

Ghana's legislative process appears to be complex and the Constitution is not so easy to understand as would be expected.

To allow all people in Ghana to understand the legislative process and find ways of influencing this, the Friedrich-Ebert-Stiftung cooperated with the Human Rights Advocacy Centre to simplify the process in this book.

In the book, the introductory part covers the historical overview of Ghana's legislature and the composition of the Parliament of Ghana. The crux of this publication – how a bill becomes a law – is then discussed. Other sub topics of interest are: the procedure a citizen with legislative concern should follow, how long a bill takes to become a law, roles of governmental organisations in law-making and why some bills do not get passed.

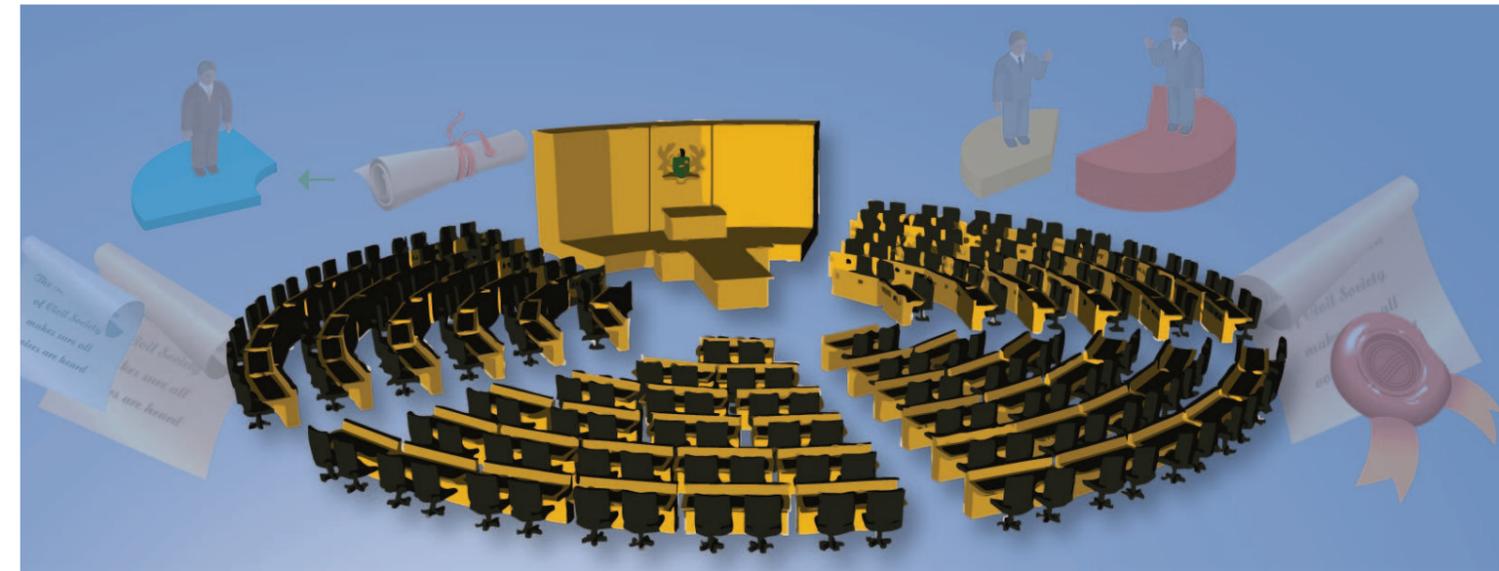
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The Human Rights Advocacy Centre (HRAC) is a non-governmental research and advocacy institution that seeks to ensure the protection of human rights in accordance with national and international human rights law.

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 Law-making Process in Ghana: Structures and Procedures



Support and
Cooperation



Democracy
and Pluralism



Knowledge and
Life-Long Education

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Law-making Process
in Ghana:
Structures and
Procedures

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Foreword

One of the goals of the Friedrich-Ebert-Stiftung is to consolidate democracy in Ghana. To achieve this long-term goal, it is important to build the capacities of all public office holders and to have well-informed citizens. The key ingredient to realising this goal is education on roles, rights and responsibilities of every Ghanaian.

