

Every state structure is complex but in order to make a contribution to policymaking as well as influence decisions, it is necessary to have an insight into the political system.

To make the governance structure reader-friendly, the Friedrich-Ebert-Stiftung cooperated with the Human Rights Advocacy Centre to write this in simple language.

In this book, some light is shed on the roles and functions of the organs of government, state institutions and the district assemblies. Additionally, how accountability is ensured in the various organs, institutions and the district assemblies are stated.

This publication has been made possible by the Human Rights Advocacy Centre and the Friedrich-Ebert-Stiftung Ghana.

The Human Rights Advocacy Centre (HRAC) is a non-governmental research and advocacy institution that seeks to ensure the protection of human rights in accordance with national and international human rights law.

The primary aim of HRAC is to assist individuals and communities to address human rights violations and issues through peaceful means. HRAC runs a Human Rights Clinic and Referral centre. It also conducts research and advocacy on human rights in Ghana.

The office does this through community based campaigns, human rights training for public officers and security personnel and human rights facts finding missions. HRAC also evaluates and monitors compliance with human rights standards by government and builds community's capacity to protect rights.

The Friedrich-Ebert-Stiftung (FES) is a political not-for-profit organisation with offices worldwide. It has been operating in Ghana for over 40 years now. Some of the topics FES works on are: political participation, economic development & social justice, security policy, gender and youth.



THE STRUCTURE OF THE GHANAIAIAN STATE



Support and
Cooperation



Democracy
and Pluralism



Knowledge and
Life-Long Education

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Structure of the Ghanaian State

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Foreword

To achieve its long-term goal of consolidating democracy in Ghana, the Friedrich-Ebert-Stiftung believes in the importance of building the capacities of all public office holders and to have well-informed citizens. One major way to achieve this is education on roles, rights and responsibilities of every Ghanaian.

Every state structure is complex but in order to make a contribution to policymaking as well as influence decisions, it is necessary to have an insight into the political system.

To make the governance structure reader-friendly, the Friedrich-Ebert-Stiftung cooperated with the Human Rights Advocacy Centre to write this in simple language – The Structure of the Ghanaian State. This booklet also has a pictorial representation on an A2 poster.

In the booklet, some light is shed on the roles and functions of the organs of government, state institutions and the district assemblies. Additionally, how accountability is ensured in the various organs, institutions and the district assemblies are stated.

We in the Friedrich-Ebert-Stiftung are thankful to the Human Rights Advocacy Centre who cooperated with us on this project.

We acknowledge the fruitful and very useful comments of the Honourable Mr Justice V. C. R. A. C. Crabbe, Statute Law Revision Commissioner, and Dr. Bossman Asare of the Political Science Department of the University of Ghana who validated the publication.

It is our hope that this book will serve as a credible reference source and a reliable information material for students, policymakers, advocacy groups and the general public.

Daniela Kuzu
Resident Director, FES Ghana

“Every state structure is complex but in order to make a contribution to policymaking as well as influence decisions, it is necessary to have an insight into the political system”

The Structure of the Ghanaian State

The structure of the Ghanaian State is set out in the 1992 Constitution. The constitution outlines not only how the various individuals and public bodies fit together, but also explains their respective functions. It also sheds light on the various mechanisms of accountability built into the system. For the sake of clarity, the constitution separates the state into three branches: the Executive, the Legislature and the Judiciary and indicates boundaries for the performance of their respective powers and the limitations on the exercise of those powers.

The Executive

The Executive Branch of Government has responsibility for the functioning of the public services. It is responsible for implementing the laws passed by parliament. In the performance of its functions, however, the executive both implements and determines law. Members of the executive are drawn from the largest political party in parliament, which by virtue of its majority has won an electoral mandate to govern.

Thus, the government produces policies, and because of its numerical advantage in parliamentary votes, it is able to dominate proceedings. Therefore, in reality, the Executive is responsible for both determining and implementing government policy.

