



OFFICE OF THE AUDITOR-GENERAL

PAPER ON PROPOSALS FOR

AMENDMENT OF CONSTITUTIONAL PROVISIONS

ON THE OFFICE

GHANA AUDIT SERVICE

PAPER ON PROPOSALS FOR AMENDMENT OF THE 1992 CONSTITUTIONAL PROVISIONS ON THE OFFICE OF THE AUDITOR-GENERAL AND THE AUDIT SERVICE

Introduction

The proposals contained in this paper have been prepared by the Audit Service towards the review and amendment of existing provisions of the 1992 Constitution which deal specifically with the Office of the Auditor-General, the Audit Service and the Audit Service Board.

2. The preparation of the proposals has been guided by the following:

a) Article 106 (1-2) of the Constitution which requires among other things, that proposals or bills for enactment into law shall not be introduced into Parliament unless the bill is covered by an explanatory memorandum setting out in detail the policy and principles of the bill, the defects of the existing law, the remedies proposed to deal with those defects and the necessity for its introduction;

b) The principles, standards and declarations of the International Organisation of Supreme Audit Institutions (INTOSAI) of which Ghana is a member;

c) Issues arising from the implementation of the 1969 through to the 1992 Constitutions in terms of the intention of the framers of the Constitution, emerging trends and challenges in public sector auditing nationally and globally;

d) expectations and concerns of stakeholders including Parliament, Development Partners and the general public on the structure and operations of the Office of the Auditor-General; and

e) The legislative framework of other National Audit Institutions in Africa and some of the developed nations of the world.

3. The Audit Service, established by Article 188 of the Constitution as part of the Public Services of Ghana, is the Supreme Audit Institution (SAI) of Ghana. The Service is the major instrument used by the Auditor-General to undertake the audit of the public accounts of Ghana and of all public offices mandated by Article 187(2) of the Constitution.

4. International Organisation of Supreme Audit Institutions (INTOSAI), is an international governmental standard setting and advisory body on auditing and accounting issues recognised by international agencies like the World Bank and the International Monetary Fund (IMF) and the United Nations.

5. Section 19 of the Audit Service Act 2000 (Act 584) requires the Auditor-General to adhere to emerging methodologies and practices in governmental auditing adopted by INTOSAI and other internationally recognised bodies.

6. The Service is a member of the Regional group of INTOSAI for Africa, known as the African Organisation of Supreme Audit Institutions (AFROSAI) which is subdivided into AFROSAI-E for English speaking members and AFROSAI-F for French speaking members.

7. INTOSAI and AFROSAI-E have established auditing standards and guidelines including capability levels which are used in undertaking peer reviews in member countries. In respect of these capability levels, the Audit Service is currently at Level 2 because administrative practices and directives of the Executive have been made to prevail over constitutional provisions on the Service. The top level is Level 5.

Appendices

8. Attached separately to the proposals are copies of the following documents which informed the formulation of remedial provisions in this Paper.

- Appendix A - INTOSAI Capability Levels showing the various attributes or characteristics of the five capability levels.
- Appendix B - A copy of the Lima Declaration of INTOSAI.
- Appendix C – A copy of the Mexico Declaration on SAI Independence expanding on Chapter II (second chapter) of the Lima Declaration.
- Appendix D - Extract of a report on European Union technical support to the Ghana Audit Service.
- Appendix E – Extract of a report of the Special Budget Committee of Parliament on the Audit Service urging the Service to enforce its independence.
- Appendix F - Extract of Debate on the Audit Service Bill 1999.
- Appendix G - Extract of World Bank Report on Ghana titled “Ghana: Accounting and Auditing Issues – 1994”.

- Appendix H –Letter from the Danish Auditor-General relating to movement from traditional financial audit towards performance audit of development aid activities reflecting new challenges in auditing.
- Appendix I – Extract from publications by GAO of USA on Human Resource Policy on modern audit requirements
- Appendix J: Extract of Quality Control Review on Ghana Audit Service by the Office of Inspector General USAID, Dakar.
- Appendix K – Extract of Quality Assurance Report by AFROSAI –E.
- Appendix L: Extract of the Memorandum to the 1969 Constitution.

The Proposals

9. The Proposals for the amendment of the existing provisions have been presented in the following format:

- (i) Existing Provision
- (ii) Issues and Comments
- (iii) Remedial Proposals

10. The issues and comments section of the proposals have been derived from the principles of Article 106(2) of the Constitution, which requires the submission of a legal Memorandum to support proposals/bill into Parliament for introduction of laws or the amendment of existing laws.

11. Article 70(1)(b) - Appointment of Auditor-General

i. Existing provision

The President shall, acting in consultation with the Council of State appoint the Auditor-General.

ii. Issues and Comments

- The existing provision dates back to the 1969 Constitution when the President, the appointing authority, was a ceremonial Head of State and not an Executive President combining the role of Head of State and Head of Government as currently existing under Article 57(1) of the Constitution. The Council of State which the President consults in

the appointment process also forms part of the Executive structure of Government.

- The perception created is that the Auditor-General who is responsible for the audit of the accounts of Government is an appointee of the President just like Ministers of State. Reviews carried out by INTOSAI and other stakeholders have faulted the country on the existing provision. International auditing standards for both the public and private sectors require that the auditor must be independent of the audited entity.
- Best international practice requires Parliamentary involvement in the appointment of the Auditor-General.
- Principle 2 of Mexico Declaration on SAI Independence issued by INTOSAI states that the applicable legislation specifies the condition for appointments, reappointments, employment, removal and retirement of the Head of SAI and members of collegial institutions who are appointed, reappointed or removed by a process that ensures their independence from the Executive and who are given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation. These are missing in Ghana's legislative framework.
- The 1968 Constitutional Commission in Paragraph 596 of its Memorandum proposed "the appointment of a public officer as the Auditor-General of Ghana" - indicating that only serving officers in the public offices of Ghana can be appointed to this post.

iii. Remedial Proposal

12. To deal with the deficiencies and omissions identified, the following provisions have been made.

- a) The President shall, acting in consultation with the Council of State and on the recommendation of Parliament, appoint the Auditor-General.
- b) The Auditor-General shall hold office for a maximum period of ten years and shall, in any event, vacate his office on attaining the age of sixty-five years.
- c) A person shall not be eligible for appointment as Auditor-General unless the person has served continuously as a public officer for a

minimum of twenty years, five of which must have been in a top management position.

13. Article 71(1)(c) –Emoluments of the Auditor-General

i. Existing provision

The salaries and allowances payable, and the facilities and privileges available to the Auditor-General being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendation of a Committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State.

ii. Issues and comments

- The determination of the emoluments of the Auditor-General by the Executive could compromise the independence of the Auditor-General who might be tempted to please the President or the Executive in order to secure his salary and conditions of service.
- Under the 1954 – 1960 Constitutions, it was Parliament which was determining the emoluments of the Auditor-General as a charge on the Consolidated Fund, which is more acceptable in terms of international standards than the current provision.
- Best practice, as seen for example in the case of Canada and South Africa, is the attachment of the Auditor-General’s emoluments to those of the judges of the Supreme Court.
- Under the Audit Service Decree (NRCD 49) of 1972, the Auditor-General was placed on the same salary as Supreme Court Judge. Since the coming into force of the 1992 Constitution, the salary and allowances of the Auditor-General who is responsible for the audit of the Courts, have been downgraded to those of an Appeal Court Judge.

iii. Remedial Proposal

The salary and allowances payable, and the facilities and privileges available to the Auditor-General, including retiring awards, shall be the same as those of a Justice of the Supreme Court and shall be a charge on the Consolidated Fund.

