

**IN THE SECOND MEETING OF THE THIRD SESSION OF THE FIFTH PARLIAMENT  
OF THE FOURTH REPUBLIC**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE PRESIDENTIAL (TRANSITION) BILL**

**1.0 INTRODUCTION**

1.1 Parliament was seized with the Presidential (Transition) Bill on 28<sup>th</sup> October 2010 when it was presented and read the first time in the House. Rt. Hon. Speaker pursuant to article 106 (4) and (5) of the Constitution and Standing Order 179 of the House referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report. The Committee is pleased to report as follows:

**2.0 DELIBERATION**

2.1 The Committee held a workshop with relevant resource persons to consider the Bill. The Hon Deputy Attorney-General and Deputy Minister for Justice, Mr. Ebo Barton Oduro, Prof. Kwamena Ahwoi of the Ghana Institute of Management and Public Administration, Nana Ato Dadzie, former Chief of Staff and private legal practitioner, Prof Justice V.C.R.A.C. Crabbe, Statute Law Revision Commissioner, Attorney-General's Office and Dr. Michael Ofori-Mensah from the Institute of Economic Affairs, were amongst others in attendance at the invitation of the Committee to assist in deliberations.

### 3.0 **ACKNOWLEDGEMENT**

3.1 The Committee is grateful to the Deputy Attorney-General and the other resource persons for their attendance and technical input during the consideration of the Bill. The Committee is also grateful to the Institute of Economic Affairs for supporting the facilitation of the workshop.

### 4.0 **REFERENCE DOCUMENTS**

4.1 The Committee had recourse to the under-listed documents during deliberations:

- a. The 1992 Constitution,
- b. The Standing Orders of Parliament,
- c. Presidential (Transition) Bill

### 5.0 **BACKGROUND**

5.1 It is ironic that throughout the history of Ghana only the Fourth Republic has witnessed a successful change in government through the transfer of political power from one political party administration to a different political party administration. Indeed the Fourth Republic has recorded two major peaceful transfer of political power. Be that as it may, these two transitions are noted to have been characterised by administrative lapses and controversies especially with regards to the management of state assets.

The Constitution of Ghana after independence did not provide for formal transitional arrangements and this has resulted in difficulties during the transfer of power from an outgoing government to an incoming one.

The difficulties encountered during previous transitions have necessitated the establishment of a legal framework for the transfer of power from an outgoing government to an incoming one.

## **6.0 OBJECT OF THE BILL**

6.1 The Bill seeks to establish a framework for the political transfer of administration from one democratically elected Government to another democratically elected Government and to provide for the regulation of the political transfer of power and for related matters.

## **7.0 PROVISIONS OF THE BILL**

7.1 The Bill provides for fourteen clauses under the following headings: the transitional team; functions of the team; meetings of the team; sub-committees; advisory council; handing-over notes; availability of the handing-over notes; presidential estates unit; inventory of assets; vacation of official residence; election of Speaker; swearing-in of the President; interpretation and transitional provisions. These clauses are organised under four main headings namely, the Transitional team, Handing over notes and assets, Election of Speaker and swearing-in and Miscellaneous.

## **8.0 Clause 1**

Clause 1 provides for the appointment of specified key officers as the Transitional Team by the incoming president within a specified time frame.

## **Clauses 2**

Clause 2 relates to the functions of the Transitional Team which include amongst others the designing of comprehensive practical arrangement to regulate the

political transfer of power following elections. It also enjoins amongst others, the expeditious payment of salaries, allowances, facilities, privileges and benefits of outgoing state functionaries as determined under article 71 of the Constitution

### **Clause 3**

Clause 3 enjoins the Transition Team to commence work within a specified time, determine its own procedure for meeting as well as the mode of arriving at decisions.

### **Clauses 4**

Clause 4 relates to the composition of specified sub-committees, their mandate and membership as well as the procedure for conducting affairs at their respective meetings.

### **Clause 5**

Clause 5 establishes an advisory council, provides the mode of selecting the membership of the council and makes the decision of the council binding on the Transition Team and its sub-committees.

### **Clause 6**

Clause 6 enjoins specified state functionaries including outgoing Presidents and Ministers of State to prepare handing over notes on their stewardship within specified period amongst others for presentation to the Administrator-General.

