictate ideological orientations and organizational precepts to the political parties;
- (b) while political parties are vehicles for acquisition of power and obviously control of the public services, they are also voluntary associations guided by their own ideologies and constitutions which provide their attraction to popular electoral vote; and
- (c) the political parties, conscious of the provisions of the Constitution and the proposed Affirmative Action legislation and the need to attract popular electoral vote, can be reasonably expected to accommodate such affirmative action in their policies and actions.

Fourth Issue: Conditions of Service of Public Officers

Government accepts the Constitution Review Commission's recommendation for the constitutional establishment of an Independent Emoluments Commission and for the amendment of the Fair Wages and Salaries Commission Act, 2007 (Act 737) to reflect the proposed regime on conditions of service of public officers.

Fifth Issue: Retiring Age of Public Officers

Government accepts the recommendation that the current retiring age of sixty years in the Public Service be maintained, with Parliament reserving the power to increase the retiring age of certain categories of public officers to reflect specific needs of the Service concerned.

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Sixth Issue: Retirement Benefits, Pensions and Gratuities of Public Officers

Government accepts the Constitution Review Commission's position that the determination of this issue is best left to the proposed Independent Emoluments Commission.

Government is however of the opinion that the administrative action on the Social Security and National Insurance Trust suggested by the Constitution Review Commission is not a constitutional matter and must therefore be considered within the ambit of the law establishing the Social Security and National Insurance Trust (SSNIT).

Seventh Issue: Removal of Public Officers from Office

Government accepts the Constitution Review Commission's recommendation for amendment of article 197 to obligate the Public Services Commission to make Regulations with the approval of the President regarding the tenure and performance appraisal contracts of career public officers other than those defined as political appointees.

Eighth Issue: Code of Conduct for Public Officers

Government accepts the Constitution Review Commission's recommendation for the amendment of Chapter 24 of the Constitution to create a more effective regime on Assets Declaration by public officers and the verification and monitoring of such assets by the Auditor-General.

Government is of the opinion that it would be more feasible for such verification and monitoring of the declared assets to be done within one year of the declaration and within three (3) months after the officers' exiting of office.

Government does not however accept the Constitution Review Commission's position that the Commission on Human Rights and Administrative Justice should be mandated to verify and monitor declared assets without cause or complaint of wrong-doing.

Government accepts the recommendation for extensive amendments to the Public Office Holders (Declaration of Assets and Disqualification), Act 1998 (Act 550) to be supported with clear Regulations on:

- (a) how assets declared can be verified;
- (b) how the public may access the declaration; and
- (c) the punishment for failure to declare and false declaration.

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Government accepts the proposal for new legislation on ethics and anti-corruption on "gifts" and what constitutes "conflict of interest", to assist the Commission on Human Rights and Administrative Justice in the determination of complaints made against public officers for breaches of the Code of Conduct for Public Officers.

Ninth Issue: Public Officers and Party Politics

Government sees the need to define what constitutes "active party politics", and a proposal on the definition has been made as an amendment to the Interpretation section of the Constitution.

Tenth Issue: The Effect of Findings of Commissions of Inquiry Under the 1992 Constitution

Government accepts the Constitution Review Commission's recommendation that the Chapter on Commissions of Inquiry be amended to indicate the exact follow-up actions that may attend the findings of such Commissions and the sequencing of such actions.

6.6

CHAPTER EIGHT

INDEPENDENT CONSTITUTIONAL AND OTHER BODIES

Sub-Theme One: General Matters Relating to The Independent Constitutional and Other Bodies

First Issue: Appointment of the Heads and Members of the Independent Constitutional and Other Bodies

Government accepts the recommendation of the Constitutional Review Commission that the Chairman, Deputy Chairmen and members of the Electoral Commission; the Chairman and members of the National Commission for Civic Education, the Chairman of the Commission for Human Rights and Administrative Justice and the Deputy Commissioners and the Auditor-General be appointed by the President in consultation with the Council of State and with the prior approval of Parliament.

Government does not accept the recommendation that the Head of the National Media Commission should be appointed by the President in consultation with the Council of State. The Constitution Review

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Commission does not give any reasons against the present method of the members of the Nation Media Commission electing a Chairman from amongst them. On the contrary, in view of the injunction in article 162 (5) of the Constitution for the media to "uphold the responsibility and accountability of the Government to the people of Ghana, Government considers that it would not be appropriate for the President as Head of the Government to appoint the Chairman of the National Media Commission. Consequently, Government upholds the provision in Article 166 (2) of the Constitution that "the National Media Commission shall elect its own Chairman".

