

CDD-GHANA POLICY BRIEF

Reforming Article 78(1): Why the Proposed Discretionary Hybrid Is Not the Answer



Policy Brief
No. 5

October 2026

Ghana Center for Democratic Development

ISSN: 3134-5530

AT A GLANCE

- Article 78(1) of the 1992 Constitution requires the President to appoint the majority of Ministers of State from among Members of Parliament, creating Ghana's so-called “hybrid” presidential system.
- Article 78(1)'s clearest defect is not simply that fusion blurs the separation of powers in the abstract, but that it undercuts Parliament's institutional role and performance.
- The claim that fusion of ministerial and legislative office in a presidential system is a uniquely Ghanaian arrangement does not survive comparative scrutiny. Fusion has been a common feature of anglophone African constitutions since the 1960s and is present today, in various forms, in Zambia, Namibia, Uganda, and Malawi.
- Converting Article 78(1) from a mandatory to a discretionary hybrid, as the Government proposes, changes the text but not the problem or outcome it is meant to address. In Uganda and Malawi, both of which operate a discretionary hybrid presidential system, Presidents still predominantly — and predictably — appoint Ministers from the majority parliamentary caucus.
- CDD-Ghana supports the CRC's core goal of strict separation of personnel between the Executive and Legislative branches, but considers the CRC's absolute opposition to MPs resigning to accept ministerial appointment overly extreme and unnecessary. Based on the comparative evidence from countries that practise the pure presidential system, including Nigeria and Ghana under the Third Republic, the fear that a resign-to-accept option would trigger a wave of by-elections is largely theoretical.

1.0 The Issues

Three decades after Ghana's Fourth Republic began, the structural relationship between the Executive and the Legislature remains one of the most contested areas of constitutional reform. At its center is Article 78(1) of the 1992 Constitution and the “hybrid” system it creates. This brief outlines the competing positions on how to resolve that structural dilemma.

- **Current Constitutional Position** — Article 78(1) of the 1992 Constitution requires the President to appoint the majority of Ministers of State from among Members of Parliament, creating Ghana's so-called “hybrid” presidential system: an elected, term-limited President exercises executive authority through Ministers of State, most of whom serve concurrently as elected MPs.
- **CRC Recommendation** — The Constitution Review Committee (CRC) recommends replacing Article 78(1) with an absolute bar prohibiting the President from appointing any sitting MP as Minister, with no option for an MP to resign to accept a ministerial appointment. The CRC's rationale is that a “resign-to-accept” option would trigger a wave of MP resignations in pursuit of ministerial appointment, each such resignation forcing a party primary and a costly by-election.
- **Government Position** — The Government rejects the CRC's proposed bar. Instead, it proposes to remove Article 78(1)'s requirement that a majority of Ministers be drawn from Parliament and leave the President free to appoint Ministers without restriction as to source — from Parliament, from outside it, or any mix of the two — at the President's unfettered discretion.

- **CDD-Ghana Position** — CDD-Ghana supports the CRC's core goal of strictly separating the Executive from the Legislative branch, thus ending the “hybrid” system. However, CDD-Ghana considers the CRC's absolute, no-resignation bar needlessly extreme. Instead, CDD-Ghana favors requiring a sitting MP to resign the seat to accept ministerial appointment, essentially returning Ghana to the arrangement under the 1979 Constitution of the Third Republic.

2.0 Criticism of the Current Constitutional Position — Article 78(1)

Inter-Branch Effects

Article 78(1)'s clearest defect is not merely that fusion blurs the separation of powers in the abstract, but that it severely undermines Parliament's check-and-balance role and overall institutional performance. Surveys of Ghana's Parliament in the 4th Republic have found that Minister-MPs are frequently late to, or absent from, plenary sittings and committee meetings, since ministerial duties routinely take priority over parliamentary attendance — an absenteeism that falls disproportionately on the majority side and weakens the House's capacity to hold hearings, scrutinize legislation, and maintain quorum.

The effect extends beyond Minister-MPs themselves: because ministerial appointment is a live prospect for almost any majority-side backbencher, non-minister MPs face a standing incentive to cultivate the executive's favor rather than scrutinize it — behaving, in effect, as ministers-in-waiting. This shrinks the pool of MPs genuinely available for scrutiny and skews even that residual pool toward deference, undercutting Parliament's effectiveness as an oversight body.

Intra-Branch Dynamics

Fusion also constrains the President's ability to select and manage a ministerial team. Executive authority under Article 58 is vested exclusively in the President, yet Article 78(1) forces him to draw most of his Ministers from a narrow political pool. Even without a literal compulsion to pick any particular MP, the pull of party politics makes it virtually obligatory to appoint certain MPs as Ministers regardless of suitability — and equally constrains what the President can do with an under-performing but politically indispensable Minister-MP.

