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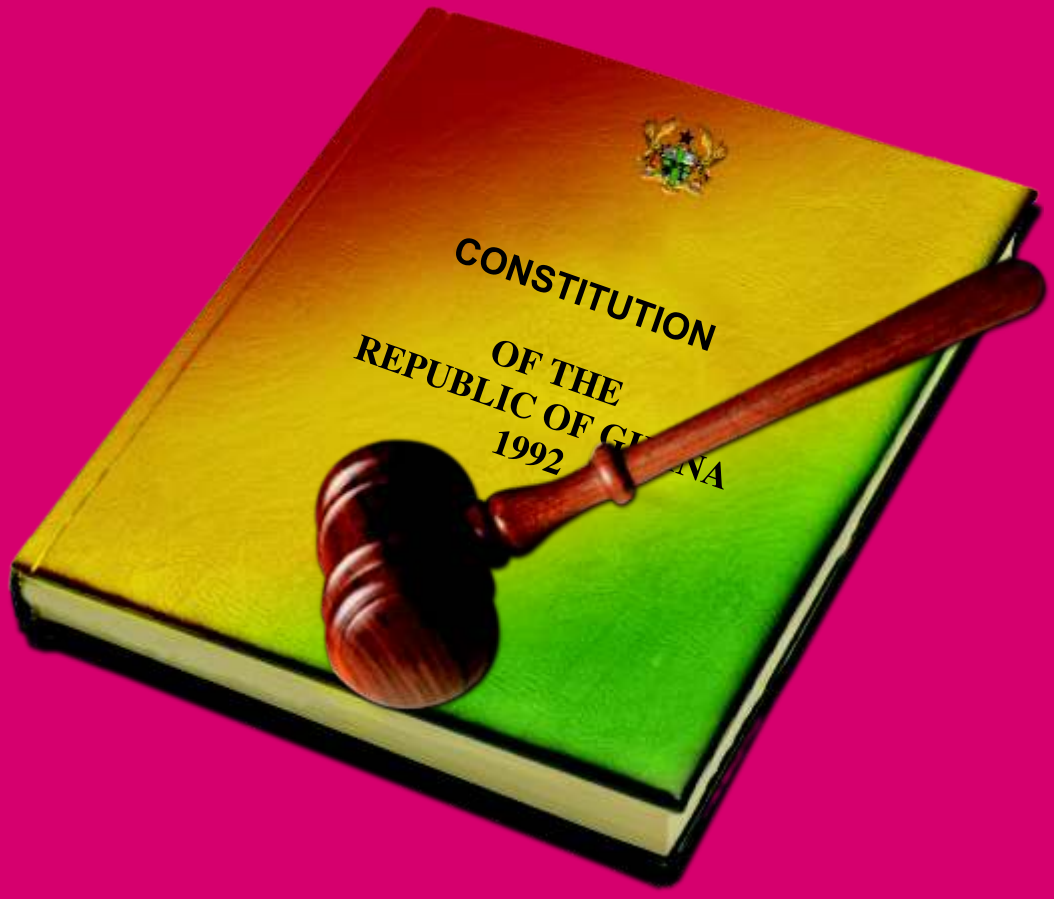
RETHINKING DECENTRALIZATION AND LOCAL GOVERNMENT IN GHANA- PROPOSALS FOR AMENDMENT



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RETHINKING DECENTRALIZATION AND LOCAL GOVERNMENT IN GHANA- PROPOSALS FOR AMENDMENT

By

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The Institute of Economic Affairs (IEA) Ghana was founded in October 1989 as an independent public policy institute dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for sustained economic growth and human development.

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Preface

Kwamena Ahwoi's paper, which is a distillation of two separate papers that he presented to the Constitutional Review Commission and The Institute of Economic Affair's 'Ghana Political Parties Programme' respectively, identifies twelve areas of Ghana's local government and decentralization system for critical analysis. It ends with a recommendation that the majority of the identified areas be subjected to constitutional or legislative amendment.

Beginning with the conceptual issue of decentralization, the author argues for the different meanings of decentralization at the national, regional, district and sub-district levels to be articulated in the Constitution. He also proposes that the power given to the President to create districts in the Local Government Act, 1993, Act 462, should be taken away and vested in the Electoral Commission with the prior approval of Parliament.

The author next makes the controversial proposal that the power to appoint 30 per cent of the members of the Metropolitan, Municipal and District Assemblies (MMDAs) should be taken away from the President and vested in the Regional Houses of Chiefs, explaining that the power has been bastardized by successive Presidents to appoint their party executives and cronies to the Assemblies instead of the original rationale of using the provision to infuse expertise into the Assemblies and to cater for marginalized and disadvantaged groups.