Second Issue: Composition of the Independent Constitutional and Other Bodies

Government accepts the following recommendations of the Constitution Review Commission that:

- (a) the National Commission for Civic Education, the Electoral Commission and the Public Services Commission are composed of three full-time executive members each, one of whom shall be the Chairman.
- (b) the Commission on Human Rights and Administrative Justice should be composed of five members, namely, a Commissioner and four Deputy Commissioners;
- (c) the four Deputy Commissioners of Commission on Human Rights and Administrative Justice should include a "Special Commissioner for children, persons with disability and the aged;
- (d) the Commission on Human Rights and Administrative Justice membership could include non-lawyers but the Chairperson should be a person qualified to be appointed as a Justice of the Supreme Court; and
- (e) the membership of the Statistical Service Board should include the Director-General of the National Development Planning Commission.

Government does not accept the recommendation that the membership of the National Media Commission be reduced from eighteen to eleven. Instead, Government agrees with the participants at the National

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Constitutional Review Conference for the retention of the current composition of the National Media Commission as it has worked well to ensure the neutrality of the Commission.

Government is also of the view that the proposed changes to the composition of the Independent Constitutional and other Bodies should not affect the current membership of the Independent Constitutional and other Bodies. Consequently, a transitional provision should be included in the amendments to protect the positions of the current members of the Independent Constitutional and other Bodies.

Issue Three: Conditions of Service and Emoluments of the Heads and Members of the Independent Constitutional and other Bodies

Government accepts the following recommendations of the Constitution Review Commission:

- (a) a five-member Independent Emoluments Commission be established as an independent constitutional body to determine the emoluments of all public officers including the Heads and Members of the Independent Constitution and other Bodies;
- (b) members of the Independent Emoluments Commission should be appointed by the President in consultation with the Council of State and with the prior approval of Parliament; and
- (c) the Independent Emoluments Commission should combine the functions of the article 71 Committee of Five and those of the Fair Wages and Salaries Commission. Who fixes their emoluments?

Fourth Issue: Conditions of Service-Tenure of Office of the Heads and Members of the Independent Constitutional and other Bodies

Government accepts the recommendation of the Constitution Review Commission that the tenure of office of the Chairman and members of the National Commission on Civic Education, Electoral Commission and Commission on Human Rights and Administrative Justice should be for a ten year non-renewable period.

Government also accepts the recommendation that the current tenure of office of members of the National Media Commission, Auditor-General and the Government Statistician be retained.

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In view of the recommendation for the constitutional independence of the Bank of Ghana, Government is unable to accept the recommendation that the tenure of office of the Governor of the Bank of Ghana should end with that of the President who appoints the Governor.

Government accepts the recommendation that the mode of removal from office of the Chairmen and members of the Independent Constitutional and other Bodies be retained.

Fifth Issue: Funding of the Independent Constitutional and other Bodies

Government accepts the recommendations of the Constitution Review Commission that:

- (a) an Independent Constitutional and other Bodies Fund be established to finance the operations of all Independent Constitutional and other Bodies; and
- (b) the decision of the Supreme Court in *Brown v. Auditor-General* on the mode of funding of the Auditor-General should, as far as practicable, be applied to all Independent Constitutional and other Bodies.

Government is unable to accept the recommendation that the budget estimates of the Independent Constitutional and other Bodies should be submitted directly to Parliament without ministerial clearance or approval. This is because once the recommendation for an Independent Constitutional and other Bodies Fund is accepted Parliament's role should be restricted to approval of the amount that should go into the Fund. Thereafter, it should be left to the management of the Fund and the Independent Constitutional and other Bodies to determine how much each Independent Constitutional and other Bodies should receive from the Fund. The budget estimates of the Independent Constitutional and other Bodies should therefore be submitted directly to the management of the Independent Constitutional and other Bodies Fund and not to Parliament.

Sub-Theme Two: Specific Matters Relating to the National Commission for Civic Education

First Issue: The Overlapping Functions of the National Commission on Civic Education and the Functions of Other Independent Constitution and other Bodies

Government accepts the recommendation that article 234 of the Constitution on the independence of the National Commission for Civic Education be entrenched.

Sub-Theme Three: Specific Matters Relating to the Electoral Commission

First Issue: Functions and Powers of the Electoral Commission

Government notes that the Constitution Review Commission does not make any recommendations for constitutional amendments. Instead, some fundamental legislative and administrative changes are recommended for both the Electoral Commission and Parliament. Government urges the Electoral Commission to take account of those recommendations in the preparation of future Constitutional Instruments. Government on its part will do the same in proposing legislation to Parliament on the subject.

Second Issue: The Electoral System

Government takes note of the recommended administrative action and of the fact that no constitutional amendments are recommended.

Third Issue: Timing of National Elections

Government accepts the recommendation that the period for conducting parliamentary elections should coincide with the period for presidential elections and that the two elections should be held within a period of sixty days before the inauguration of the new Government. Government also takes note of the recommendation for the Presidential Transition Bill to be passed but observes that the point has become moot since the Bill has already been enacted.

Fourth Issue: The Right to Vote

Government accepts the recommendation that article 42 of the Constitution be amended to make the voting age provision a non-entrenched provision.

