

## **Government Response to Public Opinion in Ghana's Constitutional Review Process**

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### **Abstract**

*The government appointed a Constitutional Review Commission (CRC) in 2010 to solicit popular opinion on the need to review Ghana's 1992 Constitution. The review became necessary against the backdrop of perceived challenges of some provisions of the Constitution that were believed to be obstructive to the maturation of Ghana's democracy. In order to ensure that the opinion of the public constituted an essential part of the review process, a nation-wide popular opinion survey was conducted by the Governance Unit of the Institute of Economic Affairs (IEA) to ascertain from the citizens regarding their views on aspects of the Constitution that should be reviewed. This article analyzes how the government responded to each of the issues raised by the public in the survey. The analysis shows that public opinion on critical aspects of the constitution that should be reviewed did not receive governmental attention. The article recommends that the government should work together with parliament and civil society to incorporate public opinion in the final document for sustainable democratization in Ghana.*

### **Introduction**

There was a constitutional appraisal process in Ghana between 2010 and 2011. The process sought to review the 1992 Constitution that had survived nearly two decades of uninterrupted constitutional rule and had ensured two turnovers in the leadership of the country from one political party to another. Even though the constitution provided for the enabling framework for nurturing Ghana's vibrant democracy, it nevertheless, contained provisions that hindered the full maturation of the democratization process. The need for a review of the constitution was stimulated by the Institute of Economic Affairs' (Governance Unit) two-year study on Ghana's democracy. The study

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which culminated in a report christened *The Democracy Consolidation Strategy Paper* was an audit of the gaps in Ghana's democratic practices. One of the recommendations made in the report was the need for a review of the constitution to address the challenges that have been experienced over a decade constitutional rule (IEA-Ghana, 2007). In seeking to influence public policy and the reform process, the IEA submitted several policy briefs regarding the gaps in the democratic practice that needed to be reviewed for the consideration of the government, policy makers including other elite groups in Ghana.<sup>1</sup>

The presidential candidate of the National Democratic Congress (NDC), Prof. J.E.A Mills was one of those who embraced the suggestion for the review of Ghana's constitution. As part of his 2008 election campaigns, Prof. Mills pledged his commitment to implement the proposal and re-echoed his pledge during the IEA-sponsored 2008 Presidential Debate on 29 October 2008. In fulfilment of his campaign promise, Prof. Mills who won the 2008 Presidential Elections set up a nine-member Constitutional Review Commission (CRC) on 8 January 2010 to oversee the review of the 1992 Constitution. It must be noted that in the past, the frequent military overthrows of the constitutions did not encourage periodic self-reflective and comprehensive assessment of the democratic process. Any constitutional reforms that were undertaken took the form of state reconstruction after the military had disengaged. The review of Ghana's 1992 Constitution was therefore the first opportunity for assessing and reforming a functioning constitution since the attainment of a Republic in 1960.

As a transitional democracy climbing the ladder of democratic progression, the need to ensure popular participation and ownership of such an important exercise as constitutional review cannot be glossed over. In this regard, public opinion about which aspects of the 1992 Constitution required a review, and provisions that should be maintained would be crucial. Again, how such opinions expressed by the public shape governmental response is also critical in consolidating democracy. The CRC submitted its report to the government in December 2011 and thereafter, the government issued its response accepting some of the reform proposals and rejecting others. A Constitutional Review Implementation Committee was set up in 2012 to oversee the implementation of the accepted proposals for reform. Unfortunately, there seem to be no study conducted on the constitutional review process and how public opinion shaped it. Therefore, this study is innovative and serves as a foundation for future studies about constitutional

review in Ghana as it undertakes a survey of public opinion on certain critical areas of governance that required reform as well as how such opinions expressed shaped the contents of the Government White Paper<sup>2</sup> on the report of the CRC.

With regards to methodology, the study relied on the outcome of a survey conducted by the Governance Unit of the IEA between July and October 2010.<sup>3</sup> Debates about the need for constitutional review were centred on key issues such as national development planning; the powers of the executive in relation to the other arms of government; the electoral system and the formation of government; decentralization and local government; the role of traditional leaders; and corruption and accountability. The IEA-survey sought to solicit public opinion on these issues after which a report that captured the concerns and opinion of the public on the issues was sent to the CRC to be factored into its final report.<sup>4</sup> Respondents for the survey were drawn from people who had participated in the district consultative workshops of the CRC. Participants in these workshops included representatives from civil society groups, recognized professional associations, opinion leaders and the general public. The rationale for selecting such respondents was to ensure that they were aware of the emerging issues on the constitutional review process.

