

# THE 1992 CONSTITUTION OF GHANA

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## Contents

- I. Origins and Historical Development of the Constitution
    - A. Brief historical background
    - B. Birth of the 1992 Constitution
  - II. Fundamental Principles of the Constitution
    - A. Classification of the 1992 Constitution
    - B. Supremacy and defence of the Constitution
    - C. Securing executive obedience to declarations of the Supreme Court
    - D. Proscription of *coup d'état*
    - E. Prohibition of institution of a single party system
    - F. Recognition of customary law
  - III. Fundamental Human Rights Protection
    - A. The rights and freedoms guaranteed
      - 1. Right to life
      - 2. Personal liberty
      - 3. Freedom of assembly
      - 4. Property rights of spouses
    - B. The non-exclusion article
    - C. The requirement of *locus standi*
    - D. The human rights jurisdiction of the High Court and Supreme Court
    - E. Freedom and independence of the media
    - F. The National Media Commission
    - G. Dual citizenship
    - H. Right to vote
    - I. The Directive Principles of State Policy
  - IV. Separation of Powers
    - A. The Executive – hybrid presidential system
    - B. The Cabinet
    - C. The Council of State
    - D. The legislature
    - E. Independent judiciary
    - F. The buffer institutions
  - V. Constitutional Adjudication – Interpretative Approach of the Supreme Court
  - VI. International Law and Regional Integration
  - VII. Decentralization
    - A. The District Assembly system
    - B. Chieftaincy
  - VIII. Post Script: The Initiated Constitutional Review Process
- Select Bibliography

## **I. Origins and Historical Development of the Constitution**

### **A. Brief historical background**

Ghana (formerly known as the Gold Coast) attained independent status from Britain in 1957. The 1957 Independence Constitution was parliamentary, with Dr Kwame Nkrumah as Prime Minister. It also provided for a constitutional monarchy, with the British monarch, Queen Elizabeth II, recognized as the Head of State. In 1960 the Parliament converted itself into a Constituent Assembly and declared the country a republic, with Dr Kwame Nkrumah as its first President. In 1964 the 1960 Constitution was amended, converting the country into a single-party state with the ruling Convention People's Party (CPP) as the only legally recognized political party. In addition, Dr Nkrumah was declared President for life, with powers to appoint and remove judges. Meanwhile, in 1958 the Preventive Detention Act (PDA) was passed, conferring powers on the Executive to arrest and detain any person without trial for up to five years, subject to renewal. With those powers and structures in place, the country slipped into dictatorship.

On 24 February 1966, the Military and Police, led by the then Colonel Kotoka, removed the CPP government from power through a military *coup d'état*. The country was returned to constitutional rule in 1969 under the 1969 Constitution. That Constitution established a parliamentary system with a Prime Minister and a President, who was essentially ceremonial. In 1972, a group of military officers, led by one Colonel Acheampong, staged a *coup d'état* and overthrew the government of Prime Minister Busia and replaced it with the National Redemption Council. This military government went through a number of internal changes, first changing its name to the Supreme Military Council (SMC) under Colonel Acheampong. Acheampong was removed from power by his own Generals who re-constituted the SMC into what became known as SMC II, under the leadership of General Akuffo. While the SMC II was preparing to organize elections and so hand over power under a constitution that was intended to come into force in 1979, a group of Junior Military Officers revolted and chased the SMC II out of power and installed Flight Lieutenant JJ Rawlings at the head of a new government, christened the Armed Forces Revolutionary Council (AFRC).

The AFRC stayed in power for six months and carried out what was labeled as a 'house cleaning' exercise, in the course of which Senior Military Officers who were alleged to have become tainted by their involvement in politics and subsequent corruption were executed. The AFRC handed over power to the civilian government of Dr Hilla Liman under the 1979 Constitution. The 1979 Constitution was presidential in nature, with a separation between the personnel of the legislature and the Executive. On 31 December 1981, Flight Lieutenant Rawlings led another *coup d'état* that removed the government of Dr Liman from power and replaced it with a military government under the name Provisional National Defence Council (PNDC). The PNDC remained in power until governmental authority was transferred to a civilian administration under the 1992 Constitution, headed by the same Flight Lieutenant Rawlings, on 7 January 1993.

### **B. Birth of the 1992 Constitution**

By the mid 1980s, the PNDC government came under pressure from the population for a return to constitutional rule. With a view to ascertaining exactly what the wishes of the people were, the PNDC constituted the National Democratic Commission (NDC) to collate and analyze the views of the people throughout the country. The NDC traversed the country and held discussions with various groups and people, and eventually came out with the declaration that the people desired a return to constitutional government.

As a consequence, the PNDC administration put together a team of experts charged with producing a draft of the Constitution. The resulting draft was placed before a Consultative Assembly, composed of representatives of almost all segments of society. The Consultative Assembly completed its assignment of deliberating on and approving the various provisions of the draft Constitution, and the PNDC government subjected the final document to a referendum on 9 April 1992. The generality of the people accepted the proposed Constitution in the referendum, with the additional condition that it would come into force on 7 January 1993.

In December 1992, elections were conducted, and the new government took office under the new Constitution on 7 January 1993.

## **II. Fundamental Principles of the Constitution**

### **A. Classification of the 1992 Constitution**

The 1992 Constitution of Ghana can be classified as traditionally unitary, in the sense that the powers of government are centralized into one point of authority; it is republican because sovereign authority resides in the people; and it is presidential because executive authority derives directly from the people through the exercise of their sovereign authority. In addition, it is democratic in principle because of the elective principle, and it is unicameral even though there is the body known as the Council of State, which is not in fact a second chamber.<sup>1</sup>

### **B. Supremacy and defence of the Constitution**

The Constitution reiterates the republican nature of the country and proclaims the people of Ghana as sovereign, with the Constitution as the supreme law of the land.<sup>2</sup> To emphasize the supremacy of the Constitution, the Supreme Court is made directly accessible to any person who alleges an infringement of any provision of the Constitution.

Article 2(1) provides the opportunity to any person to commence action in the Supreme Court for the protection of the Constitution. As was held in *Sam (No 2) v Attorney General*,<sup>3</sup> except in cases relating to the protection of human rights,<sup>4</sup> a person does not require a personal interest in a matter before proceeding under Article 2 to uphold and defend the Constitution. As held by Bamford-Addo JSC,

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<sup>1</sup> This is explained below.

<sup>2</sup> Article 1.

<sup>3</sup> [2000] SCGLR 305.

<sup>4</sup> See Article 33(1) of the 1992 Constitution, further discussed below.

[t]he plaintiff in this case is ‘a person’ as defined in the case of *New patriotic Party v. Attorney General*<sup>5</sup>. He is also a citizen of Ghana and he has alleged that section 15 of PNDCL 326 is inconsistent with the constitutional provisions in article 2(1)(a) and (b) of the 1992 constitution. These are the requirements for standing when invoking the jurisdiction of the Supreme Court under article 2(1). Other requirements like the existence of a ‘dispute’ and the ‘controversy’ requirements or ‘personal interest’ requirements are not necessary. However, under article 33(1), which deals with protection of Human Rights and Freedoms and other rights by the courts, the personal interest requirement is a pre-requisite condition for standing, which would enable a plaintiff to enforce his Human Rights and Freedoms.<sup>6</sup>

### **C. Securing executive obedience to declarations of the Supreme Court**

Arising out of previous experience, when the Executive was bold enough to openly declare its unwillingness to respect the orders of the highest Court of the land, it was thought necessary to guarantee the sanctity of the decisions of the Supreme Court. The said Article 2(3) and (4) provides that

(3) Any person or group of persons to whom an order or direction is addressed under clause (2) of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction.