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Government also accepts the recommendation that the Constitution be amended to allow Parliament to exclude from voting a person who is convicted of any of the offences listed in article 94 (2) (c) with respect to the offences of high crime, high treason or treason or an offence involving the security of the state, or any other offence punishable by death or by a sentence of not less than ten years; or an offence related to or connected with elections under a law in force in Ghana at any time.

Fifth Issue: The Adjudication of Electoral Disputes

Government accepts the recommendation that the decision of the Supreme Court that the Court of Appeal is the final appellate court over parliamentary electoral disputes in article 99 (2) should be expressly stated in the Constitution in order to make it consistent with article 48 (2).

Sixth Issue: Annual Report of the Electoral Commission

Government endorses the legislative change proposed by the Constitution Review Commission for the Electoral Commission to submit Annual Reports to Parliament as a way of informing the representatives of the people about what the Commission has been doing.

Seventh Issue: Funding of Political Parties

Government notes the Constitution Review Commission's recommendation for administrative action on this issue.

Sub-Theme Four: Specific Matters Relating to the Commission on Human Rights and Administrative Justice

First Issue: The Functions and Powers of the Commission on Human Rights and Administrative Justice

Government accepts the following recommendations of the Constitution Review Commission:

- (a) the current functions of the Commission on Human Rights and Administrative Justice should be maintained.
- (b) the Commission on Human Rights and Administrative Justice should be composed of a Commissioner and four Deputy Commissioners with responsibility for the three broad mandates of the Commission namely Human Rights, Ombudsman (Administrative Justice) and Anti-Corruption and a Special Deputy Commissioner in charge of children, persons with disability and the aged.

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- (c) the Commission on Human Rights and Administrative Justice should be empowered to initiate investigations without a formal complaint in all aspects of its mandate.
- (d) the decisions of the Commission on Human Rights and Administrative Justice should be directly enforceable by the Courts.

Sub-Theme Five: Specific Matters Relating to the National Media Commission

First Issue: Functions of the National Media Commission

Government accepts the recommendation that the National Media Commission should be the body responsible for the print media, broadcast and new media to the extent that the responsibility extends to their content only.

Government does not accept the recommendation that the National Media Commission should have the responsibility for broadcast authorization and that the National Media Commission should have the power to grant or refuse the granting of a broadcasting frequency as well as its suspension or withdrawal. Government does not think that the composition of the National Media Commission puts it in a position to professionally discharge this responsibility.

In this connection, Government notes that the allocation of a frequency spectrum goes far beyond the requirements of the broadcast media and extends to security, intelligence, navigation and aviation matters.

Rather than vest the power of broadcast authorisation in the National Media Commission, Government is of the view that the National Communications Authority should rather be provided for in the Constitution as an independent National Communications Commission and be made responsible for the technical parameters of communications activities including numbered frequency authorization and broadcast authorization. In allocating broadcast frequencies, the National Communications Commission should consult with the National Media Commission.

The composition of the National Communications Commission should be provided for in the Constitution. Its membership must be of such a nature that it will have the necessary independence while not compro-

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missing on the technical expertise so essential for the work of the management of the electromagnetic spectrum and related matters.

Government accepts the recommendation that the National Media Commission be empowered to make compensation awards to persons adversely affected by the activities of the media and sanction media practitioners who do not adhere to well set out codes of conduct.

Government also accepts the recommendation that the National Media Commission be empowered to initiate actions in court to secure compliance with its decisions.

**Sub-Theme Six: Specific Matters Relating to the Office of the
Government Statistician**

First Issue: Functions and Independence of the Government Statistician

Government accepts the recommendation that the Statistical Service be made independent and that the name "Government Statistician" be changed to "Statistician-General". Government also accepts the recommendation that the independence of the Statistician-General be entrenched.

Sub-Theme Seven: Specific Matters Relating to the Bank of Ghana

First Issue: Independence of the Bank of Ghana

Government accepts the recommendation that the independence of the Bank of Ghana be expressed in the Constitution. Government however finds this recommendation inconsistent with the recommendation at paragraph 134 of the Report that the tenure of office of the Governor of the Bank of Ghana should end with that of the President who appoints him. Consequently, Government is of the view that the Governor of the Bank of Ghana should have a fixed ten-year non-renewable tenure of office just like the Chairmen and members of the other Independent Constitution and other Bodies.

Sub-Theme Eight: Specific Matters Relating to the Auditor-General and the Audit Service.

First Issue: Independence of the Auditor-General and the Audit Service

Government notes with approval the recommendation for legislative action made on this issue.

6.7

CHAPTER NINE

DECENTRALIZATION AND LOCAL GOVERNMENT

First Issue: Conceptual Basis of Decentralization and Local Government

Government accepts the recommendation of the Commission that article 240 of the Constitution be amended to identify the type of decentralization envisaged at the three levels of decentralization in Ghana namely:

- (a) de-concentration at the level of the Regional Coordinating Council;
- (b) devolution at the level of the Metropolitan, Municipal and District Assembly; and
- (c) delegation at the level of the Sub-District.

