



## HON. DAVIS ANSAH OPOKU

Member of Parliament (MP), Mpraeso

Thursday, October 17, 2024

### MEMORANDUM

**To** : Rt. Hon. Speaker of Parliament, Parliament of Ghana  
**From** : Hon. Davis Ansa Opoku, Member of Parliament for Mpraeso  
**Subject** : Upholding Constitutional Supremacy, Parliamentary Independence, and Representation

**Dear Rt. Hon. Speaker,**

I write to offer my thoughts and respectfully seek your guidance regarding the interpretation and application of Article 97(1)(g) and (h) of the 1992 Constitution. Specifically, this relates to the vacation of parliamentary seats for MPs who intend to contest future elections as independent candidates. This matter requires careful examination of the constitutional provisions, relevant case law, including Rt Hon. Prof. *Michael Oquaye*, and the Standing Orders of Parliament to fully understand the principles of parliamentary independence, representation, and freedom of association.

#### 1. Constitutional Supremacy, Representation, and Precedence

Article 97(1)(g) and (h) maintain stability and consistency in parliamentary representation within a single parliamentary term. These provisions ensure that MPs remain loyal to the platform under which they were elected, thereby preserving the integrity of the electoral mandate and ensuring accountability to voters during that term. Respectfully, I believe the article was never intended to prevent MPs from changing their political affiliations across different terms but rather to discourage shifting allegiances during a parliamentary term.

Article 97(1)(g) states that an MP must vacate their seat if they:

*"Leave the party of which they were a member at the time of their election to Parliament to join another party or seek to remain in Parliament as an independent member."*

The language here clearly refers to actions *within the current term of Parliament*, particularly in the phrase "seek to remain in Parliament." This applies only to actions taken during an MP's current term, not their future political ambitions. The article ensures that an MP cannot change their party allegiance or become independent during a single term without vacating their seat, as this would undermine the electoral mandate that voters entrusted them with. However, once Parliament is dissolved, MPs can realign their political affiliations without breaching constitutional provisions.



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### 2. The Prof. Michael Ocuquaye Decision: Misinterpretation and Standing Orders Regime

It is crucial to address Prof. *Michael Ocuquaye's* decision as a point of precedence. In that case, the ruling was based on an interpretation of Article 97(1)(g) under a different regime of Standing Orders. However, the interpretation applied therein was misaligned with the true intent of the Constitution. The *Ocuquaye* decision mistakenly extended the constitutional requirement beyond the scope of the term in question, effectively implying that MPs could be locked into lifelong party allegiance.

This interpretation was incorrect and contradicted the Constitution's clear language. The clause refers specifically to actions during the *current parliamentary term* and does not restrict MPs' future political choices. Therefore, the *Ocuquaye* decision should not be a binding precedent, particularly under the new Standing Orders that emphasise constitutional supremacy over internal parliamentary rules.

### 3. Case Law: Zanetor Agyeman-Rawlings and Tuffour vs. Attorney-General

The *Zanetor Agyeman-Rawlings* case is highly relevant here. In that instance, the Supreme Court ruled that party rules and internal parliamentary procedures cannot override constitutional provisions. This reinforces the Constitution's supremacy over any attempts by political parties to unilaterally enforce internal rules regarding an MP's affiliation, particularly when such rules contradict the Constitution's protection of representation and electoral mandates.

Similarly, the landmark *Tuffour vs. Attorney-General* case affirms that the Constitution cannot be subordinated to institutional rules or procedures. In this case, the Court clarified that no additional procedural rules or interpretations could override the constitutional framework. This principle directly applies to Article 97(1)(g) and (h), ensuring that no misinterpretation can impose undue restrictions on MPs beyond their current parliamentary term.

### 4. Representation and Democratic Integrity

At the heart of this issue is the principle of representation. MPs are elected based on the platform or party under which they campaign. Article 97(1)(g) protects this representation throughout a parliamentary term, preventing MPs from undermining the voters' mandate by switching allegiances mid-term. However, once a parliamentary term concludes with the dissolution of Parliament, MPs are free to make decisions about their political future, including running as independent candidates or aligning with different parties.



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The Constitution does not intend to lock MPs into lifelong party allegiance. Such an interpretation would contradict MPs' fundamental right to freedom of association under Article 21(1)(e). Democracy requires political evolution, allowing MPs to adapt to changing political landscapes and societal needs. Forcing MPs into permanent allegiance beyond a single parliamentary term would stifle political pluralism and diminish their ability to represent their constituents' best interests in an ever-evolving political environment.

### 5. Constitutional Implications of Future Electoral Intentions

An MP's decision to contest future elections as an independent or under a different party does not constitute leaving their party within the current parliamentary term. Article 97(1)(g) applies strictly to actions within the present term, ensuring that MPs remain accountable to their voters throughout that time. After the dissolution of Parliament, MPs should be free to realign their political affiliations without fear of automatically vacating their seats if they do not breach the Constitution's requirements during their current term.

This interpretation upholds the Constitution's intent to preserve the integrity of parliamentary representation while allowing for political flexibility and responsiveness to the evolving political landscape.

### 6. Upholding Parliamentary Independence and Democracy

Rt. Hon. Speaker, I respectfully urge that any decisions regarding the vacation of parliamentary seats adhere strictly to the constitutional framework, considering the correct interpretation of Article 97(1)(g) and (h). The Constitution provides a precise mechanism for maintaining stability and protecting the electoral mandate during a parliamentary term without imposing unnecessary restrictions on MPs' political ambitions beyond that term.

Adhering to these constitutional principles reinforces the independence of Parliament, safeguards the integrity of representation, and protects the democratic freedoms essential to Ghana's political system.

Thank you for your attention to this matter.

Yours faithfully,

**Hon. Davis AnsaH Opoku**  
**Member of Parliament for Mpraeso**  
**Deputy Ranking Member, Public Accounts Committee**



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