BRIEFING PAPER

Ghana Center for Democratic Development ***(CDD-GHANA)***

Volume 7 Number 1 April 2005

Appointment and "vetting" of ministerial nominees: constitutional and other challenges

Editor's Note: *Speculations about the ministerial nominees for President Kufour's second term of office reached fever pitch weeks before the first batch of nominations for ministerial positions were announced. The vetting process this time round was characterized by unprecedented media attention and coverage and a large number of petitions submitted to the Appointments Committee. In the end, despite strong questions raised about the suitability of some nominees for ministerial appointment, Parliament approved all of the President's nominations.*

In this Briefing Paper, the Center presents a summary of submissions made by resource persons at its Round Table Discussion held on March 17, 2005. The 2005 ministerial vetting and appointment process are assessed examining the constitutional and other challenges and drawing from the operation, interpretation and effect of relevant constitutional and statutory provisions, the Standing Orders of Parliament as well as principles of democracy. Presenters included Professor Gyimah –Boadi, Executive Director, CDD-Ghana; Honorable Haruna Iddrisu, Member of Parliament, Tamale South; and Dr. P.E. Bondzi-Simpson, Legal Practitioner.

THE 2005 "VETTING" PROCESS IN PERSPECTIVE

E. Gyimah-Boadi

Introduction

It is important that we relate our discussions of, and debates on, the current experience with parliamentary approval process to the letter of the Constitution. After all, the 1992 Constitution represents Ghana's best effort to codify her aspiration for a democratic system of government.

But it is equally, if not more important, that we relate such discussions to how the process conduces to the development and consolidation of our democracy. This is because the Constitution and its provisions regarding parliamentary approval of the president's nominees are intended to institutionalize core democratic ideas – vertical and horizontal accountability:

1. Accountability of key public officials, in this case the accountability of the president, to the people through their representatives – parliament comprising members of the ruling party and minority parties.

2. Legislative oversight of the executive branch

3. Institutional checks and balance and inter-branch accountability

The good news

Let me begin with the good news. Any supporter of Ghanaian democratic development must be pleased with the very high profile of the current process of the approval of the President's ministerial nominees by parliament, which is popularly known as "vetting."

In fact, that the parliamentary approval process has become noticeable is in itself a measure of the improvement in this aspect of our democratic process. The interest taken by the media and the public at large in the process is also highly

encouraging. It is particularly pleasing that the proceedings were telecast live at least by one TV station. A publicised vetting process provides an opportunity for members of the public to challenge nominees who may have given false information to the Committee. Most importantly, it creates an additional possibility for the public to hold ministers to some of the sweet promises they make in their bid for confirmation.

The quality of the approval process can be improved, but we also have to acknowledge that it has improved far beyond what prevailed in the past within this Republic. Clearly, the process is getting more rigorous; each nominee spends a longer time before the Committee than before. In addition, the questions asked by the Committee members and the answers given by the ministerial nominees are beginning to have some policy and governance substance.

It is worth recalling that the vetting process was highly pro-forma, perfunctory, and largely ceremonial, especially in the first parliament of the Fourth Republic; it began to be taken seriously from 1997 under the second Parliament, especially after the J H Mensah (NPP opposition) lawsuit which affirmed the need to vet all nominees regardless of whether or not they were holdover or continuing ministers.

The seriousness with which the Appointments Committee of Parliament is tackling its assignment, this time around, provides evidence of the healthy growth of our democracy – notwithstanding the wholesale approval of the ministerial nominees, including those with serious question marks. The Committee appears to have made an effort to be meticulous, in spite of the obvious partisan and time pressures as well as resource scarcity. The Committee has also shown great openness to the public.

Shortcomings

Nonetheless, the 2005 parliamentary approval process has highlighted severe institutional and procedural weaknesses in our legislative and democratic practice.

First, the time between the announcement of the President's nominations and the beginning of the public hearings was too little to allow for anything but casual investigation.

Second, the numerous petitions filed by the public against the nominees raise questions about the quality of the background checks conducted on the nominees by the relevant state agencies.

The process also revealed the technical incapacities of Parliament and its Committees: limited resource and technical base for cross-checking allegations and verifying claims. The research and analytical capacity of Parliament proved too weak to allow deep investigation.

Thanks to the fusion of executive and legislative powers, the Committee's work was undermined because ministerial nominees sat on the appointment committee and participated in the interrogation and approval of fellow nominees. Predictably enough, ruling-party members of the Committee asked soft-ball questions and pandered to their colleagues, possibly in hopes of being favored with nomination as deputy ministers and the like, or for fear of being subjected to serious scrutiny themselves if they should be nominated for a position requiring similar approval.

The internal procedures and conventions that Parliament has adopted for the approval process proved disabling. Clearly some of the rules, especially nominees for ministerial positions sitting and participating in interrogation and approval of their colleagues, are unhelpful to the process and the overall exercise of the parliamentary oversight function. Apparently, this has something to do with the Standing Orders which require that an MP belong to at least one Standing Committee of which there are only a few. However, nothing stops Parliament from developing appropriate conventions to address this anomaly. For instance, the Speaker can make it a requirement that members of the Committee who become nominees recuse themselves from its proceedings. After all, the Committee has a quorum requirement which implies that not all its members need to sit.

Moreover, nothing prevents Parliament or the Selection Committee of Parliament from reshuffling or switching members from this Committee to others and vice versa once they become nominees.

The parliamentary approval process also revealed the weakness of the current public officer asset declaration regulations and highlighted the absence of a credible code of conduct for ministers and other executive employees as well as weak sensitivity to conflict of interest on the part of our public officials. It is not possible to know whether the vetting committee verified current claims of asset ownership and material worth against nominees' officially declared assets. Petitioners and media investigators and the whole public would have benefited from a more accessible regime of official asset declaration. That in turn would have saved precious time and augmented the thin capacity of the Committee to dig for information. Dishonest public officials are the only interests served by the opacity surrounding our current public office holder asset declaration regime. Significant problems with conflicts of interest.

Responses to questions by at least one nominee about his extensive business activities highlight the serious need for a code of conduct for ministers. He seemed to believe and the Committee appeared to concur that it was acceptable to engage in extensive private business operations (transport, farming, etc.) because he has been granted permission by the Speaker of Parliament. But did he also get permission with respect to his ministerial position (from the President who appointed him to be minister) where the greatest danger of conflict of interest resides?

What guidelines are available to regulate ministers and other executive employees who are engaged in private business ventures? Are such officials placing their private businesses in blind trusts? At any rate, how can a minister or even MP perform his or her official duties effectively when they are actively involved in so many business ventures? Again, without knowing its exact terms of reference, it is difficult to tell whether the President's Office of Accountability is looking into this area of executive employee conduct or whether such matters even fall under its remit.

Ethical Misconduct Went Unanswered

The vetting process also revealed disturbing cases of ethical impropriety and bad judgment on the part of certain Ministers. To hear certain Ministers play back the discredited defence of nameless "friends abroad" paying school fees and child maintenance expenses on their behalf served to remind us, painfully, of how little progress we have made in the realm of public ethics and probity since the 1990s CHRAJ investigation of certain Rawlings ministers.