Second Issue: Mode of District Assembly Elections

Government does not accept the recommendation that article 248 of the Constitution be amended to empower Parliament at any time in the future to make provision for partisan elections at the district and sub-district levels. Government is of the view that the arguments advanced by the Commission for a non-partisan local government system far outweigh any arguments in favour of a partisan local government system. Government therefore intends that article 248 in its present form be retained.

Third Issue : Selection, Qualification and Composition of Metropolitan, Municipal and District Assemblies

Government accepts the recommendation that the mandatory membership of Member of Parliaments on the Metropolitan, Municipal and District Assemblies be abolished. Instead, an Metropolitan, Municipal and District Assembly may co-opt a Member of Parliament or Member of Parliament of constituency or constituencies within its jurisdiction as

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a non-voting member of the Metropolitan, Municipal and District Assembly.

Government also accepts the recommendation that the thirty per cent membership of the Metropolitan, Municipal and District Assemblies be retained but does not accept the recommendation that the power to make the appointments be made by the President in accordance with the advice of the traditional authorities only. It is the view of Government that the present provision which allows the President to make the appointments in consultation with the traditional authorities and other interest groups in the district is more flexible and inclusive and therefore preferable.

Government however accepts the recommendation for legislation to provide an indicative list of identifiable groups to be appointed to the Metropolitan, Municipal and District Assemblies.

Government does not accept the recommendation that the traditional authorities develop detailed criteria for the selection of the thirty per cent appointees for appointment by the President. Instead, Government is of the view that the detailed criteria for the selection of the thirty per cent appointees should be included in legislation, preferably the Local Government Act.

Fourth Issue: Mode of selecting Metropolitan, Municipal and District Chief Executive

Government does not accept the recommendation that Parliament should be empowered to determine specific mechanisms for choosing Metropolitan, Municipal and District Chief Executives. Government does not also accept the recommendation that in Metropolises, Metropolitan Chief Executives should be popularly elected. Government is of the view that in decentralizing in a unitary state, a delicate balance ought to be struck between central control and local autonomy. Consequently, Government is of the view that article 243 (1) of the Constitution should be amended for the President to nominate a minimum of five persons who would be vetted by the Public Services Commission for competence after which three nominees would contest in a public election.

Fifth Issue: Tenure of office of Metropolitan, Municipal and District Chief Executives and Assembly Members

Government accepts the following recommendations of the Commission:

- (a) the tenure of all members of the Metropolitan, Municipal and District Assemblies should be 4 years;
- (b) the tenure of all Metropolitan, Municipal and District Chief Executives should be 4 years;
- (c) the tenure of all Metropolitan, Municipal and District Chief Executives should be coterminous with those of the President and Parliament.

Government does not accept the recommendation that Parliament should determine the number of terms Metropolitan, Municipal and District Chief Executives may be in office. Once Metropolitan, Municipal and District Chief Executives are approved by popular vote and by the District Assemblies respectively, Government is of the view that for as long as the President nominates a person for the position of Metropolitan, Municipal and District Chief Executive and for as long as the person wins the popular vote of approval or the approval of the District Assembly as appropriate, he may continue to be Metropolitan, Municipal and District Chief Executive. This will go a long way to remove the insecurity felt by Metropolitan, Municipal and District Chief Executives when coming to the end of their mandatory term and put them at par with MPs who may be elected to Parliament for as long as their constituents vote for them. It will also remove a major source of the conflict between Metropolitan, Municipal and District Chief Executives and Members of Parliament and the tendency for Metropolitan, Municipal and District Chief Executives to undermine their Members of Parliament in order to seek to replace them.

Government does not see the need for the Commission's recommendation that the Constitution should prescribe the holding of by-elections to replace an elected member who resigns or dies because the situation is well covered by the existing law. Section 11 (1) of the District Assembly Elections Act, 1994, Act (473), provides that:

"Except as otherwise provided in this Act, the Representation of the People Law, 1992, (PNDCL 284), shall apply to District Assembly election under this Act with such modifications as may be necessary."

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Section 12 of PNDCL 284 provides as follows:

"Whenever a vacancy occurs in the membership of Parliament, the Clerk to Parliament shall notify the Commission in writing within seven days after the vacancy occurred, and a by-election shall be held within thirty days after the vacancy occurred".

Sub-section (2) States as follows:

"Notwithstanding subsection (1) of this section, a by-election shall not be held within three months before the holding of a general election".

Consequently, the recommendation for the Electoral Commission to legislatively determine the time frame and related matters for holding by-elections for Metropolitan, Municipal and District Assemblies electoral areas becomes otiose.

The practice has been for the Secretary to the Metropolitan, Municipal and District Assemblies (the District Coordinating Director) to notify the District Electoral Office of all the vacancies to enable the Office take appropriate action to hold the by-election.