Ghana's legislative process appears to be a complex matter which is reserved to be known by policymakers only. The language of the Constitution is not reader-friendly and difficult to understand.

To allow all people in Ghana to understand the legislative process and find ways of influencing this, the Friedrich-Ebert-Stiftung cooperated with the Human Rights Advocacy Centre to simplify the process in this book – Law-making Process in Ghana: Structures and Procedures. This book also has a pictorial representation on an A2 poster.

In the book, the introductory part covers the historical overview of Ghana's legislature and the composition of the Parliament of Ghana. The crux of this publication – how a draft bill becomes a law – is then discussed. Other sub topics of interest are: the procedure a citizen with legislative concern should follow, how long a bill takes to become a law, roles of governmental organisations in law-making and why some bills do not get passed.

We in the Friedrich-Ebert-Stiftung express our gratitude 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 an 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”

Historical Overview of the Ghanaian Legislature

The Parliament of Ghana is organised into a Unicameral Legislature. There is only one parliament, which exercises all primary legislative functions.¹ Article 11 of the 1992 Constitution of Ghana states: "The laws of Ghana shall comprise- (a) this Constitution; (b) enactments made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules, and Regulations made by any person or authority under a power conferred by this Constitution; (d) existing law; and (e) common law."² Therefore, chief legislative power has been vested in the Parliament of Ghana.

Although the current constitution vests principal legislative power in parliament, this appropriation of authority was not always the case. In 1850, the first Legislative Council was established to advise the Colonial Governor in enacting legislation. Although this Council prevented direct involvement of the people, it served with its enlargement in 1916 under Sir Hugh Clifford as a representation chamber [see Political History of Ghana, Kimble, p433 et seq] as a precursor to today's representative democracy.

In 1925, the Guggisburg Constitution created a Provincial Council for paramount chiefs, representing selected colonial provinces.³ Although the system appeared to recognise African concerns, it continued to be dominated by British interests, which limited the amount of African representation in the government. However, the introduction of the elective principle induced radical change in the political history of Ghana. Both the Burns Constitution of 1946 and the Coussey Committee's recommendations which formed the basis for the constitution of 1951 altered the structure of government by increasing the number of African representatives. But complete representation was not achieved until 1954.⁴ In 1951 it was a representative government. In 1954 it was responsible government which paved the way for self-government of Dominion Status in 1957.

The constitution of 1954 called for the election of a 104-member assembly, all elected through political representation along party lines. This laid the foundation for the political structure surrounding Ghana's independence in 1957. Since gaining its independence from British colonial rule, the Parliament of Ghana has continued to improve the lives of Ghana's citizens by representing their concerns and voicing their opinions at the legislative level.

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

¹<http://www.nyulawglobal.org/globalex/ghana1.htm> ²Article 11, 1992 Constitution of the Republic of Ghana ³Okudzeto, Sam. "Safeguards for Democracy – the Role of the People". *Problems and Prospects of Democratic Governance in Africa*. Friedrich Ebert Foundation, Ghana Office: Accra, 1996. ⁴Okudzeto, Sam. "Safeguards for Democracy – the Role of the People". *Problems and Prospects of Democratic Governance in Africa*. Friedrich Ebert Foundation, Ghana Office: Accra, 1996.

“The Speaker of Parliament shall be elected by the Members of Parliament from among persons who are members or who are qualified to be elected as Members of Parliament.”

Composition of the Parliament of Ghana

The Legislative branch of the Ghanaian government passes bills which assented to by the President, become the laws which protect the constitutional rights of the citizens of Ghana. The elected body consists of “no less than 140 members.”⁵ A Member of Parliament must be a citizen of Ghana and must have “attained the age of 21 years and be a registered voter.”⁶ Article 94 further states: “a Member of Parliament must hold current residence in the area he or she represents or has lived in the area for at least 5 of the 10 years preceding his or her election.” All taxes must be paid.⁷

Criminal cases, bankruptcy, or other judicial issues can prevent a citizen from becoming a Member of Parliament. Article 94 of the 1992 Constitution outlines possible reasons for someone not being qualified to become a Member of Parliament:

- (1) A person shall not be qualified to be a Member of Parliament if he:
 - (a) owes allegiance to a country other than Ghana; or
 - (b) has been adjudged or otherwise declared bankrupt under any law in force in Ghana.