In each district, there were about 100 participants. Ten respondents were randomly selected for the survey immediately after the CRC workshop was concluded. What this means is that about 10% of the target population was selected for the survey, a sample proportion which is widely acknowledged as sufficient for drawing conclusions. Therefore, across 120 districts, the sample size for the survey was 1,200 respondents. At each location, respondents were numbered 1 through to the maximum number of participants based on a defined sitting order. Out of this number, a random set of 10 numbers were drawn to represent the participants to be interviewed after the workshop. Informed consent was sought from each respondent before a questionnaire was administered. The questionnaires were self administered except in cases where the respondents requested otherwise, in which case trained research assistants administered the questionnaires. The respondents were selected from a diverse background. They came from all the 10 regions of the country albeit not in proportion to the population of the regions. Brong Ahafo, Central and Volta Region had the joint highest representation of 11.6% each, followed by Greater Accra with 10.8% and then the Northern and Upper East Region, each contributing 10.6% of the sample.

Ashanti Region contributed 10.5% followed by Upper West Region with 9%. The lowest representation came from the Western and Eastern Regions which contributed 7.1% and 6.6% respectively to the sample. Regarding gender distribution, 79% of the respondents were male with 21% being female. All the respondents were more than 18 years, the minimum voting age in Ghana. The respondents were also highly literate and capable of expressing informed opinions about the emerging issues. From the IEA-data, about 65% of them had tertiary level education. Sixteen percent had secondary level education; a further 13% had some vocational/professional level education. Those who had no formal education were less than 1% while 4% had basic education.<sup>5</sup>

Before analyzing the opinion of the respondents and how it shaped the government response, the sections that follow discuss the concept of public opinion. Thereafter the paper analyzes the findings of the IEA-survey submitted to the CRC vis-à-vis the Government White Paper; and draws valid conclusion from the study.

#### **Public Opinion Revisited**

Any time there is an issue in the body politic, it is discussed and in the process, some people may form an opinion about it. The opinion formed may be for or against it; they may be divided. It is the expressed opinion of the people on the issue that constitutes the public opinion of the people in that given community. Therefore, public opinion consists of the expressed views of people about issues of common interest or concern to them. It can also be described as the sum total and aggregation of people's views held on an issue, situation, and public figure by the adult citizens of a political unit (Shamir, 2005; Harrison, 2005; Amoah, 1988). Not all the people in a political community may have opinions on issues of common interest or concern. Indeed, some may not be interested in them at all and others may simply not even hear about the issues at all (Bluwey, 2006). Moreover, on any given issue, different public opinions may exist at the same time but one body of opinion may be dominant (Grigsby, 2005; Heywood, 2007). In the view of Key (1961), public opinion consists of those opinions as held by private individuals which governments find it prudent to heed. This definition is however problematic because it restricts public opinion to only the issues that concerns government. Public opinion can extend to areas and issues that may be of little or no concern to government (Hague and Harrop, 2001).

Generally, for a body of public opinion to emerge, it can be deduced from the above that, first, there must be an issue which is of public concern. Secondly, a significant number of people in the body politic should hold opinions on the issue. Thirdly, the opinion must be expressed. This is crucial because an opinion may be widely shared privately but if it is not expressed, public opinion fails to develop (Harrison, 2005; Ball and Peters, 2005). Fourthly, the expressed opinion must be widely held. Thus, once a public issue arises, some people begin to form opinions on it. If the views of the individuals are expressed to others, by a significant number of them, a public opinion on the issues begin to emerge.

Public opinion has a number of characteristics. As can be inferred from above, the first characteristic of public opinion is its widely-held and dominant outlook on an issue. As pointed out earlier, there may be divergent views on an issue and the different bodies of opinions may be organized. However, one body of opinion may be dominant. It must be noted that in a political unit, if strong opposing public opinions on an issue emerge, a conflict may develop (Amoah, 1988; Macridis and Brown, 1990). The second characteristic of public opinion is that it tends to be more powerful in societies which are free, open and advanced than in societies which are closed and under-developed. Indeed, studies of public opinion by experts have shown that in countries with low level of education and high levels of ignorance, most of the people hardly have opinions on public issues (Magstadt and Schotten, 1988). Many people in such political units have little or no information at all on which to base their opinion. Such people are not informed about major public issues and therefore have no opinions about them (Harrison, 2005; Dye, 1997). Thirdly, public opinion on an issue can be transient, temporary or be held for a long time. Public opinion on a number of issues changes in a few weeks while on some others, it persists for a long time or changes very slowly if at all (Ball and Peters, 2005; Guild and Palmer, 1968). Public opinion changes depending on how deep the people hold the opinion (Goldman, 1972). If it is held for a long time, it tends to be adhered to and it becomes difficult to be changed (*ibid*). Finally, public opinion can be latent. A latent public opinion is a body of opinion that is present within a polity but which is not yet expressed. It becomes active when it is aroused by a policy decision of political leaders (Dye, 1997; Shamir, 2005).

