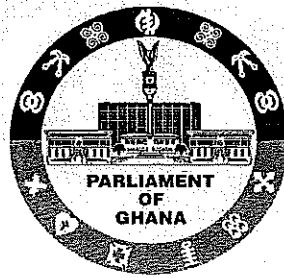


**IN THE FOURTH SESSION OF
THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



**REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS**

ON THE

CONSTITUTION (AMENDMENT) BILL, 2016

JULY 2016

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1.0 INTRODUCTION

1.1 The **Constitution (Amendment) Bill, 2016** was presented to Parliament and read the first time on **Tuesday, 28th June, 2016**. Following the presentation, the Rt. Hon. Speaker referred the Bill to the Council of State for consideration and advice in accordance with Article 291 of the Constitution. On **Monday, 4th July, 2016**, the Rt. Hon. Speaker informed the House that he has received the Advice on the Bill from the Council of State. He accordingly referred the Bill together with the Advice from the Council of State to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report in accordance with Article 106 of the Constitution and Order 179 of the Standing Orders of the House.

2.0 REFERENCE

2.1 The Committee referred to the following Documents during its deliberations.

- i. 1992 Constitution of the Republic of Ghana
- ii. Standing Orders of Parliament
- iii. Public Elections Regulations, 2012 (C.I. 75)
- iv. ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01)

3.0 BACKGROUND

3.1 Article 112(4) of the 1992 Constitution provides for the period within which election of Members of Parliament could be held.

The provision states:

“Subject to clause (2) of Article 113 of this Constitution, a general election of Members of Parliament shall be held within thirty days before the expiration of the period specified in clause (1) of that Article; and a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period.”

3.2 On the strength of the afore-stated provision (Article 112(4)), the Electoral Commission fixed the 7th day of December as the date for the conduct of Parliamentary Elections in the Country since 1996. The 7th of December, which is currently the date for the conduct of general elections in the Country, leaves a transitional period of only one month, for the swearing-in of the President-elect on 7th January in the ensuing year. The one month transition period within which one government hands over to another, has over the years, proved insufficient for a smooth transition, particularly, in instances of run-off elections, as were the cases in 2000 and 2008.

3.3 The challenges associated with Presidential transition were of concern, hence the need to take a critical look at the issue. The Constitutional Review Commission after its nationwide consultations in the Country recommended that the date for both the Presidential and Parliamentary Elections be held in November to allow for enough time for smooth Presidential transition. Following the work of the Constitutional Review Commission, the Electoral Commission also set-up the Electoral Reform Committee (ERC) in January 2015 to consider various electoral reforms needed to be made before the 2016 elections. The date for both the Presidential and Parliamentary Elections was one of the issues considered by the Committee.

3.4 The Electoral Reform Committee was of the opinion that holding the Presidential and Parliamentary Elections earlier than the 7th December, would allow for sufficient time between elections and the handing over of government to an incoming administration. This according to the ERC, will ensure a smooth transition and reduce acrimony, as well as prevent the near chaotic situation experienced by the Country previously. The ERC therefore recommended that the 7th of December for the conduct of our general elections should be changed to the First Monday of November in any election year. Consequent upon that, the Constitution (Amendment)

Bill, 2016 was introduced in Parliament to effect the change in the date.

- 3.5 It must be mentioned that the Bill only specifies the day on which Parliamentary Elections could be held. It is also worth-mentioning that unlike the Parliamentary Elections, the provision in the Constitution (Article 63(2)) which stipulates the period within which Presidential Elections could be held, will not require an amendment but a Constitutional Instrument, if it has to be fixed in November. Article 63(2) of the Constitution states:

“The election of the President shall be on the terms of universal adult suffrage and shall, subject to the provisions of this Constitution, be conducted in accordance with such regulations as may be prescribed by constitutional instrument by the Electoral Commission and shall be held so as to begin –

- (a) where a President is in office, not earlier than four months nor later than one month before his term of office expires; and**
- (b) in any other case, within three months after the office of President becomes vacant;**

and shall be held at such place and shall begin on such date as the Electoral Commission shall, by Constitutional Instrument, specify."

4.0 OBJECT OF THE BILL

4.1 The Bill seeks to amend Article 112(4) of the 1992 Constitution to provide for Parliamentary Elections to be held on the first Monday of November in every election year, to ensure effective and smooth transition.