14. Article 187(1) - The Office of Auditor General

i. Existing Provision

There shall be an Auditor-General whose office shall be a public office.

ii. Issues and comments

- The post of Auditor-General is regarded as a post in the Public Services of Ghana, one of the divisions of public office as broadly defined under Article 295.
- The constitutional mandate of the Auditor-General goes beyond the public services of Ghana to cover all 'public offices' such as the Ghana Armed Forces, VRA, Bank of Ghana. In line with global and contemporary practice in governmental auditing as well as the guidelines of INTOSAI, the Office of the Auditor-General should stand alone as part of the public offices of Ghana to safeguard his independence from the Public Services and other public offices.

iii. Remedial Proposal

There shall be an Auditor-General of Ghana whose office shall be a corporate office in the public offices of Ghana.

15. Article 187(2) – Mandate of the Auditor-General

i. Existing Provision

The public accounts of Ghana and of all public offices including the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of Parliament shall be audited and reported on by the Auditor-General.

ii. Issues and comments

- The existing provision has restricted the Auditor-General to the auditing of the accounts of public offices, or financial audit which deals with the examination of accounts. However, public sector audit, has in contemporary times, been extended to the programmes and activities of audited bodies. This has brought new dimensions to auditing which include performance audit, environmental audit, forensic audit, and

the audit of computerized and electronic systems which require multi disciplinary skills and competencies to perform.

- The budgeting system was changed by the 1979 Constitution from line budgeting to programme budgeting. This has been carried over to the 1992 Constitution where the annual estimates of expenditure required to be presented by the President under Article 179(2)(a) of the 1992 Constitution to Parliament are required to be classified into programmes or activities.
- The Office of the Auditor-General is a public office and all public offices are required to be audited by the Auditor-General; meaning that under the existing provision, the Auditor-General must audit his own Office. This is in conflict with Article 187(15) of the Constitution which states that "The accounts of the office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament."
- The wide scope of audit introduced by the 1969 Constitution to cover the entire public sector, instead of only central government, should be maintained because public sector wide issues and trends can be identified, analysed and dealt with under the broad mandate. This is the trend being followed in developing nations particularly in Africa because of the huge investments being made by Government in the public sector. The wide scope is also consistent with Section 24 of the Lima Declaration which states "(1) Supreme Audit institutions shall be empowered to audit the use of subsidies granted from public funds. (2) When a subsidy is particularly high, either by itself or in relation to the revenues and capital of the subsidized organisation, the audit can, if required, be executed to include the entire financial management of the subsidized institution."
- General Introduction to the INTOSAI Financial Audit Guidelines (ISSAI 1000) states in paragraph 6 and 7 as follows: "The objectives of a financial audit of public sector entities are often broader than the objectives of an audit of financial statements in accordance with International Standards of Auditing (ISAs) (i.e. to express an opinion whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework). The objectives of a financial audit of public sector entities may include additional audit and reporting responsibilities. For example, public sector auditors may be required to report on: public sector entity's compliance or non-compliance with authorities, including budget and accountability; the effectiveness of internal control over financial

reporting; or on the economy, efficiency and effectiveness of programs, projects and activities.”

- “The audit mandate for a Supreme Audit Institution, or the obligations for public sector entities arising from legislation, regulation, ministerial directives, government policy requirements, or resolutions of the legislature, may also result in additional audit and reporting responsibilities for public sector auditors.”

iii. Remedial Proposal

To deal with the defects and omissions noted, and to introduce as well modern concepts on public sector auditing into the Constitution, Article 187(2) of the Constitution has been modified and expanded into sub clauses (a) and (b) as follows:

- (a) The public accounts of Ghana and of all public offices other than that of the Office of the Auditor-General, including the programmes and activities underlying the accounts, shall be audited and reported on by the Auditor-General.
- (b) For the purposes of (a) above the public offices of Ghana shall include central and local government administrations, the courts, office of parliament, Universities and public institutions of like nature, of any public corporation or other body or organisation established by an Act of Parliament.

16. Article 187(3) - Access to records

i. Existing Provision

For the purposes of clause (2) of this article, the Auditor-General or any person authorized or appointed for the purpose by the Auditor-General shall have access to all books, records, returns and other documents relating or relevant to those accounts.

ii. Issues and comments

Information and Communications Technology is now providing a platform for the development of computer based and paperless system. The word “facilities” has been added to the existing formulation to take account of all facilities including computer based facilities to which the Auditor-General should have access.

iii. Remedial Proposal

For the purposes of clause (2) of this Article, the Auditor-General or any person authorized or appointed for the purpose by the Auditor-General shall have access to all books, records, returns, reports, documents and facilities related or relevant to those accounts and programmes and activities underlying the accounts.

17. Protection from Liability

i. Issues and Comments

- There is no existing provision in the regulatory framework for protection or immunity from prosecution for the Auditor-General and his officers or agents. The Audit Service has been faulted by INTOSAI (Principle 2 of Mexico Declaration) for the absence of this protection.
- INTOSAI guidelines on constitutional and regulatory framework require SAIs to be given immunity from legal action or protection from liability in the discharge of the audit mandate. Other SAIs such as those of the United Kingdom, South Africa, Kenya, Uganda and Malawi have this provision in their enabling Act, which is missing in Ghana's case.

ii. Remedial Proposal

- (a) The Auditor-General or any person serving in his Office or acting on his behalf shall not be subject to prosecution in civil or criminal proceedings or be personally liable for any act or omission done or omitted to be done in good faith in the exercise of the functions of the Office of the Auditor-General or carrying out any duty, or exercising any power under the Constitution.

18. Article 187 (4) – Form of Accounts

i. Existing

The public accounts of Ghana and of all other persons or authorities referred to in clause (2) of this article shall be kept in such form as the Auditor-General shall approve.

ii. Issues and Comments

- The approval function vested in the Auditor-General which may be regarded as an impairment of his independence should be retained since the Controller function is entrusted to the Executive and exercised by the Controller and Accountant-

General as is currently the case. The Controller function relates to the release of appropriation approved by Parliament to spending Ministries, Departments and Agencies. In some countries, the Controller function is attached to the post of Auditor-General as in the United Kingdom, Zimbabwe, India and Kenya for example.