He is of the view that at the heart of the conflict and rivalry between Members of Parliament (MPs) and District Chief Executives (DCEs) is the MPs' membership of the MMDAs and therefore makes the case for their exclusion from the Assemblies to enable them concentrate on their duties as national legislators.

The author calls for a modification of the present system of selecting DCEs. He would like DCEs to be nominated by the President, interviewed by the Public Services Commission for their competence and voted for directly by the district electorate. Using very cogent and persuasive arguments, he also makes a case for the following positions:

- Presidential, Parliamentary, District Assembly and Unit Committee elections should all be held on the same day;

- The non-partisan nature of the local government system should remain;
- The Regional Coordinating Councils (RCCs) must be recognized as part of the Central Government in the national governance system, but they should be strengthened to enable them play the roles assigned to them in the Constitution and in the Local Government Act;
- The relationship between the Regional Ministers and the DCEs must be clearly defined;
- Presiding Members should be elected by two-thirds majority of the members of the MMDAs present and voting;
- The Office of the Administrator of the District Assemblies Common Fund must be established as an independent institution of the Constitution.

The author concludes with the novelty recommendation that the two-term limit on the tenure of the DCE should be removed and that a President must be able to retain in office, beyond the 8 years a performing DCE. His rationale is that the restriction is the reason for the insecurity felt by DCEs and forms the basis for their desire to be MPs, thus fuelling the tensions and the conflicts between DCEs and MPS.

We look forward to receiving your feedback and hope you find this publication useful.

Thank you.

Jean Mensa
Executive Director

Rethinking Decentralization and Local Government In Ghana- Proposals for Amendment

1. Decentralization: The Conceptual Issue

Decentralization, it has been said, means different things to different people at different places at different times[1]. In particular, decentralization is conceptualized as taking the forms of de-concentration, devolution or delegation. De-concentration is described as a system of field administration through which functions are transferred to field staff to make routine decisions and implement central directives at the local level. Devolution, on the other hand, involves the legal conferment of powers and the performance of specified functions by formally constituted sub-national governance structures without reference to the central authority. Delegation, however, is permissive legislation or activity under which the body actually vested with the power to take decisions asks another person or body to do it on its behalf.

Applied to Ghana, it will be realized that though the 1992 Constitution uses "decentralization" several times in the document, a closer analysis of the contexts and subsequent legislation reveals that it is used to mean different things in the different contexts where it occurs[2]. This has been one of the greatest hindrances to the implementation of the decentralization policy as the two political parties which have formed the five Governments of the Fourth Republic have clearly approached decentralization with different understandings and from different perspectives, with the result that contradictory and inconsistent legislations have been enacted, all in pursuit of decentralization implementation.

However, a closer examination of "decentralization", as used in the Constitution and subsequent legislation, suggests that different meanings are conveyed depending on the level of governance that is being described and discussed.

National Level Decentralization:Ministerial Re-structuring

Article 35 (6) (d) of the Constitution makes the clearest statement on national level decentralization by providing that: *"the state shall take appropriate measures to make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts-----".* An analysis of the context and practice reveals that what is meant is a sense of ministerial restructuring in which Ministries, Departments and Agencies (MDAs) are to be restricted to policy making, planning, evaluation and monitoring of governmental activities.

Regional Level Decentralization: De-concentration

Article 255 of the Constitution establishes the Regional Coordinating Council (RCC) as the regional level of governance[3] and provides for its functions to be prescribed by an Act of Parliament.

From all indications, the regional level of governance is conceived as a de-concentration level at which the regional level MDAs, though described as *"decentralized ministries"*[4], nevertheless operate as departments of the national level MDAs, not of the RCCs, taking instructions from the national level, implementing national level decisions and providing feedback from the sub-national level to the national level MDAs.

District Level Decentralization:Devolution

The district level of governance is clearly the devolution level, where decentralization in the true sense of the concept is played out. The District Assembly is set up as a body corporate with legal personality which can sue and be sued and which can acquire and dispose of assets and other property[5]. It is the policy making body for the district; it has legislative power[6]; it has taxation power[7]; and it has borrowing power[8]. Simply put, the District Assembly has the character spelt out in Article 241 (3) of the Constitution that: *"Subject to this Constitution, a District Assembly shall be the highest political authority in the district, and shall have deliberative, legislative and executive powers".*

Sub-District Level Decentralization:Delegation

The Constitution itself is silent on the form of decentralization to be practiced at the sub-district level apart from the general signal given in Article 240 (2) (e) that: "*to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance".*

It is clear that the decentralization powers of these sub-district structures are in the nature of delegation only. The sub-district structures may take decisions on their own based on the functions assigned to and the powers conferred on them by law or delegated to them by the District Assemblies, but the sub-district structures do not take responsibility for those decisions.

