

**RESPONSE BY RT. HON. SPEAKER TO STATEMENT BY HON. MINORITY LEADER ON THE POTENTIAL BREACHES OF ARTICLE 97(1)(g) and (h)**

**BACKGROUND**

1. Hon Members, I make this formal response to the House in relation to a matter of significant parliamentary and constitutional importance, which was brought to the attention of the House by the Minority Leader, Hon. Dr. Cassiel Ato Baah Forson, MP for Ajumako/Enyan/Essiam, pursuant to Order 93 of the Standing Orders of Parliament.
2. The Hon. Minority Leader, with the indulgence of the House and with leave of the Speaker, raised a matter which he indicated was of urgent public importance in accordance with Order 93(1) of the Standing Orders of Parliament. The statement drew rigorous debate, instead of comments, on the floor of Parliament and reverberated to the public in a heated national discourse.
3. The Hon. Minority Leader, as part of his statement, called on the Speaker to follow precedent and declare vacant, the seats of four Members of Parliament pursuant to Articles 97(1)(g) and (h) of the Constitution. The Hon. Minority Leader informed the House that it had come to the attention of the Minority Caucus that certain Members of Parliament had taken actions that contravene the provisions of Article 97(1)(g) and 97(1)(h) of the Constitution, 1992.
4. Specifically, the Hon. Minority Leader alleged that:
  - (a) Hon. Peter Yaw Kwakye-Ackah, Member of Parliament for Amenfi Central, who was elected on the ticket of the National Democratic Congress (NDC), had filed with the Electoral Commission to contest the upcoming 2024 parliamentary elections as an independent candidate;
  - (b) Hon. Andrews Asiamah Amoako, Independent Member of Parliament for Fomena, and currently serving as the Second Deputy Speaker,

had filed to contest the 2024 parliamentary elections on the ticket of the New Patriotic Party (NPP);

(c) Hon. Kwadjo Asante, Member of Parliament for Suhum, who was elected on the ticket of the NPP, had filed with the Electoral Commission to contest the upcoming 2024 parliamentary elections as an independent candidate; and

(d) Hon. Cynthia Mamle Morrison, Member of Parliament for Agona West, who was elected on the ticket of the NPP, had filed with the Electoral Commission to contest the upcoming 2024 parliamentary elections as an independent candidate.

5. In the light of these developments, the Hon. Minority Leader invited the Speaker to declare the seats of these four Members vacant in accordance with Article 97(1)(g) and 97(1)(h) of the Constitution 1992. According to his submission, if these seats are declared vacant, the resultant effect on the composition of this House would be that, the NDC would have 136 seats, while the NPP would have 135 seats, thus making the NDC the Majority Party in Parliament.

6. This statement sparked intense debate in the House, with Members raising questions of constitutional interpretation, and the role of the Speaker in the enforcement of Article 97 of the Constitution particularly in the matter of the vacation of seats by MPs . It is therefore incumbent upon me, as Speaker of this House, to address these issues thoroughly. In doing this, I am simply applying the provisions of the Constitution, 1992, Parliament Act, 1965, Act 300, the Standing Orders of Parliament, 2024 precedents, and established legal principles. The issue of interpretation and enforcement of the Constitution lies in the bosom of the Supreme Court and not that of the Speaker.

### **My understanding of Article 97**

7. Hon Members, at the core of the Minority Leader's statement are the provisions of **Article 97(1)** of the **Constitution of Ghana**, 1992, which govern the circumstances under which a Member of Parliament shall vacate his/her seat in Parliament.

8. The relevant sub-clauses of this provision read as follows:

**Article 97(1) states:**

*"A member of Parliament shall vacate his seat in Parliament—*

*(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in*

*Parliament as an independent member; or*

*(h) if he was elected a member of Parliament as an independent candidate and joins a political party."*

9. Hon Members, my humble view is that Article 97(1)(g) and (h) operate to prevent what the old school refers to as "cross carpeting" or "carpet crossing\*" as witnessed in the early Legislative Councils and Parliaments of the Gold Coast and the Republic of Ghana respectively. Cross-carpeting, is now part of what is referred to as "defection" or "party switching", when a Member of Parliament who was elected on the ticket of one political party leaves that party to join another, or when an independent MP joins a political party after being elected as an independent member or a party member acts similarly.

10. The concept of defection raises significant concerns about the integrity of political representation. When voters elect a candidate, they do so based not only on the individual's personal qualities but also on the political party platform they represent. Party-switching or defection, therefore, can be seen as a breach of the mandate and social contract between the MP and the electorate, as it changes the political dynamics that the voters originally endorsed.

