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main authorities

acts and sections

- Chapter 8 & 10 of the 1992 Constitution
- Amegatcher v Attorney-General cases
- New Patriotic Party v National Democratic Congress
- Sallah v Attorney-General
- Samuel Atta Mensah v. Attorney-General
- Asare v. Attorney-General
- Sam (No. 2) v. Attorney-General
- Agyei-Twum v. Attorney-General and Akwetey
- Re Parliamentary Election for Wulensi Constituency: Zakaria vs. Nyimakan

overview

Ghana's government is structured into three branches: the Executive, led by the President ; the Legislature, consisting of the unicameral Parliament, which enacts laws and exercises oversight over the Executive; and the Judiciary, comprising various courts, responsible for interpreting laws and ensuring justice is served impartially.

must know

- Qualification to be a Member of Parliament
- Process of Law making
- Removal of Member of Parliament
- Qualification to be a President
- Powers of a President
- Composition of the judiciary
- Jurisdiction of the courts

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Legislature

Governed by: **Chapter 10 of the 1992 Constitution**

Article 93

1. There shall be a Parliament of Ghana which shall consist of not less than 140 elected members.
2. Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution.

Definition of Legislative Power

Article 106

1. The power of Parliament to make laws shall be exercised by bills passed by Parliament and assented to the President.

Amegatcher v Attorney-General (No.2) [2012]

2 SCGLR 933 at 954 – The legislative power thus vested in Parliament should be expansively interpreted in the interest of the effective representative democratic governance of this country. **Parliament should be regarded as authorised to pass any legislation on any matter so long as in doing so it does not breach any express or implied provision of the Constitution. This is axiomatic!** Were the legislative power of Parliament to be restricted beyond what the provisions of the Constitution require, this would be an assault on the sovereignty of the people, whose representatives constitute Parliament. To me therefore, it is clear that Parliament has the fullest of legislative power, subject only to what the Constitution prohibits, expressly or impliedly. Democratic principles demand this conclusion. Of course, to say this does not imply that Parliament is sovereign under our Constitution.

Tip Box

Parliament is legislatively supreme but not sovereign.

Structure of Parliament

Speaker of Parliament

The Head of Parliament is the Speaker of Parliament per **Article 95**

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There shall be a Speaker of Parliament who shall be elected by members of Parliament from among persons who are Members of Parliament of qualified to be elected as a Member of Parliament

No business can be done in Parliament without the electing a Speaker of Parliament.

Election of a Speaker happens the same day as the swearing in of the President.

Office of the Speaker becomes vacant if:

- a. Speaker becomes minister or deputy minister
- b. Resigns
- c. Anything that would disqualify him from being an MP
- d. Removed from office by three-quarters or more of all MPs

Deputy Speakers

The Speaker of Parliament has 2 deputies per **Article 96**. The Deputy Speakers are elected by Members of Parliament from among the Members of Parliament.

Both Deputy Speakers cannot be from the same political party

Per **Article 111**, the Vice President and Ministers who are not Members of Parliament may participate in parliamentary proceedings but cannot vote or hold an office in parliament

Members of Parliament

Members of Parliament are persons elected to represent their respective constituency.

Qualification - Article 94

Qualification to be a Member of Parliament ('MP') – **Article 94(1) and (2)**

To be a member of parliament one must:

1. Be a citizen of Ghana
2. Be 21 years old and above
3. Pay all taxes
4. Not owe allegiance to another country
5. Be discharged from any bankruptcy
6. Not be of unsound mind or detained as a lunatic

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Ineligibility criteria – Article 94(3)

This criteria deals with persons who are otherwise qualified to be Members of Parliament but the Constitution renders them ineligible.

The ineligibility criteria is as follows:

- A person prohibited from standing election by a law in force in Ghana by reason of his holding or acting in an office the functions of which involve a responsibility for or are connected with the conduct of, an election or responsibility for, the compilation or revision of an electoral register; or
- A member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service, the Parliamentary Service, the Statistical Service, the Fire Service, the Customs, Excise and Preventive Service, the Immigration Service, or the Internal Revenue Service; or
- A Chief.