(4) Failure to obey or carry out the terms of the order or direction made or given under clause (2) of this article constitutes a high crime under this Constitution and shall, in the case of the President or Vice-President, constitute a ground for removal from office under this Constitution.

It is therefore beyond all doubt that any declaration of the Supreme Court on a matter and any subsequent order or direction made shall be obeyed by whomever it is directed against. Failure to obey any such order or direction will constitute a ‘high crime’. A ‘high crime’ is an offence created by the Constitution and carries a punishment of imprisonment not exceeding ten years, without the option of a fine, together with disqualification from election or appointment to any public office for a period of ten years commencing from the date of expiration of the term of imprisonment. This power is exclusive to the Supreme Court.

### **D. Proscription of *coup d’état***

Political instability has been the bane of the country since independence. Ghana has experienced authoritarian rule not only under military governments, but even under the civilian administration of President Nkrumah when the country was declared a single party state following upon the 1964 constitutional amendment. The country has suffered politically and economically as a consequence of the incessant destabilization of the constitutional administration of the country.

After the first military *coup d’état* in 1966, the country’s various attempts at democratic governance have been frustrated at various times by other incidents of military subversions of various Constitutions prior to the 1992 Constitution. As a consequence of these previous

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<sup>5</sup> [1996-97] SCGLR 729.

<sup>6</sup> [2000] SCGLR 305, at 314.

experiences and with a determination to institutionalize democratic rule and proscribe unconstitutional overthrow or abrogation of the Constitution, the 1992 Constitution prohibits any such act through the proscription of *coups d'état*. Under Article 3(3), any unlawful overthrow of the Constitution constitutes high treason, which is punishable by death.

The unique aspect of this determination to outlaw *coups d'état* is the investment of the constitutional rights and duties in all citizens to defend the Constitution at all times and to do all in their power to resist any attempt to overthrow the Constitution and to restore the Constitution even after it has been overthrown or abrogated unconstitutionally.<sup>7</sup>

The clause creates two rights and duties for every citizen: first, the right and duty to defend the Constitution, and secondly, the right and duty to resist any person who seeks to overthrow the Constitution.

This simply means that any overthrow or abrogation of the Constitution will remain unconstitutional no matter how long and entrenched the perpetrators might have been in power, and it shall not be an offence to resist the overthrow and abrogation.<sup>8</sup>

This provision became the subject of *obiter dicta* in the case of *Kwam v Pianim (No 2)*,<sup>9</sup> in which Adjabeng JSC expressed the opinion that if any person were to attempt to restore the 1992 Constitution should it be overthrown, that person would be protected when that Constitution was restored. The facts of the case were that Pianim, who was a founding member of the New Patriotic Party, was intending to put himself up for election as a presidential candidate for his party in the impending elections of 1966. Ekwam, another member of the party, brought a suit in the Supreme Court claiming that Pianim stood disqualified for having been convicted of the offence of preparing to overthrow the PNDC government in 1982. The 1992 Constitution disqualifies any person that has ever been convicted for an offence involving the security of the state. Pianim argued that his action was justifiable under Article 1(3) of the 1979 Constitution, which the PNDC itself had overthrown. That article provided that

[a]ll citizens of Ghana shall have the right to resist any person or persons seeking to abolish the constitutional order as established by this Constitution should no other remedy be possible ...

The Court rejected the justification for Pianim's activities as justifiable for the purposes of restoring the 1979 Constitution, but Justice Adjabeng thought that the position would be different if it were under the 1992 Constitution. According to him,

[t]urning now to the second part of the issue under consideration, that is, whether the act of preparing to overthrow the Government of the PNDC was an act permissible under the 1979 Constitution of Ghana, I must say that the answer to this question is very simple. The fact is that both at the time of the alleged commission of the offence and at the time of the conviction of the defendant, the 1979 Constitution has been suspended by those who had overthrown the said constitution and the government formed thereunder. So the reality was that even though article 1(3) of the 1979 Constitution gave the right to every Ghanaian citizen 'to resist any person or persons seeking to abolish the constitutional order as established under this constitution,' this

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<sup>7</sup> Article 3(4).

<sup>8</sup> Article 4(5).

<sup>9</sup> [1996-97] SCGLR 120.

right could not be exercised simply because the constitution which gave that right had been suspended. Whether it was legally right or not to suspend it is not for us to say here. I think that that is now history. It is clear, therefore, that it could not have been rightly argued at the time that preparing to overthrow the PNDC Government was an act permissible under the 1979 Constitution. It would even have been suicidal to so argue having regard to the atmosphere at the time.

I do not, however, think that the position will be the same now. With the re-enactment and expansion, in article 3(4), (5), (6) and (7) of the present constitution, of the right given in article 1(3) of the 1979 constitution, I think that the position would be different if the defendant were to be tried now of the same offence.<sup>10</sup>

The provision, as expanded under the 1992 Constitution, now reads in full as follows –

(4) All citizens of Ghana shall have the right and duty at all times—

(a) to defend this Constitution, and in particular, to resist any person or group of persons seeking to commit any of the acts referred to in clause (3) of this article; and

(b) to do all in their power to restore this Constitution after it has been suspended, overthrown, or abrogated as referred to in clause (3) of this article.

(5) Any person or group of persons who suppresses or resists the suspension, overthrow or abrogation of this Constitution as referred to in clause (3) of this article, commits no offence.

(6) Where a person referred to in clause (5) of this article is punished for any act done under that clause, the punishment shall, on the restoration of this Constitution, be taken to be void from the time it was imposed and he shall, from that time, be taken to be absolved from all liabilities arising out of the punishment.

(7) The Supreme Court shall, on application by or on behalf of a person who has suffered any punishment or loss to which clause (6) of this article relates, award him adequate compensation, which shall be charged on the Consolidated Fund, in respect of any suffering or loss incurred as a result of the punishment.

With these enhanced provisions, the interpretation is anticipated that all citizens will at all times have the right and a duty to defend the Constitution using any conceivable means, even after it may have been overthrown or abrogated unconstitutionally.

#### **E. Prohibition of the institution of a single party system**

Arising out of the country's experience and with the aim of entrenching democratic governance, the Constitution prohibits any law that would seek to establish a one-party state. Under Article 3(1), 'Parliament shall have no power to enact a law establishing a one-party state.' As was confirmed in *New Patriotic Party v Ghana Broadcasting Corporation*,<sup>11</sup> Parliament has no power to establish a one-party state and in the same vein, the state organs cannot lawfully deny other political parties access to such organs.

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<sup>10</sup> [1996-97] SCGLR 143.

<sup>11</sup> [1993-94] 2 GLR 354.

In addition to the prohibition of legislating on a one-party system, the Constitution specifically guarantees the right to form political parties.<sup>12</sup> Political parties are guaranteed the space to participate in shaping the political will of the people.<sup>13</sup>

The importance attached to the role of political parties is again played out in Article 55(11), which provides that '[t]he State shall provide fair opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media.'