Yet, while admitting to the "harrowing revelations" that came out of the vetting, the President chose to do nothing. Rather, while inducting the new appointees into office, the President appeared to suggest that the evidence of ethical misconduct only affirmed the universal problem of human fallibility. The President also appeared to suggest that by approving the nominees Parliament had somehow closed the page on the issue or left him with no recourse.

This latter excuse is, of course, unavailing. The process of appointing a person as Minister of State is a three-part process, consisting of (1) the naming and submission of the nomination by President; (2) the approval (or rejection) of the nomination by Parliament; and (3) the appointment of the nominee by the President. The President is free to withdraw a nomination at any stage. Even after Parliament has approved a nomination, it remains for the President to proceed with the appointment or not.

The "approval" of Parliament means only that the Parliament finds the nominee acceptable and that the appointment can proceed, if the President so desires. The "approval" by Parliament does not constitute an order to the President to appoint the nominee. Parliament's power is at an end once the approval is rendered and communicated. The President's appointment power ripens at that point, but it remains the President's decision whether to consummate the appointment.

The President's failure to withdraw the nominations of persons entangled in a web of gross ethical impropriety, including cases of needless lying about paper qualifications and using a public account to effect private financial transactions,

represents a regressive precedent, particularly when placed within the context of the action twelve years ago by the NDC Government to withdraw the nomination of Mr. Ekow Spio Gabrah as Minister of State for failing to satisfy certain technical criteria.

The way forward

Adopting a more appealing nomenclature

While we are reviewing the prospects and challenges in the parliamentary vetting process, it may be necessary for us to consider issues of nomenclature. The 1992 Constitution does not use the word "vetting" to describe the approval process. But the process has come to be popularly known as "vetting." Unfortunately, the word 'vetting' carries considerable negative political baggage. For so many people, it has pejorative connotations. It is a painful reminder of the kangaroo manner in which individuals were hauled before so called vetting committees to account for the basis of their supposed lavish lifestyles in the AFRC and early PNDC era. Wrongful association of the parliamentary approval process with the inquisitorial and repressive vetting process of the past only serves to undermine the credibility of current constitutional process. I therefore propose that media and academic commentators stick to the use of the constitutionally prescribed term 'Approval.' The term 'confirmation' may also be used in place of this emotionally-laden and repugnant term 'vetting'.

Better nominee pre-screening to ease the burden of the Committee

The president and other state agencies are in a far better position to undertake pre-screening investigations. The Executive, because it has at its command the state's entire investigative apparatus, is better placed than Parliament to undertake this sort of pre-nomination verification. Basic facts or claims made on a nominee's CV should be investigated, verified and authenticated by appropriate documentation, if necessary, before the nomination is passed on to Parliament. That way too, the President would become aware of problems with particular nominations and seek satisfactory clarification from the nominee or else avert a public spectacle by not proceeding with the nomination at all. The Appointments Committee proceedings should not be the place where background checks are done on nominees. This should be done *before* a person is nominated, and the results of such investigations should be part of the documentation that must be submitted to Parliament along with each nomination.

The Committee must use the services of other state oversight and investigative bodies to ease the burden on itself

To overcome its resource and time constraints, the Appointments Committee must use the services of the Serious Fraud Office and the Auditor General to undertake investigation and verify petitioner claims and nominee counter claims.

Parliament must amend the Standing Orders or adopt appropriate conventions for effective approval process

The current Standing Orders relating to the composition of the Appointments Committee makes sense under a constitution like the 1979 Constitution, where there was a separation of personnel between Parliament and the Executive. However, under the current Constitution, where a majority of Ministers must be chosen from the House, the Standing Orders must structure committee membership in such a way as to enhance, not disable, the basic *oversight* function of committees. The rule that every MP must be a member of at least one standing committee does not work well with the kind of Constitution we currently have, where most Ministers are simultaneously MPs. Minister-MPs, as well as MPs nominated for Ministerial office, should not be allowed to sit or (at the very least) vote on key oversight committees, like the Appointments Committee. At any rate, a member of the Appointments Committee who has been nominated to a ministerial (or deputy ministerial) position should be required to recuse himself or herself for the duration of the entire vetting process, an arrangement that would work perfectly under the present one third quorum requirement.

Improve public office holder asset disclosure regime

A more accessible regime of asset declaration would have enhanced the credibility of the approval process and the nominees' responses to certain

questions. As things now stand, the people of Ghana have no way of verifying what their public officers claim they are independently worth. It is a defect that can be cured legislatively. What is required is the political will to do the right thing.

Abating ministerial conflict of interest

The Appointment Committee's exchanges with at least one nominee concerning the nominee's extensive business activities highlight the need for a credible code of conduct for Ministers and other appointees to public office to be educated about the concept of "conflicts of interest". The nominee in question was of the view—and the Committee too seemed to agree—that having obtained the prior permission of the Speaker immunized him against any charges of impropriety or conflicts of interest.

First, this entire practice of the Speaker granting permission to certain MPs and Ministers to pursue extra-parliamentary and extra-official activities of a profit-making nature should be properly formalized, regulated, and made transparent, and whatever permission is granted should be limited to specified or named businesses or activities, in order that such permissions do not become a blank check for MPs and Ministers to indulge in all manner of private business pursuits and unofficial activities.

Second, article 98(2) and 78(3) of the Constitution, relating to the grant of permission by the Speaker for MPs and Ministers to engage in private business pursuits and unofficial activities, should be read in conjunction with article 284, which enjoins every public officer to avoid placing himself in a position where their "personal interest conflicts or is likely to conflict with the performance of the functions of his office." Enforcement of article 284 is vested in the CHRAJ.

Third, consistent with article 284, the Speaker's permission does not immunize or excuse a Member or Minister against charges of conflicts of interest. Rather, under article 98(2), and 78(3) the Speaker's permission is granted "on the grounds" that the extra-parliamentary or extra-official pursuit will cause no conflict of interest. Thus, an extra-parliamentary or extra-official pursuit that causes a conflict of interest violates the terms of the Speaker's grant of permission.

Fourth, it is highly unsatisfactory that it is the Speaker not the relevant Select Committee that gives permission to MPs and Ministers to pursue extra-parliamentary and extra-official business. Properly done by a committee of the house, the approval process will be an important facility for the legislature to exercise oversight over not only MPs but also members of the Executive. As a back up, the President, as chief executor of the laws of the land (including the Constitution), can help enforce article 284's injunction against conflicts of interests on all of his Ministers and deputy Ministers by instituting within the Executive branch a regime similar to that imposed on MPs and Ministers under article 98(2) and 78(3). This is a role that could be assigned the President's Office of Accountability, whose current remit and utility remains ambiguous at best. As with article 98(2) and 78(3), however, a grant of permission to a Minister should be the exception, rather than the rule; and, in any case, permission should be granted only where there is no risk of a violation of article 284's injunction against conflicts of interest.