- In Uganda, section 12 of the National Audit Act, 2008 requires as follows:
“No moneys shall be withdrawn from the Consolidated Fund unless the withdrawal has been approved by the Auditor-General and in the manner prescribed by Parliament.”
- The Auditor-General’s reports over the past decades have disclosed repetitive findings on fraud, irregularities and non-compliance with regulations, weak internal controls, etc. which are not addressed adequately and yet funding continues to be given to the agencies involved. This has perpetuated a culture of impunity in financial administration of the country. Despite the establishment of Audit Reports Implementation Committees required under the Audit Service Act, passed ten years ago, this phenomenon continues to exist.
- In Ghana, the assumption of part of the Controller function by the Auditor-General, as existing in Uganda currently, will require a great deal of political and administrative goodwill to effect. The advantages are that the Auditor-General of Ghana will be in a position to trace all funds to appropriate accounts, and his recommendations on internal control will most likely be promptly enforced by audited bodies and this will enhance fiscal and financial discipline in the country.
- Under the existing provision, the Auditor-General of Ghana cannot interfere with or intervene in the release of funds from Parliament to the Executive. What has been prescribed is that before any public office or institution starts the operation of its financial and accounting system the Auditor-General must review and approve the proposed system to ensure that appropriate controls are in place to receive, record and account for funds allocated from the Consolidated Fund or other public funds. This has not been achieved and therefore systems including computerised systems have been operationalised without any assurance that risk factors have been adequately addressed.

- Some Development Partners are now requiring the Auditor-General to do pre-assessment of Governmental entities as a condition for providing donor support to those entities.

iii. Remedial Provision

Two clauses have been added to the existing provision as follows:

- (a) The public accounts of Ghana and the accounts of all other persons or authorities referred to in clause (2) of this article shall be kept in such form as the Auditor-General shall approve.
- (b) No monies other than expenditure charged on the Consolidated Fund shall be withdrawn from the Fund unless the withdrawal of such monies has been approved by the Auditor-General and in the manner authorized or prescribed by Parliament.
- (c) In giving approval for the withdrawal, the Auditor-General shall ensure that appropriate internal controls exist in the organisation concerned to receive, record and account for the monies to be withdrawn and that issues raised in previous reports have been satisfactorily or adequately resolved.

19. Article 187 (5)- Reporting to Parliament

i. Existing Provision

The Auditor-General shall, within six months after the end of the immediately preceding financial year to which each of the accounts mentioned in clause (2) of this article relates, submit his report to Parliament and shall, in the report, draw attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament.

ii. Issues and Comments

- Before 1969, the Auditor-General was responsible for the audit of central government accounts. The 1969 Constitution extended the audit mandate to the whole of the public sector and therefore provided for a twelve month period for the Auditor-General to submit his report to Parliament. The reporting period was shortened to six months by the 1979 Constitution which has been retained by the 1992 Constitution. Whilst some SAIs have a long reporting deadline (Kenya) others have flexible reporting arrangements (Canada and Uganda) unlike the fixed reporting deadline in Ghana's case.
- The public accounts and the accounts of all public offices are by law required to be presented to the Auditor-General three months after the

end of the financial year, giving the Auditor-General three months within which to conduct the audit of all the accounts, clear issues with the clients and present his report to Parliament. The rush to meet this deadline causes quality control and assurance reviews to be compromised and this has been disclosed in independent quality assurance reviews carried out by AFROSAI-E and RIG/Dakar.

- The fixed deadline of six months for the Auditor-General to submit his reports on the public accounts of Ghana and of all public offices covered by Article 187(2) of the Constitution is a serious constraint which is against INTOSAI's auditing standards for reporting (No. 62) and Principle 6 of the Mexico Declaration which states that "It is appropriate for legislation to specify minimum reporting requirements, including the matters to be subject to an audit opinion and a reasonable time within which reports should be made. Apart from that, flexible arrangements for the SAI's reporting to the legislature, without restriction on content or timing of reports, would support the maintenance of independence."
- The existing provision does not allow for separate reporting on matters related to national security accounts and operations. Because of the sensitivity surrounding these matters some countries have introduced provisions in their laws allowing for confidential and separate reporting to Parliament.
- The existing provision also requires that all reports of the Auditor-General are to be submitted to Parliament by 30th June, implying that after this date to 30th June of the succeeding year, a one year period, the Auditor-General is not mandated to submit any other report to Parliament, including reports issued in response to requests by the President under Article 187(8) of the Constitution.
- Parliament goes on recess in July and comes back in October. Where the Auditor-General's Report is issued on 30th June, this is not laid before the House and referred to the Public Accounts Committee before Parliament rises.
- The existing provision also requires the Auditor-General in his report to Parliament to "draw attention to **any irregularities** in the accounts", thus limiting the Auditor-General to act without discretion by not reporting only matters which in his opinion are material or significant.

iii. Remedial Proposal

The following amendment of the existing provisions and new proposals have been made to address the defects and omissions noted.

- (a) The Auditor-General shall, not later than nine months after the end of the immediately preceding financial year to which each of the accounts, programmes and activities underlying the accounts mentioned in clause (2) of this article relates or such longer period as Parliament may by resolution specify, submit his report to Parliament and shall, in any such report, draw attention to anything that he considers to be of significance and of a nature that should, in his opinion, be brought to the notice of Parliament.
- (b) The Auditor-General may, in addition to the report on the Public Accounts of Ghana and of all public offices, submit to Parliament, on any of its sitting days, any other report on his activities undertaken under the Constitution or any other law or any matter, which in the opinion of the Auditor-General, should be brought to the notice of Parliament.
- (c) Subject to the provisions of this Constitution, the Auditor-General shall submit separately to Parliament, under confidential cover, his findings on matters related to national security institutions in terms of their operations and activities.

20. Article 187 (6) – Parliamentary Debate of Auditor-General’s Report

- i. Existing Provision** - Parliament shall debate the report of the Auditor-General and appoint where necessary, in the public interest, a committee to deal with any matters arising from it.
- ii. Issues and Comments**
 - The existing provision does not provide for a time frame within which, upon the presentation of the Auditor-General’s report to Parliament, the report shall be considered and debated by Parliament and the findings/recommendations made referred to the Executive or other appropriate body for action.
 - The requirement that after the debate of the report of the Auditor-General, Parliament, where necessary, should appoint a Committee in the public interest to deal with any matters arising from the report, has not been complied with by Parliament. The Centre for Policy

Analysis (CEPA) in their Paper No. 10 of 2005 has noted that "When Parliament is in breach of Article 187(6), the objective of the Constitution is not achieved and all the control mechanism defined by laws and regulations, will fail to inform anybody including the law-makers themselves.

iii. Remedial Proposal

- 1) Parliament shall, not more than six months after the receipt of the report of the Auditor-General:
 - a) Debate and consider the report and refer it as appropriate, for action to be taken on the findings, recommendations and conclusions arising from the debate.
 - b) Appoint, in the public interest, a committee to deal with any special matters arising from the debate.
- 2) The Auditor-General shall follow up the implementation of the recommendations of Parliament on his report and indicate appropriately in a separate section of his subsequent annual report the adequacy and effectiveness of actions taken on the recommendations in his previous report.