Article 94(4) and (5) give certain exceptions to the qualification criteria in **Article 94(2)**.

(4) For the purposes of paragraph (d) of clause (2) of this article, in the case of any finding made by a commission or committee of inquiry which is not a judicial or quasi-judicial commission or committee of inquiry, without prejudice to any appeal against or judicial review of that finding, the finding shall not have the effect of disqualifying a person under that paragraph unless it has been confirmed by a Government white paper.

(5) A person shall not be taken to be disqualified to be a member of Parliament under paragraph (c) or (d) of clause (2) of this article if –

(a) ten years or more have passed since the end of the sentence or the date for the publication of the report of the commission or committee of inquiry; or

(b) he has been pardoned.

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When does a Person become a Candidate?

New Patriotic Party v National Democratic Congress [1999-2000]

2 GLR 506 – A person becomes a candidate when the Electoral Commission ('EC') opens nominations, and that person files his candidacy. When a person becomes a candidate, then the person's disability or inability can be questioned.

Removal of a Member of Parliament – Article 97

A member of Parliament shall vacate his seat in Parliament if:

- Parliament is dissolved January 6th . Parliament is dissolved the day before a new President is sworn in, by custom.
- Elected as Speaker;
- Absent without permission in writing to the Speaker for 15 sittings and does not give a reasonable explanation to the Privileges Committee;
- Expelled for being guilty of contempt of Parliament or a committee of Parliament;
- Disqualified or ineligible under **Article 94**;
- Resigns by writing to the Speaker;
- Leaves the party of which he was a member at the time of election to join another party or remains an independent; or
- Elected as an independent and joins a political party. If there is a coalition of government, then it will not affect their status.

Functions of the Legislature

Primary Function – Passing Law Article 106

Parliament has the exclusive power to make laws, but this function cannot be exercised unless the Executive (or via private member's bill) presents a bill before them.

How are bills made? – Article 106(2) and (3)

- 1.The bill must be gazetted,
- 2.The bill must be accompanied by an explanatory memorandum
- 3.The bill should be gazetted at least 14 days before the First Introduction of the Bill into Parliament.

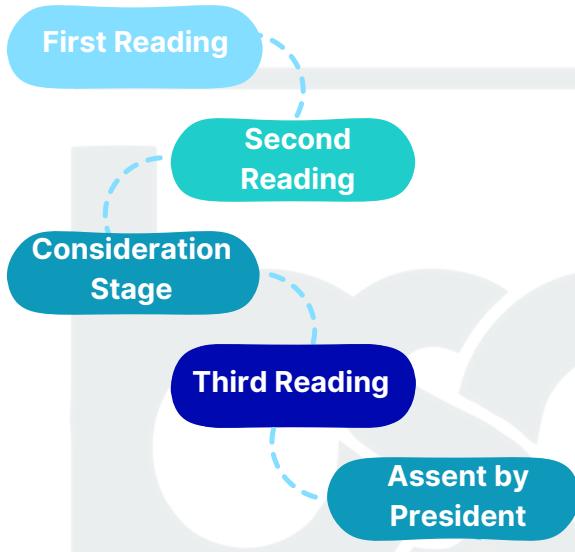
Tip Box

Note the interplay between the Executive and Legislature

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Process of Law Making – Article 106(4)-(6)

There are 4 stages a bill goes through in Parliament before the President's assent.



Tip Box

The explanatory memorandum details the policies and principles of the bill, indicates the defects and gaps in the existing law, the proposed remedies to the gaps, and the necessity of the bill.

STAGE 1 – First Reading

- Clerk reads the long title aloud in Parliament.
- The bill is referred to the appropriate committee for examination and enquiry making.
- **Article 106(4)** – A bill introduced cannot be delayed for more than three months in any parliamentary committee

STAGE 2 – Second Reading

- The report from the committee is presented and debated in full in plenary.
- A motion is made to read the long title. If approved, the clerk reads the long title.

STAGE 3 – Consideration Stage

- 48 hours after, the bill enters this stage.
- The Bill is examined clause by clause with amendments.
- The principle of the bill is no longer discussed at this stage.

