

DRAFT BILL – CRIMINAL OFFENCES (AMENDMENT) (INTERNAL POLITICAL PARTY ELECTIONS) BILL, 2026

Background and Existing Law

Section 3(5) of the **Criminal Offences Act, 1960 (Act 29)**, as amended, currently provides that:

‘The expression “*public election*” shall be construed by reference to article 49 of the Constitution, and includes an election the qualification for voting at which, or the mode of voting at which, is determined or regulated by an enactment.’

The **Representation of the People Act, 1992 (PNDCL 284)** does not define the term ‘*public election*,’ although it creates several electoral offences relating to public elections. And section 42 of that Act then gives the Attorney-General the power to determine by a written fiat, whether a person is prosecuted under the Act.

Section 11 of the **Vigilantism and Related Offences Act, 2019 (Act 999)** provides that:

“*public election*” includes general presidential and district level elections and referenda conducted or supervised by the Electoral Commission.’

Taken together, these provisions create definitional inconsistency and uncertainty, particularly as regards the application of electoral offences to internal political party elections.

Proposed Amendments

It is proposed to repeal section 3(5) of the **Criminal Offences Act**, and insert the following new section 259:

‘259. Explanation as to an election

(1) A person shall not be relieved from liability to punishment under this Chapter by reason of an irregularity or informality in the proceedings at, before or after an election.

(2) For the purposes of this Act, and without prejudice to the meaning of “public elections” under the Constitution, “public election” includes–

- (a) an election the qualification for voting at which, or the mode of voting at which, is determined or regulated by an enactment; and
- (b) any election, primary, congress, conference or other voting process conducted by a registered political party for the purpose of–
 - (i) electing or selecting officers, executives or representatives of that political party; or
 - (ii) nominating or selecting a candidate for election to public office, including the offices of President and Member of Parliament.

- (3) For the avoidance of doubt, offences relating to bribery, corruption, undue influence and treating under this Act or any other enactment apply equally to elections referred to in subsection (2)(b).
- (4) Nothing in this section shall be construed as—
- (a) conferring constitutional status on elections conducted by political parties;
 - (b) applying articles 42, 49 or 50 of the Constitution to such elections; or
 - (c) converting such elections into elections conducted by or under the authority of the Electoral Commission.
- (5) In considering whether to commence proceedings in respect of an internal political party election, the Special Prosecutor shall have regard to the seriousness of the alleged conduct and the public interest.
- (6) Nothing in this Act affects the validity of any political party constitution, rule or procedure, except to the extent that conduct under such rules constitutes an offence under written law.’

It is proposed to insert these changes, *mutatis mutandis*, into the **Representation of the People Act** as a new section 42A. It is further proposed to amend section 42 of the **Representation of the People Act** as follows:

‘Amendment of section 42 of Act 284

(1) Section 42 of the Representation of the People Act, 1992 (PNDCCL 284) is repealed.

(2) The Representation of the People Act, 1992 (PNDCCL 284) is amended by the insertion immediately after section 41 of the following new section:

“42. Prosecution of electoral offences

(1) Notwithstanding any other enactment, the power to investigate and prosecute offences under this Act and any other enactment relating to public elections shall be exercised primarily by the Special Prosecutor.

(2) Proceedings in respect of an offence under this Act shall not be commenced except by, or with the authority of, the Special Prosecutor, but this subsection does not prevent a person from being—

- (a) charged with an offence;
- (b) arrested with or without a warrant in respect of the offence; or
- (c) remanded on bail or in custody in respect of the offence.

(3) In the exercise of prosecutorial authority under this section, the Special Prosecutor shall act independently and shall not be subject to the direction or control of any person or authority.

(4) Nothing in this section derogates from the powers of the Attorney-General under article 88 of the Constitution.’

It is also proposed to amend section 79 of the **Office of the Special Prosecutor Act, 2017 (Act 959)** to renumber paragraph (c) under the definition of ‘corruption and corruption-related offences’ as paragraph (d), and insert the following new paragraph (c):

‘(c) sections 255 to 259 of the Criminal Offences Act, 1960 (Act 29), and sections 27 to 42 of the Representation of the People Act, 1992 (PNDCL 284).’