DCE approval process in District Assemblies must mimic the parliamentary version

In spite of the various lapses identified above, important benefits have accrued. Substantive issues have been put on the table. Key among them is the suggestion that DCEs be subjected to vetting (at the district assembly level). That, of course, is a matter within the authority of the district assemblies themselves, as the power to "vet" is merely incidental to the power to approve the President's nominee for DCE. Most significantly, vetting will bring the standard by which they vet DCEs in strict conformity with the provisions of the Model Standing Orders under Order 16. Lastly, vetting of DCEs would enhance local control over DCEs, enhance DCE accountability, and deepen decentralization.

CONSTITUTIONAL AND POLITICAL CHALLENGES

Hon. Haruna Iddrisu – MP, Tamale South

The Constitution establishes the three well-known organs of the state namely, the Executive, the Legislature and the Judiciary. Article 58 (1) vests the Executive Authority of the state in the President.

The 1992 Constitution is the fundamental law of Ghana. The Constitution establishes one legislative body – Parliament. Unlike the US and Britain, the Constitution is a hybrid underpinned, to some extent, by the doctrine of separation of powers. The Judiciary is the custodian of the Constitution of the land.

And a cursory perusal of some provisions of the Constitution, especially those relating to finance in general; taxation – imposition and waiver and prerogatives of Parliament; oversight responsibility for the Consolidated Fund and government expenditure; loan agreements; contracts; etc are to be approved by Parliament. International relations must also principally be conducted under Parliamentary direction – Treaties, Conventions, etc. are to be approved by resolution of Parliament.

It would seem therefore that Parliament can, without any fear of contradiction, be described as having an important watchdog role of the public interest.

It is in this light that I intend to examine or discuss the work of the Appointments Committee of Parliament and the Committees through which it functions.

Parliament is the watchdog of the public interest. It makes Standing Orders to regulate its procedures; that is between the Executive, the Legislature (Parliament) and the Judiciary. Whilst the Executive power is vested in the President who is the Head of Sate and fountain of honor, the law making powers of the state are vested in Parliament which is headed by the Speaker. Members of Parliament are the direct representatives of the people. This pre-eminence qualifies it as the watchdog of the public interest. I use the term "public interest" in the sense, but not limited to, that which is used in Article 295 (1); any right or advantage which ensures or ought to ensure, or benefit generally the people of Ghana. This watchdog role is the responsibility which should transcend partisan political considerations for the national good or the public good and if one wants to sound classical, "Pro Bono Publico".

Viewed in this light, the primary responsibility of Parliament to the common will should be attractive and compelling enough for every Honorable MP to jettison narrow parochial consideration for the common good of the nation.

This proposition includes the submission that every Committee of Parliament shall be so motivated and to eschew any narrow political agenda which factually or invariably is anti the national interest. It is in this light that I propose to discuss the work of the Appointments Committee of Parliament. Pursuant to Article 110 of the Constitution, Parliament makes Standing Orders to regulate its procedures.

Article 76 (1) of the 1992 Constitution provides that "There shall be Cabinet which shall consist of the President, the Vice President, and not less than ten and not more than 19 Ministers of State. "The Constitution fails to provide a ceiling for the number of Ministers that the President can appoint. Article 78 (2) of the Constitution provides that "the President shall appoint such number of Ministers of State as may be necessary for the efficient running of the State:." Article 76 (1) therefore places no limit on the size of government and the number of Ministers. The only limitation is for the Executive to consider gender and regional balance.

Order 172 (12) of the Standing Orders of the Parliament of Ghana provides that "There shall be a Committee to be known as the *Appointments Committee* composed of the 1st Deputy Speaker as Chairman and not more than 25 other members". It shall be the duty of the Committee to recommend to Parliament for approval or otherwise persons nominated by the President for appointment as Ministers of State or Deputy Ministers.

Under the 1992 Constitution a presidential nominee of ministerial appointment requires the "prior approval" of Parliament before he can act or hold himself out as a Minister or Deputy Minister of State. [Article 78 (1), 79 (1)]. The Constitution itself has not regulated the procedure for approval. It is the privilege of Parliament to regulate its own procedures. The wish of the President can only be overridden by a majority vote in Parliament. Parliament may approve or refuse to do so. The logical reason why Parliament may appear to be rubber-stamping nominees is the dominance of the majority and the failure of the honorable members to realize or appreciate a nobler call on their conscience by the national

interest which their membership of the august House enjoins them to serve rather than mere obeisance to the dictates of the Whip. May I then caution parties represented in Parliament to be discreet as to the frequency and the circumstances in which the Whip is resorted to. A reckless use of the Whip could be detrimental to the public good.

The Supreme Court, the highest court of the land, in the 1996/97 SCGLR celebrated case of J. H. Mensah vrs Attorney General ruled that "a necessary incident of prior approval is the consideration and vetting of each nominee for ministerial appointment and accordingly any person who has not been so approved and appointed cannot lawfully act or hold himself out as a Minister or Deputy Minister of State". As Aikins, JSC stated, the common sense implication of the expression "prior approval" was to obtain the consent of the relevant authority (referring to Parliament). Thus the words "prior approval" in Article 78 (1) was not a term of art.

The Constitution in my view lacks true balance among the centers of power. The Constitution is dominated by the Executive. The balance of advantage between Parliament and the Executive in the appointment of Ministers is weighted heavily in favour of the President, may be because of the lack of bipartisanship to a degree which arouses widespread anxiety and is inimical to the proper working of our Parliamentary democracy. The expectation is that members of Parliament must freely and willingly indicate their disapproval of a particular nominee but this is not the case. This, as I have pointed out earlier, may be because of the excessive, should I say, often reckless use of the Whip.

Parliament is not a true counteracting force to the Executive. Article 58 (1) vests the Executive authority of the State in the President. Article 76 (1) provides for a Cabinet.

The size of government undoubtedly affects the pubic purse. It is of cost to the state. The smaller the size, the lesser the amount of money spent on their facilities and privileges. The new regime of President J. A. Kufuor, while in opposition, campaigned on a pledge to reduce the size of government but subsequently the President described his criticisms of the previous regime over the size of government "as misplaced". The need to downsize government to make some savings for the state is still necessary. I will not hesitate in asking for legislation to limit the number of Ministers that can be appointed by the President, may be to sixty-five Ministers including their Deputies, for all succeeding regimes in Ghana. The argument for a small size of government is still relevant. For instance, if we have twenty Regional Ministers (inclusive of their Deputies), thirty-eight other Ministers (i.e 19 Cabinet Ministers and their Deputies) and three or four non-Cabinet Ministers with Deputies. On the basis of this a government can run with a maximum of sixty-five Ministers. We may restrict the number of ministers through practice and not necessarily through legislation.

Article 78 (1) provides that "Ministers of State shall be appointed by the President with the prior approval of Parliament from among Members of Parliament or persons qualified to be elected as Members of Parliament except that the majority of ministers of State shall be appointed from among Members of Parliament." The Constitution places a difficult obligation on Parliament to "approve" the President's nominees.

Accordingly, the minimum qualification for a person to be appointed a minister is to be a Member of Parliament or a person qualified to be a Member of Parliament. Article 78 therefore places the responsibility of the appointment of ministers on both the Executive and the Legislature. The Legislature is to give prior approval to the President's nominees.