A number of outside agencies help in the stimulation, formation, spread or reinforcement of public opinion. These agencies include one's immediate social group, the mass media, word of mouth, pressure groups and opinion

leaders (Harrison, 2005; Shamir, 2005; Bluwey, 2006; Ball and Peters, 2005). Measuring public opinion becomes somewhat difficult because it is often seen to be vague and nebulous (Goldman, 1972; Guild and Palmer, 1968). In democratic dispensations, governmental decisions must not be out of touch with public opinion. When necessary, governments must pander to the opinion of the public on issues of direct concern to the public (Amoah, 1988; Macridis and Brown, 1990; Shamir, 2005). It must be admitted however that it is sometimes difficult to know the public opinion of the majority of people on a given issue. Abraham Lincoln identified the problem of knowing what the public opinion is on an issue when he said "what I want to get done is what the people desire to have done, and the question for me is how to find that out." In measuring public opinion, most governments use elections and referenda but these devices are not adequate enough as they are conducted far between (Heywood, 2007). The need for continual assessment of public opinion has made some political scientists develop a device called the "Public Opinion Poll" for it (Bluwey, 2006). A public opinion poll is any effort to find public opinion on a question of public interest by directly asking some members of the public what they think about the issue (ibid).

The number of people who are questioned constitute a sample or a cross section of the population and the views of the sample are taken to represent what the whole adult population think about the issue (ibid) . Though few governments, if any, in developing countries use public opinion polls as a device to find public opinions on public issues, polls are now the major tool for measuring and analyzing public opinions in advanced democracies (Macridis and Brown, 1990; Shamir, 2005). In many advanced democracies, opinion polls are conducted by commercial polling organizations. The poll organizations follow four basic procedures in conducting public opinion polls. These procedures are the sampling drawing; questionnaire design; soliciting responses to the questionnaire; and coding, tabulating and interpreting responses received (Amoah, 1988; Bluwey, 2006).

The role of public opinion in a democratic dispensation varies from issue to issue and the way it asserts itself also differs from one country to another. Generally, however, the expression of public views on an issue sets some limits on what those in authority can do (Ball and Peters, 2005). People in authority sometimes yield to popular pressure or factor it into proposed courses of action. Governments abandon policies and decisions in the face of strong popular protests. Besides, they try to avoid decisions which they believe will fly in the face of popular opinion (Guild and Palmer, 1968;

Magstadt and Schotten, 1988). Indeed it is only few governments and people in authority especially in developing democracies that are impervious to public opinion (Goldman, 1972). While popular opinion is a useful check on the authority of rulers, it can sometimes spur them on to take some bold decisions. A favorable public opinion on a course of action emboldens those in authority to pursue that course of action further. More importantly, public opinion helps governments to be responsive and act democratically. It also enables governments to act according to the wishes of the people and if indeed governments wish to uphold the banner of democracy, its policies must necessarily reflect the feelings of the majority of its citizens (Heywood, 2007). However, if a government does not and cannot know those feelings, it can hardly act in accordance with them. It must be added that favourable governmental response to public opinion give citizens a sense of belonging to the political system. This feeling is not only a source of satisfaction to the citizenry but also a source of ownership and support for the government (Amoah, 1988).

The major difficulty in determining what really the opinion of the public is on an issue is that the concept itself is nebulous. Sometimes, the views of the literate in society; the articulate and political demagogues; as well as the privileged few who may have access to the media may be mistaken to mean the opinion of the public. In this regard, governmental response to these views may not really reflect the actual concerns of the ordinary people, particularly those in the rural hinterlands (Bluwey, 2006; Heywood, 2007; Ball and Peters, 2005). Public opinion may therefore play an important role in shaping governmental decisions and policies. The problem, however, is how to figure it out and make it known to all those who are to be influenced by it. In the next section, we analyze the results of the IEA opinion survey on emerging issues for constitutional review and how it influenced the Government White Paper.

### **Analysis**

Governmental response to the result of the public opinion submitted to the CRC and later forwarded as part of the CRC recommendations for constitutional reform to the President was not encouraging. Even though some key proposals were accepted, it is important to point out from the onset of this analysis that certain critical issues of concern to the public which could deepen democracy, promote constitutionalism, check corruption as well as ensure holistic and long term national development were rejected. The response and posturing of the government however typifies nascent

democracies (Gyimah-Boadi and Brobbey, 2012). In terms of democratic progression, Ghana is only an electoral democracy. Indeed, in 1992, Ghana climbed just one step of the ladder of democratic progression from authoritarianism to achieve a transitional or an electoral democratic status (Diamond and Morlino, 2005). Electoral democracies like Ghana, only conduct relatively free and fair elections without viable and credible opposition, and the institutionalization of the basic tenets of democracy. They provide a “sufficiently fair arena of contestation to allow the ruling party to be turned out of office” (ibid). However, they are hollow and a wide gap exists between them and high quality democracies (Diamond, 1997:18). The indicators of high quality democracy including human rights protection; equality before the law; rule of law; accountability; responsiveness; competition; popular participation in the governance process beyond elections; and the need for governmental actions or policies to be shaped or tampered by public opinion are not well developed or completely absent in electoral democracies like Ghana (Diamond, 1997; Mates and Gyimah-Boadi, 2005).