This provision came up for consideration by the Supreme Court in the case of *NPP v Ghana Broadcasting Corporation*.<sup>14</sup> In that case the Supreme Court held the Ghana Broadcasting Corporation, a state broadcasting media outfit, to be in breach of its constitutional responsibility in failing to afford commensurate air time for the opposition NPP political party to express its views on the national budget. It was alleged that the ruling NDC party was given disproportionate airtime as against the NPP.

## **F. Recognition of customary law**

Prior to the introduction of the British legal system and norms, the various communities that now constitute the country of Ghana were regulated by their own legal norms, now labeled customary law. A large segment of the populace of Ghana is still organized according to customary ways of life, for which reason the Constitution accords recognition to the customary laws that operate in the various customary or traditional communities. 'Customary law', which means the rules of law that by custom are applicable to particular communities in Ghana,<sup>15</sup> are therefore a constituent part of the laws of Ghana.<sup>16</sup>

Nevertheless, the Constitution, by Article 26(2), subjects customary law to the human rights of the individual. This provision states that '[a]ll customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.'

It is for that reason that the criminal law was amended to criminalize certain customary practices, such as female genital mutilation, *trokosi*,<sup>17</sup> and forced marriages. By section 69A of the Criminal Offences Act, 1960, a person who engages in what is described as female circumcision commits a second degree felony and is subject to a term of imprisonment of not less than three years if convicted. Also, by section 314A of Act 29, any person who engages in what is described as customary servitude commits a criminal offence and is liable to a term of imprisonment of not less than three years.

## **III. Fundamental Human Rights Protection**

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<sup>12</sup> Article 55(1).

<sup>13</sup> Article 55(3).

<sup>14</sup> [1993-94] 2 GLR 354.

<sup>15</sup> Article 11(3).

<sup>16</sup> For a more detailed discussion see Kofi Quashigah, 'The Historical Development of the Legal System of Ghana: An example of the Co-existence of Two Systems of Law' (2008) 14-2 *Fundamina* 95.

<sup>17</sup> Literally, described as customary servitude. For a detailed explanation of this practice see Quashigah, 'The Vestal Virgins, The Trokosi Practice in Ghana' (June 1998) 10 No 2 *African Journal of International and Comparative Law* 193.

## **A. The rights and freedoms guaranteed**

It has become the practice since the 1969 Constitution to enshrine fundamental human rights and freedoms into the Constitutions of Ghana. Chapter Five of the 1992 Constitution provides for a large body of fundamental human rights and freedoms. These cover a medley of civil, political, economic, and cultural rights, spread over eighteen articles, as follows: protection of the right to life (Article 13), protection of personal liberty (Article 14), respect for human dignity (Article 15), protection from slavery and forced labour (Article 15), equality and freedom from discrimination (Article 17), protection of privacy of home and other property (Article 18), fair trial (Article 19), protection from deprivation of property (Article 20), general fundamental freedoms, including freedom of speech and assembly, etc (Article 21), property rights of spouses (Article 22), administrative justice (Article 23), economic rights (Article 24), educational rights (Article 25), cultural rights and practices (Article 26), women's rights (Article 27), children's rights (Article 28), rights of disabled persons (Article 29), and rights of the sick (Article 30).

For the purposes of this work, the right to life, right to personal liberty, right to freedom of assembly, and property rights of spouses shall be given some further consideration because of their topical nature.

### **1. Right to life**

The right to life is guaranteed, but the death penalty may be exacted in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which the offender has been convicted.<sup>18</sup> The death penalty is therefore still on the statute books of Ghana.

### **2. Personal liberty**

The abuse of personal liberties during the first republican period and under the various military regimes has been well documented.<sup>19</sup> During the period of the first republic, for instance, the Preventive Detention Act, 1958, Act No 17, 18 July 1958, was passed to confer authority on the Executive to arrest and detain any individual without trial for up to five years, subject to renewal. The history of abuse of fundamental rights therefore compelled an extensive and explicit itemization of specific reasons that would justify the deprivation of personal liberty under any circumstance.

The specific reasons for which the personal liberty of an individual could be derogated from are

- a. Upon a court order in respect of conviction for a criminal offence;
- b. For punishment for contempt of court;
- c. In respect of a bench warrant;
- d. For the treatment of a person suffering from an infectious or contagious disease, a person of unsound mind, a drug or alcohol addict, or a vagrant;

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<sup>18</sup> Article 13(1)(2).

<sup>19</sup> See, for example, the classic case of *Re Akoto* [1961] G & G 160.



- e. For the education of a person under the age of eighteen years;
- f. For the prevention of entry by unlawful immigrants into the country or for effecting expulsion or for extradition; and
- g. Upon reasonable suspicion of having committed or being about to commit a criminal offence.

Any arrest for a reason other than any of these would be unconstitutional.

Article 14 also mandates access of a detainee to his or her lawyer (Article 14(2)) and also release on bail within 48 hours, unless further detention is authorized by a court of law (Article 14(3)). Any unlawful arrest or detention entitles the aggrieved person to compensation from the person who committed the unlawful detention (Article 14(5)).

### **3. Freedom of assembly**

The right to freedom of assembly as guaranteed represents a dramatic improvement in the entrenchment of the democratic process in Ghana. The right to freedom of assembly is explained to include freedom to take part in processions and demonstrations. The impact of this provision became the subject matter of the decision in *N.P.P v I.G.P.*<sup>20</sup> in which the Supreme Court declared the pre-Constitution law Public Order Decree, 1972, NRCD 68—which mandated a permit from the police for assembly and demonstrations—as unconstitutional.

The consequence was the promulgation of the Public Order Act, 1994, Act 491, which now requires any person or group of persons to ‘inform’ the police of the intention to assemble or to undertake a peaceful procession. If for any reason the police cannot guarantee security for the event, they can ‘request’ the organisers to change the venue or route of the programme, or even to postpone it. If the organisers refuse to heed the ‘request’ of the police, then the latter can apply to the court for an order to restrain the organisers.

The Public Order Act therefore regularises the exercise of the freedom of assembly and demonstration by subjecting the police powers to the overriding authority of the court in the final decision whether or not to permit the planned assembly or demonstration.

### **4. Property rights of spouses**

The Constitution mandates Parliament, as soon as practicable after the coming into force of the Constitution, to enact legislation to regulate the property rights of spouses. To achieve this constitutional requirement the legislation would be expected to ensure that:

- a. Spouses shall have equal access to property jointly acquired during marriage; and
- b. Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.<sup>21</sup>

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<sup>20</sup> [1993-94] 2 GLR 459.

<sup>21</sup> Article 22(3) 1992 Constitution.

It took nearly two decades before a bill was formulated for Parliament to consider.<sup>22</sup>

Meanwhile, the Supreme Court, in a recent decision, took the bold step ahead of Parliament and held that upon the dissolution of a marriage each spouse is entitled to a fifty per cent share of the property jointly acquired during the marriage.<sup>23</sup>

### **B. The non-exclusion article**

In addition to the various specific fundamental human rights and freedoms categorized in the Constitution, there is the omnibus provision in Article 33, which reads as follows:

(5) The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.

This provision is obviously intended to avoid a fossilization of the rights guaranteed, by leaving it open to the courts of Ghana to incorporate right and duties that have attained international recognition. A relevant case on this provision is *Adjei-Ampofo v Attorney General*,<sup>24</sup> in which it was explained that

[t]his article clearly speaks of ‘rights, duties, declarations and guarantees relating to fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.’ The reference to ‘others’ referred to in article 33(5) can only be those rights and freedoms that have crystallized into widely or greatly accepted rights, duties, declarations and guarantees through treaties, conventions, international or regional accords, norms and usages.