21. Article 187(7) – Authority and Powers of the Auditor-General

i. Existing Provisions

In the performance of his functions under the Constitution or any other law, the Auditor-General

- (a) Shall not be subject to the direction or control of any other person or authority;
- (b) May disallow any item of expenditure which is contrary to law and surcharge
 - i) the amount of any expenditure disallowed upon the person responsible for incurring or authorizing the expenditure; or
 - ii) any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account; or
 - iii) the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

ii. Issues and Comments

- The provisions of Article 187(7)(a-b) should be maintained and enforced.
- The independence of the Auditor-General from direction or control of any person or authority is a key requirement under INTOSAI's Auditing Standards. The Office of the Auditor-General has received adverse comments from Development Partners who have invested in the national budget and also from Parliament for not actively introducing measures to implement the provisions on surcharge and disallowance.
- There is no provision in the Constitution to allow the Auditor-General to establish advisory bodies and formal relationships outside his office.
- The auditing function has become a dynamic one which has been extended from the audit of accounts to the assessment of programmes and activities underlying the accounts and evaluation of impacts of the programmes and activities. Modern public sector auditing involves competences covering several academic and professional disciplines. Auditors-General are now required to rely on expert advice outside the office structure. There is the need to introduce a provision to give freedom to the Auditor-General to obtain outside advice as has been done in the case of South Africa, Uganda and Kenya in their enabling Acts. Article 187(7) (c) has accordingly been introduced.

iii. Remedial Proposal

In the performance of his functions under the Constitution or any other law, the Auditor-General

- a) maintain the existing provision.
- b) maintain the existing provision including (b)i-iii.
- c) may establish formal relationship with persons, institutions and associations, in or outside the country or appoint advisory and other bodies outside his Office to provide specialized advice to the Auditor-General.

22. Article 187(8) – Request by the President to Auditor-General to conduct audits

i. Existing provision

Paragraph (a) of clause (7) of this article (Article 187) shall not preclude the President, acting in accordance with the advice of the Council of State, from requesting the Auditor-General in the public interest, to audit, at any particular time, the accounts of any such body or organisation as is referred to in clause (2) of this article.

ii. Issues and Comments

- The existing provisions allow the President, at any particular time of his choice, to request the Auditor-General to audit the same accounts which Article 187(2) of the Constitution has prescribed for the Auditor-General. Reports on audits carried out as a result of Presidential requests are not specifically required by the Constitution to be presented to Parliament. Peer reviews conducted by AFROSAI-E and the USAID/Regional Inspector General in Dakar, have criticized the provision of Article 187(8) as running counter to Article 187(7)(a) and have called for the removal of Article 187(8) from the Constitution.
- The due process prescribed by the Constitution, requiring only the President to make a request to the Auditor-General, is not observed as Ministers of State and other functionaries of the Executive assume the role of the President and make direct requests for audits to be performed by the Auditor-General who may be constrained, notwithstanding Article 187(7)(a) of the Constitution, to act on such requests.
- INTOSAI Standards require a SAI to execute the audit mandate in accordance with its own programme and priorities, as reflected by Principle 3 of the Mexico Declaration. Article 67 of INTOSAI Standards state that "Maintenance of the SAI's independence does not preclude requests to the SAI by the Executive proposing matters for audit. But if it is to enjoy adequate independence, the SAI must be able to decline any such request. It is fundamental to the concept of SAI independence that decisions as to the audit tasks comprising the programme should rest finally with the SAI".
- As part of the annual audit planning process, the Auditor-General may engage the Office of the President, Parliament and other stakeholders on matters of concern to them and factor those he considers to be relevant or appropriate into his audit programme and activities.

iii. Remedial Proposal

Article 187(8) has been modified to place the discretion in carrying out special audit on the Auditor General as follows:

The Auditor-General may accept requests by the President, acting on the advice of the Council of State, to undertake a special audit of the accounts, programmes and activities underlying the accounts of any public office or institution which is subject to audit by the Auditor-

General if, in the opinion of the Auditor-General, the special audit is in the public interest and does not interfere with his primary functions.

23. Article 187(9) - Appeal against disallowance

i. Existing Provision

A person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal to the High Court.

ii. Issues and Comments

This existing provision should be maintained because it is consistent with human rights and the rule of law.

iii. Remedial Proposal

None.

24. Article 187(10)-Rules of Court Committee

i. Existing Provision

The Rules of Court Committee may, by Constitutional Instrument, make Rules of Court for the purposes of clause (9) of this article.

ii. Issues and Comments

The existing provision should be maintained and activated by the Auditor-General and the Rules of Court Committee chaired by the Chief Justice. Since the introduction of this clause by the 1969 Constitution, no effort has been made to come out with the required Rules.

iii. Remedial Proposal

The Rules of Court Committee, as established by Article 157 of this Constitution may, by Constitutional Instrument, make Rules of Court for the purposes of clause (9) of this article.

25. Article 187 (11) - Salary and allowances of the Auditor-General

i. Existing Provision

The salary and allowances payable to the Auditor-General shall be a charge on the Consolidated Fund.

ii. Issues and Comments

The provision should be deleted because Article 71(1)(c) as modified by the proposals made in this document has dealt with the matter.

iii. Remedial Proposal

The existing provision is to be deleted.

26. Article 187(12)- Variation of the Rights of the Auditor-General

i. Existing Provision

The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring award or retiring age shall not be varied to his disadvantage during his tenure of office.

ii. Issues and Comments

This should be retained as it reinforces the independence of the Auditor-General from executive control. The retiring age of the Auditor-General, previously dealt with by the 1969 Constitution which provided for five years more than the retiring age in the public services, has been omitted from the 1992 Constitution. Proposals have already been made in this document on the matter.

iii. Remedial Proposal

None. The existing provision should be maintained.

27. Article 187 (13) – Removal of the Auditor-General

i. Existing Provision

The provisions of article 146 of the Constitution relating to the removal of a Justice of the Superior Court of Judicature from office shall apply to the Auditor-General.

ii. Issues and Comments

Parliamentary involvement in the appointment of the Auditor-General is the current best practice endorsed by INTOSAI. The removal from office should therefore also involve Parliament.

iii. Remedial Proposal

The Auditor-General shall be removed from office by the President acting in accordance with the provisions of Article 146 of the Constitution and approval of not less than two-thirds of members of Parliament on the following grounds:

- (a) Inability to perform the function of his office arising from infirmity of body or mind;
- (b) Misbehavior or misconduct
- (c) Incompetence

28. Vacancy in position of Auditor-General

i. Existing Provision

There are no provisions in the Constitution on vacancy in the post of Auditor-General.

ii. Issues and Comments

- Past and current Constitutions of the country have contained provisions to the effect that “There shall be an Auditor-General...” meaning that at no point should there be a situation where there is no substantive Auditor-General. However, in practice, there had been occasions where the position of the Auditor-General had been vacant for periods ranging from nine months to two years.
- All over the world, the Auditor-General is the only person required to present the Auditor-General’s Report to Parliament and is required in Ghana’s case, by the Constitution, to swear the Oath of Office before assuming the functions of his Office.
- Development Partners have expressed concern about prolonged vacancy in the post of Auditor-General and the Service had lost opportunities for international cooperation and technical assistance because of the absence of a substantive Auditor-General.

iii. Remedial Proposal

To address the issues identified, the following proposal has been made to strengthen the Office of the Auditor-General:

There shall be no occasion where the Office of the Auditor-General becomes vacant for a period exceeding three months following the retirement, resignation or removal of the Auditor-General from office in accordance with the Constitution.