The Conceptual Confusion

Given the conceptual confusion surrounding the concept of decentralization, it is not surprising that the confusion permeates the Constitution in its use of the concept. The confusion is further introduced into the consequential legislation, the resultant programmes and decentralization implementation itself. It is clearly responsible for what appears to be the forwards and backwards movement in decentralization implementation in Ghana. For these reasons, it is recommended that the Constitution clearly defines what is meant by decentralization at each level of governance.

2. Districts of Local Government: The Issue of Demarcation – Article 241

The 1992 Constitution does not directly determine the issue of who demarcates district boundaries; how this should be done; and who should be responsible for the creation of districts. Instead, apart from boxing in the 110 districts in existence on the coming into force of the Constitution as the minimum number of districts that the country should have[9], it leaves the other issues to the discretion of Parliament. Thus Article 241 (2) provides that: "Parliament may by law make provision for the redrawing of the boundaries of districts or for reconstituting the districts".

In exercise of this power under Article 241 (2), Parliament in the Local Government Act, 1993, Act 462, vests the power for the demarcation of district boundaries and the creation of districts in the President. Section 1 (2) of Act 462 provides as follows:

"The President may by executive instrument –

(a) declare any area within Ghana to be a district;
(b) assign a name to the district."

In 2003 and 2007, the President of the Third and Fourth Governments of the Fourth Republic created an additional 60 districts and upgraded municipalities in very bizarre circumstances. Of the three new Metropolises that were created, Cape Coast and Tema did not meet the minimum population criterion of 250,000.[10] Of the 36 new Municipalities that were created, none met Act 462's criterion "that the geographical area

consists of a single compact settlement" and of the 31 districts that were created, very few met Act 462's requirement of "economic viability".

The net effect of all these is that we have Metropolises that do not meet international standards, Municipalities that are not "single compact settlements" within the meaning of Act 462 and districts that are not "economically viable" again as required by Act 462. Such proliferation of districts always poses a danger to local government and decentralization as they tend to strengthen the central government's stranglehold over the districts.

Within the local government and decentralization sector, all are agreed that the 2003/2007 district creations were done largely for political convenience rather than for any logic of local government demarcation and administration. It is also believed that the reason why such clear breaches of statutory requirements were not challenged (with the exception of the solitary case of Ashaiman which had the advantage of a vociferous and hard-hitting MP) was because the power was vested in and exercised by the President. When such Presidential infractions occur, it is difficult for succeeding Presidents to reverse the situation because of the political price they may have to pay. The net result is that local government suffers.

For all these reasons, it is recommended that the power of district boundaries demarcation and district creation should be vested in the Electoral Commission but subject to the approval of Parliament, and this should be stipulated in the Constitution and not left to legislation.

Composition of the District Assemblies: Who Appoints the 30%? – Article 242

Having removed the major obstacles to participation by ordinary people in local government such as literacy in english (DA proceedings may be in english or any agreed local language or languages); poverty (local government elections are free with no payment of deposits and no campaign costs); hijacking by the urban elite (candidates for local government elections should be "ordinarily resident" in the district); and imposition by political parties (local government elections are non-partisan – an addition by the 1992 Constitution); it was anticipated that the quality of Assembly members would suffer. It was therefore decided to infuse persons with expertise and experience into the DA system through the appointment mechanism.

It was also the view that no matter how hard one tried, it was going to be difficult to get the representation of historically excluded, marginalized, disadvantaged and under-represented groups and others through the election mechanism.

Additionally, it was recognized that due cognizance had to be taken of the chieftaincy institution at the level of local governance where it had an even more perceivable role to play in offering counsel and mobilizing the people for development[12]. Besides, there was a time in our history when local governance revolved round chieftaincy institutions[13]. However, by virtue of their revered status and the perceived neutrality of their positions, it was considered that not many chiefs would offer themselves for elections even if the opportunity was opened to them.

These were the main reasons why the decision was taken to set aside a certain percentage of the membership of the DAs to be appointed to enable the PNDC provide for their representation through their appointment.

The power of appointment was initially vested in the PNDC – at the time a non-partisan central government with representation from all shades of political opinion in the country. In crafting the Constitution, the President was simply substituted for the PNDC as required by the Constitution of existing legislation[14] without as much as a debate.