Other provisions of the constitution outline possible reasons for the ineligibility of candidates for Parliament. If, for instance, a person is a member of “the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service,” or any other service listed in Article 94 of the 1992 Constitution, he is ineligible to become a Member of Parliament.

It is very important to note that even after being elected, a Member of Parliament can lose his or her seat for a number of reasons. Such reasons include, but are not limited to: “if he is elected as Speaker of Parliament, if he is absent without the permission in writing of the Speaker, if he is expelled [after being] found guilty of contempt of Parliament, [or] if he leaves the party of which he was a member at the time of his election to join another party or seeks to remain as an independent.”⁸

One of the most important clauses in Article 97 pertains to the act of changing political parties following an election. Although this has not been much of an issue now within Ghana as in the past, other countries have suffered from such acts. Currently, many parties exist within parliament, including the National Democratic Congress (NDC), which is the majority party, and the New Patriotic Party (NPP), which is the minority party. Other political parties within Parliament are the Convention People’s Party (CPP), the People’s National Convention (PNC), and independent candidates. The current Parliament of Ghana has 230 members.

⁵Article 93, 1992 Constitution of the Republic of Ghana. It is now, in 2010, 230 members. ⁶Article 94, 1992 Constitution of the Republic of Ghana ⁷Article 94, 1992 Constitution of the Republic of Ghana ⁸Article 97, 1992 Constitution of the Republic of Ghana

Leadership in Parliament

The Speaker of Parliament

The Speaker of Parliament presides over Parliament and enforces the observance of the Standing Orders. The Speaker of Parliament “shall be elected by the Members of Parliament from among persons who are members or who are qualified to be elected as Members of Parliament.”⁹ The Speaker’s decision is never appealed on at any point of order and shall not be reviewed by the House, except upon a substantive motion made after notice. The Speaker must be non-partisan and patient. The Speaker can exercise indirect influence on both the majority and minority to reach consensus when necessary. However, the Speaker has neither an “original nor casting vote.”¹⁰ According to the constitution, “no business shall be transacted in Parliament other than an election to the office of the Speaker, at any time when the office of Speaker is vacant.”¹¹

First Deputy Speaker

Due to the possible absence of the Speaker, two Deputy Speakers are elected. The Deputy Speakers “shall not be members of the same political party.”¹² When a First Deputy Speaker presides, he or she exercises all the powers of the Speaker for the “effective and efficient conduct of business in the House.”¹³ According to the Standing Orders of Parliament, the First Deputy Speaker also presides over the Appointments and the Privileges Committees.¹⁴

Second Deputy Speaker

When both the Speaker and the First Deputy Speaker are absent, the Second Deputy Speaker presides over sittings of parliament. Under these circumstances, he exercises all the powers of the Speaker “for the effective and efficient conduct of business in the House.”¹⁵ Additionally, in accordance with the Standing Orders of Parliament, the Second Deputy Speaker presides over the Committee on Members Holding Offices of Profit.¹⁶

Majority Leader

The Majority Leader is elected from the political party that holds the majority of seats in the House. A Deputy Majority Leader and a Majority Chief Whip assist the Majority Leader. The Speaker must consult the majority and minority leadership on the business of the House and other important issues. The Majority Leader is usually the first to gain the Speaker’s attention during debates. The position of the Majority Leader allows smooth and orderly progression during important debates. He maintains order by scheduling legislation for floor consideration by planning the daily, weekly, and annual legislative agendas. The Majority Leader urges colleagues to support or defeat motions on the Floor and works to “advance the goals of House in general, and the majority party in particular.”¹⁷ In addition, the Majority Leader guards and champions rights of parliament and privileges. As a parliamentary leader, he can speak on behalf of the entire House in public.¹⁸

“The Speaker must consult the majority and minority leadership on the business of the House and other important issues.”