The President is the Head of the Executive. He or she is 'Head of State and Head of Government and Commander in-Chief of the Armed Forces'.¹ A further key duty of the President is to make appointments to various public offices, including the Chief Justice², Inspector-General of Police³ and the Auditor-General.⁴

The appointments are made in consultation with the Council of State and approved by parliament. Beneath the President in the hierarchy is the Vice-President who is responsible for presidential duties if the President is unable to perform them. If the President dies, resigns, is removed from office⁵, or is out of the country⁶, the Vice-President takes over. If, for any reason, the Vice-President is unable to fulfil these duties, the Speaker shall assume them.⁷

The Cabinet

The Cabinet is the responsible body for assist[ing] the President in the determination of general policy of the government.⁸ The Cabinet consists of the President, the Vice-President and not more than nineteen ministers of state.⁹

Ministers are appointed by the President with the approval of parliament to run the various ministries.¹⁰ The majority of the ministers must be Members of Parliament. A ministry is a specialised government body responsible

"In the performance of its functions, however, the Executive both implements and determines law."

¹Constitution of the Republic of Ghana, 1992, 57. (1) ²Constitution of the Republic of Ghana, 1992, 144. (1). ³Constitution of the Republic of Ghana, 1992, 202. (1). ⁴Constitution of the Republic of Ghana, 1992, 70. (1)(b) ⁵Constitution of the Republic of Ghana, 1992, 60. (6) ⁶Constitution of the Republic of Ghana, 1992, 60. (8) ⁷Constitution of the Republic of Ghana, 1992, 60. (11) ⁸Constitution of the Republic of Ghana, 1992, 76. (2)

for the functioning of a particular area of state. There are 21 Ghanaian Ministries, including the Ministry of Defence, the Ministry of Health and the Ministry of Education and Sport. Ministers are assisted in their duties by Deputy Ministers.

Regional Ministers

As cited in the constitution, it is the President, with the approval of parliament, who appoints a Regional Minister for each of the regions of Ghana. It is the duty of the Regional Ministers to represent the President in the region. They are responsible for the coordination and direction of the administration in the region. ¹¹Each Regional Minister is the chairman of the Regional Coordinating Council. The Regional Coordinating Council consists of the Regional Minister and his deputies, the Presiding Member and the District Chief Executive from each district in the region, two chiefs from the Regional House of chiefs, and the Regional Heads of the ministries.¹²

Key Advisory Panels

The Executive also benefits from three key advisory panels: the National Security Council, the National Development Planning Commission, and the Council of State. Although their functions are distinct, they all serve to counsel the government, hold it to account and ensure it is functioning effectively. The National Security Council is responsible for safeguarding the internal and external security of Ghana. It aims to ensure the integration of domestic, foreign and security policy to allow the security services and other government departments to cooperate on matters of national security.¹³ The National Development Planning Commission analyses macro-economic reform options and creates plans and policies for development.¹⁴ The Council of State is an advisory panel of prominent citizens of proven character. Its main function is to 'counsel the President in the performance of his functions.'¹⁵ The Council also advises public officials, including Ministers and Members of Parliament.¹⁶

Accountability within the Executive

The Council of State

The Council of State has a key role in holding the Executive to account. The composition of the Council of State is important. It must include a former Chief Justice, a former Chief of Defence Staff of the Armed Forces, a former Inspector-General of Police, the President of the National House of Chiefs and an elected representative from each region of Ghana.¹⁷ Thus, in its recommendations, it not only has expertise and experience in several key areas of the state, it can also gauge the feelings of different regions.

Commission on Human Rights Administrative Justice (CHRAJ)

The Commission on Human Rights and Administrative Justice is the national human rights body which derives its authority from the constitution and an enabling Act of Parliament, Act 456 of 1993. It exists to protect fundamental human rights and to ensure good governance. The mandate of CHRAJ encompasses the national human rights institution, the Ombudsman (an

¹⁰Constitution of the Republic of Ghana, 1992, 78. (1) ¹¹Constitution of the Republic of Ghana, 1992, 256, (1). ¹²Ibid, 255. ¹³Constitution of the Republic of Ghana, 1992, 84 ¹⁴Constitution of the Republic of Ghana, 1992, 87. (2)

agency which ensures administrative justice) and an anticorruption agency for the public good.