Again and more importantly, governments of Ghana and in many electoral democracies do not easily pander to public opinion largely because it is nebulous and difficult to measure (Bluway, 2006). Not many organizations and individuals in Ghana have the technique and skills to conduct independent and objective opinion polls (ibid). For example, in the run up to General Elections in Ghana, virtually all political parties conduct opinion polls about their electoral fortunes and present outcomes that are almost always nullified by the actual popular preference expressed through elections. This is in sharp contrast to what pertains in high quality democracies like the USA where opinion polls about electoral fortunes and other critical issues of national importance are considered apt, credible and a reflection of the views of the ordinary people (Diamond, 1997). In this regard, governments of Ghana like other electoral democracies, tend to downplay the importance of opinion polls because of lack of trust in the methodology used; and their belief that the outcome of such polls may only be the views of their political opponents, particularly when such views appear not to favor them and curtails the exercise of political power (Mates and Gyimah-Boadi, 2005). With this introductory context, we turn our attention to the response of government to public opinion on Ghana’s constitutional review process.



*National Development Planning*

Overwhelming opinion supported a national development planning. The issues were the term or duration of the National Development Planning Commission (NDPC), the mandate of the NDPC and the sustainability of the National Development Agenda. About 94% of the respondents agreed with the proposition that national development planning must be as far as practicable long-term and devoid of partisan politics. In addition, 95% of the respondents shared the view that the NDPC must have a clearer mandate that incorporates the industrial development of each region. The proposition that there should be a national development planning framework which is entrenched and mandatory for governments to adopt also received 91% support from the respondents.

While the Government accepted the CRC recommendation for a comprehensive long term, strategic multi-year rolling National Development Plan in its White Paper, it did not agree with the CRC that the provision for the development plan should be entrenched; and that the Plan so developed should be binding on all successive governments and enforceable at the instance of any person or institution. In the view of the Government, the two propositions would have the effect of a command model of development planning and, tie the hands of successive governments to the ideological interests and policies of a particular political party (Government White Paper, 2012:4). Therefore, even though the government accepted virtually all the views expressed by the public in the survey on the NDPC and development planning, it nevertheless, rejected a crucial recommendation that would ensure that the nation is able to develop a truly long-term national development plan that may be implemented by all regimes. But this explains why Goldman (1972) indicated that some governments and people in authority, particularly in developing and transitional democracies can be impervious to public opinion.

To demonstrate its disappointment with the government's rejection of the CRC proposal for an entrenched Plan that would be enforceable and binding to all successive governments and to galvanize public opinion against the position of government, the IEA organized a roundtable discussion on 29 August 2013 where representatives of civil society organizations, political parties, academia, clergy, traditional rulers, development experts, and economists were given the platform to thoroughly review the CRC recommendations on the NDPC and the basis for the government's rejection of the proposal for an entrenched plan that would be enforceable and

binding to all successive governments. Additionally, the platform was to provide participants with an opportunity to reach consensus on proposals and influence the on-going constitutional review implementation process in a manner that would ensure that a truly autonomous NDPC with the mandate to formulate broad national development goals for the nation is established. At the end of the roundtable, a consensus was reached that there was no solid basis for the government rejection of the proposal for an entrenched plan enforceable and binding to all regimes. A press statement was therefore issued to this effect and extensively circulated to the media and discussed in the body politic by ordinary people. Thereafter, a report was submitted to the Constitutional Review Implementation Committee.<sup>6</sup>

#### *Relationship between the Arms of Government*

On the power play between the three arms of government, the concern of many Ghanaians has been the over-bearing posturing of the executive in its relation with the other arms of government. Under the 1992 Constitution, the President is allowed to appoint majority of his ministers from parliament. Indeed, what pertains in Ghana is a constitutional hybridity that discards the notion of separation of powers. It borrows and hybrids some features of the US Presidential System with some features of the British Westminster system. However, this arrangement is certainly inimical to the independence and effective functioning of parliament and undermines constitutionalism. In addition, the lack of an upper limit on the number of judges that can be appointed to the Supreme Court is seen as a loophole which governments can exploit to manipulate the Judiciary. These concerns informed the line of inquiry on the power relations between the arms of government.