⁹Article 95, 1992 Constitution of the Republic of Ghana ¹⁰Article 104, 1992 Constitution of the Republic of Ghana ¹¹Article 95, 1992 Constitution of the Republic of Ghana ¹²Article 96, 1992 Constitution of the Republic of Ghana ¹³“Leadership in Parliament: Leadership in the House.” The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html> ¹⁴“Leadership in Parliament: Leadership in the House.” The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html>

Minority Leader

The Minority Leader is elected from the second largest political party in Parliament. Like the Majority Leadership, a Deputy Minority Leader and a Chief Whip assist the Minority Leader with his various tasks. The two Leaders and the Chief Whip constitute the Minority Leadership of Parliament. The Speaker must consult with the Minority and Majority Leadership on the business of the House and other important issues. The Minority Leaders typically get the Speaker's attention during important debates.

Committees of the Parliament

Once all leadership positions have been filled, Members of Parliament undertake their most important responsibility - the legislative process. In order to move bills through parliament effectively, each member is "required to be a member of at least one standing committee."¹⁹ These Committees are organised by issue areas and are an effective way of evaluating and analysing bills that reach parliament. Article 103 of the 1992 Constitution outlines the specific functions of these committees: "investigation and inquiry into activities and administration of ministries and departments as parliament may determine." The investigations and inquiries performed by parliamentary committees play a major role in the passage of legislation. In order for any matter to pass through parliament, it must win the majority of the votes. A majority is defined by "at least half of all the members of Parliament present."²⁰ In the case of a tie, however, the votes are taken as a loss.²¹ A member is ineligible to vote if he is a "party to or partner in a firm which is a party to a contract with the Government."²² In addition, The Speaker of Parliament has "neither an original nor casting vote" and thereby only takes part in the proceedings.²³

"In order to move bills through parliament effectively, each member is 'required to be a member of at least one standing committee'."

¹⁵Leadership in Parliament: Leadership in the House." The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html> ¹⁶Leadership in Parliament: Leadership in the House." The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html> ¹⁷Leadership in Parliament: Leadership in the House. ¹⁸The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html> ¹⁹Leadership in Parliament: Leadership in the House. ²⁰The Parliament of Ghana. <http://www.parliament.gh/about/leadership/leadership.parliament.html> ²¹Article 103, 1992 Constitution of the Republic of Ghana Article 104, 1992 Constitution of the Republic of Ghana ²²Article 104, 1992 Constitution of the Republic of Ghana ²³Article 104, 1992 Constitution of the Republic of Ghana

Legislative Process (How a bill Becomes a Law)

The legislative process in Ghana is the “crystallisation of ideas”²⁴. It is termed this way, because people involved in the lawmaking process put a lot of thoughts and effort into ideas before they are even presented to others. Once presented, these ideas “crystallise” to form a larger, more cohesive unit, which can then be drafted into law. Many different organisations play major roles in the lawmaking process. Non-governmental organisations, private citizens, public officers, sectors of the government (including the Attorney General’s Office, the Law Reform Commission, and the Sector Ministries) and numerous others have the ability to influence legislation. For example, the Law Reform Commission has the ability to review statutory and customary laws, while Sector Ministries research and gather information for its incorporation into legislative drafts and reports.²⁵ Although these entities have distinct spheres of influence as well as varying levels of control, the power to actually construct and pass laws is distributed between parliament (which passes the bill) and the President (who assents the bill).

According to Justice V.C.R.A.C. Crabbe, former Supreme Court Justice, a citizen with a legislative concern should contact the appropriate Sector Ministry in order to have his or her issue addressed. For example: if a citizen feels passionate about an issue involving forestry or wildlife, he or she should contact the Ministry of Lands and Natural Resources. The Minister and his Chief Director, (the most senior civil servant of the ministry who is charged with running the day-to-day tasks of the ministry) then discuss the proposal and, if deemed appropriate, produce a Cabinet Memorandum. The Cabinet Memorandum includes background information, and the necessity of addressing the issue, and both its financial and policy implications.²⁶ In accordance with the constitution, all bills that go before parliament must include an “explanatory memorandum” specifically detailing the “policy and principles of the bill, the defects of the existing law, the remedies proposed to deal with those, and the necessity for its introduction.”²⁷ This memorandum serves as the chief subject matter for subsequent cabinet and committee discussion.