29. Article 187(14) – Expenses of the Office of the Auditor-General

i. Existing Provision: The administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the Audit Service shall be a charge on the Consolidated Fund.

ii. Issues and Comments

- Article 187(14) of the Constitution should be modified to provide for a National Audit Office to replace the existing Audit Service. The provision guarantees the financial independence of the Office of the Auditor-General in line with INTOSAI Standards as the expenses of this office are regarded as statutory expenditure which has been ring-fenced by the Constitution.

- Before the 1969 Constitution, the Auditor-General’s mandate covered only the Central Government and all expenses for the audit were borne from the Consolidated Fund managed by the Central Government. However, when the audit mandate was extended to the whole of the public sector, provision was not made for bodies outside the central government structure which are subject to audit by the Auditor-General to contribute to auditing costs and expenses of such bodies. Additional provision to cover this omission has therefore been made to Article 187(14) of the Constitution.

iii. Remedial Proposal

- (a) The administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in his Office (the National Audit Office) shall be a charge on the Consolidated Fund.
- (b) Expenses determined by the Auditor-General for the audit of public funds other than the Consolidated Fund shall, subject to approval by Parliament, be recovered from such public funds and transferred into the Consolidated Fund to cover the auditing expenses related to such funds.

30. Article 187(15) – Audit of accounts of the Office of Auditor-General

i. Existing Provision

The accounts of the Office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament.

ii. Issues and Comments

- Parliament has been given the power to conduct only financial audit on the Office of the Auditor-General. This should be extended to other forms of audit and reviews into the performance, structure and operations of the Office.
- INTOSAI Capability levels developed for SAIs to enable them progress from the basic level of the Model, Level 1 to Level 5, require that
 - At Level 3, An independent parliamentary process exists to oversee the activities of SAI
 - At Level 4, Productivity is measured and reports are issued on the activities and performance of SAIs against pre-determined objectives

- At Level 5, Performance of the SAI is measured against pre-determined objectives by means of an independent parliamentary oversight process.

iii. Remedial Proposal

Three clauses have been introduced as follows to replace Article 187 (15) of the Constitution in order to strengthen parliamentary oversight over the Office of the Auditor-General.

- (a) The accounts, programmes and activities underlying the accounts of the Office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament.
- (b) Notwithstanding the provisions of Article 187(15), Parliament shall, within a period of three years or less cause an independent review to be conducted into the structure, operations and performance of the Office of the Auditor-General in the discharge of the functions conferred on the Office by the Constitution or any other law.
- (c) A report from any review carried out in accordance with the Provision of this article shall be debated by Parliament which shall refer any recommendation made to the Office of the Auditor-General for appropriate action.

31. Article 187(16) – Oath of Office

i. Existing Provision

A person appointed to be the Auditor-General of Ghana shall, before entering upon the duties of his office, take and subscribe the Oath of the Auditor-General set out in the Second Schedule of this Constitution.

ii. Issues and Comments

The existing provision should be maintained as this seeks to regulate the conduct of the Auditor-General in accordance with the Constitution.

iii. Remedial Proposal

None.

32. Analysis of the budget objectives of Government

i. Existing provision

None.

ii. Issues and Comments

- At Level 5 of INTOSAI Capability Level for SAIs, budget objectives of Government are expected to be analysed and reported upon by the Auditor-General. This is the case in Liberia and the United Kingdom. This provides opportunity to the SAI to plan around the objectives of the budget well ahead of time.
- In some countries, the Auditor-General attends Cabinet sessions and becomes aware of the plans of Government and uses these for his assignment planning.
- According to Sections 2.2.6 and 2.2.7 of INTOSAI Standards "... the important results of audits of the carrying-out of the State budget and of administration and disputes and disagreements with audited administrations should be brought to the attention of the legislative body by way of report or special communication. "Special committees created within the legislative body may be charged with examining, in the presence of Ministers, delegates from the audited services and other representatives, the comments in the SAI reports and special communications. The close link between the legislative body and the SAI can also be implemented by a budgetary enquiry as well as by technical assistance to the work of parliamentary committees charged with the examination of draft budgets." These indicate that SAIs should be able to review draft budgets, which is not the case in Ghana.

iii. Remedial Proposal

The Auditor-General shall carry out an analysis of budget objectives of Government and report thereon to Parliament.

33. Article 188 – Establishment of the Audit Service

i. Existing Provision

There shall be an Audit Service which shall form part of the public services of Ghana.

ii. Issues and Comments

- Independence of SAIs from audited entities at the institutional and personal levels is one of the principal factors universally recognised as a basis for assessing the adequacy and effectiveness of SAIs. Section 6 of the Lima Declaration states in this respect that "The Independence of Supreme Audit Institutions is inseparably linked to the independence of its members." At the institutional level, the

elements of independence of SAIs includes financial, political and legal independence from the Executive as expressed in paragraph four of the Memorandum of the Audit Service Bill 1999. At the personal level, members of SAIs in their professional careers must not be influenced by the audited organisation and must not be dependent on such organisation.

- In view of developments in governmental audits, Supreme Audit Institutions are gradually being detached from the public services to stand on their own as public offices. Thus there are currently the United Kingdom National Audit Office, the Swedish National Audit Office, the Kenya National Audit Office, Office of the Auditor General of Uganda, as a corporate body, General Accountability Office of the United States, Office of the Auditor-General of Canada, etc which are detached from the public services of their respective countries.
- The INTOSAI Capability Level requires that by the attainment of Level 3, the SAI should have ceased to be part of the Public Services. In Level 3 of INTOSAI capability levels, the following are expected to be in place
 - Human, administrative and other resources to execute his mandate are independently managed (staff are not public servants) by the Auditor-General and his office
 - The SAI or its governing body determine key policies and practices
 - Financial resources are appropriated by Parliament without any involvement of the executive, including auditees. The recovering of audit fees is regarded as an involvement of auditees
- The Audit Service is currently part of the Public Services of Ghana which are subject to audit by the Auditor-General. The Audit Service therefore forms part of the organisations which it is required to audit under the direction of the Auditor-General. As already indicated, this is against INTOSAI Standards which require that the Supreme Audit Institutions must be independent of the organisations which are subject to audit by the SAIs. Section 5(1) of the Lima Declaration in this respect states that Supreme Audit Institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and protected against outside influence.
- Section 6 of the Lima Declaration states that "The independence of Supreme Audit Institutions is inseparably linked to the independence

of its members. Audit staff of supreme Audit Institutions must not be influenced by the audited organisation.