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STAGE 4 – Third Reading

- There is a motion for the bill to be read a third time, formally.
- There is no debate, but an amendment may be made to reject the bill.
- After the motion is approved, the clerk reads the bill.
- The bill is passed after the Third Reading.

Assent by President – Article 106(7)-(9)

After the bill is passed, it must be assented to by the President to become law.

- The President can assent or refuse to assent to the passed bill.
- The President informs the Speaker on whether he assents or not OR that the Bill has been sent to the Council of State for advice.

Council of State Procedure:

- **Within 7 days of the bill's presentation** to the President, the Council of State, have **30 days after the Third Reading** to consider the passed bill and make comments.
- The Council of State sends a memorandum to the President **within 15 days** with its comments
- If the Council of State has no comments, it sends a memorandum to that effect to the President **within 7 days of its decision**
- If the President refuses to assent, he sends a memorandum to the Speaker of Parliament indicating his recommendations and amendments within **14 days after the refusal**.
- Parliament may partly or wholly accept or reject the suggestions.
- If there is a deadlock between the President and Parliament, Parliament may override the President by passing the bill with **at least two-thirds of ALL members** per **Article 106(10)**.
- President MUST assent **within 30 days after Parliament passes**.
- If the President still refuses to assent after the two-thirds vote of Parliament, the President may be brought before the Supreme Court under **Articles 2(1) and (2), and 130(1)(b)**.
- The bill, when assented to, is published in the Gazette, and comes into force on the date of publication.

Limitations on the Law-Making Power of Parliament

- **Article 3(1)** – Cannot make Ghana a one-party state.

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- **Article 56** – Cannot impose a common program or religion.
- **Article 107(a)** – Cannot alter judgments of any court between private persons subject to the judgments.
- **Article 107(b)** – Cannot make retroactive laws that burden those affected.
- **Article 270(2)** – Cannot confer chieftaincy or withdraw recognition; cannot make any law that detracts or derogates the honour and dignity of the institution of chieftaincy.
- **Article 106** – Any law that does not follow the procedure in this Article is void.
- **Article 106(3)** – Cannot make a law affecting chieftaincy without prior reference to the national house of chiefs.
- **Article 108** limits Parliament's spending power

Other Functions

- Determine Ghana's boundaries with respect to the seas – **Article 4(2)**
- Raise money primarily through taxation
- Spend or authorise spending of money through budget approvals
- Criticise the Government though plenary or committees Parliament establishes, but cannot co-govern
- Act as a grand inquest of the nation, that means they inquire into the work of Ministers and State Departments
- Debate issues of public concern
- Serve as a kind of ombudsman, that is a body that brings the complaints of constituents to the government's notice
- Oversees the performance of ministries, departments, and agencies

Per **Article 103(1)**, Parliament may establish standing committees and other committees as may be necessary to effectively discharge its functions.

Parliament forms standing committees and appoints members to them at its first meeting, immediately after electing a Speaker of Parliament and his/her deputies.

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The Executive

Governed by **Chapter 8 of the 1992 Constitution**

The President – Articles 57 and 58

The President is the Executive. He/She functions as the:

- Head of Government – **Article 57(1)**
- Commander-in-Chief of the Ghana Armed Forces – **Article 57(1)**

Article 58 Clause (1) – (2)

- Executive authority vests in the President – **Article 58(1)**
- The power of the Executive is the execution and maintenance of the Constitution and all laws made under or continued by the Constitution – **Article 58(2)**

Execution refers to the enforcement of the law

Maintenance is ensuring that the laws are in good shape, that is, removing, replacing, and creating laws.

The Executive places bills before the Legislature and signs Parliament-passed bills, making those bills effective laws.

Presidential Immunity

The President has absolute immunity from civil and criminal proceedings – **Article 57(5)**

While in office, the President is not personally liable to any civil or criminal proceedings in court. This is subject to the offence of a high crime, for which the president will then be removed from office.

Tip Box

The President's immunity is subject to Articles 2(1), 33(1), 130

Can you Sue the President Himself?