Fusion further misaligns the incentives of the President and the Minister-MPs on whom he depends. The President holds a two-term national mandate; Minister-MPs carry a local mandate with no equivalent term limit and must keep investing in local electioneering and constituency-nurturing in a way the President does not — a divergence most acute in a President's final term. The result is that Minister-MPs, not the President or the public, become the chief beneficiaries of Article 78(1), gaining executive office (with its associated political advantages) alongside a legislative career, even as their independence and availability for genuine legislative work are severely diminished by their conflicting executive branch responsibilities.

3.0 Government Justification for Wanting to Retain the Hybrid/Fusion Arrangement

“Uniquely Ghanaian”

The Government Position Paper defends Ghana's hybrid system as a “uniquely Ghanaian arrangement that strikes a balance between strict presidentialism and the parliamentary system of government,” and argues that it should be preserved for that reason.

From Mandatory to Discretionary Hybrid

The Government proposes converting the hybrid under Article 78(1) from a mandatory rule to a discretionary one: instead of requiring a majority of Ministers from Parliament, it would leave the President free to appoint Ministers from within or outside Parliament, in whatever mix he sees fit. Thus, in theory, all of the President's Ministers could come from Parliament (total hybrid), from outside Parliament (zero hybrid), or some combination of the two (partial hybrid); the choice is left to each President. The Government treats this discretionary hybrid as sufficient reform in itself.

The Westminster Comparison

A further defense – though not one officially advanced by the Government – argues that fusion is not, in itself, a governance defect: in the conventional Westminster or continental European parliamentary model, fusion is not merely permitted but complete — the entire ministerial class is typically drawn from Parliament, and no serious body of opinion regards this as undermining parliamentary government. If total fusion is the norm in one of the world's most established constitutional traditions, the argument goes, Ghana's partial, majority-only fusion can hardly be condemned as a governance defect.

4.0 CDD-Ghana's Rebuttal

Comparative African Experience: The Hybrid Is Not Unique to Ghana

The claim that Ghana's fusion is uniquely Ghanaian does not survive comparative scrutiny. The hybrid presidential system, in which an executive President must draw all or some of his Ministers from among members of Parliament, was fashionable in anglophone Africa in the 1960s, as newly independent states discarded their inherited parliamentary systems of government in favor of presidentialism. In switching to presidentialism, early constitutional revisions in Africa blended the “pro-executive” features of the parliamentary system with the executive presidency, creating a super-powerful President and a subservient Parliament. Indeed, Ghana's 1960 Constitution required the President to appoint all of his Ministers from Parliament (Article 15); total or partial fusion was also a feature of the constitutions of anglophone African countries like Kenya, Zambia, and Uganda. Fusion of ministerial and legislative office, raising the same concerns about executive dominance and compromised legislative oversight, remains a feature of presidential systems in countries across the continent:

- **Zambia** mandates total fusion: Articles 116 and 117 of the country's constitution require that Ministers and Provincial Ministers be appointed from among Members of the National Assembly, with no route to a non-MP appointment.
- **Namibia** requires the entire Cabinet to be drawn from the National Assembly; the President may also appoint eight non-voting members to the Assembly, who then become eligible for ministerial selection.
- **Uganda's** Article 113(1) authorizes the President to appoint Ministers from sitting MPs or from persons merely qualified to be MPs; non-MP appointees then sit in Parliament ex officio, without a vote.
- **Malawi's** Constitution's Sections 94(1) and 51(3) together allow the President to appoint Ministers from within or outside the National Assembly, without requiring sitting MPs to resign upon appointment.

Kenya, by contrast, has moved away from the model. Before 2010, Kenya operated the fused model that Ghana operates today — and it was precisely this fusion's negative impact on executive

accountability and patronage that led to Kenya's 2010 Constitution barring Cabinet Secretaries from also being MPs (Article 152(3)).

Clearly, Article 78(1) of the 1992 Constitution is not a constitutional curiosity peculiar to Ghana; it is a common design choice across African presidential systems, nearly all of which are grappling with, or have already reformed away from, the very same concerns identified by the CRC.

A Discretionary Hybrid Does Not Change the Outcome

More tellingly, the two African states that already operate a permissive or discretionary hybrid — the same kind the Government now proposes to replace Article 78(1) — show that removing the mandatory fusion does not change the outcome. In Uganda, roughly 69% of the current ministerial cohort are drawn from the majority bench in Parliament. In Malawi, it reached as high as 83% (20 out of 24) of the cabinet as of October 2025.

The comparative evidence supports the CRC's analysis that Presidents left unconstrained in choosing their Ministers will still select them predominantly from the majority parliamentary caucus. The reasons are structural: doing so rewards and disciplines the governing party's legislators, locks in a solid voting bloc in Parliament, and extends patronage to influential MPs who already command strong, local standing. In short, the empirical evidence undercuts the premise of the Government's proposed reform: converting Article 78(1) from mandatory to discretionary changes the text, not the problem or outcome it is meant to address.