Nothing is laid down in the Constitution as to what the qualifications of a Minister of State should be other than he or she being a Member of Parliament or qualified to be an MP. But as their function is to assist the President who is the fountain of honor, it is assumed that they will be persons of good standing in the community. The question now is whether moral turpitude must be used as basis for the approval or otherwise of ministers.

The Constitution does not specifically say so as is done in the case of Superior court judges who are not qualified for appointments unless he or she is a person of "high moral character and proven integrity".

But I think the Code of Conduct for public officers contained in Articles 284-287 liberally read together with the oaths of Ministers of State, Cabinet and the Official Oath should make it possible for the Appointments Committee to interest itself in the moral character and integrity of a nominee. In any case, what harm does it cause the nation to demand of a nominee to public office a high standard of moral character and integrity?

Those countries which support about 40% of our national budget have not achieved the ability to do so, by allowing their ministers who use public occasions or funds to indulge in fruitless gallivanting life when they go to conferences which often leads to reckless ruins which are of no benefit to their people.

The President, in swearing in the three "discredited" Ministers of State Dr. Richard Anane, Roads and Transport, Sheikh I. C. Quaye, Greater Accra Region and Mr. Isaac Edumadze, Central Region remarked that "there were people in the society who felt that your nominations should have been withdrawn but I will not exercise that role *since Parliament had deemed it fit to pass you*". The President, by this remark, was shifting blame to Parliament and at the same time expressing regret for their approval. The President could simply have withdrawn their nominations without agonizing further. Ministers of State must not only be persons with proven character and ability but of high moral character and integrity. Especially when the President has the *yes men* in Parliament. The approval of the three Ministers waned/eroded public interest in the vetting process.

I think Parliament must of necessity look at its Standing Orders as to who should be a member of the Appointments Committee. The current Appointments Committee had at least four nominees being members of the Committee, namely, Hon Hackman Owusu Agyemang, Hon Nkrabea Effah-Dartey, Hon Shirley Botchway and Hon Hajia Alima. The political significance of the approval process by Parliament is greatly undermined.

A review of Order 172 is necessary to strengthen the process of approval. The situation where ministerial nominees sat on the Appointments Committee as members smacks of conflict and undermines the credibility and integrity of the Committee. I support the position that beyond the Appointments Committee, Ministerial nominees must go through another approval process at the Select committee level of Parliament to answer questions pertaining to the sector Ministry and policy.

It is my considered opinion that Article 78 (1) places a joint responsibility on the two organs of government. Ghana operates a hybrid constitution and the executive power of the state is vested in the president. Article 78 (1) in my view, overlooks the doctrine of separation of powers. You have a situation where a Member of Parliament exercises both Executive and Legislative powers (where the MP has been appointed a Minister).

Parliament regulates its own procedures – Article 110 (1). The effect of this Article was to empower Parliament by Standing Orders to regulate its own procedures. There is an Appointments Committee of Parliament (Order 172 of the Standing Orders of Parliament) which sits and scrutinizes persons nominated by the President for prior approval.

Any appointment by the President without the prior approval of Parliament will be unconstitutional and the Supreme Court has the power to so declare that appointment. The life of office of a Minister or Deputy Minister cannot go beyond the life of the President or Parliament. However, Ministers or Deputy Ministers can continue to hold office for a "reasonable time" to allow the President to appoint new Ministers or Deputy Ministers after he is sworn in. What constitutes reasonable time is yet to be determined by Parliament.

Unlike Article 64 (2) of the 1969 Constitution of Ghana which provides that a Minister's office becomes vacant, inter alia, on the dissolution of the National Assembly, such a provision is absent in Article 81 of the 1992 Constitution. Ministers or Deputy Ministers of a previous government may continue to hold office after the dissolution of the National Assembly.

The work of the committee has in recent times come under intense public scrutiny and sometimes, public condemnation. Some members of the public

have expressed indignation at the recent approval of three ministers of state of questionable character and integrity. The possibility of the rejection of the President's nominee is very minimal and Parliament has become more or less a rubber stamp in the exercise of its duty of prior approval of ministers. The majority will always out-muscle the minority on the issue, particularly as there is little chance of a rejection. The vetting process is reduced to an exercise in futility, especially in the situation where the President's party has the majority in Parliament.

The framers of the Constitution had intended that the office of these Ministers and Deputy Ministers should terminate with the life of the President and parliament but no express provision was made to that effect. There is therefore a defect in Article 81 which states when the office of a Minister of State shall become vacant. What is intended and what is actually expressed are two different things.

Conclusion

In Ghana, the President's nominees for ministerial appointments go through a vetting process at a committee of Parliament known at the Appointments Committee. The membership of the Committee is bipartisan but often dominated by the majority party in Parliament. In recent times, the motive of the vetting process has been questioned by many. Is it to expose the wrongdoings of Ministers or it is to disqualify unsuitable candidates? It remains doubtful whether Parliament has the authority to reject the President's nominees, especially where the ruling party has the majority in Parliament.

I think the public interest requires a review of the position where a nominee "sits in his own court" as a nominated Minister and a member of the Appointments Committee. This is a clear case of conflict of interest. We need to give clearer guidance by reviewing our Standing Orders under such circumstance to exclude nominees from sitting in the Appointments Committee. Issues raised at the Appointments Committee against nominees that border on integrity, abuse of office and corruption must be investigated further by the Executive or state institutions such as CHRAJ, the SFO and the President's Office of Accountability.

CONSTITUTIONAL CHALLENGES

Dr. P.E. Bondzi-Simpson

Questions arising

A number of questions arise from the symposium topic. For example, in respect of the "appointment" of Ministers of State ("Ministers"), who is qualified to be Minister or a Deputy Minister? Doesn't the Constitution create different classes of Ministers? Must Ministers or a majority of them be drawn from Parliament? What are the Constitutional duties of a Minister? Is there any requirement for Ministers to be full-timers? Shouldn't there be a ceiling on the number of Ministers (which ceiling may be reviewed from time to time)? Must Ministers be subjected to prior approval by Parliament? What form should "prior approval" take"? Should it be by Parliamentary vetting?

In respect of "vetting" of Ministers, some of the questions arising are: Are there Constitutional provisions, Standing Orders or even constitutional conventions that require or prescribe Parliamentary vetting of Ministerial candidates? If there are none, should there be any such provisions? If so, what form should those provisions take?

The constitutional scheme on ministerial appointments

The Constitution creates two types of Ministers of State, the Executive Minister (popularly called the "Sector Minister")[1] and the Regional Minister.[2] There are a number of differences in the Constitutional position of Executive and Regional Ministers. First, the Constitution places Executive Ministers and their Deputies under Chapter 8 entitled "The Executive" but it places Regional Ministers and their Deputies under Chapter 20 entitled "Decentralization and Local Government." Second, whereas the majority of Executive Ministers are to be drawn from Parliament,[3] there is no such requirement for Regional Ministers.[4] Third, whilst there is no requirement for the President to appoint a Minister for any particular sector (except the Attorney-General, who shall, among other duties, be the principal legal advisor to Government),[5] the President is mandated to appoint a Minister of State for every region.[6] The Regional Minister shall represent the President in

the region and he shall be responsible for the coordination and direction of the administrative machinery in the region. Fourth, while the Constitution expressly provides that Executive Ministers and Deputy Ministers must be qualified to be Members of Parliament ("MPs") there is no such qualification for Regional Ministers[7] and their Deputies. Does it mean that persons unqualified to be MPs or Executive Ministers and their Deputies are not disqualified from becoming Regional or Deputy Regional Ministers? Such a proposition is arguable but should fail. The spirit of the Constitution seeks minimum qualifications for Ministers of State. In any event, Article 295 – the interpretation section of the Constitution – defines Minister to include one appointed under Article 78 or 256.