In their response, 63% of respondents agreed with the notion that the 1992 Constitution gives too much power to the President. About 88% were in favour of separation of executive and legislative responsibilities based on the conviction that the current system does not promote constitutionalism and has little or no mechanisms for holding the government accountable through Parliament. Only 10% of the respondents thought the status quo should be maintained. About 66% agreed with the proposition that the present system allows the president to use his power of appointment to manipulate and control parliament. Indeed 69% of those who favoured the separation of executive and legislative powers thought that the president could use his power of appointment to manipulate and control parliament. In contrast, 45% of those who did not favour the separation of powers believe that the president could use his power of appointment to manipulate and control

parliament. Again, about 76% preferred that Article 78(1) of the 1992 Constitution, which enjoins the president to appoint the majority of ministers from parliament, should be amended. On the judiciary too, about 64% of respondents supported the proposition that there should be a ceiling or an upper limit on the number of judges that can be appointed to the Supreme Court. This, they believed, would contribute positively to a fair and credible dispensation of justice and prevent the manipulation of the judiciary by the executive.

There was however not much commitment on the part of the executive to curtail its own powers even though public opinion weighted against the enormous powers of the executive. The call for separation of powers was not heeded to (Government White Paper, 2012:16). The CRC proposed an amendment to give the president a free hand to appoint ministers from within or without parliament, a proposal which the government gladly accepted but could be described as spurious. This is because even though the reviewed constitution would no longer enjoin the president to appoint majority of his ministers from president, the recommendation opens the flood gates for a power drunk leader to perpetuate the status quo or even appoint all his ministers from parliament in a manner that can further weaken parliament, sacrifice constitutionalism and make nonsense the popular call for separation of powers as a mechanism to check executive manipulation of parliament. This is because the CRC proposal did not place any limit on the number of ministers that may be appointed by the president from within parliament.

On the judiciary, the government accepted the public opinion on the need to have a ceiling or upper limit on the number of Supreme Court judges that may be appointed. In this regard, the government agreed with the recommendation that article 128 (1) be amended to provide for a maximum of 15 judges, but this should remain non-entrenched. What is however worrying is that, not entrenching the recommendation for a cap of 15 justices of the Supreme Court throws cold water on government's commitment to public opinion and judicial independence. This is because, given the excessive partisanship and corrupting influences<sup>7</sup> that sometimes characterize parliamentary deliberations, it is not difficult to get two-thirds majority of parliamentarians to vote to increase the upper limit of 15 justices of the Supreme Court just to manipulate the judicial process in favour of the executive.

*The Electoral System*

On the nation's electoral system, a person is duly elected as a president only when he wins a clear majority of 50% +1 votes (Constitution of Ghana, 1992). This issue was put to the respondents to elicit their opinions. However, respondents were divided over it. While 48% thought there was the need for a change, the same percentage thought that there should be no change, and 4% were indifferent to the situation. The next issue of concern regarding the electoral system had to do with whether or not the 4-year term period for holding national elections should be changed. To this proposition, 57% answered in the negative while 42% answered in the affirmative. The majority of those who advocated the need for change thought that the 4-year period is too short for a government to organize and implement any meaningful development agenda. Before leaving office, President J.A. Kufuor provoked public debate by recommending an extension of the 4 year period to 5 years for future leaders, explaining that the time frame is too short.<sup>8</sup> Indeed, Ghana's political history since 1992 when the nation's fourth attempt at constitutional democratic rule commenced shows that governments use the first year in power to settle down; appoint ministers and members of boards; form their governments and analyze the actual state of the economy. In the second year, they are pre-occupied with how to conduct successful nation-wide district level elections in the rural hinterlands where there is endemic poverty and where campaign promises and policies are expected to be much relevant. In the third year of office, presidents are saddled with internal party politicking aimed at ensuring their re-election as party flag bearers.<sup>9</sup> Finally, the fourth year is year of electioneering campaign. During such times, there is less focus on governance and other developmental issues.

Among those who wanted a change in the time frame between national elections, 62% agreed with former President J.A. Kufuor and supported a change to 5 years. Interestingly, those who believed the 4 year period for holding national elections should not be changed were of the view that 4 years is enough time for any government to make the necessary impact for the electorate to assess them. They argued that an extension of the period could make governments complacent and non-performing leaders may inflict hardships on their people for a long time before elections are held when they can change government. Such prolonged suffering under bad and inefficient leaders, they argued, could breed social unrest and possibly trigger a return of the military.