The Cabinet Memorandum then goes before cabinet for decision and policy approval. The cabinet consists of “the President, the Vice President and not less than 10 and not more than 19 Ministers of State.”²⁸ Once cabinet has approved the memorandum, the Secretary to Cabinet informs the Sector Ministry, or the ministry that first initiated the legislation. The Chief Director of the Sector Ministry then produces a set of drafting instructions which are delivered to the Attorney General’s Department. The Parliamentary Counsel, also known as Legislative Drafters, under the advice of the Attorney General

“The legislative process in parliament can be classified in four stages: first reading, second reading, committee or consideration stage, and third reading.”

²⁴Discussions with Justice Crabbe, Statute Law Revision Commissioner Attorney-General’s Office
²⁵http://www.afriMAP.org/english/images/report/AfriMAP_Ghana%20JusticeDD.pdf ²⁶Discussions with Justice Crabbe, Statute Law Revision Commissioner Attorney General’s Office ²⁷Article 106, 1992 Constitution of the Republic of Ghana ²⁸Article 76, 1992 Constitution of the Republic of Ghana

“Debates of the parliament are recorded verbatim by the Hansard Department of the Office of the Clerk of Parliament.”

(AG), has the responsibility of drafting all legislative documents. Upon receipt of the drafting instructions and the Cabinet Memorandum, the Parliamentary Counsel begins the drafting process. Although the AG receives instructions and background information on the bill, additional information and analysis is often needed in order to prepare and consolidate the formal document. In order to attain this information, Counsel in charge of the bill and the AG's Department hold conferences and consultations to clarify information to draft the bill. These conferences can span a broad range of topics and include presentations from experts in various fields. The AG can also easily access government resources. For example, the Legislative Drafters may consult a representative of the Forestry Commission when drafting a bill about forestry or a wildlife issue. However, to consult non-governmental sources, special permission must be granted from the appropriate Sector or Cabinet Minister. This is necessary in order to validate the use of appropriate sources.²⁹

After receiving the Cabinet Memorandum and the drafting instructions, and after completing any necessary research, the Attorney General (Legislative Drafter) revises the bill. The AG sends a copy of the bill to the Sector Ministry who critiques it and returns it to the AG with relevant notations. The AG then revises the bill, drafts it, and sends a copy back to the relevant ministry. The ministry and the AG continue to review and revise the draft until the ministry is satisfied with the product. When a consensus is reached, the ministry sends the final draft, together with the Cabinet Memorandum and a brief resume of the bill, to Cabinet for consideration³⁰ and approval for introduction in parliament.

Upon cabinet approval, the bill is sent to the Government Printer, where copies are produced for parliament and published in the Gazette. According to Article 106, clause (2), of the constitution “No bill...shall be introduced in Parliament unless it has been published in the Gazette at least 14 days before the date of its introduction in Parliament.”³¹ The bill, as published in the Gazette is introduced in parliament. The legislative process in parliament can be classified in four stages: **first reading, second reading, committee or consideration stage, and third reading.**³²

The First Reading is the first time the bill appears before parliament. The Speaker reads the long title of the bill and the sponsoring Minister then rises and bows to the Speaker. The bill is then referred to the relevant committee. This same committee investigates and examines the bill. During the following deliberation, the Committee produces a report that forms the basis for the **second reading.**³³

During the Second Reading, Parliament debates the principles and policies of the bill. The Sector Minister delivers a speech explaining the implications of the bill and argues for its passage. The minority party will also debate the bill. Debates of the parliament are recorded verbatim by the Hansard Department of the Office of the Clerk of Parliament. These recordings, and other Parliamentary materials including bills, are published as an Official Report in the Hansard of the Parliament of Ghana.³⁵

³²Discussions with Justice Crabbe ³³Article 106, 1992 Constitution of the Republic of Ghana ³⁴Essien, Victor. “Researching Ghanaian Law”. Hauser Global Law School Program. NYU School of Law. http://www.nyulawglobal.org/globalex/ghana1.htm#_Legislation ³⁵Discussions with Justice Crabbe

In the Committee or Consideration Stage, the bill is discussed clause by clause and all concerns are debated and voted upon. The Speaker states each clause of the bill and members note their questions and concerns. Finally, changes or amendments are voted upon.