- The World Bank in a report on Ghana titled Ghana: Assessment of Accounting and Auditing Issues, released in February 1994, recommended the removal of the Audit Service from the Public Services.

iii. Remedial Proposal

Two clauses have been introduced to remove the Audit Service from the Public Services of Ghana in accordance with INTOSAI Standards, rename the Audit Service as the National Audit Office and to provide for the membership of the office as follows:

- (a) There shall be a National Audit Office which shall form part of the Office of the Auditor-General of Ghana.
- (b) The members of the National Audit Office shall be the Auditor-General and officers and employees appointed into the National Audit Office.

34. Article 189(1) – Establishment/Composition of the Audit Service Board

i. Existing Provision

There shall be an Audit Service Board which shall consist of:

- a. A chairman and four other members appointed by the President acting in consultation with the Council of State;
- b. The Auditor-General; and
- c. The Head of the Civil Service or his representative

ii. Issues and Comments

- The main reason for the creation of the Audit Service Board by the 1969 Constitution was to ensure the removal of the then Auditor-General's Department "from the traditional control of the Establishment Secretariat and the Minister of Finance". This removal, according to the Memorandum of the 1968 Constitutional Commission, was to be effected by "the establishment of an Audit Service with a board whose main duty would be to carry out an impartial examination of the service conditions and the annual estimates of the department"

- More than forty years after the provision on the establishment of the Board was made in the 1969 Constitution, and repeated by succeeding Constitutions, the reasons for the establishment of the Board are yet to be attained fully. Conditions of service approved by the Board in consultation with the Public Services Commission (PSC) have often been varied, estimates of the Service approved by the Board reduced before presentation to Parliament, budgeting guidelines and policies of the Executive imposed on the Service, ceilings placed on recruitment, etc. The Board has therefore been treated as an ordinary governing board of a state institution, which is subject to Ministerial directives and control, thus defeating the purposes for which it was established by the 1969 Constitution.
- The Board is made up of seven members with the Head of Civil Service and the Auditor General as automatic members. The limited number, unlike the Judicial Council for example with a membership of seventeen, does not allow for a balance of difference types of competencies required to drive the modern public sector processes to be considered in appointments to the Board. The Audit Service requires a wide range of multi disciplinary skills to perform the modern varieties of public sector audits. These include not only professional accountants but engineers, lawyers, surveyors, economists, scientists, computer experts, valuers, financial analysts and degrees holders in other fields. These are demonstrated by Appendix I showing the Human resource policy of the General Accountability Office of the USA to meet the challenges of modern audit and Appendix F showing parliamentary debate on the Audit Service Bill, 1999.
- The Civil Service is just one of the several Public Services specified under Article 190 of the Constitution. The reason for the automatic membership of the Head of the Civil Service on the Board is not clear. The Civil Service is also audited by the Auditor-General and this raises the issue of the independence of the Auditor-General and also conflict of interest on the part of the Head of the Civil Service or his representative serving on the Board.
- The Board is a constitutional board and not an ordinary board. In addition to dealing with policy issues required of all governing boards, the Board is a lawmaker required by Article 189(3)(b) of the Constitution to make Regulations which under Article 11 of the Constitution become part of the laws of Ghana. Article 189(4) of the Constitution has extended to the Chairman and four other members of the Board removal provisions similar to those applicable to members

of the Supreme Court of Judicature, emphasising the fact that the Board is not an ordinary board.

- The Public Services Commission which is a supervisory constitutional institution of the State serves as an advisory body to a Board which has the power of final decision, according to the Audit Service Act, on matters on which the Board has held consultation with the Commission. Governing Boards are generally perceived to be inferior in status to Commissions.
- The Constitution has not provided term limits for members of the Audit Service Board. The Audit Service Decree 1972 (NRCD 49) which replaced the 1969 Constitution provided two term limits of three years each for members similar to the term limits of other statutory governing boards. The Audit Service Act 2000, Act 584 has extended the term limits to three terms, subject at the end of each three year term of office to renewal up to a maximum of nine years.
- The Audit Service Act, 2000, Act 584 also requires the Board to ensure that the auditing activities spelt out in the Act are undertaken in accordance with best international practices. Auditors are not created overnight to attain the level of proficiency and effectiveness required by the Act. Policies introduced by the Board towards enhancement of the delivery capacities of auditors, may require implementation and evaluation beyond the three year period that members of the Board are required to serve.
- In modern times, two main types of SAIs have emerged in response to refinements made by INTOSAI to issues on the independence of SAIs. These are:
 - (a) cases where Boards or Commissions are established to oversee and take decisions on some aspects of the administration of SAIs, such as review and approval of the estimates of SAIs, on behalf of the State, and
 - (b) cases where there are no governing boards or commissions, with the Head of the SAI (Auditor-General) as the highest and only authority responsible for the recruitment of his Deputies and all other staff of his office, determination of conditions of service and annual estimates without the involvement of any other person or authority including the Executive and submission of the annual estimates directly to Parliament without reference to the Executive. South Africa and Uganda are examples.

- To allow for checks and balances in the system and also in recognition of socio-cultural characteristics of the country, the Audit Service Board should remain and be renamed the Audit Commission to recruit officers of the SAI, determine impartially the conditions of service and the annual estimates of the proposed National Audit Office.

iii. Remedial Proposal

Proposals have been made for the renaming of the Audit Service Board, expanded membership of the Board to provide for the wide mandate of the Service, now National Audit Office, the involvement of Parliament in the approval of appointment of members of the Board/Commission, the replacement of the Head of the Civil Service by a retired officer of the Audit Service (NAO) to provide for institutional memory and a fixed term limit for service on the Board as follows:

- (1) There shall be an Audit Commission which shall be the governing body for the National Audit Office and shall consist of:
 - a. A chairman and six other members appointed by the President acting in consultation with the Council of State and approval by Parliament;
 - b. The Auditor-General; and
 - c. A nominee from the retired staff of the Audit Service Pensioners Association.
- (2) Subject to the Constitution, the Audit Commission shall, in the performance of its functions under this Constitution or any other law not be subject to the direction or control of any person or authority.
- (3) The members of the Commission, other than the Auditor-General, shall be in office for a period of five years renewable for another term.

35. Article 189(2) - Appointment of officers into the Audit Service

i. Existing Provision

The appointment of officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission.

ii. **Issues and comments**

- Article 195(1) of the Constitution has vested in the President the power to appoint persons into the Public Services of Ghana of which the Audit Service is a part, unless the Constitution, as provided by Article 189(2) of the Constitution in the case of the Audit Service, states otherwise. The exception to the powers of the President regarding appointment into the Audit Service has not been fully respected. The Audit Service has since 1969 to date continued, as already explained, to be treated as a Department of Government with high state officials still calling it the Auditor-General's Department and subjecting it to government policies and control. The Service has in this respect suffered from manpower ceilings imposed on it by Executive agencies, like MoFEP and OHCS without regard to the mandate of the Auditor-General.
- The authority of the Board as a Constitutional governing body which includes the Auditor-General has not been recognized by the State machinery. Denial and reduction by Government of human resource requirements of the Auditor-General as determined and approved by the Board affects the performance of the functions of the Auditor-General specified in Article 187(2) of the Constitution. This also constitutes an infringement of Article 187(7)(a) of the Constitution where the Auditor-General is unable to carry out his planned programmes. In some countries, including African countries, the Auditor-General determines his human resource requirements without reference to any other person or authority. In Ghana's case this function has been democratized to allow checks and balances but the decision making process continues to be interfered with through the application of executive policies on the Service.
- The Public Services Commission is subject to audit by the Auditor-General and by INTOSAI Standards should not be involved in the determination of resources, human and financial, required to audit not only the Commission but also the entire Public Services of Ghana over which the Public Services Commission exercises regulatory and supervisory roles.
- A publication by the Office of the Canadian Auditor-General, which is a technical wing of Parliament states as follows: "The Office of the Auditor-General is part of the legislative branch of the system by which we are governed and not part of the Government itself. This independence from the Government of the day and the Public Service is vital if the Audit Office is to perform its work effectively and make unbiased judgments."