Specifically, the CHRAJ mandate include “investigating 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.” CHRAJ also investigates complaints concerning certain public bodies including the Public Services Commission, the administrative organs of state, the Armed Forces, the Police and Prisons Services in relation “to the failure to achieve a balanced structuring of those services.” In addition, it investigates complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints relate to violations of fundamental human rights and freedoms. Additionally, CHRAJ investigates all instances of alleged or suspected corruption and reports to the Attorney-General and the Auditor-General.

The Commission annually gives account on its functions to parliament. It is headed by a Commissioner and two Deputy Commissioners who are all appointed by the President. CHRAJ has a national and a district representation which is created by Act 456. Each region and district is headed by a Regional and a District Director respectively.

Their functions include receiving “complaints from the public in the region or district, making on-the-spot investigations as may be necessary; and discharge any other duties relating to the functions of the Commission that may be assigned to him or her by the Commissioner.”¹⁸

CHRAJ has been granted the autonomy to initiate legal proceedings to support its recommendations. CHRAJ is able to “call for the remedying, correction and reversal of instances of abuse of power and human rights”¹⁹ through means such as: bringing proceedings before a competent court in order to terminate the offending action or conduct; restraining the enforcement of such legislation or regulation by challenging its validity if appropriate; presenting cases before any Ghanaian court.²⁰ CHRAJ’s authority to initiate civil action is an interesting and important feature. No Ombudsman system anywhere has equal power.

CHRAJ also has “special powers of investigation” such as issuing subpoenas and issuing prosecution of contemptuous persons.²¹ However, CHRAJ is not without restrictions. CHRAJ may not investigate matters which are pending before a court or judicial tribunal; a matter involving Ghana’s relations with other governments or international organisations; or a matter relating to the exercise of the prerogative of mercy.²²

CHRAJ is bound to the traditional judicial process in Ghana which is said to have limited its ability to function effectively.²³ CHRAJ is criticised as being unable to implement some of its recommendations. CHRAJ has limited financial autonomy, its funds are provided by parliament and charged on the Consolidated Fund²⁴. Limited resources and reliance on public funding limits its actual ability to act autonomously or effectively.²⁵ It is unable to recruit the best staff and lawyers due to remuneration issues.

National Commission for Civic Education (NCCE)

The Constitution establishes the National Commission for Civic Education and provides for its functions leaving it to parliament to fill in the details²⁶. The Commission is responsible for creating awareness within the Ghanaian

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¹⁵Constitution of the Republic of Ghana, 1992, 89. (1). ¹⁶Constitution of the Republic of Ghana, 1992, 91. (3). ¹⁷Constitution of the Republic of Ghana, 1992, 89. (2)

“The District Assembly is responsible for formulating and executing plans, programmes and strategies for the effective development of the District”

society on the constitution as “the fundamental law of the people of Ghana”²⁷ whilst educating Ghanaians to defend the constitution at all times against all forms of abuse and violation. The Commission is also mandated to develop periodic awareness creation programmes on the constitution for the consideration of government at all levels with the purpose of ensuring the objectives of the constitution. It is responsible to develop, enforce and superintend programmes to instil in Ghanaians, awareness of their civic responsibilities and “an appreciation of their rights and obligations as free people.”²⁸

The NCCE consists of a chairman and two deputies who are appointed by the President on the advice of the Council of State. The NCCE is national in character as it is represented in all regions and districts by regional and district directors. The NCCE empowers citizens and ensures that they are informed about the role and duties of state institutions, so they can demand accountability from these institutions. NCCE is independent and insulated from ‘direction or control of any person or authority in the performance of its functions.’²⁹