The Constitution sets the minimum number of ministers at 21. How 21? The Cabinet must have at least 10 - and at most 19 – Ministers.[8] There must be an Attorney-General as a Minister of State.[9] The Attorney-General need not be a Cabinet Minister. There will also generally be as many Regional Ministers as there are regions. There are 10 regions now. 10 + 1 + 10 = 21.

By Constitutional construct, or by operation of law, one can say that until the Electoral Commission revises the number of constituencies,[10] there will be a ceiling of 470 Ministers of State! How 470? Since the majority of Executive Ministers must come from Parliament, and since Parliament now has 230 Members, there cannot be more than 459 Executive Ministers (ie 230 MP Ministers and 229 non-MP Ministers). Add the Attorney-General whose position is guaranteed by Article 88. Add the 10 Regional Ministers. Total number of Ministers should not exceed 470!

So the President will be within his Constitutional rights to appoint 470 Ministers of State! And worse still yet, he can appoint an unlimited number of Deputy Ministers! After all, the Constitutional requirement that the President may appoint the majority of his Ministers from Parliament does not apply to appointments of Deputy Ministers, be they Deputy Executive Ministers or Deputy Regional Ministers! Though it may seem strange and far-fetched, indeed ridiculous and absurd, it is nevertheless constitutionally possible for the President, subject to Parliamentary approval, which may be forthcoming if he controls Parliament, to appoint 470 Ministers and the entire membership of his political party who are qualified to be MPs (excluding the Ministers) as Deputy Ministers.

I am respectfully of the view that once there is the possibility of an undesirable outcome, reasonable measures must be put in place to prevent it from occurring. I do not share the view that since the worst hasn't occurred (yet) and may seem unlikely to occur, there is no need to take adequate preventive measures.

Let's return to the constitutional scheme. Executive and Regional Ministers and their Deputies are "nominated" by the President; they must receive Parliamentary "prior approval"; if they do, they are then "appointed" by the President. Deputy Ministers are nominated by the President in consultation with Ministers.

Ministers and their Deputies serve at the pleasure of the President, (ie their appointment may be revoked at any time by the President.)[11] The President may also transfer them from one Ministry to another or maintain them as Ministers or Deputy Ministers "without portfolio". The office of Minister or Deputy Minister of State may also become vacant if the holder is elected Speaker or Deputy Speaker[12] or resigns[13] or dies.[14] Also, by operation of law, as declared by the Supreme Court,[15] when the terms of the President and Parliament expire (usually at midnight on January 6th every four years after 1993), the term of Ministers also expires.

Another point made by the majority of the Supreme Court Judges in the *J.H. Mensah case*[16] is that though Ministers require to receive Parliamentary "prior approval" before being appointed, they are not required to be considered and vetted!

J.H. Mensah v. A-G[17]

The brief facts of the case are that the National Democratic Congress ("NDC") won the Presidential and Parliamentary elections. The President sought to retain some of his previous Ministers without obtaining Parliamentary approval of the Second Parliament of the Fourth

Republic. The argument made by the Attorney-General to support such a move was that the First Parliament of the Fourth Republic had already approved of the retained Ministers. There was therefore – or there ought to be deemed – the necessary Parliamentary prior approval. The Plaintiff disagreed with this move and its interpretation and sued at the Supreme Court. While the suit was pending, Parliament, which had an NDC majority, passed a resolution that all retained Ministers had been approved by Parliament. There had been no vetting of those Ministers by Parliament or a Committee of it. The Plaintiff amended his writ and sought a further declaration that Parliamentary "prior approval" required consideration and vetting by Parliament.

The Supreme Court (constituted by Justices Aikins, Ampiah, Hayfron-Benjamin, Acquah and Sophia Akuffo) unanimously held, among other things, that all Ministers (retained and new) require "prior approval" by Parliament. Once there is a new term of office for a President, all of his Ministers, whether retained or new, require "prior approval" by Parliament. "Prior approval", however, is not a term of art and its meaning has to be gleaned from the context in which it is used.

The Supreme was also unanimous in holding that though the Constitution was silent on the matter, by operation of law, a Minister's term expires with that of the President (unless it is otherwise sooner determined).[18]

However, the Supreme Court was divided 4:1 on the question of whether "prior approval" as used in Article 78 (1) of the Constitution requires consideration and vetting by Parliament, as proposed by J.H. Mensah and as opposed by the Attorney-General. The majority decision of the Supreme Court (read by Acquah JSC as he then was) was that prior approval does not necessarily require Parliamentary consideration or vetting. How Parliament chooses to give its approval is left to it; the courts will not intervene if no violation of the Constitution has occurred. If Parliament chooses to pass a resolution to approve of the "retained" or "hold-over" Ministers, such a resolution is not unconstitutional.

The minority decision (of Aikins JSC) was that though the phrase "prior approval" is not a term of art, under the circumstances and in the context that it is used in the Constitution, it does require Parliamentary consideration or vetting.

The majority decision carried the day and is the law of the land. However, there are some worrisome implications of the majority decision.

Q1. What if Parliament passed a resolution that all "retained" Ministerial nominees were automatically rejected? Would that have been constitutional?

Q2. Is it constitutional for Parliament to adopt different procedures to grant prior approval for different classes of Ministers? Is it constitutional for there to be automatic adoption by resolution for "retained Ministers" and consideration/vetting for new "Ministers"?

My answers to my own questions are that:

A1. It would be unconstitutional for Parliament to pass a resolution that all "retained" Ministerial nominees are automatically rejected! Parliament is a deliberative body. It must consider every matter before it and decide on the merits after consideration. It is unfortunate for our Constitutional development and for democracy for the Supreme Court to endorse a Parliamentary resolution which, in essence, admits that it has not considered the matter for which it has granted approval!

A2. It will be unconstitutional for Parliament to adopt different procedures to grant prior approval for different classes of Ministers. It will constitute invidious discrimination and be unconstitutional for there to be automatic adoption by resolution for "retained Ministers" and consideration/vetting for new "Ministers". In fact, it makes sense for a Minister who has held office before and who has been proposed for continued service to be

> required to account to Parliament for his stewardship the first time round and for his competence and suitability whilst at post the first time round to be scrutinized. It will be discriminatory and unconstitutional for "retained" Ministers (who particularly have to be vetted) to be approved wholesale by resolution and "new" Ministers to be subjected to different treatment. What is good for the goose is good for the gander!