The President cannot be sued in his capacity as Head of Government – **Article 57(4)**

Without prejudice to the provisions of Article 2 of this Constitution, and subject to the operation of the prerogative writs, the President shall not, while in office, be liable to proceedings in any court for the performance of his functions, or for any act done or omitted to be done, or purported to be done, or purported to have been done or

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purporting to be done in the performance of his functions, under this Constitution or any other law.

Sallah v Attorney-General [1970] GLR – All actions should be against the Attorney-General as nominal defendant.

There is a 3-year window, after a President leaves office, where actions can be brought against the President in his personal capacity that could not be brought during their tenure as president per **Article 57(6)**. After this period, these actions are statute barred.

Who Qualifies To Become President – Article 62

1. Citizen of Ghana by birth
2. Must be 40 years old and above
3. Qualified to be elected a Member of Parliament under **Article 94**

The qualifications and ineligible criteria apply to the President. However, the exceptions in **Article 94 (4) and (5)** do not apply to someone who wants to be President.

Process Of Becoming President

A person becomes President via elections

- **Article 63(1)** – how to become a candidate in a presidential election.
- **Article 63(2)** – Elections should begin not more than 4 months and not later than 1 month before the end of the last term (which is 7th January)

Article 64 – Supreme Court has exclusive original jurisdiction to hear challenges to a presidential election

Powers And Functions of The President

The list below is not exhaustive. The functions and powers of the President are spread across the Constitution:

- Appoint members of the Council of State, 11 on his own and 3 in consultation with Parliament – **Article 89(2)(a) & (d)**
- Appoint Chief of Defence Staff, service chiefs and officers of the Ghana Armed Forces in consultation with the Council of State

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- Appointment of the IGP and other Police officers in consultation with the Council of State.
- Appointment of the CJ, SC Justices (in consultation with the Council of State, with Parliamentary approval for CJ and JSCs), Court of Appeal Justices, High Court Justices, Chairmen of Regional Tribunals (on advice of the Judicial Council for the rest).
- Determine salaries and other benefits of officials the President appoints.
- The prerogative of mercy in consultation with Council of State
- Power to grant assent or delay this grant to bills Parliament passes to law
- Power to appoint District Chief Executive s with approval from at least two- thirds of the member of the District Assembly present and voting
- Power to create new regions, alter boundaries, merge, etc., subject to a referendum in the areas affected
- Power to appoint a Commission of Inquiry into a matter of public interest
- Power to appoint, introduce into Parliament measures concerning financial implications.
- Power to appoint Ministers of State and their deputies with approval of Parliament

Removal Of President - Article 69

President is removed if:

- He/she wilfully breaks the oath of allegiance and Presidential Oath (found in the Second Schedule) or any provision of the Constitution. The oath is performed before Parliament by the Chief Justice. This is where the 3 branches of State converge.
- He/she does anything likely to bring the high office of the President into disrepute, ridicule, or contempt. Determining this depends on the set of facts present
- He/she does anything likely prejudicial or inimical to the economy or the security of the State
- He/she is incapable of performing the functions of the President due to an infirmity of body or mind.

Where there is a bodily or mental infirmity, the Chief Justice, in

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consultation with the Ghana Health Service convenes a Medical Board to determine if there is a *prima facie* case of physical/mental incapacity.

Where the President is incapable for reasons aside bodily or mental infirmity, the Chief Justice convenes a Tribunal made up of himself and 4 senior Supreme Court Justices. This Tribunal then inquires *in camera* if there is a *prima facie* case for the removal of the President.

The Tribunal or Medical Board then sends a report of its findings to the Speaker with a copy to the President.

Within **14 days**, Parliament must move a resolution as to whether the President should be removed or not.

- **Failure to carry out an order or direction per Article 2(4)-(5).**

This is a high crime that leads to the removal of the President or Vice President

A person convicted of high crime can be imprisoned for not more than 10 years. The person can hold public office only after 10 years from release from prison.