It did not take long for the strains and stresses of this arrangement to show. The appointments to the first DAs after the first district level elections in 1988/89 had complied strictly with the rationale for the appointments. But from the 1994 DA elections through all the district level elections under the Fourth Republic Constitution in 1998, 2002 and 2006, the appointments became a matter of representation of the political party in power rather than of expertise and experience, such that the Government appointees in the DAs now look like a conclave of the district executive members of the ruling political party. Expertise and experience have been sacrificed. The situation reached an absurd level in 2006 when government appointees who were suspected of being hostile to the President's DCE nominee were dismissed on the day of the balloting for the approval of the nominated candidates in order to make way for more pliant members who would vote for the nominee to be appointed.

For all these reasons, the better opinion today seems to be that though there should continue to be appointed members of the DA, the power of appointment should be taken away from the President. That power, it is recommended, should be vested in the Regional Houses of Chiefs to appoint the 30 per cent membership of the DAs.

4. The MP as a Member of the District Assembly – Article 242 (b)

The 1992 Constitution marks the first time in post-independent Ghana that Members of Parliament (MPs) have been made members of their local authorities. Coincidentally, the Fourth Republic is also the period when there has been unending conflicts between MPs and their DCEs, in particular, and Assembly members in general. Is there a relationship between the two developments or is it a matter of sheer coincidence?

Unfortunately, in practice, the MP's presence in the DA appears to have given the impression that he is also a development agent in addition to his role as a national legislator. Demands that should be made on the Assembly member as the decentralized development agent are suddenly being made on the MP with the result that the MP is now seen to be in competition with the DCE, the Assembly member and sometimes even with the Unit Committee member, as to who can best deliver on the development aspirations of the local people.

The rivalry has been most unhelpful as the line of demarcation of functions between MPs and DCEs has become blurred. In the process, MPs have been at the forefront of agitating for the removal of DCEs while DCEs have also campaigned actively to unseat MPs, especially in constituencies where the two belong to the same political party. In the end, it is the District Assembly system that has suffered.

It is the considered view of the author that the time has come for the rivalry to be brought to an end. A sure way of helping in that direction is to abolish the MPs' membership of the District Assembly. That way, the lines of demarcation will become clearer. The MP will be seen for what he is – a national legislator – and it will be inopportune for him, during his campaigns, to be promising development projects.

5. The District Chief Executive: To Elect or to Appoint – Article 243

Ghana has always had appointed DCEs by whatever name called (District Commissioner (First Republic), District Administrative Officer (NLC), District Chief Executive (Second Republic) or District Secretary (PNDC)). Under the SMC Administration, however, Chairpersons of the District Councils were elected by the Councillors from among themselves, except for Accra, Kumasi and Sekondi-Takoradi. The SMC had the option of making the appointment of the Executive Chairmen directly. Apart from that era, the Fourth Republic is the only governance era in which local authorities have had a say in the appointment of DCEs, with the 1992 Constitution requiring that the District Assemblies must approve the President's nominee for DCE before the President can formally appoint him.

How the DCE emerges in a decentralized system in a unitary state such as Ghana is critical, because he is required to be accountable and responsible both to the local electorate and to the central government. The DCE is thus caught in the tussle between local autonomy and central control, with the centrifugal forces of decentralization pulling the local jurisdiction in the direction of local autonomy while the centripetal forces of central control pull the local jurisdiction towards the central government.

The role and the functions of the DCE as spelt out in the Constitution add to the dilemma. Though unelected, the DCE is a voting member of the DA.[15.] He presides at meetings of the Executive Committee of the DA.[16.] He is responsible for the day-to-day performance of the executive and administrative functions of the DA.[17.] He is the chief representative of the central government in the district.[18.] Additionally, he is the Chairman of the District Security Committee[19], which makes him responsible to the National Security Coordinator.

Above all, the DCE is a manager. Section 4 (1) of the Local Government Act, 1993, establishes the DA as a body corporate with legal personality which should therefore be managed by the DCE as an efficient managing director would manage a limited liability company with full knowledge of all the rules of corporate governance. As a manager, the DCE not only adopts measures to develop and execute approved plans and programmes of the DA but also ensures that adequate resources are mobilized and rationally utilized in the implementation processes.

International practice shows a wide variance in local laws and practice regarding how DCEs emerge as well as their powers and responsibilities.

After carefully weighing all the arguments, it is recommended that the DCE should be nominated by the President, interviewed by the PSC for his competence and voted for directly by the district electorate. This recommendation seeks to combine the need for central control and the desire for local accountability and autonomy with the requirements of efficiency and competence.

6. Central Government/Local Government Relationship: The Tenurial Issue – Article 246

Article 246 of the Constitution provides as follows:

"1. Elections to the District Assemblies shall be held every four years except that such elections and elections to Parliament shall be held at least six months apart.

2. Unless he resigns or dies or he earlier ceases to hold office under clause (3) of article 243 of this Constitution, the term of office of a District Chief Executive shall be four years; and a person shall not hold office as a District Chief Executive for more than two consecutive terms".