The Supreme Court missed a fine opportunity presented by the *J.H. Mensah case* to decree Parliamentary consideration and vetting as part of the constitutional requirements of "prior approval". The Supreme Court declined the opportunity to demonstrate judicial activism and creativity and rather demonstrated undue deference to Parliamentary manoeuvring.

If the Constitution does not prescribe vetting, if the President is not keen that his Ministerial nominees be vetted, if Parliament does not insist on vetting, and if the Supreme Court does not decree vetting, then so much for transparent and accountable government!

Further observations and comments

As previously noted, the majority of Executive Ministers must be appointed from among Members of Parliament.[19] But must it be so? No, it must not. The duties of MPs and that of Ministers are each so important and onerous that each requires dedicated full-timers to do. When the same person is an MP and a Minister, one of the two responsibilities will suffer significantly. The practice in Ghana's Fourth Republic has even been to appoint some Regional Ministers from among Parliamentarians. Such persons have the added impediment of geography: one can't be at a regional capital, say Takoradi or Tamale, and at the seat of Parliament, at Accra, at the same time! Any cursory observer of Parliament on a typical sitting date will note the number of vacant seats, a good number of them belonging to Ministers.[20] The Speaker of the Third Parliament of the Fourth Republic complained at least once about the habitual absence and lateness of many MPs. Why should we design a Constitution to make lateness or absence by MPs more probable? [21] Are the arguments in favour of Ministers to be drawn from Parliament more compelling than the other way round? I don't think so.

There is no logical connection between Parliamentary and Ministerial duties so as to require the majority of Ministers to be Parliamentarians. Nor is Ghana so short of competent personnel, the majority of the few present being in Parliament, so as to require the majority of Ministers to be drawn from Parliament! Why should the President be confined to Parliament to choose his Ministers to execute his mandate? Why can he not choose them from the overwhelming vast majority of Ghanaians from outside Parliament? The Constitutional requirement encourages persons who have only Ministerial ambitions and no interest in Parliament to seek Parliamentary office. Parliament has become a stepping stone in the pursuit of Ministerial office; worse still, Parliament is becoming more and more a subordinate arm of government to the Executive, and not an arm equal with it.

It is further observed that no convention has yet been developed on how Parliament may grant "prior approval" of Ministerial nominees. In the First Parliament of the Fourth Republic, the NDC ran a de facto one-party state. The New Patriotic Party ("NPP") boycotted the 1992 elections and, save for 2 independent MPs, Parliament comprised of NDC MPs and those from allied parties. Parliament therefore did not vet any Presidential nominee for Minister. During the Second Parliament of the Fourth Republic, the NDC-Government procured automatic Parliamentary approval (by a resolution) of the "retained Ministers" and the Supreme Court granted approval to this practice.[22] The NPP formed the government during the Third Parliament and introduced "vetting", which they have repeated during the Fourth Parliament. No other party has adopted the vetting procedure, and we are yet to see what any other party would do. For the time being, the position is this: the two-term NDC-controlled Parliament did not adopt vetting as a Parliamentary practice; but the two-term NPP-controlled Parliament has. No Parliamentary convention has therefore yet been established on vetting or on the

procedures and standards that Parliament will adopt when it has to approve or reject Ministers.

Neither the Constitution nor Parliament's Standing Orders set out criteria for approval or rejection of candidates as Ministers or Deputy Ministers. But the Constitution requires that Executive Ministers and their Deputies should be MPs or "persons qualified to be MPs.[23] The qualifications and eligibility criteria to be an MP are very simple. In the main, a candidate must be at least 21 years old and be a registered voter; must have paid his taxes or made satisfactory arrangements to have paid his taxes; he should not be bankrupt, a criminal convict or of unsound mind; and he should not be a public servant or chief.[24] Given the above criteria, it has been observed that "any shoe-shine boy can be a Minister!"[25] I should add that under the scheme of things, any shoe-shine boy can be an MP![26]

Perhaps the time has come when – by Parliamentary convention, or Parliamentary Standing Orders, or by Act of Parliament – very high and not very low qualifications and eligibility criteria for the high and demanding office of Minister be provided. A Minister is the chief implementing officer, chief manager, and chief spokesman for the Ministry or Region. A candidate for ministerial appointment should have demonstrated an ability to carry out the functions of his office. Shouldn't the Appointments Committee publish standards by which it would evaluate nominees? Isn't it standard practice for there to be a mark-sheet setting out criteria and mark allocation for most job interviews, particularly for middle-level and top management positions?

Another observation: Nowhere does the Constitution require the Minister to be a full-timer. Part-time Ministers are, by Constitutional silence or omission, permissible. What the Constitution requires, however, is that Ministers and Deputy Ministers require the Speaker's permission to hold any other office of profit or emolument, whether private or public and whether directly or indirectly.[27] Before the Speaker gives his permission, a Committee of Parliament should have made such a recommendation to him on the ground that holding that office will not prejudice the work of the Minister and that no conflict of interest arises or would arise as a result of the Minister holding that office.[28]

There is also very little in the Constitution or anywhere else that sets out the duties and functions of the Minister. The notable exceptions are the Attorney-General[29] and Regional Ministers[30] whose duties are constitutionally enumerated. But by inference drawn from the duties of Cabinet[31] and those of Regional Ministers,[32] it is fair to say that a Minister's duty is to head the Ministry or Region to which he has been assigned, to assist the President in determining the policy of Government as applies to his Ministry or Region, to represent the President in the Ministry or Region, and to be responsible for the administrative machinery in the Ministry or Region.

The final observation to be made here is that the Appointments Committee of Parliament, which is to vet Ministerial nominees, is itself made up of some members who are themselves Ministerial nominees. Is this legal? Is it right? Should something be done about it? If so, what should be done?
Unfortunately, it is legal that the Appointments Committee of Parliament, which is to vet Ministerial nominees, is itself made up of some members who are themselves Ministerial nominees. But it is not right. Something should be done about it; and that something will be described in the following section.

The Standing Orders ("SOs") provide that at the first meeting of every session of Parliament there shall be appointed a Committee of Selection comprising Mr. Speaker as Chairman and not more than nineteen other Members to compose a number of Standing Committees of the House, including the Appointments Committee, to be appointed by Parliament.[33] The SOs also provide that changes in the Membership of any Committee may be effected by the Committee of Selection at the beginning of every Session in the following manner:-[34]

(a) during the Session of Parliament by the Committee of Selection with the consent of the Member concerned; or failing that, at the request of two-thirds of all the Members of the Parliamentary Party to which the Member belongs or in the case of an independent member by a simple majority of Members of the House;

(b) the Leader of the party affected by the change shall notify the Chairman of the Committee stating the reasons for the change and the name of the nominee to replace the outgoing Member; and

(c) the Chairman shall notify the House of the Change.

The SOs define a "Session" to mean a series of meetings of Parliament within a period of twelve months.[35] The result then is this: even if a good reason arises to re-compose the Appointments Committee – or any other Parliamentary Committee for that matter – it shall have to go through the cumbersome process described above, and any such change may – indeed, will invariably – be "effected" at the beginning of the next Session of Parliament.

A simple amendment to the SOs which says that a Member who is nominated to one of the positions which requires Parliamentary approval should be deemed to have consented to his exclusion from the membership of the Appointments Committee would solve the problem.