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On voting, about 80% of the respondents wanted Ghana to adopt an electronic voting system to enhance credibility and speedy collation of results from polling stations. Government responded to the opinions expressed by the people interviewed as follows: the current arrangement which requires a presidential candidate to obtain 50% plus 1 of all valid votes cast to become president was maintained. Again, the current term of 4 years for sitting presidents with re-election eligibility for another 4 years was maintained (Government White Paper, 2012:11). Perhaps, this was as a result of the divided opinions of the public on the issues. On the issue of electronic voting, the government accepted the overwhelming opinion in favour of it. In its response, the government indicated that the call for electronic voting required administrative actions and that no constitutional amendment was necessary. The government therefore called on the Electoral Commission to take account of such administrative actions in the preparation of its future Constitutional Instruments (ibid: 29).

#### *Decentralization*

On decentralization and local government, one major issue was on Ghana's current mode of appointment of Metropolitan, Municipal and District Chief Executives (MMDCEs), the officials who man the day to day affairs at the local grassroots.<sup>10</sup> There have been several calls and studies that favour the direct election of MMDCEs. The works of Ayee (2003); Burton and Stevens (2005); Gyampo (2007); Debrah (2009); De Grazia (1962); and Coicaud (2002) come handy. These scholars argue that the direct election of MMDCEs promotes effective decentralization and local government. It douses the divisive and unproductive flames of winner-takes-all political psyche and ensures stability as well as rural development (Crawford, 2004; Gyampo, 2007). The current mode of appointment of MMDCEs has been critiqued on grounds that it undermines the concept of decentralization and sacrifices the quest for bottom-up approach to decision making (Da Rocha, 2002; Dapatem, 2002). In the survey, the majority of the respondents (67%) supported the call for direct election of MMDCEs while 30% were in disagreement and about 3% were indifferent. Those who supported the current system of appointing MMDCEs believed that it ensures total control over affairs at the grassroots by the central government, and that it ensures a more effective implementation of government policy than an elected one, and also that elections would add more cost to the state with no substantial gain.

Government response sought to appease the two main schools of thought but in a manner that cleverly ensures that the power to control local affairs is still

concentrated in the hands of the central government. Indeed, the government flatly rejected the view that MMDCEs should be directly and popularly elected on grounds that it ought to strike a delicate balance between central government control and local autonomy. In this regard, it rather proposed an arrangement to alter article 243 (1) of the 1992 Constitution for the president to nominate a minimum of 5 persons who would be vetted by the Public Service Commission (PSC) for competence after which 3 nominees would contest in a public election (Government White Paper, 2012:34). Even though this response sought to please the two schools of thought, it still gives the president the power to indirectly appoint his favourites as MMDCEs because whoever may emerge victorious after the direct local election would be an appointee of the president. This would certainly perpetuate the very problem being solved. Besides, the PSC is just a three-member Commission that would crumble and be inefficient under the burden of vetting the numerous aspirants of the over 200 Metropolitan, Municipal and District Assemblies (MMDAs) in Ghana even if the president decides to stick to the nomination of a minimum of 5 people for every MMDA. In the discharge of this heavy workload, the PSC itself may easily become susceptible to corrupt manipulations in a manner that may undermine the quest for the selection of the most competent nominees, particularly when aspirants desire to be selected “at all cost.”

#### *Chieftaincy and Partisan Politics*

Furthermore, respondents were quizzed about the role of chiefs in Ghana’s electoral politics. Article 276 (1) of Ghana’s 1992 Constitution bans chiefs from active partisan politics in order to protect the respect and sanctity of the institution of chieftaincy. However, while some chiefs have respected and complied with this injunction, others have violated it with impunity, arguing that it is their political right to do active partisan politics (Ansa-Koi, 1998; Jonah, 2003). In this regard, they have been seen wearing party t-shirts, attending rallies and openly declaring their support and campaigning for politicians and political parties (Gyampo, 2009). Public opinion however weighed in favour of the constitutional injunction. The suggestion that chiefs should be allowed to actively engage in partisan politics therefore drew a sharp rebuttal with only 10% of the respondents in support; 85% in disagreement; and 5% being indifferent. Those who suggested that the Constitution should lift the ban on the active engagement of chiefs in partisan politics argued that chiefs are Ghanaians like everyone else and therefore must have the right to join a political party of their choice and participate in partisan politics. Others also argued that the chiefs are already

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actively involved in partisan politics “under cover” and therefore the ban should be lifted so that they can do what they are already doing more openly. Some also opined that if chiefs get involved in partisan politics, it would enable them gain control over the resources needed to be able to develop their areas of jurisdiction. On the other hand, those in support of the continued exclusion of chiefs from partisan politics believed that the chieftaincy institution is an embodiment of the destiny of a whole group of people with different political persuasions and if the chief should be seen actively on one side, it would undermine their authority over people on the other side of the divide. This would lead to disobedience and bring the entire chieftaincy institution into disrepute. In addition, it is thought that if the chiefs engage in partisan politics, there is a greater likelihood that their territory would be marginalized during the period that the party they support is in opposition due to the vindictive nature of the Ghanaian political terrain.