Again, in the case of *Ghana Lotto Operators Association & Others v National Lottery Authority*,<sup>25</sup> Justice Date-Bah observed in relation to Article 33(5) that ‘[e]vidence of such rights can be obtained either from the provisions of international human rights instruments (and practice under them) or from the national human rights legislation and practice of other states.’<sup>26</sup>

### **C. The requirement of *locus standi***

For the effective protection of the fundamental human rights and freedoms in Chapter Five, Article 33 specifically guarantees access to the High Court for judicial protection from abuse. According to Article 33(1),

Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available that person may apply to the High Court for redress.

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<sup>22</sup> The Property Rights of Spouses Bill is still under consideration in Parliament.

<sup>23</sup> *Menash v Mensah*, Supreme Court of Ghana, Civil Appeal No J4/20/2011 of 22 February, 2012 (unreported).

<sup>24</sup> [2003-2004] SCGLR 418.

<sup>25</sup> [2007-2008] SCGLR 1088.

<sup>26</sup> *Ibid*, at 1096.

Particular note may need to be taken of the qualification that the infraction is ‘in relation to him’. This imports the need to show ‘interest’ to qualify for a hearing in the Court. In the case of *Sam (No 2) v Attorney General*,<sup>27</sup> it was held that

[t]he words ‘in relation him’ and ‘that person’ imply that a plaintiff must have personal interest in the litigation. Therefore, it is only when a person seeks the enforcement of his fundamental human rights and freedom that he ought to have ‘personal interest’ in the case, and this would invariably also mean that there must have arisen a controversy or a dispute concerning an infringement or intended infringement of the plaintiff’s rights which he seeks to enforce through the High Court.

The need to exhibit a personal interest is not a requirement for proceedings under Article 2.

#### **D. The human rights jurisdiction of the High Court and the Supreme Court**

Another matter that needs to be mentioned in respect of the enforcement of the fundamental human rights and freedoms is the nature of the jurisdiction of the High Court and the Supreme Court in matters relating to the fundamental human rights and freedoms; according to Article 33(1), a person aggrieved in respect of an abuse or likely abuse of his fundamental rights ‘may apply to the High Court for redress’.

The mandate of the High Court to exercise original jurisdiction in matters relating to the fundamental human rights and freedoms is clear from this provision. It is when we bring in the provisions of Article 130(1)(a) that the question of whether both the High Court and the Supreme Court can exercise original jurisdiction in matters relating to the fundamental human rights and freedoms becomes an issue. The said Article 130(1)(a) provides that

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in—

(a) all matters relating to the enforcement or interpretation of this Constitution;

In the case of *Edusei (No 2) v Attorney-General*,<sup>28</sup> the Supreme Court refused a call on it to enforce the fundamental rights and freedoms as a court of first instance. The Court read Articles 33(1) and 130(1)(a) together with Article 140(2), which provides that ‘[t]he High Court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution’ and came to the conclusion that the Supreme Court does not possess concurrent original jurisdiction with the High Court in matters relating to human rights abuses. All suits relating to the enforcement of fundamental human rights and freedoms must commence in the High Court.

#### **E. Freedom and independence of the media**

Article 21(1)(a) guarantees the right to freedom of speech and expression, which includes freedom of the press and other media.

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<sup>27</sup> [2000] SCGLR 305, at 314.

<sup>28</sup> [1998-99] SCGLR 753.

Due to the importance accorded to freedom and independence of the media in the working of the democratic system, the whole of Chapter Twelve is dedicated to the freedom and independence of the media. Of particular interest is Article 162(3), which prohibits impediments to the establishment of private press or media, and in particular, states that no law shall require any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal, or other media for mass communication or information.

In effect, licensing shall not be used as a mechanism for frustrating the establishment or operation of a media outfit.

In line with the strengthening and sustenance of the democratic process, Article 163 requires all state-owned media to afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions. This provision became the subject of contention in the case of *National Patriotic Party v Ghana Broadcasting Corporation*,<sup>29</sup> in which the Supreme Court held that the state-owned media has the duty to afford to the opposition political party equal opportunity to present its views to the public on matters of national concern.

#### **F. The National Media Commission**

The Constitution demands the establishment of the National Media Commission which has, *inter alia*, the responsibility to promote and ensure the freedom and independence of the media for mass communication or information. It is an independent commission that is to insulate the state-owned media from government control. The Commission therefore has the responsibility to appoint the chairman and other members of the governing bodies of public corporations managing the state-owned media, in consultation with the President. The relevant Article 168 of the Constitution provides that

[t]he Commission shall appoint the chairmen and other members of the governing bodies of public corporations managing the state-owned media in consultation with the President.

In the case of the *National Media Commission v Attorney-General*,<sup>30</sup> the Supreme Court held that

[o]n the plain and unambiguous language of article 168 of the 1992 Constitution, the authority to appoint the chairmen and other members of the governing bodies of public corporations managing the state-owned media, including chief executives, who were members of such governing bodies, was the National Media Commission, acting in consultation with the President.<sup>31</sup>

The governing bodies of the respective public media corporations thereafter have the responsibility to appoint the editors of state-owned media. By this process it is hoped to remove the undue influence of government in the management of the state-owned media establishments.

#### **G. Dual citizenship**

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<sup>29</sup> [1992-93] GBR 522.

<sup>30</sup> [2000]SCGLR 1

<sup>31</sup> *Ibid*, at 4, Headnote 2.

The 1992 Constitution at its inception did not make provision for dual citizenship; the 1996 Constitutional Amendment, however, removed the inhibition, thus making it possible that ‘a citizen of Ghana may hold the citizenship of any other country in addition to his citizenship of Ghana.’<sup>32</sup> In principle, the amendment limits dual citizenship to persons who already possess Ghanaian citizenship. To qualify for dual citizenship, therefore, the person must be a citizen of Ghana or must have lost citizenship as a result of the law in Ghana which had prohibited the holding of dual citizenship by a Ghanaian.<sup>33</sup> Any other person desiring to acquire Ghanaian citizenship would have to do so by registration<sup>34</sup> or by naturalization.<sup>35</sup> On the other hand, a Ghanaian citizen who in addition acquires the citizenship of another country is required to notify the Minister responsible for the Interior in writing of the acquisition of the additional citizenship.<sup>36</sup>

## H. The right to vote

The right to vote at public elections and referenda is guaranteed to every citizen of eighteen years of age and above, and of sound mind.<sup>37</sup> A corollary to the right to vote is the right to form political parties, as well as the right to join a political party.<sup>38</sup>

Arising from the genesis of political parties in Ghana and their demonstrated tendencies to exacerbate ethnic differences in the country, the Constitution mandates that all political parties ‘shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.’<sup>39</sup> This prescription is intended to remove sectional-based political groupings that could disorganize the cohesiveness of the country.