(iii) Remedial provision

The appointment of officers and other employees in the National Audit Office, other than the Auditor-General, shall be made by the Audit Commission.

36. Article 189 (3) -Terms and conditions of Service

i. Existing Provision

The Audit Service Board shall, acting in consultation with the Public Services Commission -

- (a) determine the terms and conditions of service of officers and other employees in the Audit Service; and
- (b) by constitutional instrument, make regulations for the effective and efficient administration of the Audit Service.

Issues and comments

- As previously stated, one of the main reasons for the establishment of the Audit Service Board by the 1969 Constitution was to determine impartially the annual estimates of the Audit Service and conditions of service of officers and employees of the Service other than the Auditor-General. (Paragraphs 593 and 595 of the Memorandum of the 1968 Constitutional Commission.) This situation has continued to exist under article 189(3) of the Constitution.
- The developing trend, including African countries like Uganda and South Africa, is to leave all decisions regarding human, financial and logistical requirement of the Office of the Auditor-General to only the Auditor-General. Special bodies of the Legislature including one of its commissions are required by INTOSAI standards to handle the approval of auditing costs without the involvement of the Executive branch of Government.
- The SAI or its governing body determines key policies and practices.
- Principle 8 of the Mexico Declaration of SAIs independence states as follows:
 - SAIs should have available necessary and reasonable human, material, and monetary resources – the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately.

- The Legislature or one of its Commissions is responsible for ensuring that SAIs have the proper resources to fulfill their mandate.
 - SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate.
- In the United Kingdom, South Africa and Uganda, for example, the Auditors-General appoint their Deputies and all staff of their offices, determine their conditions of service without reference to any other person or authority and prepare their own annual estimates without any executive direction or interference. The United Kingdom however has a Public Accounts Commission, different from the Public Accounts Committee which vets the annual estimates of the Controller and Auditor-General.
 - In Kenya there is a governing commission, Kenya National Audit Commission headed by the Auditor-General with the Attorney General, Chairman of the Public Accounts Committee as part of the members of the Commission. The Commission engages staff of the National Audit Office and determines their conditions.
 - In Ghana, the determination of condition of service, under the existing provisions of the Constitution, is done in a corporate manner which involves the Board, acting in consultation with a constitutionally established independent body, the Public Services Commission, which is subject to audit by the Auditor-General. The hands of the Board (Commission) which include the Auditor-General should be strengthened to constitute the sole authority for the appointment of officers of the Service (NAO) without consultation with any of its clients like the Public Services Commission.

iii. Remedial Proposal

Ghana needs to move up from Level 2 to Level 3 where some other African SAIs previously behind Ghana have attained most of the requirements of this level. To achieve this, the Public Services Commission has been substituted with Parliament in the approval of the conditions of service by the proposed Audit Commission as well as the issue of Regulations by Constitutional Instrument for the effective and efficient administration of the proposed National Audit Office (Audit Service).

- (1) The Audit Commission shall, acting in consultation with Parliament:

- (a) determine the conditions of service of staff of the National Audit Office and costs related to this determination shall be charged on the Consolidated Fund;
 - (b) make regulations by Constitutional Instrument for the effective and efficient administration of the National Audit Office.
- (2) Subject to the Constitution, the Audit Commission shall, in the performance of its functions under this Constitution or any other law not be subject to the direction or control of any person or authority.

37. Additional Proposals

On the basis of the issues and comments made elsewhere in this paper and also under this paragraph, additional proposals have been made to deal with omissions in the Constitution and to strengthen the independence of the proposed Commission to reflect INTOSAI Standards.

i. Issues and Comments

- The Board was established by 1969 Constitution to ensure among other things the impartial determination of the Annual Estimates of the Service. However, no specific provisions have been made in past and current Constitutions to reflect this function.
- There are no provisions in the Constitution on the mode of determination of the allowances and facilities of the Board. The Audit Service Act, 2000, Act 584 has reserved this determination to the President, which by INTOSAI Standards and Guidelines on independence does not reflect good practice.
- Principle 8 of the Mexico Declaration on SAI independence requires SAIs to be provided with financial and managerial/administrative autonomy and the appropriate human, material and monetary resources to discharge their mandates. This Principle further requires that the Executive should not control or direct the access to these resources and that SAIs manage their own budget and allocate it appropriately.
- Article 189(2), 189(3)(a) and 187(14) of the Constitution which were originally introduced by the 1969 Constitution have jointly guaranteed the provision of resources required by Principle 8 for the Audit Service but these have been interfered with by the Executive.

- In a recent Quality Assurance review carried out by the Regional Inspector General of USAID the following comments were given “In terms of the legal framework, the GAS (Ghana Audit Service) is organizationally and financially independent. However in practice the budget of the GAS is approved by the Ghana Audit Service Board and sent to the Ministry of Finance (executive branch) for comment before forwarding it to parliament (legislative branch)..... In the past years the Ministry of Finance has reduced the budget by 20 percent. In addition, reallocation from one expense category to another must be approved by the Ministry of Finance”.
- The United Nations made similar observations reflected in the RIG Dakar’s Quality Control Report. This also appeared in the contributions of the then Majority Chief Whip (of Parliament) and now the First Deputy Speaker of Parliament to the debate on the Audit Service Bill, 1999, as indicated in Appendix F.

ii. Remedial Proposals

The following proposals have been made to strengthen the financial and administrative independence of the Service to ensure compliance with international standards.

a) Expenses of the Commission

- (1) The Audit Commission shall be entitled to such facilities, allowances and benefits as may be determined by Parliament.
- (2) The expenses relating to the work of the Commission shall be charged on the Consolidated Fund.

b) Annual Estimates of the Service

- (1) The Audit Commission shall be responsible for the issue of budgetary guidelines and directives for preparation of the Annual Estimates of the National Audit Office and approval of the estimates.
- (2) The annual estimates of the National Audit Office shall be made up of:
 - a) The estimates of administrative expenses of the Office charged on the Consolidated Fund by Article 187(14) of the Constitution to be laid before members of Parliament for the information of Members of Parliament in accordance with Article 179(2)(b) of the Constitution.

b) Estimates of development or Investment expenditure of the National Audit Office for approval by Parliament.