Sixth Issue: Removal and Security of Tenure of Metropolitan, Municipal and District Chief Executives

Following Government's view that there should be the same mode of selection for Metropolitan, Municipal and District Chief Executives, Government accepts the recommendation that Metropolitan, Municipal and District Chief Executives may be removed from office by the President with the approval of not less than two-thirds majority of all Assembly members. Conversely, the Assembly may also request the removal of Metropolitan, Municipal and District Chief Executives by a petition signed by two-thirds of all members of the Assembly, and the request should be endorsed by the President.

Seventh Issue: Mode of Election and Tenure of Office of Presiding Members

Government accepts the recommendation that article 244 (2) be amended to allow for the election of Presiding Members by a majority of the members of the Assembly present and voting. Government also accepts the recommendation for the retention of the two-year, two-term tenure of office for Presiding Members.

Eighth Issue: Conditions of Service for Metropolitan, Municipal and District Chief Executives, Presiding Members and Assembly Members

Government accepts the recommendation that the Independent Emoluments Commission recommended to be set up under the Constitution should determine the emoluments and conditions of service of Metropolitan, Municipal and District Chief Executives, Presiding Members and Assembly members.

Government notes however that this recommendation does not address the issue of whether the Presiding Members and Assembly members should be paid from the resources of the Central Government or the Metropolitan, Municipal and District Assemblies. Government is of the view that the emoluments for Presiding Members and Assembly members, once fixed by the Independent Emoluments Commission, should be paid from the resources of the Consolidated Fund. These should be budgeted for and transferred to the Metropolitan, Municipal and District Assemblies as Grants-in-Aid.

Ninth Issue: Fiscal Decentralization

Government accepts the recommendation of the Commission that the Office of the District Assemblies Common Fund Administrator should be established as an independent constitutional body.

Government also accepts that the contradictory constitutional provisions on the appointment of the District Assemblies Common Fund Administrator in articles 70 and 252 must be reconciled.

Government does not accept the recommendation that the District Assemblies Common Fund Administrator should be authorized to make proposals to Parliament for determining which additional revenue generating functions need to be ceded to the Metropolitan, Municipal and District Assemblies. Government is of the view that such a decision should be taken by Cabinet after recommendations have been made to that effect by the Minister of Local Government and that such a provision is best contained in legislation that is the Local Government Act and not the Constitution.

Government does not also accept the recommendation that two Deputy Administrators be appointed. Government is of the view that once the quantum of resources to be distributed among the Metropolitan, Municipal and District Assemblies is determined by the Minister of Finance and once Parliament approves the sharing formula, the only function of the District Assemblies Common Fund Administrator is to

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apply the formula to the quantum to get each Metropolitan, Municipal and District Assemblies allocation of the Fund. This is easily done by one person using a computer. It is for this reason that a Board for the Office of the District Assemblies Common Fund Administrator is not considered necessary.

Government however accepts the recommendation that the Office of the District Assemblies Common Fund Administrator be filled with staff for data gathering and monitoring purposes, but that does not require a constitutional amendment.

Government also accepts the following recommendations of the Commission which do not require constitutional amendments:

- (a) the District Assemblies Common Fund Administrator should institute detailed and clear-cut procedures for accounting for the use of the District Assemblies Common Fund;
- (b) the Member of Parliaments' share of the District Assemblies Common Fund should be abolished and a Constituency Development Fund be established to replace it.

Tenth Issue: Demarcation of the Boundaries of Districts

Government does not accept the recommendation that the Constitution provides specifically for the power to upgrade and to create districts to be vested in the President and the Electoral Commission, subject to the approval of Parliament.

In view of the political controversy that the creation and upgrading of districts has generated in the past, and in view of the fact that Presidents have tried to manipulate this power to the advantage of their political parties, it is Government's considered view that the subject be handled by an independent body. Accordingly, Government is of the view that the power to create and upgrade districts should be vested in the Electoral Commission acting in consultation with the President and with the approval of Parliament, and that this should be provided for in the Constitution. The Ministry of Local Government should however continue to exercise the power to establish the Metropolitan, Municipal and District Assemblies but this should be done by legislation.

Eleventh Issue: Regional Coordinating Councils and Regional Level Governance

Government accepts the Commission's recommendation for legislation to designate the Regional Coordinating Councils as part of the Central Government placed in charge of coordinating the policy planning of the districts and monitoring and evaluating the performance of the Metropolitan, Municipal and District Assemblies.

Twelve Issue: Urban, Town and Area Councils and Unit Committees

Government accepts the Commission's recommendation that the Ministry of Local Government should take administrative action to make the sub-district structures function effectively.

6.8

CHAPTER TEN

TRADITIONAL AUTHORITIES

Fifth Issue: Chiefs and Active Party Politics

Government accepts the recommendation that article 277 of the Constitution be amended to define concisely the meaning of 'active party politics' in article 276 of the Constitution. Consequently, government accepts further that 'active party politics' be defined to mean:

"openly and personally joining or taking part in the activities of a political party by wearing their paraphernalia and associating with the executive and members of that party mounting party platforms to galvanize support for the party at their meetings, being a card-bearing member of a political party and also holding an executive position in a party at any level".