These articles are consistent with the philosophy underlying the Constitution of a partisan central government superimposed on a non-partisan local government system, so that a new partisan President whose tenure coincides with that of Parliament, should be able to work with the non-partisan DCE and DAs whose tenures would not have ended at the time the new President assumes office. Thus an overlap between the tenures of office of the President and the DA/DCE underlies the tenurial relationship between the central government and the local government systems.

Practice however tells a very different story. In the first real transition of 2001 when power shifted from the NDC Government to the NPP Government, one of the first acts of the new NPP administration was to terminate the membership of all the appointed members of the DAs.

In 2009, when power shifted from the NPP to the NDC, the new President

attempted to stay his hand and retain the appointed members in office. Intensive internal pressure from within his party however forced his hand and after about only one month, he terminated the membership of all the appointed members of the DAs.

The situation was exactly the same with regards to the DCEs. The Government in the 2001 transition terminated their appointments soon after assuming office whilst in 2009 their appointments were terminated after about three months.

The effect of all these developments is that in practice, the tenures of the President, Parliament, the District Assemblies and the DCEs have become virtually coterminous and the four-year tenure of many DCEs is cut short since they are invariably removed from office by a new President whether or not they have completed their tenures.

It is recommended that Presidential, Parliamentary, District Assembly and Unit Committee elections be all held at the same time and that the tenure of office of the DCE be made coterminous with that of the President for as long as the President remains the one who appoints the DCEs. Apart from according with practice and convention, it will also reduce drastically the cost of holding the two elections (Presidential/Parliamentary and District Assembly/Unit Committee) separately.

7. A Partisan Central Government on a Non-Partisan Local Government System - Article 248

Article 248 of the Constitution sanctifies the phenomenon of a partisan central government superimposed on a non-partisan local government system, one of the most unique features of Ghana's constitutional arrangement.

There are other arguments for and against the non-partisanship of the District Assembly system.[20.] Among the arguments in favour of non-partisanship are the following:

- It enables the local governments to build partnerships and better dialogue with civil society organizations to deepen democracy and accelerate district development without them acquiring opprobrious partisan political tags;

- It prevents the ethnicisation of local politics, particularly in multi-ethnic communities amalgamated into single districts;

- There is a tendency for incumbent partisan central governments to exert undue influence on local government bodies to win political advantage;

- It tends to facilitate the mobilization of the people and to be more conducive to consensus building; factors that are crucial to development efforts at the grassroots level.

Against the non-partisanship provision and in favour of making the DAs partisan, the following arguments have been made:

- It will enable the opposition political parties to control some DAs and therefore give them a sense of "enjoying" some power even as the ruling party monopolises power at the national level. Consequently, it ameliorates, in a sobering way, the polarization effects of the "winner-takes-all" system;

- Local government elections are used to gauge the mid-term performance of incumbent governments and this is best determined if the local government elections are conducted along partisan lines;

- Political parties sponsor candidates for the district level elections anyway, so we should stop behaving like ostriches and let the law conform to the practice by making the elections partisan;

- Partisan local government elections will allow local government to be used as training grounds for higher political office at the national governance level which is partisan.

Irrespective of the arguments of logic, the author has been part of several consultation teams on this subject and has formed the view that the majority of the people are in favour of a non-partisan system of local government.

8. Fiscal Decentralization: Making the DACFA Independent – Article 252

The District Assemblies Common Fund (DACF) is Ghana's solution to the problem of fiscal decentralization. The District Assemblies Common Fund Administrator (DACFA) is the office established by the Constitution to ensure that decentralized transfers are made to the DAs in a transparent, non-discriminatory, accountable manner. Once Parliament approves the formula for the sharing of the DACF, the DACFA is required to release the allocated funds without let or hindrance. This is to deal with the problem of the past and in other Sub-Saharan African countries in which central governments discriminate against districts which are considered "hostile" to them on account of having voted against the party in power or on some other grounds such as ethnicity, regionalism or source of wealth.

It is clear that the spirit of the Constitution is for a DACFA who is independent, non-partisan and accountable. The evidence for this is the fact that two different provisions of the Constitution, both designed to ensure independence and non-partisanship, govern the appointment of the DACFA. Under Article 70, the DACFA is appointed by the President in consultation with the Council of State[21] and under Article 252, he is appointed by the President with the prior approval of Parliament[22]. In practice, the two provisions have been combined so that the DACFA is appointed by the President in consultation with the Council of State and with the prior approval of Parliament.

However, this independence is compromised in practice by certain constitutional, legislative and practical issues:

- The appearance of the provisions on the DACFA in the Chapter of the Constitution on "Decentralization and Local Government" creates the impression that he is part of the local government system and therefore operates under the Minister of Local Government.