However, for a person convicted of a high crime, he/she cannot hold the presidential office

Exercising Executive Power

The President can exercise executive power by himself or through officer subordinate to him – **Article 58(3)**. These officers include:

- Vice President
- Cabinet
- Council of State
- Ministers of State

Vice President – Article 60

There shall be a Vice-President of Ghana who shall perform such functions as may be assigned to him by this Constitution or by the President.

The President chooses a Vice before contesting in the election
Article 60(2) and Article 63

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The running mate becomes Vice President automatically when presidential candidate is elected.

The President and Vice President are sworn in on the same day before Parliament.

When President dies, resigns or is permanently unable, The Vice President assumes the presidency for the duration of the unexpired term. He is required to nominate a person to the office of VP subject to Parliamentary approval. If the unexpired term is more than half of the President, the Vice President can only subsequently run for one full term.

The Vice President can serve two terms as President after serving two terms as Vice President.

There are no provisions on replacing a Vice President, therefore it will be at the President's discretion.

Ministers Of State – Article 76(1)

There shall be a Cabinet which shall consist of the President, Vice President and not less than 10 or more than 19 Ministers of State.

Article 76(2) – Cabinet assists the President in the determination of the general policy of the Government.

Article 88(1) – the President must appoint an Attorney-General who MUST be a Minister of State

Institutions in the Executive that Assist The President

- National Security Council
- National Development Planning Commission
- The Attorney-General **Article 88**

What Happens if the President is Absent?

Samuel Atta Mensah v. Attorney-General – When President and VP are absent, the Speaker takes the office of the President. The

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Speaker is constitutionally required to take the oath of the President before taking the office of the President.

Asare v. Attorney-General – The office of the Speaker created in the Constitution relates to the functions of the legislature, so when the occupant of that office is asked to temporarily assume the functions of president, he must subscribe to the oath of President to enable him to exercise the functions of President.

Without the oath, the Speaker cannot exercise any function that pertains to the office of the President.

The Judiciary

Fundamental Principles

The core principles regarding Ghana's judicial system are articulated in **Article 125 of the 1992 Constitution**

1. Justice shall be administered by an independent Judiciary – **Article 125(1)**.
2. Citizens may participate in the administration of justice through public and customary tribunals and the jury and assessor systems – **Article 125(2)**.
3. Judicial power (i.e., the power to adjudicate disputes and enforce remedies) is vested in the Judiciary and neither Parliament NOR the President shall have OR be given final judicial power – **Article 125(3)**.

Judicial Independence

Article 127 of the Constitution establishes a framework to ensure the independence of Ghana's judiciary:

- The Judiciary is subject only to the Constitution and not to the control or direction of any person or authority – **Article 127(3)**
- President and Parliament cannot interfere with exercise of judicial power by judiciary – **Article 127(2)**
- Superior Court Justices or any person exercising judicial power cannot be liable for any – **Article 127(3)**
- Administrative expenses of Judiciary will be – **Article 127(4)**
- Salaries, Allowances, Privileges and Benefits (absence, gratuities, pension etc) of Justices or others exercising judicial power shall not be varied to their disadvantage – **Article 127(5)**

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Note however, that judicial independence is not without checks and balances. The exercise of some of the Judiciary's financial independence is limited under **Article 179(6)** which provides that the "development expenditure" of the Judiciary will only be charged to the Consolidated Fund if approved by Parliament. This is good example of the principle of constitutionalism as it demonstrates that no power within the constitution is absolute. Even the fundamental human rights protected by **Chapter 5 of the Constitution** are subject to the public interest, among others, as outlined in **Article 12(2)**.

Composition of Judiciary

Under **Article 126**, Ghana's Judiciary consists of superior courts and lower courts:

- Superior Courts are the Supreme Court, Court of Appeal, High Court, and Regional Tribunals. Superior Courts are courts of record and have power to commit for contempt – **Article 126(2)**
 - All powers as were vested in a court of record before the Constitution came into force, vest in Superior Courts, per **Article 126(2)**. This part of the clause vests in the superior courts the inherent jurisdiction to do justice.
- Lower Courts are the courts that Parliament may establish by law. The **Courts Act, 1993 (Act 459)** passed by Parliament establishes the District and Circuit Courts, for example.