Given the overwhelming support for the constitutional injunction that bans chiefs from active partisan politics, the government pandered to public opinion by accepting the CRC recommendation to maintain the status quo. In its recommendation, the CRC also sought to clarify what is meant by “active party politics.” “Active party politics” was defined by the CRC as “openly and personally joining or taking part in the activities of a political party by wearing their paraphernalia and associating with the executive and members of that party; mounting platforms to galvanize support for the party at their meetings; a chief being a card-bearing member of a political party and also holding an executive position in a party at any level.” This definition was also accepted by the government (Government White Paper, 2012:38).

#### ***Corruption and Accountability***

Finally, on corruption and accountability, it has been argued that the nation’s effort to consolidate its democratic gains would come to naught if measures are not put in place to curb or reduce corruption. Given the pervasiveness of corruption perception in Ghana,<sup>11</sup> it was interesting to gauge people’s perception on the extent of corruption under the Fourth Republic in the survey. Up to 83% of the respondents held the view that corruption has been high in Ghana since the inception of the Fourth Republic in 1992. Contributing to the factors that account for the high incidence of corruption among public officials, about 27% believed that excessive politicization of issues of accountability was the main factor to blame; another 27% blamed it on poverty; 20% blamed it on the absence of a culture of moral probity, and

15% blamed it on mass illiteracy. Ethnicity was cited by only 3% of the respondents as the main factor responsible for the high incidence of corruption among public officials. About 4% of the respondents gave other reasons including the society's craving for wealth and lavish expenditure, poor salaries for government officials, under resourcing and governmental control over state institutions that are meant to check corruption, and a cultural acceptance that "you cannot go to see a person in authority with empty hands" as factors responsible for corruption. In fact, up to 32% of the respondents thought that the mandatory declaration of assets by public officials within a stipulated time could not help reduce the high incidence of corruption among the public officials.

Based on these views, the CRC made several recommendations to deal with corruption, particularly at the state level. Government accepted the CRC recommendation for an amendment of Chapter 24 of the 1992 Constitution to create a more effective Assets Declaration regime<sup>12</sup> that can be verified and monitored by the Auditor-General. Government opined that it would be more feasible for such verification and monitoring of the declared assets to be done within one year of the declaration and within three months after the officers' exiting of office. Unfortunately, the government did not accept the recommendation for the Commission on Human Rights and Administrative Justice (CHRAJ) to be mandated to verify and monitor the declared assets without cause or complaint of wrong-doing (Government White Paper, 2012:25). The government accepted the recommendation for Independent Constitutional Bodies (ICB) including the CHRAJ to benefit from an ICB Fund to be established to augment the sources of funding to all ICBs. It however refused to accept the recommendation for the CHRAJ to be able to submit its annual budget directly to parliament without ministerial approval.<sup>14</sup> This lukewarm attitude of government clearly shows lack of commitment in dealing with the public opinion expressed on corruption. Indeed, the battle against corruption in many African countries just like Ghana seem to have been fought and lost as governments of these countries have demonstrated sheer lack of political will to fight the cancer and to adequately resource the state agencies in charge of fighting it (Amoah, 1988; Jonah, 2003).

### **Conclusion**

The foregone analysis aptly shows that the response by the government to public opinion on matters of constitutional review has been mixed, lukewarm, and on many occasions, completely out of touch with the public



view. While the government may be applauded for being responsive and yielding to the opinion of the public on some of the issues, there were many other critical areas of concern to the public which were rejected thereby giving the impression that the government was up to manipulate the process to undermine public opinion. Given that Ghana is a free and open country, public opinion tends to be more powerful and noticeable. However, since 1992 successive governments have not been generally responsive to public opinion. Apart from the “ku me preko<sup>15</sup>” demonstration that forced the then Jerry Rawlings’ administration to temporarily withdraw the introduction of Value Added Tax (VAT) in 1995, public opinion on issues, irrespective of whichever form it takes, has been met with some resistance and governmental intransigence. That, several critical issues raised by the public in the opinion survey were rejected by the government did not therefore come as a surprise given the Ghanaian government’s culture that is less tolerant of public opinion. This culture is deeply ingrained in the body politic to the extent that even parliamentary debates have been undermined by the infamous cliché that “the opposition can have its say but government would have its way.” The enormous powers granted the executive under the 1992 Constitution and the largess associated with the exercise of these powers, makes governments too unwilling to pander to public opinion on issues, especially where the opinion is divided and/or does not favour them. As indicated earlier, this is however symptomatic of many electoral democracies. It must be noted that Ghana’s effort to review its constitution falls within the wind of constitution-making and constitutional review in Africa. Indeed, countries such as Kenya, Zimbabwe, Zambia and Tanzania have all undergone the process of constitutional review. However, similar to what pertains in Ghana, governments in these countries and their respective ruling parties have whimsically controlled the constitution making and review process to suit their interests and undermine public opinion.<sup>16</sup>