- The fact that the DACFA has no "voice" on the floor of Parliament and therefore has his formula for the sharing of the DACF presented to and defended in Parliament by the Minister of Local Government reinforces this wrong impression.

- Section 9 of the District Assemblies Common Fund Act[23] gives power to the Minister of Finance, in consultation with the Minister of Local Government, to determine which percentage of the DACF of a district can be used to execute the approved development plans of a DA.

These strictures imposed on the DACFA have conspired to shortchange the DAs who regularly complain about the planning difficulties they face on account of the uncertainty and unreliability of the DACF releases. If the DACF is to play the developmental role envisaged for it in the Constitution, and if fiscal decentralization is to make any meaningful impact on district development, then it is important that the DACFA who manages the Fund is made as independent as any other independent institution of the Constitution.

For all these reasons, it is recommended as follows:

? • The Office of the DACFA must be established as an independent institution of the Constitution by providing that: "In the performance of his functions, the District Assemblies Common Fund Administrator shall not be subject to the direction or control of any person or authority".

- The contradictory provisions on the appointment of the DACFA in Articles 70 and 252 should be reconciled in one Article which should provide that: "The District Assemblies Common Fund Administrator shall be appointed by the President acting in consultation with the Council of State and with the approval of Parliament".

9. Regional Level Governance: Central Government or Local Government? – Article 255

The regional level of governance in Ghana is the weakest level in the three-tier governance system (national, regional and district), but it is also a very important level in the system. It is again a problematic level, because it appears to be part of both the central government and the local government systems at the same time.

The significant points to note about the Regional Coordinating Councils (RCCs) are that they are not elected bodies; they are not policy making bodies; they are not a legislative level; they do not have borrowing powers; and they are not a taxation or rate-levying level in the national governance arrangements.

The reasons for assigning only coordinating and harmonization roles to the RCCs are also important. Democratic theory frowns on unelected bodies supervising or changing the decisions of democratically elected local authorities. The solution has been to assign the RCC monitoring, coordinating and harmonization functions only.

For all intents and purposes, the regional governance level is a part of the central government system and must be recognized as such. The only reason it is perceived as part of the local government system is because it is treated in Chapter 20 of the Constitution on "Decentralization and Local Government" and also because in the literature on governance, all sub-national governance structures are normally treated as part of local government.

Consequently, the following recommendations are made:

- The RCC is part of the central government in the national governance system, and this must be reflected in the Chapter arrangements of the Constitution. It could be given a separate Chapter and its functions fully spelt out rather than leaving it to legislation.

- The RCC could however be made into a policy planning level in the policy making and development planning system.

- The RCCs must be given a separate budget line of their own in the national budget.

- The RCCs must be enabled to mobilize some internally generated funds of their own.

- Members of Parliament should not be appointed Regional Ministers or Deputy Regional Ministers where geographical distances prevent them from effectively performing either or both of their functions.

10. Regional Ministers and DCEs: Relationship – Article 256

Neither the Constitution nor any legislation spells out the functions of the Regional Minister (RM), let alone his relationship with the DCE. In a centralized system of administration, this does not pose any problem since the vertical hierarchical order of relationships establishes the RM as the "supervisor" of the DCE and the DCE would normally report to the central government through the RM.

In a decentralized system of administration, however, things are not so clear. First of all, the DA, as the policy making body for the district determines policy which the DCE as the implementer of the DA's decisions is bound to implement. What happens when there is a conflict between a decision of the DA and a position taken by the RM? This situation occurs all too often especially in Accra with respect to the issue of decongestion and urban renewal.

Secondly, the DCE is officially designated the "chief representative of the central government in the district"[24]. The RM is not accorded similar designation in the region. Some DCEs therefore take the position that they are required to deal directly with central government agencies rather than through the RM and this can make the relationship between the two quite frosty.

Thirdly, and following on from the second, RMs complain that DCEs do not keep them informed of activities in their districts. Thus on the ground, there is serious power play between the RM and the DCE. However, because of the geographical and communication distance between the DCE and central government agencies, it is important for RMs to monitor the activities of DCEs by getting them to give an account of their administration and operations. It is also true that in practice, confidential performance reports of RMs on DCEs form an important part of the assessment of the latter to determine whether they keep their jobs or are re-nominated for a second term of office.

For all these reasons, the silence of the Constitution on the role of the RM and the relationship between him and the DCE is dysfunctional. It is therefore recommended for the Constitution to make it explicit that RMs are the first line vertical supervisors of DCEs and are responsible in part for the confidential assessment of the performance of DCEs.