Chief Timitimi v. Amabebe – lower courts do not have jurisdiction unless a statute explicitly confers such on them.

Structure of the Judiciary

Chief Justice

Per **Article 125(4)**, the Chief Justice is the Head of the Judiciary, responsible for the administration and supervision of the Judiciary.

The Chief Justice's administrative functions include:

- Making regulations by Constitutional Instrument for the efficient performance of the functions of the Judicial Service and Judicial Council
- Assigning cases to judges

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- Appoints lower court judges on advice of the Judicial Council with approval of the President
- Transfer of venue

The Chief Justice is a member of all courts but holds only the power a judge in that court will have, not more.

Per **Article 144**, the President appoints the Chief Justice in consultation with Council of State, with approval from Parliament.

Where office of Chief Justice is vacant or the Chief Justice cannot perform his/her functions for any reason, until the Chief Justice resumes or a new Chief Justice is appointed person has been appointed and assumed that office or the person appointed as CJ resumes, the most senior Supreme Court Justice fills the vacancy per **Article 144(6)**.

Jurisdiction of the Superior Courts

Supreme Court

- It has exclusive original jurisdiction in all matters related to the interpretation or enforcement of the Constitution under **Article 130(1)(a)**.

The Supreme Court's interpretation and enforcement jurisdiction is invoked under **Article 2 of the Constitution**. This is subject to the jurisdiction of the High Court under **Article 33**.

In **Sam (No. 2) v. Attorney-General**, the Supreme Court declared that the jurisdiction under **Article 2(1) of the Constitution** is a special jurisdiction available to citizens of Ghana only, irrespective of personal interest.

Agyei-Twum v. Attorney-General and Akwetey [2005-2006] SCGLR 414, the Supreme Court interpreted 'person' in **Article 2(1)**. The Court used the preamble to the Constitution to determine that 'person' refers to Ghanaians (i.e., citizens of Ghana).

- It has exclusive jurisdiction to determine whether of Acts of Parliament were made in excess of Parliament's powers under **Article 130(1)(b)**.

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- The Supreme Court has final appellate power under **Article 129**. Appeals from the Court of Appeal are as of right if it is a judgment of the High Court exercising its original jurisdiction – **Article 131(1)(a)** Appeals with leave lie in any other cause or matter where the case commenced in a court lower than the High Court – **Article 131(1)(b)**

- The Supreme Court also has exclusive jurisdiction in determining whether an official document should not be produced in court because its contents will be prejudicial to national security – **Article 135**.
- It has supervisory jurisdiction over all courts and adjudicating bodies per **Article 132**
- It has review jurisdiction over its own decisions - **Article 133**

Court of Appeal

- It is the final appellate court in parliamentary election disputes – **Article 99(2)**, as held in **Re Parliamentary Election for Wulensi Constituency: Zakaria vs. Nyimakan**.
- It has appellate jurisdiction over High Court decisions - **Article 137**.

Parliament may extend the Court of Appeal's appellate jurisdiction

Unlike the Supreme Court, it is bound by its previous decisions – **Article 136(5)**.

High Court

- Per **Article 140**, the High Court has jurisdiction to try all civil and criminal matters.
- It has such original, appellate, and other jurisdiction as may be conferred on it by the Constitution and other law.
- Per **Article 33**, the High Court has jurisdiction to enforce breaches of personal human rights in **Chapter 5 of the Constitution**.
- The High Court has supervisory jurisdiction over all lower courts and adjudicating authorities pursuant to **Article 141**.

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After reviewing, the Chief Justice decides if the petition makes a *prima facie* case. If there is a *prima facie* case, then the Chief Justice forms a committee of 5 persons, including 3 Justices of the Superior Court and 2 non-lawyers, appointed on the advice of the Council of State. The Committee investigates the allegations and makes recommendations. The recommendations from the committee go to Chief Justice and are then forwarded to the President per **Article 146(5)**.

All proceedings in **Article 146** for the removal of the Chief Justice and other Superior Court Justices are *in camera* and the justice in question is entitled to be heard by himself, his lawyer, or expert of choice - **Article 146(8)**.

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