Government suggests that the definition above be placed in the Interpretation section of the 1992 Constitution to cater for other provisions in which the phrase has been used.

Seventh Issue: Remuneration of Chiefs

Government accepts in principle the recommendation that the National House of Chiefs and the Regional Houses of Chiefs draw funds from the proposed Fund for the Independent Constitutional Bodies to be established under the Constitution for effective implementation of

their functions and for the benefit of the traditional authorities. However, this should be done on the advice of the Minister of Finance and Economic Planning to ascertain its implications on the national budget.

6.9

**CHAPTER ELEVEN
NATIONAL SECURITY**

First Issue: Conceptualisation of Security

Government accepts the recommendation of the Constitution Review Commission that the National Security objectives as stated in paragraph 103 of its Report be inserted in article 35 (as article 35A) of the Directive Principles of State Policy.

Second Issue: Composition of the National Security Council

Government accepts the recommendation that the National Security Council should comprise the Heads of all the Security Agencies, which should include the Heads of the Immigration Service, Narcotic Control Board, National Peace Council and the Commissioner of Customs, Excise and Preventive Services. Government does not accept the recommendation that the National Security Coordinator be made the Secretary to the National Security Council.

Over the years the Secretary to Cabinet has always been the Secretary to the National Security Council for good reasons. There is the need to have a synergy between security matters in cabinet and the National Security Council. It makes implementation of decisions reached at both fora easier and cuts back on the procedures of bureaucracy.

The issue of a separate provision in the Constitution on the need for a National Security policy is accepted by government as proposed in paragraph 104 of the Constitution Review Commission Report. The need for a national security policy should also be incorporated in the proposed amendment in article 35A as one of the security objectives in the Directive Principles of State Policy of the Constitution.

LANDS AND NATURAL RESOURCES

Sub-Theme One: Ownership of Natural Resources

First Issue: Ownership and Vesting of Natural Resources

Government agrees with the Constitution Review Commission that the Land and Natural Resources of Ghana belong to the people of Ghana and therefore accepts the Constitution Review Commission's recommendation for a constitutional amendment that vests all of Ghana's natural resources in the people of Ghana to be held in trust for them by the President. In this regard, Government is of the view that the President, as such trustee, shall not manage the trust property in a manner that unfairly discriminates in favour of political appointees and party activists.

Government accepts the recommendation that stool and skin lands should continue to be vested in the respective stools and skins, in trust for and on behalf of the people of the communities in accordance with customary law and usage.

Government does not accept the Constitution Review Commission's proposal for a constitutional definition of stool/skin land to encompass family lands that have the character of stool and skin lands. Rather, Government recognizes the need for a constitutional definition of family as distinct from stool/skin land.

Government accepts the Constitution Review Commission's recommendation for review of the Chieftaincy Act, 1971 (Act 370) and the Head of Family (Accountability) Act, 1985 (P.N.D.C.L. 114), towards the creation of specific and detailed rules of accountability of Chiefs and Heads of Family to the ultimate beneficiaries of lands entrusted to them.

Second Issue: Ownership of Land by Non-Ghanaians

Government agrees with the Constitution Review Commission that the current constitutional provision of fifty years renewable leasehold interest in land for foreigners shall be maintained but where there is joint ownership of land between a Ghanaian and a foreigner, issues arising on the leasehold shall be settled by the rules of private international law.

Third Issue: Exercise of the Power of Eminent Domain

Government accepts the two recommendations of the Constitution Review Commission relating to this issue, namely

- (a) that all natural resources of Ghana shall be vested in the people of Ghana and shall be held in trust for the people by the President.
- (b) that Government's power of compulsory acquisition of land for public purposes or public interest shall be subject to prompt payment of fair and adequate compensation to the landowners.

Fourth Issue: Right of First Option to Original Owners of Public Lands

Government accepts the Constitution Review Commission's recommendation for a constitutional amendment to ensure that, where and when Government fails to use compulsorily acquired land for the original or comparable purposes of the acquisition, the land should be returned to the original owners, subject to the return of any compensation that was given.

Sub-Theme Two: Management of Natural Resources

First Issue: Management and Administration of Natural Resources

Government accepts the Constitution Review Commission's recommendation that the constitutional mandate of the various Natural Resources Commissions be retained to manage and regulate the national resources and ensure better utilization of the resources.

Government accepts the recommendations for an amendment of article 258 (i) (d) of the Constitution, to reflect the expanded mandate of the Land Registration Division of the Lands Commission, to advise on and execute a comprehensive programme for the registration of land title throughout Ghana.

Government accepts the recommendation for legislation to widen the functions of the Lands Commission to include:

"Survey, mapping, valuation and other functions as the Minister may assign"

Government accepts the recommendation for an amendment of articles 268 and 269 of the Constitution to provide for the grant of a resource right upon the recommendation of the relevant Commission and subject to ratification by Parliament.