11. Security of Tenure of DCEs – Article 246

Article 246 (2) of the Constitution provides as follows: *"Unless he resigns or dies or he earlier ceases to hold office under clause (3) of article 243 of this Constitution, the term of office of the District Chief Executive shall be four years; and a person shall not hold office as a District Chief Executive for more than two consecutive terms".*

Article 243 (3) states as follows: *"The office of District Chief Executive shall become vacant if –*

> *(a) a vote of no confidence, supported by the votes of not less than two-thirds of all the members of the District Assembly is passed against him; or*
>
> *(b) he is removed from office by the President; or*
>
> *(c) he resigns or dies.*

These provisions make the DCE the most insecure of all the political office holders under the Constitution. At best, he can be DCE for a maximum of 8 years only – it does not matter how well he performs. In the process, he wakes up every morning wondering whether he still has a job. This is because the President can decide to sack him at any time. He does not have to give any reason. The DA can also decide to sack him at any time by passing a vote of no confidence in him. They do not have to give any reasons.

This insecurity of tenure is at the root of the so-called conflict between DCEs and MPs because if a DCE wants to have a permanent political career, he knows he cannot have it as a DCE since he has at most a tenure of 8 years. However, as MP, he can be in that position for as long as his people continue to vote for him. Consequently, as soon as DCEs enter into their second term of office, they begin eyeing the position of MP as a more secure political career position and will do anything and everything to undermine the MP, irrespective of whether they belong to the same party or not.

The two-term limit on the tenure of the DCE must be removed. A President must be able to continue in office beyond the 8 years a performing DCE. Indeed, if the term limit is removed, a new President can even continue in office a performing DCE who was appointed by his predecessor.

12. ELECTION OF PRESIDING MEMBERS – Article 244

Article 244 of the Constitution states as follows:

"(1) The District Assembly shall have a Presiding Member who shall be elected by the Assembly from among its members.

(2) The Presiding Member shall be elected by at least two-thirds majority of all the members of the Assembly".

These provisions make the election of the Presiding Member (PM) a very difficult task indeed. They are to be contrasted with the provisions relating to the election for the approval of the DCE in Article 243 (1) which states that: *"There shall be a District Chief Executive for every district who shall be appointed by the President with the prior approval of not less than two-thirds majority of members of the Assembly present and voting at the meeting".*

The mathematical difference in the two formulae works out like this: For a 90-member Assembly, the quorum to transact business is 30 since under the Model Standing Orders of the Assemblies, the quorum for the conduct of proceedings of the Assembly is one-third of all the members of the Assembly. But to elect a PM for the 90-member Assembly, you need at least 60 members to be present and all 60 members must vote for the PM candidate.

To approve a DCE however, you need only the quorum of 30 to be present (since only two-thirds of members present and voting are required to approve a DCE). Of the 30 persons present, only 20 (two-thirds) need to vote for the DCE candidate to be approved.

Thus for the same 90-member Assembly, whilst you require a minimum of 60 members to elect a PM, you require a minimum of only 20 members to approve a DCE. No explanations for these different requirements have ever been offered.

It is therefore recommended that Article 244 (2) be amended so that the PM will be elected by two-thirds majority of the members of the Assembly present and voting at the meeting.

Conclusion

I will conclude by summarizing the recommendations that I have been making in the course of this paper:

1. The Constitution should clearly define what is meant by decentralization at every level of governance.

2. The power of district boundaries demarcation and district creation should be vested in the Electoral Commission but subject to the approval of Parliament, and this should be stipulated in the Constitution and not left to legislation.

.3. The power should be vested in the Regional Houses of Chiefs to appoint the 30% membership of the District Assemblies.

4. The MP's membership of the District Assembly should be abolished.

5. The DCE should be nominated by the President, interviewed by the Public Services Commission for his competence and voted for directly by the district electorate.

6. Presidential, Parliamentary, District Assembly and Unit Committee elections should all be held at the same time and the tenure of the DCE should be made coterminous with that of the President as long as the President remains the one who appoints the DCE.

7. The local government system should remain non-partisan.

8. The Office of the DACFA must be established as an independent institution of the Constitution by providing that: "In the performance of his functions, the DACFA shall not be subject to the direction or control of any person or authority".

9. The contradictory provisions on the appointment of the DACFA in Articles 70 and 252 should be reconciled in one Article which should provide that: "The DACFA shall be appointed by the President acting in consultation with the Council of State and with the approval of Parliament".

10. The regional governance level is a part of the Central Government system and this must be reflected in the Chapter arrangements of the Constitution. It could be given a separate Chapter and its functions fully spelt out rather than leave it to legislation.