The right to vote was the subject matter in *Tehn – Addy v Electoral Commission & Another*,<sup>40</sup> the facts of which were that the plaintiff, a 57 year old Ghanaian citizen, had travelled out of Ghana when the Electoral Commission conducted the registration exercise. Upon his return into the country he submitted himself for registration by the Electoral Commission but for some reasons the latter could not accede to his request. The plaintiff therefore filed a suit against the Electoral Commission in the Supreme Court, claiming that the refusal of the Electoral Commission to register him as a voter was inconsistent with and in contravention of Articles 42, 45, and 46 of the 1992 Constitution. The Supreme Court upheld the right to vote as a fundamental constitutional right and therefore ordered the Electoral Commission to register the plaintiff accordingly.

The Court emphasized the fact that in Ghana, the non-registration of a qualified person carries the additional effect of disqualification from holding the position of Minister of State,<sup>41</sup> member

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<sup>32</sup> 1992 Constitution, Article 8, as amended by the Constitution of the Republic of Ghana (Amendment) Act, 1996.

<sup>33</sup> Citizenship Act, 2000, Act 527, section 16(5).

<sup>34</sup> 1992 Constitution, Article 9 and Citizenship Act, 2000, Act 591, section 10.

<sup>35</sup> Citizenship Act, 2000, Act 591, section 13.

<sup>36</sup> *Ibid*, section 16(3)(b).

<sup>37</sup> 1992 Constitution, Article 42.

<sup>38</sup> 1992 Constitution, Article 55(1)(2).

<sup>39</sup> 1992 Constitution, Article 55(4).

<sup>40</sup> [1996-97] SCGLR 589.

<sup>41</sup> 1992 Constitution, Article 78(1).

of the Electoral Commission,<sup>42</sup> President or Vice-President,<sup>43</sup> member of the Public Services Commission,<sup>44</sup> or member of the National Commission for Civic Education.<sup>45</sup> The Court consequently interpreted the right to vote as a fundamental constitutional right rather than as a mere privilege or civil right.

In another case, *Ahumah – Ocansey v Electoral Commission*,<sup>46</sup> the Supreme Court was confronted with the issue of the right of prisoners to vote. The Court came to the conclusion that the express provisions of Article 42 of the Constitution confer the right to vote on all Ghanaians of eighteen years and above and of sound mind, and therefore that remanded and convicted prisoners confined in legal detention centres have the right to be registered as voters for the conduct of public elections.

The court added, however, that the exercise of this right is subject to the Electoral Commission making the necessary legislative arrangements to take care of the control, management, and regulatory regime of such an exercise.

### **I. The Directive Principles of State Policy**

In addition to Chapter Five on the fundamental human rights and freedoms is Chapter Six, on the Directive Principles of State Policy, which are intended to guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties, and other bodies and persons in applying or interpreting the Constitution or any other laws.

The directive principles cover political objectives, economic objectives, social objectives, educational objectives, cultural objectives, international relations, and duties of citizens.

The main issue that relates to the directive principles is their constitutional status; whether they are justiciable or not justiciable. Article 34(1) has created a bit of uncertainty in this respect. The said provision reads as follows:

The Directive Principles of State Policy contained in this Chapter shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, Political Parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society.

Unlike the Constitutions of India and Nigeria, the 1992 Constitution of Ghana does not specifically provide that the provisions under the directive principle of state policy shall not be subject to enforcement in the courts. Matters were not helped by the fact that the Report of the Committee of Experts that prepared the draft of the Constitution stated that ‘[t]he principles shall not of and by themselves be legally enforceable by any court.’ This sentence, however, is not reflected in the Constitution itself, thus giving room for different opinions on the constitutional

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<sup>42</sup> 1992 Constitution, Article 44(1).

<sup>43</sup> 1992 Constitution, Article 62(c).

<sup>44</sup> 1992 Constitution, Article 194(3)(a).

<sup>45</sup> 1992 Constitution, Article 232(3).

<sup>46</sup> [2010] SCGLR 575.

nature of the matters mentioned in Chapter Six. While Bamford-Addo JSC in *New Patriotic Party v Attorney-General (31<sup>st</sup> December Case)*<sup>47</sup> held the view that Chapter Six is not justiciable, Adade JSC thought otherwise; according to him,

I do not subscribe to the view that chapter 6 of the Constitution, 1992 is not justiciable; it is. First, the Constitution, 1992 as a whole is a justiciable document. If any part is to be non-justiciable, the Constitution, 1992 itself must say so. I have not seen anything in chapter 6 or in the Constitution, 1992 generally, which tells me that chapter 6 is not justiciable. The evidence to establish the non-justiciability must be internal to the Constitution, 1992, not otherwise, for the simple reason that if the proffered proof is external to the Constitution, 1992, it must of necessity conflict with it, and be void and inadmissible; we cannot add words to the Constitution in order to change its meaning.

In the subsequent case of *Ghana Lotto Operators Association & Others v National Lottery Authority*,<sup>48</sup> the Supreme Court, per Justice Date-Bah, reiterated the position of Justice Adade that ‘[t]here is no language in the Constitution stating that the principles are not of and by themselves legally enforceable by any court.’<sup>49</sup> However, taking the peculiar nature of the matters contained in Chapter Six into account, Justice Date-Bah further explained that

there may be particular provisions in chapter 6 which do not lend themselves to enforcement by a court. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to enforcement by courts, however, the enforcement by this court of the obligations imposed in chapter 6 should be insisted upon and would be a way of deepening our democracy and the liberty under law that it entails.<sup>50</sup>

With this, any ambiguity in Article 34(1) about the justiciability of the provisions of Chapter Six is cleared; nevertheless, the problem of sifting out any aspect ‘that does not lend itself to enforcement by courts’ still remains to be addressed when specific issues arise.

## **IV. Separation of Powers**

### **A. The Executive - hybrid presidential system**

The Constitution establishes a presidential system, with a President who comes with a Vice-President and who must be designated as such by the candidate for the office of President before the election. To qualify for election as President, the individual must be a citizen of Ghana by birth and must have attained the age of forty years. The President holds office for a term of four years but may hold office as President for only two terms.<sup>51</sup> He or she could be removed by the process of impeachment.<sup>52</sup> Parliament can also pass a vote of censure on a Minister of State by a

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<sup>47</sup> [1993-94] 2 GLR 35.

<sup>48</sup> [2007-2008] SCGLR 1088.

<sup>49</sup> *Ibid*, at 1101–1102.

<sup>50</sup> *Ibid*, at 1106.

<sup>51</sup> Article 66.

<sup>52</sup> Article 69.

resolution supported by not less than two-thirds of all the members of Parliament.<sup>53</sup> The President is not, however, obliged to revoke the appointment of a Minister on whom a vote of censure has been passed.<sup>54</sup>

The executive authority of Ghana vests in the President and can be exercised by him directly or through officers subordinate to him. Unlike the 1979 Constitution, which prohibited a member of Parliament from occupying a ministerial position, the 1992 Constitution mandates the President to appoint Ministers of State only with the prior approval of Parliament. The President may appoint such number of Ministers of State as he deems fit, from both within and outside of Parliament, but subject to the proviso that ‘the majority of Ministers of State shall be appointed from among members of Parliament.’<sup>55</sup> Ministers picked from within Parliament retain their seats in Parliament, while those from outside can sit in Parliament, but do not possess a vote on matters under discussion therein.