(3) The Audit Commission shall at least two months before the end of the financial year submit the annual estimates of the National Audit Office to Parliament and forward copies to the President and Minister responsible for Finance.

(4) The President shall not later than one month to the end of the financial year forward to Parliament any comments on the estimates of the development expenditure of the National Audit Office.

(5) The development expenses of the National Audit Office shall, upon approval by Parliament, be a charge on the Consolidated Fund.

c) Release of Estimates

The annual estimates of administrative expenses of the National Audit Office charged on the Consolidated Fund and investment expenditure approved by Parliament shall be released to the National Audit Office in quarterly installments or at such intervals determined by the Audit Commission.

d) Activity Report

The Audit Commission shall prepare and submit annually to Parliament a report on the activities of the National Audit Office for the preceding year.

38. Article 189(4)– Removal of Board members

i. Existing Provision

A member of the Audit Service Board, other than the Auditor-General or the Head of Civil Service or his representative, may be removed from office by the President, acting in accordance with the advice of the Council of State, for inability to perform the functions of his office arising from infirmity of mind or body or for any other sufficient cause.”

Issues and comments

- The Board is appointed by the Executive (President and the Council of State) with no parliamentary involvement. Members are however expected to exercise good judgment and impartiality in carrying out their constitutional functions which the framers of the Constitution have conferred on them. In anticipation that their decision may not always please the Executive, the removal provision similar to that of Justices of the Superior Court of Judicature has been extended to the chairman and four others appointed by the President, whilst the Auditor-General has directly been linked to Article 146 of the Constitution on this matter.
- Since 1969 when the provision of Article 189(4) of the Constitution was first introduced by the Constitution, it has to date not been observed by the Executive. Board members have been removed from office by radio announcements and government directives on all governing boards issued by both civilian and military administrations. Sometimes the vacuum created by the removal lasted for years, causing another breach of the Constitution which requires that "there shall be an Audit Service Board..." meaning that at all times this board must exist and be in place. The absence of the Board has retarded the development of the Audit Service and resulted in the following:
 - Inability of the Service to recruit staff to replace retired staff and to handle emerging challenges.
 - Delayed promotion of staff, leading to some resignations.
 - Determination of low salary levels for staff of the Service sometimes below the national minimum wage by the Executive, lowering morale which had reflected in parliamentary reports and had also led to loss of trained staff.
 - Failure to prepare handing over notes resulting in lack of consistency and cohesive policy formulation and implementation in the Service.

iii. Remedial Proposal

Parliamentary involvement in the removal of the members of the Board (Commission) has been provided as an amendment to the existing provision as follows:

- (1) The Chairman or a member of the Audit Commission, other than the Auditor-General, shall be removed from office by the President for inability to discharge the functions of his office, whether arising from infirmity of mind or body or for

any other sufficient cause as established under Article 146 of the Constitution and ratified by not less than two-thirds of Members of Parliament.

- (2) The Audit Commission shall continue to act in office notwithstanding the expiration of its term of office, until the Commission is reconstituted in accordance with the Constitution.

39. Article 184 - Foreign Exchange Dealings

i. Existing Provision

- (1) The Committee of Parliament responsible for financial measures shall monitor the foreign exchange receipts and payments or transfers of the Bank of Ghana in and outside Ghana and shall report on them to Parliament once in every six months.
- (2) The Bank of Ghana shall, not later than three months –
 - (a) after the end of the first six months of its financial year; and
 - (b) after the end of its financial year; submit to the Auditor-General for audit, a statement of its foreign exchange receipts and payments or transfers in and outside Ghana.
- (3) The Auditor-General shall, not later than three months after the submission of the statement referred to in clause (2) of this article, submit his report to Parliament on the statement.
- (4) Parliament shall debate the report of the Auditor-General and appoint, where necessary, in the public interest, a committee to deal with any matters arising from the report.

ii. Issues and comments

- The current provision was introduced by the 1979 Constitution at which time the Bank of Ghana was the sole authority in Ghana responsible for foreign exchange receipts and payments. However, reforms in the banking sector has decentralised foreign exchange operations with the Bank of Ghana, ceding some of the foreign exchange transactions to dealer banks in the country.
- Bank of Ghana's statement of foreign exchange receipts and payments does not therefore represent the whole foreign exchange transactions

of the country. The Bank of Ghana has been demanding returns from the dealer banks and attaching these separately to its own statement. There is no independent mechanism to ensure the authentication of the returns.

iii. Remedial Proposals

Remedial proposal has been made to restore the original intention behind this Article, that is, global reporting of Ghana's foreign exchange dealings. Article 184(2) of the Constitution has been amended to reflect this, whilst the rest of the provisions under this article have been retained as follows:

- (1) Retained
- (2) The Bank of Ghana shall, not later than three months
 - (a) after the end of the first six months of its financial year; and
 - (b) after the end of its financial year, submit to the Auditor-General for audit
 - (i) a state of its foreign exchange receipts and payments or transfer in and outside Ghana including returns on foreign exchange dealings of any person or institution authorized by the Bank to undertake foreign exchange transactions.
 - (ii) a statement of foreign currency reserves as at the end of each statement period
 - (iii) a statement of foreign exchange retentions granted
- (3) Retained
- (4) Retained

40. Assets Declaration

i. Existing Provision

Article 286(1) A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by him, whether directly or indirectly –

- (a) within three months after the coming into force of this Constitution or before taking office, as the case may be;
- (b) at the end of every four years; and
- (c) at the end of his term of office.

ii. Issues and Comments

- The administration of Assets Declaration is not part of the normal duties of SAIs. This has not been seen in the legislative framework of other countries. A quality assurance report issued by AFROSAI-E in December 2009 indicated that this is an “administrative issue, and that when the Auditor-General is relieved of this duty, he can then take his rightful role in examining the policies and procedures and commenting on its effectiveness.”
- The existing constitutional provisions on Assets Declaration contained in Articles 286 to 287 have been difficult to enforce arising out of different interpretations by Parliamentarians on these provisions. In this respect Parliamentarians have objected to the opening and verification by the Auditor-General of the contents of sealed envelopes purporting to contain the Assets Declaration Forms.
- Article 286 (1) requires a public officer covered by Article 286 (5) to submit written declaration to the Auditor-General within periods specified by Article 286 (1)(a) of the constitution. This then becomes the initial declaration by a public officer. Article 286 (4) states that after the initial declaration any property or assets acquired by an officer which is not reasonably attributable to income, gift, loan inheritance ... shall be deemed to have been acquired in contravention of the Constitution. There is therefore an implied obligation on the Auditor-General to use Article 297(c) of the Constitution to compare the initial declaration against subsequent declaration made to him by a public officer and to refer unexplained discrepancies to CHRAJ for further action. This interpretation has been opposed by Members of Parliament. Explicit provisions need therefore to be made in the constitution to provide clarity on the roles that are expected of all public officers in the assets declaration regime of the country.

iii. Remedial Proposal

The role of the Auditor-General in the administration of Assets Declaration should be transferred to CHRAJ.