5.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

5.1 The Committee in considering the Referral, was conscious of the importance of the Bill to the whole Country. It therefore deemed it prudent to involve the political parties, civil society organisations and the general public. Cognisance of this, the Committee held a Public Forum on Monday, 11th July, 2016 to solicit the views of the public on the Bill. The following organisations/institutions were invited to participate in the Forum:

- i. National Democratic Congress (NDC)
- ii. New Patriotic Party (NPP)
- iii. Convention People's Party (CPP)
- iv. Progressive People's Party (PPP)
- v. National Democratic Party (NDP)

- vi. Democratic People's Party (DPP)
- vii. New Vision Party (NVP)
- viii. National Commission for Civic Education (NCCE)
- ix. The Ghana Bar Association
- x. Ghana Journalist Association (GJA)
- xi. Ghana National Association of Teachers (GNAT)
- xii. Christian Council of Ghana
- xiii. Office of the National Chief Imam
- xiv. Centre for Democratic Development (CDD)-Ghana
- xv. Institute for Democratic Governance (IDEG)
- xvi. Coalition of Domestic Election Observers (CODEC)
- xvii. Civic Forum Initiative
- xviii. National Union of Ghana Students (NUGS)

5.2 In attendance was the Honourable Minister for Justice and Attorney-General, Mrs. Marietta Brew Appiah-Oppong and Officials from her Ministry.

5.3 All the participants at the Public Forum unanimously agreed with the change in the date for the conduct of general elections from 7th December to the first Monday of November in an election year and were therefore in support of the passage of the Bill. Some however raised concerns which bother on the readiness of the Electoral Commission to hold the up-coming general elections in November, should the Bill

be passed. It is worth-mentioning that for this Year, the first Monday in November proposed in the Bill, falls on the 7th of November.

5.4 One of the concerns was that, the Electoral Commission was already behind schedule in respect of its Calendar released to the political parties. Some Representatives of the political parties indicated that copies of the Provisional Voters' Register, which they ought to have received at the time, had not been released to them, though exhibition of the Register was scheduled for the 18th of July, 2016. As a result of this, they were in doubt as to whether after the exhibition, there would be ample time to adequately deal with issues relating to errors, change of names, objections, claims, among others, to enable the Electoral Commission provide political parties with certified copies of the Voters' Register at the time stipulated by the Public Elections Regulations, 2016 (C.I. 94) upon its maturity. They were also in doubt as to whether issues relating to transfers, registration of proxy voters and special voting could be concluded before the 7th of November, when the elections are expected to take place.

5.5 Some participants were also concerned with whether the Electoral Commission had the necessary financial and logistical support to run the election in November, 2016. They

inquired whether Government was ready to release adequate funds for the Commission to meet its financial needs to enable it conduct the general elections come November, 7. The Attorney-General and the Minister for Employment and Labour Relations, Mr. Haruna Iddrisu allayed the fears of the participants by indicating that Government was prepared to resource the Electoral Commission to conduct the Elections in November this Year. Mr. Haruna Iddrisu disclosed that, as at the time of the Forum, the Government had released an amount of Six Hundred and Ninety-Three Million Ghana Cedis (GH¢693,000,000.00) to support the activities of the Electoral Commission out of a total request of Eight Hundred and Twenty-Two Million Ghana Cedis (GH¢822,000,000.00) as agreed with the Special Budget Committee of Parliament.

5.6 Other participants also suggested that, in the light of the issues raised by some of the major stakeholders regarding the preparedness of the Electoral Commission, the Bill could be passed and implementation deferred to the next election year, which is 2020.

5.7 At the Forum, the Committee's attention was also drawn to Article 2 of the ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01) which does not permit any

modifications in electoral laws, six months before elections. The provision states:

“No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of political actors”.

The opinion of the participants regarding this issue was that since Ghana was a signatory to the Protocol, the passage of the Bill would be a breach of the Protocol.

- 5.8 The Committee having listened to the views and reservations by the participants at the Forum, held a Meeting with the Electoral Commission, led by its Chairperson, Mrs. Charlotte Osei. In attendance at the Meeting was the Attorney-General and the Minister for Justice.
- 5.9 The Chairperson of the Electoral Commission at the Committee’s Meeting, admitted that its Calendar had been revised in the light of the Supreme Court Orders. According to the Chairperson, the names of those who registered with National Health Insurance Cards had been deleted from the soft copy of the Voters’ Register but yet to be deleted from the hard copy of the Register in order to fully comply with the

Supreme Court Order. She added that the names would be flagged on the hard copy during its exhibition, so that affected persons can identify their names and be taken through the procedure for re-registration for their names to be added to the final Register, in line with the Order of the Court.

5.10 The Commission informed the Committee that, the delay in the Limited Registration Exercise also affected the period for the Exhibition of the Voters' Register. For this reason, it became necessary to make some adjustments to the original Election Calendar prepared on the basis of holding the elections in November. She said that, the revised Calendar has been accepted by all the political parties. As a result of the adjustment, the Exhibition Exercise scheduled for June would now be held from 18th July to 7th of August, 2016. The Commission assured the Committee that, though the Original Election Time Table for the 2016 general elections had been altered, it had put in place all the measures needed to make the 7th of November, a possible date for the 2016 general elections.

5.11 On the issue of finances, the Chairperson confirmed that the amount of Six Hundred and Ninety-Three Million Ghana Cedis (GH¢693,000,000.00) had been released as disclosed by the Minister for Employment and Labour Relations at the Forum.