Order 172 of the Standing Orders of Parliament also provides that:

"(1) There shall be a Committee to be known as the Appointments Committee composed of the First Deputy Speaker as Chairman and not more than twenty-five other Members."

"(2) It shall be the duty of the Committee to recommend to Parliament for approval or otherwise persons nominated by the President for appointment as Ministers of State, Deputy Ministers, Members of the Council of State, the Chief Justice and other Justices of the Supreme Court, and such other persons specified under the Constitution or under any other enactment."

"(3) The names of persons nominated for appointment in the Committee shall be published, and the proceedings of the Committee shall be held in Public."

"(4) The Committee shall report to Parliament within three days after it has concluded its proceedings when Parliament is sitting. Parliamentary approval of persons recommended for appointment shall be by secret ballot or by consensus."

"(5) Each Member shall be provided with a sheet of paper on which appears the names of all candidates for approval or rejection. Against the name of each candidate shall be two columns, one for AYES indicating approval and the other for NOES indicating rejection."

"(6) A cross against one name in the AYES column and another cross against the same name in the NOES column shall render the vote null and void."

"(7) Every ballot paper shall bear the stamp and the initial of the Speaker."

"(8) A candidate who fails to secure fifty per cent of the votes cast is rejected."

Again, nothing is said in the Standing Orders about competence and suitability for office. It is, now, a purely political question, to be decided only by Parliamentary vote, whether a Presidential nominee will be approved or rejected. That is not good enough. Even if the final decision will a political one, determined after a Parliamentary vote, the Standing Orders or Parliamentary Convention or the Appointments Committee should specify criteria by which it will recommend appointment or rejection, and those criteria should be published in advance of the process by which appointment or rejection will be recommended. Furthermore, the Appointments Committees report to Parliament should specifically provide reasons for recommending rejection of a nominee, and the reasons should be in accord with the criteria of evaluation of nominees.

Recommendations

Before making any recommendations, and in order to better understand any recommendations to be made, let's briefly recapitulate some of the points developed already. So far, we have pointed out that:

1. There is no constitutional requirement for Parliament to consider or vet Ministerial nominees.
2. The majority of Executive Ministers must be appointed from among Members of Parliament.
3. There is no ceiling as to the number of Ministers – or more precisely, there is a ceiling of 470 Ministers.[36]
4. There is no ceiling on the number of Deputy Ministers.
5. There is no law which requires Ministers or Deputy Ministers to hold full-time office. It is thus possible for there to be part-time Ministers or Deputy Ministers.
6. Ministers and Deputy Ministers require the Speaker's clearance to hold any other office of profit or emolument.
7. Appointments Committees comprise some members who are themselves Ministerial nominees.
8. No Convention has yet been developed on how Parliament may grant "prior approval" of Ministerial nominees.
9. Neither the Constitution nor Parliament's Standing Orders set out criteria for approval or rejection of candidates as Ministers or Deputy Ministers.
10. Although the Appointments Committee is to report to Parliament after its proceedings, there is no requirement for it to provide reasons for its recommendations and there is no requirement for it to publish its report.

In the light of the above observations, may I respectfully make the recommendations that follow in order to improve upon our democracy and Parliamentary practices and to ensure accountability, transparency and good governance in Ghana.

1. *Parliament should amend its Standing Orders[37] – or pass a Constitutional or Statutory Instrument[38] - to provide for consideration and vetting of Ministerial nominees.* This recommendation does not require a constitutional amendment and should be easy to secure should Parliament have the will to do so. The amended SOs should provide that members of the Appointments Committee who are nominated to any Ministerial or Deputy Ministerial position or other position that requires Parliamentary approval shall be deemed to have consented to removal from the Appointments Committee. The amended SOs should also set out criteria for approval or rejection of candidates as Ministers or Deputy Ministers.[39] The amended SOs should expressly provide the procedure for "prior approval" of Ministers. Such procedure should include:

   (a) Public vetting by the Appointments Committee;
   (b) The Appointments Committee should publish its report and the reasons for any recommendation to Parliament to reject any Minister;
   (c) Debate in open Parliament on the Appointments Committee's published report, and
   (d) Voting by secret ballot by MPs on Ministerial nominations.

2. *Ministers should not be drawn from Parliament.* The country requires Ministers and Parliamentarians to be devoted exclusively to their respective and onerous duties. This proposal, however, requires a Constitutional amendment.

3. *There should be an Act of Parliament setting a ceiling on the number of Ministers and Deputy Ministers and making these offices full-time ones.* This need not be done by constitutional amendment. The same result can be achieved by Act of Parliament. Such legislation should also provide that the office of Minister and Deputy Minister is a full-time and exclusive one. Such legislation will not conflict with any provision of the Constitution. There should be a number of Regional Ministers not exceeding the number of Regions. Each Regional Minister should have no more than one Deputy. There should be no more than 25 Executive (or Sector) Ministers, including Cabinet

Ministers and the Attorney-General, as provided for by the Constitution. There should also be no more than 30 Deputy Ministers. The result is that, given the number of Regions Ghana now has, there should be no more than 35 Executive and Regional Ministers and no more than 40 Deputy Executive and Regional Ministers. There are several advantages to limiting the number of Ministerial appointments.[40] First, patronage and patrimony will be drastically reduced. Corruption at primaries and bank-rolling of candidates for elected offices will also be drastically reduced since there will be fewer Ministerial positions on offer. Again, when too many people occupy an office, it is cheapened. And too many cooks spoil the broth. Placing a cap on the number of Ministers will restore that office to the exalted and dignified position that it deserves. Finally, if there is good reason for the law to place a cap on the number of Cabinet Ministers, there is equally good reason for the law to place a cap on non-Cabinet Ministers.

Conclusion

The 1992 Constitution is largely a workable and good document. However, there are some constitutional omissions and as well as impediments that impact or potentially impact adversely on questions relating to the appointment and vetting on Ministers.

This paper has attempted to expose some of those difficulties and offer some recommendations for improvement.

End Notes

1 Constitution of the Fourth Republic of Ghana ("Constitution"), 1992 Article 78 (1).
2 Ibid. Article 256 (2).
3 Article 78 (1).
4 Article 256.
5 Article 88.
6 Article 256 (1).
7 Articles 78 (1) and 79 (2).
8 Article 76 (1).
9 Article 88 (1).
10 Article 93 (1) provides that Parliament shall have a minimum of 140 Members. The 4th Republic however commenced with 200 Members. During the Fourth Parliament of the Fourth Republic, the number of seats was increased to 230.
11 Article 81 (a).
12 Article 81 (b). Hon. Mallam Issa, Minister of Youth and Sports during the first part of the Third Parliament of the Fourth Republic had his appointment revoked by the President.
13 Article 81 (c).
14 Article 81 (d).
15 *J.H. Mensah v. A-G* [1996-7] SCGRL 320
16 Ibid.
17 Ibid.
18 Such as by the Minister's resignation, death, appointment as Speaker or Deputy Speaker or revocation by the President.
19 Article 78 (1).
20 But when an important vote in Parliament is required, the whip and other party machinery ensure that all MPs – Executive Ministers, Regional Ministers, Deputy Ministers and all, ill-health or good, are rallied together and in situ to vote for the Government position.
21 It is conceded that an irresponsible or indolent MP or one who is not conscientious will skip Parliament altogether, or come late when he feels like coming, whether or not he is a Minister. The point, however, is that such an MP will be given a better excuse for his irresponsibility, lateness or absence by the present Constitution.
22 *J.H. Mensah v Attorney-General* [1996-7] SCGLR 320.
23 Article 78 (1).
24 Article 94
25 Hon. Haruna Iddrisu, MP for Tamale South, presenter at CDD symposium on above topic held on March 17, 2005.
26 I have borrowed the expression from the Hon. MP. It is not used in any derogatory context and it does not suggest that there is any necessary connection between occupation on one hand and education and competence on the other hand. It is possible for a Ph.D holder to be a shoe-shine boy, although it is highly improbable in Ghana.