### **Clause 7**

Clause 7 imposes obligations on the Administrator-General to make available copies of the handing over notes to specified state functionaries other than

members of the Executive.

**Clause 8**

Clause 8 establishes the presidential estates unit under the authority of the Administrator-General in whom power is vested to amongst others procure, secure and keep inventory of State assets and ensure that such assets and properties of Government are maintained in good condition and tenantable repair for transfer where necessary.

**Clause 9**

Clause 9 enjoins the Administrator-General to prepare an inventory of assets in a national register taking stock of all official assets both in the official and private residencies of state functionaries. It provides for such stock taking to be done in the presence of the head of the household within specified period before an incumbent president leaves office and prior to the assumption of office by officers of an incoming administration.

**Clause 10**

The provisions of clause 10 govern the vacation of office by the incumbent administration and also specify the time, the manner and the arrangement for vacating official residence by the incumbent administration.

**Clause 11**

Clause 11 makes provision for the election of a Speaker and deputies and specifies the time frame for the conduct of the elections.

## **Clause 12**

Clause 12 provides for the administration of the oath of office to a person elected as president on a specified date.

## **Clauses 13 & 14**

Clause 13 and 14 relate to interpretation and transitional provisional arrangements respectively.

## **9.0 OBSERVATIONS**

9.1 The Committee observed that the Bill is a novelty in the history of the country as far as formal political arrangements for the transfer of the reins of government are concerned and that, the provisions therein by and large have emerged from the unique experiences of the country as obtained from the past two transitions. It was further observed that the Bill provides for the following: an institutional framework for resolving transitional disagreements, the promotion of transparency and accountability in the management of state assets, resolution of grey issues which often occasion challenges during transitions, structured time frame for effective management of transitions, improvement in the timing of presidential inaugurations, formalised arrangements with regards to handing over notes as well as improved arrangements for vacation of office and official residence by state functionaries.

## **9.2 Institutional Framework for Resolving Transitional Disagreement**

The Committee observed that under this subject matter, the Bill provides for the establishment of an Advisory Council to manage and resolve transitional disagreements which may arise during a transition. Membership of the Advisory Council include two persons each appointed by both the outgoing and the

incoming presidents and a third person appointed by consensus by the two appointees to chair the Council. The Advisory Council provide a practical approach to resolving disputes which often tend to be politicised and its decisions on disagreements referred to it are binding on the transitional team together with sub-committees working under the team. This unique arrangement which seeks to remedy a gap in our Constitutional scheme of things would undoubtedly help minimise if not completely put to rest frequent issues of sharp disagreements which have characterised past transitions in the country.

### 9.3 **Transparency and Accountability in the Management of State Assets**

The Committee also observed that the Bill provides inbuilt mechanisms designed to promote, uphold, strengthen and ensure transparency and accountability in the management of state assets. It specifically provides for periodic stocktaking and a detailed inventory of executive assets, thereby limiting expropriation of state assets which, allegedly, occur during transitions. Clause 9 of the Bill enjoins the creation of a national register to cover lands vested in the President as well as other official assets both in the official and private residences of key state functionaries including Ministers of State. Provision is made under the Bill for the establishment of a Presidential Estates Unit (PEU) which is charged with keeping an inventory of executive assets of the State in addition to the maintenance of those properties.

The accountability measures extend to executive level transitions beside regime change which may occur within continuing administration by reason of cabinet reshuffle. Such unique arrangement which is long overdue would help obviate frequent accusations by incoming governments of incumbent governments of

inefficiencies in the management of State assets and ultimately enhance good governance.

There is the added advantage of clarity in terms of public office holders whose tenure end with that of the outgoing President thus, resolving the grey issues of public offices who may continue in office, a decision often left to the discretion of the incoming President. This arrangement would in the Committee's view help to neutralise potential accusation of political witch-hunting that has characterised the two transitions witnessed so far. It would also help the nation to avoid the allegations of seizure of bona fide assets of some members of outgoing administration which often results in strained relations between outgoing and incoming Government officials.