Finally, section 11 of the **Vigilantism and Related Offences Act** should be amended accordingly to adopt or reflect these proposed changes.

EXPLANATORY MEMORANDUM

I. Overview

Electoral offences in Ghana are presently dispersed across two principal statutes: the **Criminal Offences Act, 1960 (Act 29)**, where they appear in Chapter 5 of Part IV (sections 255–259), and the **Representation of the People Act, 1992 (PNDCL 284)**, where they appear in Part V (sections 27–42). This dual location in and of itself generates uncertainty as to scope, overlap and enforcement.

In particular, questions arise as to whether identical offences in the two statutes are cumulative or substitutive, whether later enactments impliedly amend earlier ones, and whether the requirement of the Attorney-General’s fiat under section 42 of the **Representation of the People Act** applies equally to prosecutions under the **Criminal Offences Act**. Ideally, these issues would be resolved through a consolidated **Electoral Offences Act**. Pending that reform, this Bill adopts targeted amendments to clarify coverage and enforcement.

II. Objects of the Bill

The object of this Bill is to:

1. expand the definition of ‘*public election*’ currently in section 3(5) of the **Criminal Offences Act** to include specified internal elections conducted by registered political parties;
2. insert the expanded definition into the **Representation of the People Act** as sections 42 and 42A;
3. vest prosecutorial authority for all electoral offences in the Office of the Special Prosecutor, by amending section 79 of the **Office of the Special Prosecutor Act, 2017**; and
4. replace the definition in section 11 of the **Vigilantism and Related Offences Act** to ensure consistency.

III. Constitutional Context

Articles 49 and 50 of the **Constitution** use the term '*public elections*' in a manner that is conceptually and structurally distinct from internal political party elections. This exclusion is deliberate and arises from constitutional text, context and design. Four reasons are advanced in support of this argument:

1. *Textual context of articles 49 and 50*

Articles 49 and 50 appear in Chapter Seven of the **Constitution**, titled '*The Representation of the People*.' That chapter governs elections through which the people directly exercise their sovereign will through voting. Those voting rights are framed as incidents of citizenship, not party membership. Internal party elections, by contrast, are limited to members or delegates and are governed by party constitutions and rules.

2. *Meaning of 'public' in constitutional usage*

In constitutional usage, '*public*' in relation to elections, denotes elections that are open to all qualified citizens, conducted under state authority, and which produce office-holders exercising public power derived directly from the people. Internal party elections are selective, privately organised and intermediary processes. Their public consequences do not convert them into *public elections* in the constitutional sense.

3. *Structural separation*

The **Constitution** deliberately distinguishes political parties (article 55) from public elections (articles 42, 49–55, 63, etc.). Political parties are recognised as voluntary associations, not organs of the State. Treating party primaries as *public elections* for constitutional purposes would collapse this distinction and generate conflicts with constitutional voting rights and institutional design.

4. *Role of the Electoral Commission*

Public elections are conducted by or under the authority of the Electoral Commission pursuant to article 45. Internal party elections are, strictly, not. The Commission's involvement in party processes flows mainly from articles 45(e) and 55 of the **Constitution**, and is supervisory and regulatory, not constitutive. That is why the EC does not issue writs of election, declare winners as a constitutional returning authority, or apply entrenched electoral procedures to internal party elections. The Commission's expanded practical involvement in party primaries therefore reflects pragmatic responses to political reality, not constitutional transformation.

IV. Rationale for Legislative Reform

The exclusion of internal party elections from articles 49 and 50 of the **Constitution** does not, however, render those elections constitutionally insignificant. It reflects their character as associational processes with public consequences. Any extension of criminal or electoral safeguards to such elections must therefore be deliberate and legislative, not assumptive or interpretive.

The current statutory definition of '*public election*' in section 3(5) of the **Criminal Offences Act**, while appropriate at the time of enactment, has the unintended effect of excluding party primaries, congresses and similar processes from the reach of offences relating to elections. This gap has contributed to the normalisation of bribery, inducement and undue influence within internal party elections, undermining democratic accountability and public confidence.