Government does not see the need to designate the Office of the Administrator of Stool Lands as an independent constitutional body.

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Government accepts the recommendation, for the inclusion of the following principles on national resources in the Directive Principles of State Policy:

- (a) the utilisation of Ghana's natural resources must be for the ultimate good of the people of Ghana. Ghana must be the primary beneficiary of its natural resources;
- (b) Ghana's natural resources must be generally managed in order to ensure equitable distribution of the benefits of the exploitation of those resources; and
- (c) there must be local content requirement in extractive industries to enhance the building of local capacity and the general inclusion of Ghanaian business in the extractive industry.

Second Issue: Sharing of Benefits Derived From Lands and Natural Resources

Government accepts the Constitution Review Commission's recommendation that the various Acts of Parliament dealing with benefit sharing in the national resources be reviewed to ensure greater transparency and accountability in the use of the resources.

Government also accepts the recommendation for a new legislative framework on environmental crime in relation to exploitation of natural resources.

Third Issue: Tax Regime

Government accepts the recommendation for a review of the tax regime on natural resources to achieve better financial returns to the State.

Government accepts the recommendation for a periodic review of the stabilisation clauses in Natural Resource Agreements.

6.11

CHAPTER THIRTEEN

HUMAN RIGHTS

Sub-theme One: Citizenship

First Issue: Dual Citizenship

Government accepts the recommendation of the Constitutional Review Commission that article 8 of the 1992 Constitution on dual citizenship be amended to provide that any person who lost his or her Ghanaian citizenship before, may register as a dual citizen. Government

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also accepts the proposal that article 7 of the Constitution should be made gender neutral.

Second Issue: Death Penalty

Government accepts the recommendation of the Constitution Review Commission that the death penalty in article 13 of the Constitution be completely abolished and that the penalty be replaced with imprisonment for life. The sanctity of life is a value so much engrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties.

Sub-Theme Three: Protection of Personal Liberty

First Issue: Pre-Trial Detention

Government does not accept the recommendation of the Constitution Review Commission that article 14 of the Constitution be amended to reduce the period of pre-trial detention from forty-eight hours to twenty-four hours for the following reasons:

- (a) experience, since the coming into force of the 1992 Constitution, has shown that where arrests are made on a Friday for good reasons, legal challenges have been raised in relation to bringing the accused to court within forty-eight hours;
- (b) this situation arises because the next sitting of the court is often on a Monday where the forty-eight hours would have lapsed;
- (c) it is also instructive as the report indicates that relatively more endowed economies such as the United States of America, France, Germany and South Africa still maintain the forty-eight hour rule; and
- (d) resource constraint will not make it possible to limit pre-trial detention to twenty-four hours.

Sub-theme Four: Equality Freedom from Discrimination

First Issue: Discrimination

Government accepts that the recommended Affirmative Action Act should deal with all types of discrimination against vulnerable groups and minorities.

Sub-Theme Eleven: Children's Rights

First Issue: Children's Rights

Government does not accept the proposal that the Constitution be amended to include the basic principles of children's rights such as the best interests of the child, non-discrimination, right to survival and development, right to health, participation and sense of responsibility according to evolving capacities.

Government however accepts the creation of an 'Office of the Special Commissioner for Children, Persons with Disability and the Aged' within the Commission on Human Rights and Administrative Justice as earlier indicated in the comments on the Commission on Human Rights and Administrative Justice.

Second Issue: Support to the Family As a Fundamental Unit of Society

Government does not accept the proposal to amend article 28 of the Constitution to provide that the State shall support the family in the realization of the rights of the child. There are enough laws which address the concerns of children and the challenge has to do with enforcing them.

Sub-Theme Twelve: Rights of the Youth

First Issue: Rights of the Youth

Government accepts the proposal that the essence of the National Youth Policy be contained in the Directive Principles of State Policy in the Constitution.

Second Issue: Representation and Empowerment of the Youth

Government accepts the proposal that provision be made in the Directive Principles of State Policy that the State shall take measures including: affirmative action programmes; to ensure that the Youth access relevant education and training; have opportunities to associate, be represented and participate in political, social, economic and other spheres of life; access employment; and are protected from harmful cultural practices and exploitation.

Sub-Theme Thirteen: The Aged

First Issue: Rights of the Aged

Government accepts the proposal that the right of the Aged to live in dignity, free from abuse be guaranteed in the Constitution. Government, however, does not accept the extension of that right to include obtaining adequate State Pension and social welfare.

Sub-Theme Fourteen: Rights of Persons with Disability

First Issue: Description of Persons with Disability

Government accepts the Constitution Review Commission's recommendation that the Constitution be amended to replace the term "disabled persons" with "persons with disability" in consonance with international best practice.

Sub-Theme Fifteen: Environment

First Issue: Environmental Rights

Government accepts the recommendation that provision be made in the Constitution for a right to a clean and healthy environment.