## **B. The Cabinet**

Although the Constitution creates a presidential system and also states specifically that ‘the executive authority of Ghana shall vest in the President’,<sup>56</sup> the same Constitution makes provision for a Cabinet. The Cabinet is made up of the President, the Vice-President, and not less than ten and not more than nineteen Ministers of State.<sup>57</sup> The Constitution does not specify which Ministry’s Minister qualifies for inclusion into the Cabinet; the President is therefore at liberty to decide which Minister gets a seat in the Cabinet. Certain key Ministers will no doubt always be included: for example the Minister for Finance, the Attorney General and the Minister for Justice, the Minister for Interior, the Minister for Defence, the Minister for Foreign Affairs, and such others. The Cabinet is to assist the President in the determination of general policy of the government.<sup>58</sup> It is summoned by the President, but invariably the final executive authority nonetheless resides with the President.

## **C. The Council of State**

Of particular interest with respect to the Executive and the legislature is the Council of State. At the draft stage of the Constitution, the issue of whether there should be two legislative houses—that is, an upper house and a lower house—was considered and rejected. The idea of a bi-cameral legislature was dropped for a number of reasons, including the fact that the country was a unitary state as against a federal system, that the population of the country was not quite large enough to warrant the creation of a second house, and also that there was a fear of creating a structure that might subsequently nurture ambitions of federalism.<sup>59</sup>

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<sup>53</sup> Article 82(1).

<sup>54</sup> Article 82(5).

<sup>55</sup> Article 78(1).

<sup>56</sup> Article 58.

<sup>57</sup> Article 76(1).

<sup>58</sup> Article 76(2).

<sup>59</sup> Interview on 5 November 2012 with Dr Benjamin Kumbour, Hon Attorney-General and Minister for Justice. He was a member of the team that drafted the 1992 Constitution.



Instead of the bi-cameral system was the idea that there should be a Council of State, akin to the council of elders of a traditional chief, with the duty to advise the chief.

Membership of the Council of State is made up of nominated and elected members. One representative from each of the Regions of Ghana is elected by an electoral college from within the Region. There are also eleven other members appointed by the President. The other category of members who are appointed by the President, in consultation with Parliament, are one former Chief Justice, one former Chief of Defence Staff of the Armed Forces of Ghana, and a former Inspector-General of Police.<sup>60</sup> They hold office until the end of the term of office of the President. The Council of State holds its meetings in camera, but may admit the public whenever it considers it appropriate.<sup>61</sup>

The Council of State has the function to consider and advise the President or any other authority in respect of any appointment which is required by the Constitution or any other law to be made in accordance with the advice of or in consultation with the Council of State.<sup>62</sup> Another important function of the Council of State is that upon a request by the President, it may consider a bill that has been published in the Gazette or passed by Parliament.<sup>63</sup> This function is not a legislative function; it is merely advisory.

The Council of State is therefore not a legislative organ elected by popular vote.

#### **D. The legislature**

The Parliament of Ghana is vested with the legislative power of Ghana.<sup>64</sup> It is to be made up of not less than 140 elected members<sup>65</sup> and has a life span of four years. Parliament is presided over by a Speaker<sup>66</sup> and needs a quorum of one-third of all of its members to be properly constituted.<sup>67</sup> It works through committees whose mandates include the investigation and inquiry into the activities and administration of ministries and departments.<sup>68</sup>

In the exercise of its legislative powers, Parliament has no power to pass any law that seeks to alter the decisions or judgment of any court as between the parties subject to that decision or judgment. It is also prohibited from making any retroactive legislation except in respect of certain matters relating to the consolidated fund and public debt.<sup>69</sup>

#### **E. Independent judiciary**

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<sup>60</sup> Article 89(2).

<sup>61</sup> Article 92(3).

<sup>62</sup> Article 91(1).

<sup>63</sup> Article 90(2).

<sup>64</sup> Article 93(2).

<sup>65</sup> Article 93(1). As a result of a recent re-organization of constituencies in the country the number of seats in Parliament has risen to 275.

<sup>66</sup> Article 10.

<sup>67</sup> Article 102.

<sup>68</sup> Article 103(1).

<sup>69</sup> Article 107.

The judicial power of Ghana is vested in the judiciary and accordingly, neither the President nor Parliament shall have final judicial power.<sup>70</sup>

It is headed by the Chief Justice and consists of the Superior Courts and the lower courts. The Superior Courts comprise the Supreme Court, the Court of Appeal and the High Court, and Regional Tribunals. The lower courts are as Parliament may establish by law.<sup>71</sup>

The Constitution guarantees the judicial, administrative, and financial independence of the judiciary.<sup>72</sup> Article 127(1) provides that

[i]n the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority.

For the purposes of clause (1) of Article 127, ‘financial administration’ includes the operation of banking facilities by the judiciary without the interference of any person or authority, other than for the purposes of audit by the Auditor-General of the funds voted by Parliament or charged on the Consolidated Fund by this Constitution or any other law, for the purposes of defraying the expenses of the judiciary in respect of which the funds were voted or charged.

The tenure of judges is guaranteed; the mode of removal of judges is entrenched in the Constitution.

In the case of *Agyei Twum v Attorney-General & Akwetey*,<sup>73</sup> the Supreme Court took the opportunity to strengthen the protective structure by implying the need for the establishment of a prima facie ground for the removal of a judge before the requisite committee is charged with the duty of investigation into the allegations.

## **F. The buffer institutions**

A number of institutions have been provided for by the Constitution to counteract the perceived extensive powers of the President. These include an independent Electoral Commission, the National Commission for Civic Education (NCCE), and the Commission on Human Rights and Administrative Justice (CHRAJ).

The Electoral Commission is an independent body not subject to the direction or control of any person or authority.<sup>74</sup> Similarly, the NCCE is an independent institution that has the responsibility ‘to create and sustain within the society the awareness of the principles and objectives of this Constitution ...’ and also ‘to educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation.’<sup>75</sup>

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<sup>70</sup> Article 125(3).

<sup>71</sup> Article 126.

<sup>72</sup> Article 127(1).

<sup>73</sup> [2005-2006] SCGLR 732.

<sup>74</sup> Article 46.

<sup>75</sup> Article 233.

The CHRAJ functions as a human rights institution, an ombudsman institution, and also as an anti-corruption agency. It is vested with the power, among others, to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power, and unfair treatment of any person by a public officer in the exercise of his official duties.

The influence of the CHRAJ has been pervasive and this often brings it into conflict with the Executive and even the judiciary. One such case of particular interest is the *Republic v Commission on Human Rights and Administrative Justice; Ex parte Richard Anane*<sup>76</sup> (Anane Case), the facts of which were that the CHRAJ, acting under Article 218(a) of its constitutional functions, without a formal complaint from an identifiable complainant and on its own initiative, investigated allegations of corruption and abuse of office made in the media against Dr Anane, a Minister of State. The Commission, at the conclusion of its investigations, made adverse findings of abuse of power and perjury against Dr Anane and recommendations, among others, of his removal from office. Not satisfied, Anane instituted proceedings in the High Court, arguing that the said findings and recommendations should be quashed on the grounds that the Commission is by law mandated as a precondition to activating its investigative processes under Article 218(a) to receive a formal complaint from an identifiable complainant.

The Fast Track High Court granted the *certiorari* application and quashed the findings, decisions, and recommendations of the Commission, and proceeded to give an interpretation of the meaning of ‘Complaint’ under Article 218 of the 1992 Constitution.