#### **9.4 More formalised Arrangements in terms of Handing over Notes.**

The Committee also took note that, the Administrator-General is also given the responsibility of taking custody of comprehensive handing-over notes from an incumbent administration for the immediate information and necessary action by the new Government. Obligation is imposed on an incumbent Government to present the handing-over notes on the activities of the office of the President, ministries, departments and agencies, among others, to the Administrator-General at least thirty days before presidential elections.

The Committee took note of the fact that, the institutional framework prescribed by the draft legislation such as the Administrator-General's role could help address or even eliminate the possible use of state facilities by individuals who do not qualify for such entitlements.



## 9.5 **Improved Arrangements for Vacating of Office and Official Residence**

The Bill requires both an incumbent President and the Vice to vacate their official residences prior to the presidential inauguration day but makes provisions for them to be temporarily accommodated in alternate official residence for six months. During this period, permanent arrangements expected for State functionaries in that regard pursuant to the implementation of article 71 of the Constitution are expected to be concluded for such persons amongst others. This arrangement in addition to the existing arrangement for outgoing Ministers and other political appointees to vacate their official residence, the Committee believes is certainly a better and more orderly approach which would help minimise the thorny issues associated with this subject matter.

## 10.0 **Clause 1 - Amendment proposed** –Sub-clause (1), paragraph (a), *delete* "incumbent President" and *insert* "following persons"

(Chairman of the Committee)

### ii. **Clause 1 – Amendment proposed** –Sub-clause (1), closing paragraph, rephrase as follows:

"(c) the Head of the Civil Service, the Head of the Local Government Service, the Secretary to the Cabinet and the National Security Coordinator to constitute a Transitional Team."

(Chairman of the Committee)

### iii. **Clause 2 – Amendment proposed** – Paragraph (c), closing paragraph, line 3, *delete* "or accorded to those persons without undue delay" and *insert* "before the president-elect assumes office"

(Chairman of the Committee)

- iv. **Clause 3 – Amendment proposed** – Sub-clause (4), line 3, before “determination” *insert* “expeditious”

(Chairman of the Committee)

- v. **Clause 4 – Amendment proposed** – Sub-clause (1), paragraph (d), line 1, *delete* “Committee” and *insert* “Team”

(Chairman of the Committee)

- vi. **Clause 10 – Amendment proposed** – Sub-clause (1), line 3, *delete* “move” and *insert* “moves”

(Chairman of the Committee)

- vii. **Clause 11 – Amendment proposed** – Sub-clause (1), line 2, *delete* “of” and *insert* “to”

(Chairman of the Committee)

- viii. **Clause 12 – Amendment proposed** – Line 2, *delete* “precisely at 10:00 hours”

(Chairman of the Committee)

- ix. **Long Title – Amendment proposed** – Line 1, *delete* “in practice”

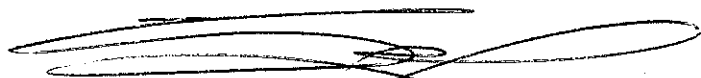
(Chairman of the Committee)

## 11.0 **RECOMMENDATIONS AND CONCLUSION**

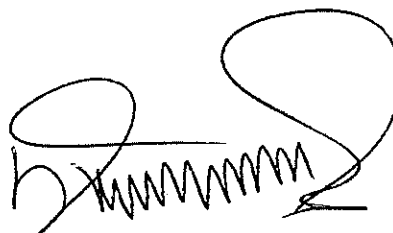
The Committee notes that the initiation and introduction of the Bill is a further step by the nation to establish proper guidelines to govern transition in Government. Above all the Committee perceives the proposals encapsulated in the Bill as critical components of good governance, as good governance is much more about smooth and orderly transfer and handover of political power from one government to the other as it is about the process and deliverables of the art of governance.

Finally, the Committee has examined the provisions of the Bill having regard to the Constitution and our specific circumstance as a country on the subject matter and is of the view that they are consistent and would help consolidate and further deepen the democracy and good governance in the country. The Committee accordingly recommend it for passage by the House subject to adoption of the proposed amendments.

Respectfully submitted.



**HON. EMMANUEL KWASI BANDUA  
CHAIRMAN, COMMITTEE ON  
CONSTITUTIONAL, LEGAL &  
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**JUNE 2011**

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