Sub-Theme Sixteen: Consumer Rights

First Issue: Consumer Rights

Government accepts the recommendation that consumer rights be provided for as part of fundamental human rights in the Constitution and, that such rights should include but not limited to:

- (a) information on competing goods and services;
- (b) protection from misleading or false advertising or labeling of goods and services;
- (c) protection from dangerous and hazardous goods;
- (d) unfair competition and anti-trust;
- (e) safety of goods; and
- (f) the right to reject defective goods.

6.12

**CHAPTER FOURTEEN
MISCELLANEOUS MATTERS**

First Issue: Review of the Constitution

Government accepts the Constitution Review Commission's recommendation for a simplified version of the Constitution to be produced and translated into all the major vernaculars of Ghana, to facilitate its communication by the National Commission for Civic Education to all the people of Ghana.

Second Issue: National Orientation

Government shares the view of the Constitution Review Commission on the need for administrative action to adequately resource the

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National Media Commission for a more serious and efficient regulation and monitoring of the airwaves, especially radio frequencies, towards the achievement of responsible freedom of expression and freedom of the press. In this context, the proposed Independent Constitutional Bodies' Fund should be available for the achievement of the purpose

Third Issue: Culture

The Government agrees with the Constitutional Review Commission on the need for the inculcation of national consciousness in the people and communities of Ghana and, therefore, accepts the recommendation for a reformulation of the Preamble of the Constitution to reflect the cultural legacy and values of the Ghanaian society.

Government does not, however accept the recommendation for the constitutional establishment of the National Commission on Culture as an independent body.

Fouth Issue: Ethnicity

Government accepts the recommendation on the need for stringent legislation to criminalise ethnocentric attitudes, policies and activities and actions that engender social conflict and potential inter-tribal or civil war.

Fifth Issue: Politics and Polarisation

Government accepts the recommendation that the Directive Principles of State Policy should be amended to include a provision that enjoins Government to take measures to deal with the rising tide of politicization of every aspect of national life and ethnicity within the Ghanaian polity. Government also accepts the recommendation of the Constitution Review Commission for amendment of the Political Parties Act to institute closed sessions for electioneering campaigns.

Sixth Issue:

Government accepts the Constitutional Review Commission's recommendations in paragraphs 177 and 178, namely:

- (a) the amendment of the Constitution to provide that prosecution may follow from the findings of Commissions of Inquiry set up under the Constitution.
- (b) the amendment of the Directive Principles of State Policy to include a provision that enjoins the State to take effective steps to deal with corruption and wastage in the society.

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Government also accepts the Constitution Review Commission's recommendations for the following:

- (a) review of the Criminal Offences Act 1960, (Act 29) to define corruption to encompass all corruption-related offences and to cover all offences that fall under the scope of the "United Nations Convention Against Corruption" and the "African Union Convention on Preventing and Combating Corruption".
- (b) the repeal of the law on wilfully causing financial loss to the State.
- (c) the serious enforcement of the Mutual Legal Assistance Act, 2010 (Act 807).
- (d) the passage of the Public Officers' Liability Bill.
- (e) The amendment of the Public Procurement Act, 2003 (Act 663) to make it more effective and efficient.
- (f) the review of the rules of evidence to shift the burden of proof onto a person alleged to have been bribed, where that person admits the receipt of a monetary or other advantage but denies that what was received amounts to a bribe.

Government further accepts the recommendation for the review of the Internal Audit Agency Board towards the following objectives:

- (a) re-composition of the Board to embrace the representation of Internal Auditors.
- (b) amendment of the Internal Audit Agency Act, 2003 (Act 658) to create an internal audit class of public officers who shall be part of the Internal Audit service rather than operate under the Ministries Department and Agencies/ Metropolitan Municipal and District Assemblies and the Local Government Service.
- (c) statutory proscription of Metropolitan, Municipal and District Chief Executives and the Local Government Service from chairing Audit Report Implementation Committees.
- (d) statutory re-definition of the powers and functions of the Director-General of the Internal Audit Agency, to give the Director-General clear and definite courses of action

Government endorses the Constitutional Review Commission's

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recommendation for legislation to punish corruption, as follows:

- (a) where a person is found guilty of corruption, the proceeds of the corruption should be traced and forfeited to the State.
- (b) a person convicted of corruption shall be prohibited from holding a public office for five years.
- (c) the minimum term of imprisonment for corruption should be five years.

Ninth Issue: The Indemnity Clauses

Government accepts the Constitutional Review Commission's recommendation for the retention of the Indemnity Clauses in the Constitution.

Tenth Issue: The Conduct of Ghana's International Relations

Government accepts the recommendation for the substitution in the Constitution for the Charter of the Organization of African Unity (OAU) of the Charter of the African Union (AU).

7. CONCLUSION

Government acknowledges the excellent work done by the Commission and on behalf of the people of Ghana says a very big thank you to the Chairman and members of the Commission.

Dated this 15th day of June, 2012.

Date of *Gazette* notification: 15th June, 2012.

JOHN EVANS ATTA MILLS
President of the Republic of Ghana