Electoral Commission

One of the governance institutions under the 1992 Constitution of the Republic of Ghana is the Electoral Commission. It is established by Article 43 of the constitution. The mission of the Electoral Commission is to increase the development of Ghana by implementing free, fair, and transparent elections to encourage the advancement of good governance and democracy.³⁰

The Electoral Commission consists of seven members: a chairman, two deputy chairmen and four other members.³¹ The Commission has both administrative and regulatory powers. It is also divided into two major functional divisions: Operations as well as Finance & Administration. Both are sub-divided into departments.³² As required by the 1992 Constitution, the Commission must have a representation in each administrative region and district of Ghana.

The Electoral Commission has to compile the register of voters, separate electoral boundaries, direct the conduct of all public elections and affairs relating directly to all elections in the country, educate the public about the electoral process and its purpose, and expand the registration of voters.³³ The independence of the Commission is guaranteed in Article 46 of the constitution. Here, it is stated that in the performance of its functions, the Electoral Commission shall not be subject to control or direction by any person or authority.

Local Governance Structure and Accountability

The organisation of district assemblies is created by the Local Government Act of 1993. The districts that existed immediately prior to the establishment of the constitution in 1992 were to be used after its establishment³⁴.

The President as an executive instrument may declare and name any area in Ghana to be a district.³⁵ The Electoral Commission may recommend to the President that a district shall be established if the appropriate conditions exist.

A district must have: at minimum a population of seventy-five thousand

¹⁸Art 220 and Act 456 Section 10. ¹⁹Act 456 Sections 7&8. ²⁰Art. 218 (d). See also Asibuo, Sam K, *The Role of the Commission of Human Rights and Administrative Justice (CHRAJ) in promoting Public Service Accountability under Ghana’s Fourth Republic.* ²¹Art. 219 and *Ibid*, p. 8. ²²*Ibid*, p. 9. ²³*Ibid*, p. 16.

²⁴Article 227 ²⁵*Ibid*, p. 17.

people; a municipality that consists of a single compact settlement with a minimum of ninety-five thousand people; a geographical contiguity and economic viability. In other words, the area should be able to provide, “basic infrastructural and other developmental needs from the monetary and other resources generated in the area”.³⁶

In the Ghanaian Constitution, there is a strong emphasis on devolving power away from a central government and into the hands of local authorities.³⁷ To this end, each district in Ghana has a District Assembly. The Constitution states that ‘to ensure the accountability of local Government, people shall, as far as practicable, be afforded the opportunity to participate effectively in their governance’.³⁸ For this purpose, members of a District Assembly are elected by citizens within their area. They are therefore directly accountable to these local people.

The District Assembly is responsible for formulating and executing plans, programmes and strategies for the effective development of the district. It also levies and collects taxes, rates, duties and fees. Each assembly is chaired by an elected Presiding Member.³⁹ Each District Assembly also has an Executive Committee which is responsible for ensuring that the executive and administrative functions of the assembly are successfully fulfilled.⁴⁰ The committee is presided over by a District Chief Executive, who is responsible for the effective functioning of the assembly.⁴¹ He or she also oversees the implementation of government policy at the local level and is the main representative of the Central Government within the district.⁴²

A District Assembly may delegate any of its functions to a Sub-metropolitan District Council, Town, Area, Zonal or Urban Council or Unit Committee or such other body as necessary.⁴³

“The Constitution states that ‘to ensure the accountability of local Government, people shall, as far as practicable, be afforded the opportunity to participate effectively in their governance’.”