She told the Committee that the released amount was for the 1st and 2nd Quarters. A Representative of the Minister of Finance, Ms. Christie Amagnoh who was in attendance at the Committee's Meeting, confirmed the figures provided by the Chairperson of the Electoral Commission. She informed the Committee that the Ministry of Finance was in the process of releasing the Commission's 3rd Quarter budget. She also assured the Committee that, the Ministry would be ready to adequately finance expenditure related to run-off elections, in the event of its occurrence.

5.12 The Chairperson of the Electoral Commission however informed the Committee that, the Commission was working with a budget of about One Million, Two Hundred Thousand Ghana Cedis (GH¢1,200,000.00) which is higher than what the Special Budget Committee approved.

5.13 Addressing the issue of breach of Article 2 of the ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01) which the Country is a signatory to, the Attorney-General said that Ghana would not be in any breach if the Bill is passed. The Attorney-General explained to the Committee that, so long as the Law is being modified with the consent of majority of stakeholders in the Country, its enactment would not constitute a breach of the Protocol. The Chairperson of the

Commission in affirming the point made by the Attorney-General, indicated that the decision for the modification of the Law, was taken at the Inter Party Advisory Committee (IPAC).

5.14 Concluding her presentation, the Chairperson of the Electoral Commission informed the Committee that even though the Commission was operating a very tight Calendar, it was optimistic of conducting the elections in November, if Parliament passes the Bill.

6.0 OBSERVATIONS

6.1 As indicated by the Chairperson of the Electoral Commission, the Committee noted that the Calendar for the 2016 elections is very tight and therefore poses a challenge for the Electoral Commission. Some Members of the Committee shared the same sentiment with the participants who raised doubts about the preparedness of the Electoral Commission to conduct the 2016 elections in November. They were of the opinion that the Bill be withdrawn or could be passed whilst deferring the implementation date to the next election year, which is 2020. The Attorney-General however explained that, since it is a constitutional amendment, its implementation could not be postponed.

6.2 The Committee also observed that the passage of the Bill will pave way for a Constitutional Instrument to be laid in Parliament to fix the date for the Presidential Elections to coincide with the 7th November. As indicated earlier in the Report, the election of the President and that of Members of Parliament are regulated by different provisions in the Constitution. Whereas Article 112(4) provides that the election of Members of Parliament should be done within a month to the end of the tenure of office of the Members, Article 63(2) states that the election of the President should be held not less than four months and not more than one month to the expiration of the term of the President.

6.3 This implies that the election of a President could be held any time between October and December, 7. It is therefore of paramount importance to make a decision early enough, to allow the Electoral Commission to introduce into Parliament, the Constitutional Instrument required under Article 63(2). The Electoral Commission informed the Committee that it has already prepared two draft Constitutional Instruments for the 2016 elections for both 7th November and 7th December and will present the appropriate Constitutional Instrument to Parliament depending on the decision of the House on the Bill.

6.4 The Committee would like to mention that the Council of State recommended to Parliament to take the most appropriate action to pass the Bill as contained in its Letter of 28th June, 2016, referenced OP/S.7/16/33. The Council in its Letter, informed the House through the Rt. Hon. Speaker that it had fully apprised itself of the issues discussed in the Memorandum accompanying the Bill and was of the opinion that the amendment proposed to Article 112(4), when passed, will advance Ghana's democracy and also help develop the Country.

7.0 CONCLUSION

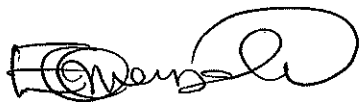
7.1 In conclusion, the Committee would like to express its appreciation to the Honourable Minister for Justice and Attorney-General, Mrs. Marietta Brew Appiah-Oppong and Officials of her Ministry, the Chairperson of the Electoral Commission, Mrs. Charlotte Osei and Officials of the Commission, and Officials of the Ministry of Finance, for their assistance during its deliberations. The Committee also expresses its sincere gratitude to the political parties, civil society organisations and the general public for participating in the Forum.

7.2 The Committee has critically examined the Bill vis-à-vis the Advice from the Council of State and the views of the


participants at the Forum. The Committee is also cautious of the implications of the change in the date of the elections of both the President and Members of Parliament from December to November. It has also taken note of the firm commitment and assurance given by the Chairperson of the Electoral Commission and is of the view that the Bill be passed.

7.3 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the Amendment attached.

Respectfully submitted.

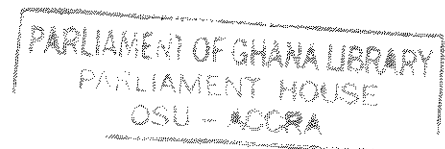


ERIC OWUSU-MENSAH
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JULY, 2016



PROPOSED AMENDMENT TO THE CONSTITUTION
(AMENDMENT) BILL, 2016

Amendment proposed – *Delete* "2." before "Article 112"
in the opening paragraph and *insert* "1."

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