Dissatisfied with the High Court ruling, the Commission instituted proceedings in the Supreme Court under Article 132 of the 1992 Constitution for an order of *certiorari* to quash the said decision of the Fast Track High Court. The main ground of the Commission’s complaint in the instant case was that the trial judge erred in law when he wrongly assumed jurisdiction to interpret and apply Articles 218(a) and 287(1) of the 1992 Constitution.

The Supreme Court affirmed that matters of constitutional interpretation are solely vested in the Supreme Court by virtue of Article 132 of the 1992 Constitution, which gives the Supreme Court exclusive jurisdiction, and that any issue of constitutional interpretation which arises at any forum must be timely referred to the Supreme Court for interpretation. The Supreme Court held further that the word ‘complaint’ under Article 218(a) and (b) means a formal complaint made to the Commission by an identifiable individual or body corporate who may, but need not be, a victim.

With this decision, the protective powers of the CHRAJ were whittled down; nevertheless the CHRAJ remains a significant institution as a human rights protector and anti-corruption agency.

## **V. Constitutional Adjudication – Interpretative Approach of the Supreme Court**

The Supreme Court has the original jurisdiction to proffer interpretations of the Constitution when the need arises. According to Article 130(1)(a),

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<sup>76</sup> [2007-2008] SCGLR 340.

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in—

(a) all matters relating to the enforcement or interpretation of this Constitution;

In the performance of its interpretative function the Supreme Court has adopted the purposive approach.

Constitutional provisions and, to a large extent, ordinary statutes are known to better serve their purposes when approached from a purposive perspective. One can assert that the purposive approach has become the accepted interpretative approach, as was clearly indicated by the Supreme Court in the case of *Agyei Twum v Attorney-General & Akwetey*.<sup>77</sup> It may be worth our while to recollect the very instructive words of Date-Bah JSC in that case, that

where an interpreter comes to the conclusion that the literal meaning does not make sense within its context and in relation to the purpose of the relevant provision, it becomes necessary for the interpreter to explore other semantic possibilities flowing from the language of the provision. In exploring these possibilities, the interpreter has to bear in mind the purpose of the provision.

Analysis of the concept of the purpose of a constitutional provision reveals that there are two kinds of purpose: subjective and objective. The subjective purpose is what the framers of the Constitution actually intended. The objective purpose, on the other hand, is what the provision should be seeking to achieve, given the general purposes of the Constitution and the core values of the legal system and of the Constitution. In other words, it is the purpose that a reasonable person would have had if he or she were faced with formulating the provision in question. In *Asare v Attorney-General*,<sup>78</sup> this Court held that, in determining the purpose of a provision, the interpreter should balance the two kinds of purpose.

The spirit of a constitutional provision includes its objective purpose. I explained this in my judgment in *Asare v Attorney-General*,<sup>79</sup> where, I said

‘In this connection, I would like to refer to the dictum of Sowah JSC (as he then was) in *Tuffuor v Attorney-General*,<sup>80</sup> which is frequently referred to and is in this case relied on by both the Plaintiff and the Defendant. He said:

“The Constitution has its letter of the law. Equally, the Constitution has its spirit. ...Its language, therefore, must be considered as if it were a living organism capable of growth and development. Indeed, it is a living organism capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time.”

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<sup>77</sup> Ibid.

<sup>78</sup> [2003-2004] SCGLR 823.

<sup>79</sup> Ibid.

<sup>80</sup> [1980] GLR 637, at 647.

The “spirit” to which Sowah JSC refers is another way of describing the unspoken core underlying values and principles of the Constitution. Justice Sowah enjoins us to have recourse to this “spirit” or underlying values in sustaining the Constitution as a living organism.’

I describe objective purpose in the Asare case in the following terms

‘The objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values etc. of the society for which he is making law. This objective purpose will thus usually be interpreted to include the realisation, through the given legal text, of the fundamental or core values of the legal system.’

Accordingly, the core values of the Constitution can be drawn upon to help fashion a construction of its language. Thus, though an initial superficial reading of a provision may convey a particular meaning, further reflection on the provision, taking into account the context and core values of the Constitution, may lead to a different construction of the provision.

The purposive approach is, therefore, the mainstay of the Supreme Court’s interpretative approach.

## **VI. International Law and Regional Integration**

Ghana is a dualist state; therefore, although the President has the power to execute treaties, agreements, or conventions in the name of the State,<sup>81</sup> any such undertaking ‘shall be subject to ratification by Act of Parliament supported by votes of more than one-half of all the members of Parliament.’<sup>82</sup> The traditionalist position therefore applies, that in keeping with the dualist system of absorption of international law into domestic law, the courts will apply these international agreements when they have been incorporated into domestic law. This general traditionalist position was reiterated by Justice Ampiah in *NPP v Attorney-General (CIBA Case)*,<sup>83</sup> that

laws, municipal or otherwise, which are found to be inconsistent with the Constitution cannot be binding on the State whatever their nature. International laws, including intra African enactments, are not binding on Ghana until such laws have been adopted or ratified by the municipal laws.<sup>84</sup>

Irrespective of this general assertion, the Supreme Court is prepared to accept the more progressive position, that the failure of a country to incorporate international human rights instruments into its municipal law does not permit it to treat such instruments with ignominy. This position was adopted in the case of *NPP v Inspector General of Police*,<sup>85</sup> wherein it was held that the fact that Ghana had not passed specific legislation to give effect to the African Charter on Human and Peoples’ Right did not mean that it could not be relied upon.

## **VII. Decentralization**

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<sup>81</sup> 1992 Constitution, Article 75(1).

<sup>82</sup> 1992 Constitution, Article 75(2).

<sup>83</sup> [1996-97] SCGLR 729.

<sup>84</sup> *Ibid*, at 761.

<sup>85</sup> [1993-94] 2 GLR 459.

## **A. The District Assembly system**

Decentralization is an integral part of the Constitution. The country is divided into districts for the purposes of local government. The highest political authority in the district is the District Assembly, which has deliberative, legislative, and executive powers.<sup>86</sup>

Membership of the District Assembly consists of elected members, members of Parliament for the Constituencies that fall within the area of authority of the District Assembly (but without the right to vote), and the District Chief Executive of the district, together with not more than thirty per cent of all the members to be appointed by the President in consultation with the traditional authorities and other interest groups in the district.<sup>87</sup>

It is significant to note that elections into the District Assembly are not organized on a political party basis; according to Article 248, '[a] candidate seeking election to a District Assembly or any lower local government unit shall present himself to the electorate as an individual, and shall not use any symbol associated with any political party.'

This, it is believed, will preserve the cohesiveness of the traditional communities by avoiding the divisive characteristics of political party activity, which is the hallmark of political activity in the country.

## **B. Chieftaincy**

The chieftaincy institution was the basis for political administration prior to the intrusion of the colonialists onto the territories that now constitute Ghana. Over time, however, political authority has been almost completely divested from the traditional rulers. The Constitution nevertheless recognizes the importance of the institution in the lives of the majority of the people of Ghana. As was acknowledged by the Committee of Experts that produced the draft of the 1992 Constitution,

[s]uccessive Governments have recognized the importance and resilience of the institution of Chieftaincy in our social and cultural life. Although stripped of all formal powers, the chief continues to command the traditional loyalty of most Ghanaians, particularly in the rural areas. He or she remains a leader in a very meaningful sense, and is particularly well placed to mobilize and inspire the community in the execution of development projects or other social and economic ventures. Chieftaincy is often a stabilizing and often a unifying factor.<sup>88</sup>

The chief remains an important player in the life of the nation, particularly in the customary aspect. It is of particular interest that the Constitution, in Article 272(b) and (c), confers on the National House of Chiefs powers that are legislative in character as far as customary law and practices are concerned, as it follows that

272. The National House of Chiefs shall –

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<sup>86</sup> Article 241.