²⁶Article 231 and 233 ²⁷Article 233(a) ²⁸Article 233 (d) ²⁹Article 234 ³⁰Article 45. See also <http://www.ec.gov.gh/> ³¹Constitution of the Republic of Ghana, 1992, 43 ³²<http://www.ec.gov.gh/node/14>

³³Constitution of the Republic of Ghana, 1992, 45 ³⁴Article 241 (1) ³⁵Local Governments Act (462), 1993, Section 1. ³⁶Ibid. ³⁷Constitution of the Republic of Ghana, 1992, 240. (1) ³⁸Constitution of the Republic of Ghana, 1992, 240. (2) (e) ³⁹Constitution of the Republic of Ghana, 1992, 244. (1) ⁴⁰Constitution of the Republic of Ghana, 1992, 251. (1) ⁴¹Constitution of the Republic of Ghana, 1992, 243. (2) (b) ⁴²Constitution of the Republic of Ghana, 1992, 243. (2) (c) ⁴³Ibid, Section 15

The Legislature

As set out in the constitution, parliament is the legislative body of Ghana.⁴⁴ The Legislature is the component of the Ghanaian state responsible for making laws, and hence law-making is parliament's primary function. It does this by debating and passing bills, which are assented to by the President to become laws⁴⁵. The Speaker is in charge of all the proceedings of parliament. He or she ensures that parliamentary procedure and protocol are followed. The Speaker also acts as a spokesperson for the House in dealing with other state institutions, including the President.⁴⁶ The amended Constitution stipulates that there must be 'not less than two hundred and thirty elected members' (MPs).⁴⁷ In addition to his or her legislative duties, an MP also has a duty to represent his or her constituents and a duty to support his or her party.

Due to the sheer volume of business that Parliament needs to conduct, it is impractical for the whole House to consider everything. Thus, MPs sit on numerous Committees which scrutinise different Bills, policy matters and other public issues in detail.⁴⁸

There are three main types of Committees: 'Standing Committees', 'Select Committees' and 'Ad Hoc Committees'.⁴⁹

Standing Committees deal with aspects of business that are of continuing importance to the house. For example broad issues as gender and children, or rules which govern Members' financial conduct.

Select Committees have the responsibility to scrutinise the expenditure, the management and the policies of ministries, government departments and other public agencies.

An Ad Hoc Committee is established to investigate any matter of public significance or to scrutinise any bill that does not come under the remit of any of the existing Select Committees. Decisions within committees are made by a majority vote of the members.

The additional functions of parliamentary committees are mandated by the Standing Orders of Parliament.⁵⁰ Each committee has a specific function determined by its mandate. Select committees have the responsibility of overseeing specific ministries, departments and agencies. For example, there is a Committee on Health, a Committee on Foreign Affairs, a Committee on Land and Forestry etc.⁵¹ Standing committees such as the Gender and Children Committee have tailored mandates and thus, functions.

"The Speaker is in charge of all the proceedings of parliament. He or she ensures that parliamentary procedure and protocol are followed."

⁴⁴Constitution of the Republic of Ghana, 1992, 93. (2) ⁴⁵Article 106 (1) ⁴⁶A Guide to the Parliament of Ghana ⁴⁷Constitution of the Republic of Ghana, 1992, 93. (1) ⁴⁸Constitution of the Republic of Ghana, 1992, 103. (3) ⁴⁹A Guide to the Parliament of Ghana

⁵⁰<http://www.parlcomm.org.gh/faq/31-general/60-what-are-the-function-of-parliamentary-committee>

Judiciary

The Judiciary is the component of the Ghanaian state responsible for interpreting the law. The Constitution guarantees that the Judiciary 'shall be independent and be subject only to [the] Constitution.'⁵² It is therefore impartial. At the head of the Judiciary is the Chief Justice who is responsible for its administration and supervision.⁵³ He or she is appointed by the President, acting in consultation with the Council of State and subject to parliamentary approval.

Judicial Council

The Judicial Council is responsible for administering justice as provided in the constitution of Ghana. The Judiciary works under the authority of the Chief Justice who also chairs the Council. The Council is meant to work independently in order to uphold the accurate interpretation of the constitution.⁵⁴ The function of the Council includes: "proposing for the consideration of Government judicial reforms to improve the level of administration of justice and efficiency in the Judiciary."⁵⁵ In terms of accountability, the Judicial Council plays an advisory role and holds judges in check. It also performs other functions relating to the appointment and removal of judges and other staff of the Judicial Service.