It is worth noting that Uganda's Article 113(1) draws support from the ruling NRM but is opposed by most Ugandans who view it as undermining executive accountability: Afrobarometer (2025) found that seven out of ten Ugandans oppose elected MPs serving concurrently as Ministers.

Fusion in a Presidential System Is Fundamentally Different from a Westminster System

The Westminster comparison fails because it treats fusion as a governance feature that can be transferred from one constitutional system to another without altering the political or governance dynamics. But in a genuine Westminster system, complete fusion is coherent only because the executive's survival — including the Head of Government's tenure — depends on continuously retaining the confidence of the House: a government that loses a confidence vote falls. Fusion of personnel is the flip side of that arrangement — Cabinet answers to Parliament daily precisely because Parliament can end its life at any time.

Ghana's Constitution, being presidential at its core, does not replicate this structure: the President is elected separately, serves a fixed term, and cannot be removed by a parliamentary vote of no confidence. Fusion in a presidential system, where the executive does not depend on Parliament for survival, is, therefore, quite a different matter from fusion in a parliamentary system. Importing the personnel overlap into a presidential system without the “no-confidence” mechanism that disciplines it in a parliamentary system produces an executive drawn, in whole or in part, from the legislature but insulated from the very mechanism that justifies fusion in a true parliamentary system.

5.0 Where CDD-Ghana Disagrees with the CRC

The Absolute Bar: A Concern That Is Merely Theoretical

CDD-Ghana parts company with the CRC not on the need for genuine separation, but on the necessity of an absolute bar against appointing MPs as Ministers with no option to resign their parliamentary seat.

The CRC fears that a resign-to-accept option would trigger a wave of MP resignations and by-elections. Comparative experience does not bear this out: Countries that operate the classical or pure presidential system, where an MP must resign upon being appointed a Minister, do not experience a wave of MP resignations in pursuit of ministerial positions. For example, Nigeria operates precisely this system — under Section 147(4) of the Nigerian Constitution, a sitting legislator appointed Minister is deemed to have resigned the seat upon taking the ministerial oath — and decades into its Fourth Republic, there is no evidence that the lure of federal ministerial appointment induces a wave of resignations from Nigeria's National Assembly.

The political cost to an MP of resigning a hard-won seat — trading a legislative career for a ministerial appointment of uncertain duration — would, in practice, discourage all but a small number from taking that route. The incentive for a President to appoint a large number of MPs as Ministers is weaker still where, upon being appointed a Minister, an MP automatically loses their seat in Parliament. Instructively, the model CDD-Ghana endorses is not untested in Ghana's history: it operated under the Third Republican (1979) Constitution, and, as elsewhere, did not give rise to the consequences the CRC fears.

6.0 Recommendations

1. Strictly separate ministerial from parliamentary office. The Government's proposal to convert Article 78(1) from mandatory to a discretionary hybrid merely changes the text, not the problem or the effect it is meant to address.
2. Preserve a resignation-from-Parliament route for MPs the President wishes to appoint, in place of the CRC's absolute, no-resignation bar.

7.0 Conclusion

The case for Ghana's hybrid presidential system rests on three claims that do not withstand scrutiny. First, that it is uniquely Ghanaian: it is not — the same design has been common in Africa since the 1960s and currently appears in Zambia, Namibia, Uganda, and Malawi, with much the same outcomes and concerns as Ghana experiences. Second, that converting the hybrid from mandatory to merely discretionary is itself sufficient reform: Uganda's and Malawi's experience with an already-permissive hybrid shows otherwise — Presidents in both countries still draw a disproportionate majority of Ministers from the dominant parliamentary caucus. Third, that fusion is unproblematic because it is the norm in the Westminster system: this conflates fusion in a parliamentary system, where government survival depends on the legislature's confidence, with fusion in a presidential system like Ghana's, where it does not — Westminster's tolerance for fusion rests on an accountability mechanism Ghana's Constitution lacks by design.

CDD-Ghana maintains that only genuine inter-branch separation will address the accountability, patronage, and parliamentary performance costs created by Article 78(1) — a discretionary option, however well-intentioned, will not. At the same time, CDD-Ghana does not endorse the CRC's absolute, no-resignation bar: on the comparative evidence from Nigeria and Ghana's own Third Republic experience, the fear of a destabilizing wave of by-elections is largely theoretical. CDD-Ghana recommends strict separation of ministerial and parliamentary office, with a resignation-from-Parliament route preserved for MPs the President wishes to appoint as Ministers.

About this series

This special issue of the CDD-Ghana Policy Brief series offers accessible, evidence-based analysis of selected constitutional reform proposals and their implications for governance and democratic development in Ghana. The briefs aim to inform public discussion and policy engagement by examining the issues, trade-offs, and potential impacts of key reform recommendations.



www.cddgh.org
info@cddgh.org
Accra, Ghana