<sup>87</sup> Article 242.

<sup>88</sup> Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana, 31 July 1991, p 156.

(b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin;

(c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful;<sup>89</sup>

This mandate is yet to be fully exploited by the traditional authorities who, put together, have more direct access to the majority of ordinary citizens, particularly those in the rural communities, than the official government institutions.

### **VIII. Post Script: The initiated Constitutional Review Process**

In 2008, the late President Professor Evans Atta Mills<sup>90</sup> made it a campaign promise to initiate a comprehensive review of the 1992 Constitution. The assumption was that as the Constitution had operated for a number of years, certain aspects of it needed to be re-examined and, if necessary, be amended.<sup>91</sup> As was explained in the Attorney-General's Memorandum, '[t]he purpose of the Constitutional Review is to undertake an experiential reflection on the operation of the Constitution over the last 16 years and thereby identify aspects of the Constitution that need to be retained; retained and further developed; amended; or repealed.'<sup>92</sup> A Constitution Review Commission was constituted, with the following mandate:

1. Ascertain from the people of Ghana, their views on the operation of the 1992 Fourth Republican Constitution and, in particular, the strengths and weaknesses of the Constitution;
2. Articulate the concerns of the people of Ghana as regards the amendments that may be required for comprehensive review of the 1992 Constitution;
3. Make recommendations to the Government for consideration and provide a draft Bill for possible amendments to the 1992 Constitution.

The Constitution Review Commission traversed the length and breadth of the country to collate the views of the generality of the people, and finally presented its report to the President.

In June 2012, the government issued a White Paper on the Report of the Constitution Review Commission of Inquiry, which sets out the government's reactions to the various recommendations of the Commission. Of significance is the Commission's recommendation that the term of office of the President should remain at the current term of four years, with re-election eligibility for another four years. For the avoidance of doubt, it is recommended that 'the

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<sup>89</sup> Article 272(c) in particular could be a very important means of reforming society, but so far that mandate has not as yet been utilized, as is expected.

<sup>90</sup> He died on 24 July 2012 while serving as President.

<sup>91</sup> Not many believe that a general review of the whole Constitution is proper at this time in its life. See, for example, Kofi Quashigah, *Constitutional Reform and Democratic Governance in Ghana* (Monograph, IDEG 200).

<sup>92</sup> Memorandum of the Attorney-General on the Consultative Review of 16 Years of the Operation of the 1992 Constitution of Ghana, 2009.

Constitution should be amended to make it clear that a person who has been President for two terms of four years shall not qualify to stand for re-election as President.<sup>93</sup> This position amounts to a rejection of calls by some individuals that the term of office of the President should be extended from four years, as now pertains under the 1992 Constitution, to a five or seven year term.

On the issue of gender balance in the appointment of Ministers and deputy Ministers of State, the government accepts the recommendation that the Constitution should be amended to provide for the appointment of at least thirty per cent of each gender into such positions.<sup>94</sup>

The hybrid executive system would be deepened with the suggested removal of the restriction that the President should appoint a majority of the Ministers of State from among the Members of Parliament,<sup>95</sup> with the accepted recommendation that the Constitution be amended to ‘give the President a free hand to appoint Ministers from within or from outside Parliament.’<sup>96</sup> The restriction in Article 78(1) of the 1992 Constitution would therefore be jettisoned if the proposed amendment is brought into effect.

The other generally contentious issue,—the mode of selection of Metropolitan, Municipal, and District Chief Executives, whereby the President appoints them in accordance with Article 243(1) of the 1992 Constitution—is to be modified; the suggested election of such officials is rejected. The new thinking is that the President should nominate a minimum of five persons who would be vetted by the Public Services Commission for competence, after which three nominees would contest in a public election. The proposal that the Metropolitan and District Chief Executives should be popularly elected is therefore not wholly accepted, for the reason that in a unitary state there is the need to maintain a delicate balance between central control and local autonomy.

The complete eradication of the death penalty is recommended for the reason that ‘the sanctity of life is a value so much engrained in the Ghanaian social psyche that it cannot be gambled away with judicial uncertainties.’<sup>97</sup>

The Government White Paper further accepts some other proposed rights, including the following recommendations –

- i. That provision be made in the Constitution for a right to a clean and healthy environment.

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<sup>93</sup> White Paper on the Report of the Constitution Review Commission of Inquiry, WP No 1/2012, June 2012, p 10.

<sup>94</sup> Ibid, at 14.

<sup>95</sup> 1992 Constitution, Article 78(1).

<sup>96</sup> White Paper, at 14.

<sup>97</sup> White Paper, at 44.



- ii. That consumer rights be provided for as part of fundamental human rights in the Constitution and that such rights should include, but not be limited, to –
  - a. Information on competing goods and services;
  - b. Protection from misleading or false advertising or labeling of goods and services;
  - c. Protection from dangerous and hazardous goods;
  - d. Unfair competition and anti-trust;
  - e. Safety of goods; and
  - f. The right to reject defective goods.<sup>98</sup>

The delicate issue of same sex relationships has been shelved upon the acceptance of the recommendation of the Constitution Review Commission that the legality or otherwise of homosexuality be decided by the Supreme Court if the matter comes before the Court.

On the issue of rights of the aged, the government accepts that the proposal that the rights of the aged to live in dignity and free from abuse be guaranteed, but not its extension to include the right to obtain an adequate state pension and social welfare.<sup>99</sup>

As to how to realize the accepted recommendations, the White Paper proposes the setting up of a five-member Implementation Committee with the mandate to implement the accepted proposals, in strict compliance with Chapter 25 of the Constitution, on Amendments to the Constitution.

On 2 October 2012, an Implementation Committee was inaugurated and charged with the mandate to implement the recommendations of the Government White Paper on the Constitution Review Commission.<sup>100</sup> For now one can only wait to see how the Committee proceeds.

## **Conclusion**

The 1992 Constitution was the product of the people's desire to be governed according to the principles of constitutionalism, particularly the exorcism of military dictatorships from the governmental system of the country. The inbuilt structures within the constitutional framework were designed to avoid the several incidents of authoritarian rule that the country had gone through in the hands of both civilian and military rulers. Institutions such as the National Media Commission, the Electoral Commission, and the Commission on Human Rights and Administrative Justice that have protected their independence over the period cannot be ignored. These, coupled with constitutional provisions that guarantee a strong and vibrant media and civil society groups that find protection under various provisions of the Constitution, such as freedom of assembly and procession, have helped to prop up the need for accountability in governance and respect for the Constitution. The fact of the developing incidence of two strong political

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<sup>98</sup> One would have thought that these matters could easily be handled through ordinary legislation.

<sup>99</sup> Obviously this approach is dictated by concerns about the consequences on the economy.

<sup>100</sup> Ghana News Agency.

parties that are almost evenly matched, in addition to a number of smaller ones that can throw a spanner in the works, cannot be ignored as contributing to the fact that governments under the Constitution of Ghana cannot afford to take things for granted. The 1992 Constitution has provided the constitutional framework within which democratic values can grow, provided the people remain resolute.

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