The Ghanaian Judiciary has two strata of courts: the Superior Courts and the Lower Courts.⁵⁶ The Superior Court of Judicature consists of: the Supreme Court, the Appeal Court, the High Court and the Regional Tribunals. The Supreme Court is the highest court of appeal in Ghana. It also has exclusive jurisdiction over constitutional matters and has supervisory jurisdiction over all other courts in Ghana.

The Supreme Court

The Supreme Court consists of the Chief Justice and at least nine other presidentially-appointed Justices.⁵⁷ Beneath the Supreme Court is the Appeal Court, which serves as the appellate body for all of Ghana's High Courts, Regional Tribunals and Circuit Courts. It has no original jurisdiction; it only deals with hearing cases that have already been heard by another court.⁵⁸

The High Court

The High Court is next in the judicial hierarchy and has original jurisdiction over all matters, criminal and civil. It also serves as the appellate body for all judgements made in the Lower Courts, over which it has supervisory jurisdiction. The High Court is also responsible for enforcing the Fundamental Human Rights and Freedoms guaranteed by the constitution.⁵⁹ Regional Tribunals provide the final component of the Superior Courts. They have specialised criminal jurisdiction, extending to the power to try offences in the public interest against the state. Currently, Regional Tribunals are only

"The Constitution guarantees that the Judiciary 'shall be independent and be subject only to [the] Constitution'."

⁵¹<http://www.parlcomm.org.gh/faq/31-general/57-what-jobs-do-parliamentary-committee-do>. ⁵²Constitution of the Republic of Ghana, 1992, 125. (1) ⁵³Constitution of the Republic of Ghana, 1992, 125. (4) ⁵⁴http://www.judicial.gov.gh/index.php?option=com_content&task=v

operating in Accra and Tamale, as those previously operating in Kumasi, Takoradi and Bolgatana have been turned into High Courts.⁶⁰

Beneath the Superior Courts are the Lower Courts, consisting of Circuit Courts and District Courts. Each Circuit Court is presided over by a Circuit Judge. The jurisdiction of a Circuit Court includes civil action arising under contract or tort, recovery of small claims and cases pertaining to land law. Circuit Courts also have jurisdiction over probate and wills, and matters relating to the custody of children.⁶¹ The majority of cases in Ghana are handled by District Courts. Such courts have civil jurisdiction over any personal action arising under contract or tort and any actions related to land law, up to a certain value. In criminal matters, District Courts have jurisdiction to try summarily any offence punishable by a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years.⁶² District Courts can also serve as a Juvenile Court⁶³ or a Family Tribunal⁶⁴. The former hears any criminal or civil matter concerning a person under the age of eighteen; the latter deals with actions arising under the Children's Act 1998.

Fast Track High Court

The Fast Track High Court is a division of the High Court and operates under an electronic case flow management system. It has six judges sitting at a time in Accra. It hears certain types of cases, approved by the Chief Justice, including Commercial, Land, Revenue, Human Rights, Environmental, Bank, Investment, Defamation, Prerogative Applications, and Criminal Cases.

Commercial Court

The Commercial Division of the High Court is mandated to deal exclusively with matters of commercial nature. It has a semi autonomous status, to enable its efficiency and effectiveness. The difference between this court and the existing High Courts is that it is limited to commercial disputes.

Human Rights Court

The Human Rights Court determines human rights related cases pursuant to Chapter 5 of the 1992 constitution.

iew&id=5&Itemid=6. ⁵⁵Article 154 (1) ⁵⁶Judicial Service of Ghana Annual Report 2005/2006, 11 ⁵⁷Judicial Service of Ghana Annual Report 2005/2006, 13 ⁵⁸Ibid, 14 ⁵⁹Ibid, 15 ⁶⁰Ibid, 21 ⁶¹Ibid, 22 ⁶²Ibid, 24 ⁶³Ibid, 27 ⁶⁴Ibid, 28

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