V. Effect of the Proposed Amendments

The proposed amendments:

1. recognise party primaries as *public in consequence*, without treating them as constitutionally public elections;
2. avoid constitutional conflict by regulating criminal conduct, not party organisation;
3. are technology- and format-neutral: by using '*primary, congress, conference or other voting process*,' they cover delegate systems, expanded electorate, electronic voting or future innovations; and
4. align with Ghana's existing statutory framework governing political parties.

VI. Prosecutorial Authority

As a corollary, the Bill proposes to remove the requirement of the Attorney-General's fiat for the prosecution of electoral offences and vest primary prosecutorial authority in the Office of the Special Prosecutor. Vote-buying and corruption in intra-party elections constitute abuse of public trust and fall squarely within the mandate of the OSP. Independent prosecution is essential to avoid real or perceived conflicts of interest and to enhance public confidence in enforcement.

VII. Constitutional Consistency and Safeguard

Constitutional Meaning of 'Public Election'

Nothing in this Bill purports to amend, reinterpret or expand the meaning of '*public elections*' as used in the **Constitution**, including articles 49 and 50. The **Constitution** employs **that** term to describe elections conducted under state authority through which the sovereign will of the people is directly exercised. That constitutional meaning remains untouched.

Rather, the definition this Bill introduces operates solely for the purposes of statutory offences relating to elections. Parliament is constitutionally entitled to define terms for the limited purposes of legislation, even where the **Constitution** uses the same expression in a different context. The Bill therefore does not constitutionalise internal political party elections. Nor does it import constitutional voting rights, procedures or institutional control into those processes.

Respect for Political Party Autonomy under Article 55

This Bill does not regulate political parties' internal organisation, membership rules, disciplinary procedures or nomination criteria. It does not prescribe how parties conduct their elections, who may vote or how candidates are selected. The Bill is confined to criminal conduct (bribery, corruption, undue influence, treating, personation, intimidation, etc), conduct that Parliament is constitutionally empowered to prohibit wherever it occurs. The extension of criminal liability to internal party elections does not undermine political party autonomy but protects it, by ensuring that internal decision-making processes are not distorted by corruption and coercion.

No Transformation of Party Primaries into Constitutional Elections

The Bill expressly avoids treating internal party elections as '*public elections*' in the constitutional sense. Internal party elections remain associational processes governed by party constitutions and the **Political Parties Act**. The Electoral Commission's role in such elections remains supervisory and regulatory, not constitutive.

Accordingly, the Bill does not trigger the application of articles 42, 49 or 50 of the **Constitution**, does not require universal suffrage, does not require the issuance of writs of election, and does not alter the constitutional framework for electoral dispute resolution.

Certainty and Precision in Criminal Liability

The offences to which this Bill applies are well-established offences under Ghanaian criminal law. The Bill does not create new offences or expand the content of existing ones. It merely clarifies the categories of elections to which those offences apply.

The inclusion of terms such as '*primary, congress, conference or other voting process*' reflects the diverse and evolving forms of internal party elections and is necessary to prevent avoidance through form rather than substance.

Prosecutorial Authority and Article 88

Vesting primary prosecutorial authority in the Office of the Special Prosecutor for electoral offences does not derogate from article 88 of the **Constitution**. The Attorney-General remains the principal legal adviser to the Government and retains general prosecutorial authority under the **Constitution**.

The allocation of primary responsibility for the investigation and prosecution of electoral offences to the Special Prosecutor reflects Parliament's power to establish specialised prosecutorial regimes in respect of defined categories of offences, particularly those involving corruption and abuse of public trust. The Bill strengthens, rather than weakens, constitutional accountability by insulating prosecutions from political influence.

VIII. Conclusion

This Bill closes a significant gap in Ghana's electoral criminal law and reinforces the principle that elections determining access to public power must be free from corruption, bribery, intimidation and undue influence. It is a necessary interim reform pending the enactment of a consolidated Electoral Offences statute.