I have elsewhere argued that the qualifications of MPs should be raised. The job description of MPs includes debating and drafting laws for the land. A demonstrated ability to think clearly and objectively, to read and write, to research issues, and to articulate one's position, are essential pre-requisites of effective MPs. Educational qualifications (say, satisfactory pass-mark of Senior Secondary School examinations) should be an express minimum requirement. See P.E. Bondzi-Simpson, "Its time for Constitutional Amendment", *The Statesman*, Monday 31 Jan. 2005, p. 6.
27 Articles 78 (3) and 79 (3).
28 Article 78 (3).
29 Article 88.
30 Article 256.
31 Article 76 (2)
32 Article 256 (1)
33 Standing Orders of the Parliament of Ghana (commencement: 1st November 2000), Order 151 (1) and (2)(h).
34 SO 193.
35 SO 5.
36 There is, however, a floor (10) and a ceiling (19) for Cabinet Ministers: see Article 76 (1).
37 Pursuant to Article 110 (1) of the Constitution.
38 Pursuant to Article 296 of the Constitution.
39 Article 296 of the Constitution requires that discretionary powers be exercised in a fair and candid manner and not arbitrarily, capriciously or be actuated by resentment, prejudice or personal dislike. It also requires that where a person is not a judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations to govern the exercise of the discretionary power.
40 At the symposium at which this paper was presented, a number of participants were uncomfortable with any proposal to amend the Constitution just yet. Some of them also felt that it was unnecessary to place a cap on the number of Ministers since the President should be given the free-hand to appoint whoever he wished and as many people as he required, to move his agenda for the nation forward. But when a question was posed as to whether they had an upper limit in their mind beyond which they would consider there to be too many Ministers, all seemed to have a number in mind although that number was articulated. When it was suggested that the President could presently appoint up to some 460 Ministers, all thought that this number was ridiculous! This means that it is open to debate what the upper limit of Ministers ought to be but not that there should not be an upper limit of Ministers.

At the same symposium, the Chairman, Prof. Nii Ashie Kotey, Dean of the Faculty of Law, wondered whether instead of setting

an upper limit on the number of Ministers, there should not be a requirement that Ministries be established by legislation to ensure Parliamentary controls over the number of Ministries, their mandate and matters relating to financing them.

My view on the Prof. Kotey's proposal is that it is easier to pass one law fixing a reasonable ceiling on the number of Ministries than to it will be to pass as many separate legislation as there will be Ministries. Furthermore, once a ceiling is fixed, the President should be given the free-hand to work within the ceiling stipulated, to establish the Ministries he desires and to appoint suitably qualified persons who have been approved by Parliament to head those Ministries. In any event, some persons are appointed as Ministers-without-portfolio and the proposal will not cover them, unless the law further provides that every Minister shall be assigned a portfolio (ie Ministry) or region.

SUMMARY OF THE SUBMISSIONS ON THE MINISTERIAL "VETTING" PROCESS

Speakers at the roundtable readily acknowledged that there have been significant improvements in the recent ministerial vetting process, compared to what had transpired in the past. Such improvements included enhanced public access to the proceedings through extensive media coverage, increased public patronage of the proceedings exhibited by a rise in the volume of petitions received by the Appointments Committee and an improvement in the substance of questions put to nominees. Notwithstanding these achievements, they also pointed to continued problems and deficiencies in the ministerial approval process, ranging from institutional to procedural weaknesses.

Principally, concerns were raised over the lack of a constitutional or statutory requirement to vet ministers, the lack of formality and clarity with respect to the operation of the Speakers' permission to ministers and parliamentarians to engage in extra-official and parliamentary businesses, the failure to examine moral turpitude in the consideration of the suitability of ministerial nominees and the conflict of interest problems posed by ministerial nominees sitting on the Appointments Committee, among others.

Experts agreed that the Standing Orders of Parliament needed to be amended to ensure that members of the Appointments Committee who are nominated as ministers recuse themselves from the committee. Secondly, that there was a need for the Appointments Committee to formalize and make transparent the criteria for approving or rejecting ministers. Some recommended further the amendment of constitutional provisions that directly crippled the ability of the Appointments Committee to discharge its responsibilities. These crippling provisions included the requirement that the majority of ministers must come from parliament and provisions supporting a general imbalance of power between the Executive and Legislature, guaranteed by the constitution.

Arguments were advanced in favor of placing a ceiling on the number of ministers that the President can appoint, promulgating a credible public office holder asset declaration regime to complement the vetting process, and extending the vetting process to the approval process of District (Municipal and Metropolitan) Chief Executives at the District Assembly level.

CDD's OVERALL RECOMMENDATIONS

1. Parliament should adopt a convention or amend the Standing Orders to require members of the Appointments Committee nominated for ministerial or deputy ministerial positions to recuse themselves during the prior approval process. In the alternative, the Speaker can reshuffle such members from the Appointments Committee to other Committee once they become nominees.

2. The Appointments Committee should come out with specified criteria by which it recommends or rejects a nominee and publish it in advance of the next prior approval process.

3. Parliament should adopt a convention or amend the Standing Orders to require the Appointments Committee to report to the House to provide reasons for recommendation or rejection in accordance with the set criteria.

4. DAs should subject DCE nominees to the vetting process to bring the process in strict conformity with the Model Standing Orders under Order 16.

5. The Executive must undertake better nominees pre-screening investigations to minimize the burden on the Appointments Committee while the Committee must make more use of the services of the SFO, Attorney-General and undertake investigations and verification of petitioner claims and nominee counter claims.

6. Parliament should formalize, regulate and make transparent the practice of the Speaker's granting permission to MPs and Ministers to pursue extra-parliamentary and extra-official activities. Preferably, Parliamentary Select Committees should be entrusted with this power and not the Speaker. As a back up, the Executive should help enforce Article 284's injunction against conflict of interest by instituting a similar regime to Articles 98(2) and 78(3) through the Office of Accountability.

7. Parliament must urgently improve the Asset Declaration Regime to make it more accessible and verifiable and work towards a more credible code of conduct on conflict of interest. ■■

CDD-Ghana Briefing Papers are generated from commissioned research on topical issues, as well as presentations at round-table discussions at the Center.

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ISSN: 0855-4005