11. The prohibition of deflection , as reflected in Article 97(1)(g) and (h), serves several critical purposes in maintaining the integrity of Parliament, parliamentarians, and protecting the trust and will of the people.
12. The provisions of Article 97(1)(g) and (h) are designed to safeguard the principles of party loyalty, voter representation, and political stability. Deflection is prohibited because it undermines the trust placed in MPs by their constituents and can lead to instability in Parliament. These constitutional safeguards ensure that Members of Parliament remain accountable to both their parties and the electorate, and they prevent MPs from engaging in behavior that could amount to fraud or disruptive of the functioning of Parliament .
13. Hon Members, it has been suggested by some members that the provisions of **Article 97(1)(g) and (h)**, which address the vacating of a Member of Parliament's seat due to defection, should be understood **prospectively**—that is, they should apply only to future Parliaments and not to the term of office of Parliament when the act occur.
14. While this argument may appear to offer a pragmatic approach, it must be firmly dismissed as both untenable and inconsistent with the constitutional purpose of these provisions. One may ask, what is Article 97 purposed to do? The clear intent of Article 97(1)(g) and (h) to my understanding is to preserve party loyalty, engender trust, and protect the mandate of the voter and representation throughout an MP's term of office.
15. These provisions are designed to prevent political instability, opportunistic behavior, fraudulent representations, and disruption of parliamentary composition during the term of a parliament by ensuring

that MPs remain faithful to the mandate given to them by the electorate at the time of their election.

16. To understand these provisions as only applying prospectively—meaning that they would take effect only in future Parliaments—would nullify the purpose of Article 97. The provisions of Article 97 under consideration are intended to address breaches of party loyalty and independent status as they occur, during a term, ensuring that the House’s composition remains consistent with the electoral outcomes.
17. If Article 97(1)(g) and (h) were to apply only in future Parliaments, it would render these provisions effectively superfluous. By the time the next Parliament is constituted, any MP who has defected or switched political allegiance during the current Parliament would no longer be in violation of the provision—they would start the next term aligned with their new party or as an independent. There will exist no deflection, and the violation would effectively be wiped clean at the start of the term of the succeeding Parliament.
18. If the understanding of the provisions was futuristic, MPs could **freely switch parties** or become independents during the term of a Parliament, and pretend to be representing the interests of the people who elected him!/her or the Party on whose platform he /she rode to Parliament while paying loyalty to a different party or group of people with no immediate consequences. This is precisely what **Article 97(1)(g) and (h)** are meant to prevent. The provisions exist to **curb cross-carpeting** as it happens, not to offer a free pass to MPs to change allegiance during their term and only face consequences in future electoral cycles.

19. Under **Article 97** of the Constitution of Ghana, there are indeed different modes through which a Member of Parliament (MP) shall vacate their seat. These can be broadly categorized into two groups:

**(a) Automatic or Procedural: and**

**(b) As a matter of determination of fact**

20. Certain modes of vacating a seat happen automatically or procedurally, either through the direct operation of law or institutional processes. These are relatively straightforward and do not require external determination of facts:

**(i) Dissolution of Parliament**

**(ii) Election as Speaker**

**(iii) Expulsion for Contempt**

**(iv) Resignation**

**(b) Vacancies Requiring Determination of Facts :**

21. The other provisions identified in Articles 97(1)(e), and (d)—involve more complex factual situations that are less clear-cut and may be subject to disputes, making them matters that likely require determination to ascertain whether a vacancy has occurred.

22. Hon Members, it is important to note that the determination of whether a Member of Parliament has **resigned from their political party** or has **joined another party** is a matter of fact.

23. In 2020, during the tenure of Rt. Hon. Prof. Aaron Mike Oquaye as Speaker of Parliament, a notable instance occurred when the New Patriotic Party (NPP) notified the Speaker that the MP for **Fomena**, Hon. Andrews Asiamah Amoako, was no longer a member of the party. The NPP requested that the seat be declared vacant in accordance with **Article 97(1)** of the Constitution, citing that the MP had filed to contest

the upcoming elections as an **independent candidate**, which violated the party's constitution.

24. In response to this notification, and request, Rt. Hon. Prof. Aaron Mike Oquaye, proceeded to declare the seat vacant.

25. However, I must emphasize that this ruling made by the previous Speaker does not bind other Speakers including myself.

26. It is important to point out that in the present matter before the House, the notice of poll is available at the Electoral Commission on all the 275 Constituencies. I have duly taken note of the notice of the poll. Furthermore no MP in making comments to the Statement made to the House by the Minority Leader denies these glaring and notorious facts.

### **Role of the Speaker**

27. Hon Members, it is important to point out that the Speaker is called upon by the Standing Orders of Parliament, particularly Order 18, to inform the House of the occurrence of a vacancy of the **seat of a Member** under Clause (1) (b) to (e), (g) and (h) of Article 97 of the Constitution.

28. Accordingly, I proceed to inform the House that by the notification of the polls the following Members of Parliament have by their actions vacated their seats in Parliament. The Members are: (1) Hon Peter Yaw Kwakye-Ackah, NDC MP for Amenfi Central in the Western Region now referred to as an Independent Parliamentary Candidate for the Constituency (2) Hon Andrew Amoako Asiamah, Independent member for Fomena Constituency in Ashanti Region now referred to as NPP Parliamentary Candidate for the constituency (3) Hon Kwadjo Asante, NPP MP for Suhum in the Eastern Region, now referred to as Independent Candidate, for the same constituency, and Hon Cynthia Mamle Morrison, NPP MP for Agona West Constituency in the Central

Region, now referred to as Independent Candidate for the same Constituency.

The House is accordingly so informed.

Hon. Members, I thank you for your patience and attention.