

Policy Brief

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GHANA'S PROPOSED CONSTITUTIONAL AMENDMENTS: HOW DEVELOPMENTAL ARE THEY?

INTRODUCTION

In January 2010, the former President of Ghana, John Evans Fiifi Atta Mills established a nine member Constitutional Review Commission (CRC). This was pursuant to the Constitutional Review Commission of inquiring instrument 2010 C.I.64 on Tuesday, 20th December 2011 after the CRC presented its report to the president after extensive consultations with Ghanaians home and abroad and the country's development partners. The report was titled "from a political to a developmental constitution". The government of Ghana issued a white paper in June 2012 in response to the commission's report after six months of wide study of the 960 page CRC report. In the white paper the government accepted majority of the recommendations and rejected few with reasons. Later in October 2012, President John Dramani Mahama appointed a 5 member Constitutional Review Implementation Committee (CRIC). They were tasked to translate into draft amendments bills the recommendations of the CRC accepted in the white paper.

There are a number of questions raised with the proposed constitutional amendments. For instance, if the proposed amendment of the entrenched provisions were successfully executed, would they bring development? Given that the constitutional review was silent on any development agenda, there is the need to critically analyse the entrenched provisions to be amended, highlight the challenges to amending the constitution and make some recommendations.

Motivation for constitutional review

The main reason set out for the amendment of the constitution is to deepen democracy and development. However, this did not feature in the end product of the review process.

The very first sentence of the CRC report states; "The establishment of the Constitution Review Commission was the outcome of many fervent calls by Ghanaians to fine-tune the constitution in order to advance the democratic gains made since the return to constitutional rule on 7th January 1993 (P8 CRC report)." This clearly shows that the idea of a developmental constitution is not central to the constitutional review process but rather incidental. The emphasis was more on political rather than developmental goals.

The 2005 African Peer review mechanism report on Ghana is one of the major forces precipitating the constitutional review. This is fully acknowledged in the CRC's background to its establishment (P8 CRC report). Nonetheless, the major issues in the APRM report are that of Democratic governance and not development. It includes the large size of cabinet and that having many minutes in Parliament defeats the idea of separation between the executive and legislative. Other concerns in the APRM report are the independence of the judiciary and the inadequate participation of women in Ghana's democratic process. There were also issues on land acquisition and chieftaincy.

Flagging a development agenda – the future role of the National Development Planning Commission (NDPC)

Amendments to the entrenched provisions that are directly relevant to the country's development are those relating to article 85-87 of the existing constitution that deal with the National Development Planning Commission (NDPC) and its planning function. The CRC advanced a sustained role for the NDPC. The commission advocated for a constitutionally independent NDPC that would be empowered to formulate and implement a comprehensive long-term development plan constitutionally binding on all successive governments. The composition of the NDPC is to be expanded to include representatives from all political parties, representatives of the National House of Chiefs, the private sector, organized labour and civil society organizations. However, the proposed amendments are silent on the modalities of a workable long term national development plan.

Challenges

Currently, the constitutional instrument for the establishment of the CRC is before the Supreme Court. Furthermore, parliament and government are uncertain on how to proceed with the amendment of the entrenched provisions. There also exist conflicting

interpretations of article 290 of the constitution which provides for the amendment of entrenched clauses. Finally, no government is likely to risk conducting a referendum for constitutional change with an election ahead in 2016.

Conclusion

The proposed amendments will be positive for Ghana's development if enacted. The NDPC has initiated a process of preparing a comprehensive forty year national development plan. A plan which should be binding on every government if these proposed amendments are accepted.

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