It must be noted that the public opinion expressed on Ghana’s constitutional review process is critical for strengthening the pillars of democracy and promoting constitutionalism in the country. Therefore, as the implementation of the CRC report is on-going, this study strongly recommends that the Constitutional Review Implementation Committee works with parliament and civil society to fine-tune the process and ensure that all other recommendations that could help promote Ghana’s democratization process and deepen constitutionalism, but which were unfortunately rejected by the government are brought on board to the constitutional review and implementation process. If indeed the expression

of public opinion on an issue is expected to set some limits on what those in authority can do, then nothing should frustrate efforts to revisit the public views that were rejected in Ghana's constitutional review process. This would not only bring satisfaction to the citizenry but also serve as a source of ownership and support for the government; make the government responsive; and contribute to its democratic credentials and goodwill.

### **Notes**

1. The authors are grateful to the Executive Director of the Institute of Economic Affairs (IEA) for this information.
2. Details of what the various Presidential Aspirants said during the Debate are captured in the Report on the 2008 Presidential Debates published by the IEA in 2009.
3. The Government White Paper is the response of the government to the report submitted by the Constitutional Review Commission (CRC).
4. The authors have the expressed permission of the Executive Director of the IEA to make use of the outcome of the survey conducted in this particular piece of work.
5. The authors are grateful to the Executive Director of the IEA for this information.
6. For more details on the research methodology, see [www.ieagh.org](http://www.ieagh.org).
7. The Constitutional Review Implementation Committee set up to oversee the implementation of the CRC proposals in 2012 is also mandated to consider other proposals for constitutional review including a call for review of some of the government's positions as encapsulated in its White Paper.
8. There is anecdotal evidence and open confessions of parliamentarians, particularly from the opposition side that they are sometimes bribed or given money as precondition to vote in support of the government on certain issues. In 2009 for example, a former

member of parliament for the Esikuma-Odobeng-Brakwa constituency in the Central Region of Ghana on the ticket of the New Patriotic Party (NPP), Hon. P.C. Appiah Ofori openly confessed to the media that each NPP parliamentarian was given 5000 USD to vote in support of the controversial sale of Ghana Telecom to Vodaphone UK. Although his colleagues rubbished this allegation, it was never investigated.

9. See details of this at <http://www.gbcghana.com/1.142438>.
10. This competition can be keener than even national elections as the case of President J.E.A. Mills, a sitting president who was contested by the wife of the founder of the National Democratic Congress (NDC) showed in the run up to the December 2012 Presidential Elections. Such keenly competitive internal elections diverted attention from governance.
11. Under (Article 243 (1) of the Ghana's 1992 Constitution, Metropolitan/Municipal and District Chief Executives (MMDCEs), are appointed by the president, subject to endorsement by two-thirds of members of the district assembly present at the time a vote is taken.
12. See reports of the pervasiveness of corruption perception in Ghana published by the Ghana Integrity Initiative, (Ghana's local chapter of Transparency International) available at [www.tighana.org](http://www.tighana.org).
13. Article 286 (1) of the 1992 Constitution requires a person who holds public office to submit to the Auditor-General a written declaration of all property and assets owned by or liabilities owned by him directly or indirectly. Such declarations cannot be verified to ensure the correctness of what is declared unless there is a court order to that effect. The danger is that corrupt officials can submit empty sheets in envelopes to the Auditor-General knowing that such submissions cannot be opened. Others may declare what they do not have in anticipation of corrupt deals when they are in office.
14. Under the current practice, CHRAJ's budget is submitted to the Ministry of Finance for approval. The Ministry reserves the power to reduce or cut the funds requested by the CHRAJ before submitting it

to parliament. Since 1992, this practice has denied the CHRAJ the needed funds to fight corruption.

15. "Ku me preko", to wit, "you may as well kill me now" was the banner under which around 100 000 people demonstrated through the streets of Ghana's capital city of Accra May 11, 1995. A new tax, called the Value Added Tax (VAT) that increased prices by 17.5 per cent was introduced under severe pressure from the International Monetary Fund and the World Bank to raise revenue as part of Ghana's structural adjustment programme. The demonstration which resulted in deaths and injuries compelled the government to withdraw the introduction of the VAT.
16. The authors are grateful to the anonymous reviewers of the paper for this view.

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