11. The RCC could be made into a policy planning level in the policy making and development planning system.

12. The RCCs must be given separate budget lines of their own in the national budget.

13. The RCCs must be enabled to mobilize some internally generated funds of their own.

14. MPs should not be appointed RMs or DRMs where geographical distances prevent them from effectively performing either or both of their functions.

15. The two-term only limit on the tenure of the DCE must be removed. A President must be able to continue in office beyond 8 years a performing DCE. If the term limit is removed, a new President should be able to continue in office a performing DCE who was appointed by his predecessor.

16. Article 244 (2) of the Constitution should be amended so that the PM will be elected by two-thirds majority of the members of the Assembly present and voting at the meeting.

NOTES

1. Wraight Ronald: *Local Administration in West Africa* (1972) (George Unwin Ltd.). See also Kwamena Ahwoi: "Ghana's Public Administration Reforms-De-concentration, Delegation, Devolution or Decentralization?" Published in *GIMPA Journal of Leadership, Management and Administration*, Volume 4, Number 2, December 2006, page 8
2. See for example in Articles 35 (6) (d); 240 (1); 240 (2); 254; 255 (1) (d)
3. The RCC is composed of the Regional Minister as Chairman, the Deputy Regional Minister or Ministers, all DCEs in the region, all PMs in the region, 2 chiefs from the Regional House of Chiefs and the regional heads of the decentralized ministries without voting rights (Article 255 (1) (d) of the Constitution)
4. Constitution, Article 255 (1) (d)
5. Section 4 (1) of the Local Government Act, 1993, Act 462, states that: "Each District Assembly shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its own name" and section 4 (2) states that: "A District Assembly shall have power for the discharge of any of its functions to acquire and hold movable and immovable property, to dispose of such property and to enter into any contract or other transaction"
6. Section 79 (1) of Act 462 states that: "A District Assembly may make bye-laws for the purpose of any function conferred upon it under this Act or any other enactment"
7. Section 86 (1) of Act 462 states as follows: "Notwithstanding the provisions of any enactment to the contrary, all income from the sources listed in the Sixth Schedule to this Act and all revenues from levies, fees and licences charged in respect of the activities listed in the Sixth Schedule shall be taxed or collected exclusively by or for the District Assembly"
8. Section 13 of Act 462 states as follows: "A District Assembly may raise loans or obtain overdrafts within Ghana of such amounts, from such sources, in such manner, for such purpose and upon such conditions as the Minister [of Local Government] in consultation with the Minister responsible for Finance, may approve except that no approval is required where the loan or overdraft to be raised does not exceed ¢20,000,000.00 and the loan or overdraft does not require a guarantee by the Central Government"
9. Article 241 (1) states that: "For the purposes of local government, Ghana shall be deemed to have been divided into the districts in existence immediately before the coming into force of the Constitution"
10. Tamale, the third metropolis, met the criterion
11. The situation involving Adenta and Ashaiman was particularly bizarre and

embarrassing. Originally created as the Adenta-Ashaiman Municipality with a capital at Adenta under L.I. 1866 of 2007, loud public protestations by the people of Ashaiman accompanied by threats of violent street demonstrations forced the Government to backtrack and to split the Municipality into two as the Adenta Municipality under L.I. 1888 of 2007 and the Ashaiman Municipality under L.I. 1889 of 2007

12. See generally: Ahwoi Kwamena: "*Local Government and Decentralization in Ghana*", Unimax Macmillan, 2010, Chapter 8
13. Committee of Experts (Constitution): Report presented to the PNDC, July 31, 1991, Chapter Eleven, page 150, paragraphs 334 & 335
14. Section 26 (a) of the Transitional Provisions of the Constitution provides that: "----in all enactments in existence immediately before the coming into force of this Constitution – (a) for any reference to the PNDC there shall be substituted a reference to the Cabinet" and section 29 (1) provides that: "A reference to the PNDC in any enactment in existence immediately before the coming into force of this Constitution, where a reference was originally to the President shall be construed as a reference to the President"
15. 1992 Constitution, Article 242 (c)
16. Ibid, Article 243 (2) (a)
17. Ibid, Article 243 (2) (b)
18. Ibid, Article 243 (2) (c)
19. Security and Intelligence Agencies Act, 1996, Act 526, section 8 (1) (a)
20. See generally Ahwoi Kwamena: *Local Government and Decentralization in Ghana*, Published by Unimax Macmillan, 2010, Chapter 6
21. Article 70 (1) (c) of the Constitution provides that: "The President shall, acting in consultation with the Council of State appoint the DACFA"
22. Article 252 (4) provides that: "There shall be appointed by the President with the approval of Parliament, a DACFA"
23. Act 455 of 1993
24. Article 243 (2) of the Constitution

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