The AG's Department then takes the accepted amendments and redrafts the bill.³⁵

Justice V.C.R.A.C. Crabbe illustrated the proceedings at the Consideration Stage as follows: After the formal debate the Speaker puts the question that clause 1 for example, stands part of the bill. Those in favour say 'aye', those against say 'no' then the affirmative response is 'aye' and the negative response is 'no'. Then he says the 'ayes' have it and wait whether there is a demand for division. Where there is no demand for division, the Speaker says the 'ayes' have it or 'nos' have it if there is no objection. If a member calls for division the Speaker asks for votes to be counted. Tellers are then appointed and the House goes into division. Names are then taken for a roll-call. The names of the 'ayes' and 'nos' are published in the Hansard.

Justice V.C.R.A.C. Crabbe stated that different political manoeuvres could be used at the Committee Stage to keep parliament on schedule: the "Winnowing Sessions", the "Guillotine", and the "Kangaroo". The "Winnowing Session" is the only one of these procedures that is clearly detailed in the Standing Orders of Parliament. The Standing Orders state: "Where after a bill has been read a second time, more than Twenty (20) amendments are proposed to it, any Member proposing an amendment may appear before the Committee dealing with the subject-matter to defend his or her amendment(s) and the Committee shall submit a Report to the House on the result of this exercise before the consideration stage of the bill is taken." In these sessions, members consolidate the questions on particular clauses.

The next procedure, the "Guillotine", is used to prevent filibusters. For example, if parliament has 5 days to end a session and 10 bills to work on, the opposition may opt to filibuster, because they know they will lose. The Speaker combats the filibuster by creating a timeline and, regardless of the progress, when the deadline arrives, the bill will pass. Only 10 out of 50 clauses may have been discussed, but the bill will still pass. Finally, when Parliament wants to expedite the process, the "Kangaroo Procedure" is exercised. In the Kangaroo procedure, the Speaker sets a time for a set of clauses in the bill and at that time the Speaker puts the question that the relevant clauses stand part of the bill and they are voted on. The next set of clauses is then taken. So like the kangaroo, members jump from a set of clauses to another.

In the Third Reading, parliament continues to debate the principles and policies of the bill. If a Member of Parliament indicates that a clause was not properly reviewed, the bill is recommitted to the Committee Stage. If there are no objections, all present Parliamentarians vote for or against the bill's passage. Following the vote, the Clerk examines the votes of the proceedings to determine which amendments have been made and incorporates them into the bill. The Clerk sends the final bill with all amendments to the Government Printer.³⁶

"If the President assents, the bill becomes law. The new law is published in the Gazette and enters into force."

³⁶Article 106, 1992 Constitution of the Republic of Ghana

³⁷Article 106, 1992 Constitution of the Republic of Ghana

“ A bill introduced into parliament by or on behalf of the President must be dealt with within 3 months. ”

When the Clerk is satisfied that the bill as finally printed by the Government printer is a correct version as regards the amendments made during the passage of the bill the vellum copies are printed and the Clerk sends them for the assent of the President. According to Article 106, clause (7), of the Constitution “where a bill passed by parliament is presented to the President for assent he shall signify, within seven days after the presentation to the Speaker that he assents to the bill or that he refuses to assent to the bill, unless the bill has been referred by the President to the Council of State under article 90 of [the] Constitution.” Within 7 days, the President informs the Speaker of Parliament of his assent, refusal, or referral of the bill. If the President assents, the bill becomes law. The new law is published in the Gazette and enters into force.³⁷

If the President refuses to assent to the bill, according to Article 106, clause (8) (a), he must “within fourteen days after the refusal, state in a memorandum to the Speaker any specific provisions of the bill which in his opinion should be reconsidered by parliament, including his recommendations for amendments if any.” In accordance with clause (9) of the same article, parliament reviews the bill considering the President’s comments. Subsequently, parliament votes for or against passing the resolution. According to Article 106, clause (10), “where a bill reconsidered under clause (9) of this Article is passed by parliament by a resolution supported by the votes of not less than two-thirds of all the Members of Parliament, the President shall assent to it within thirty days after passing the resolution.” Because the President does not have the power to refuse or refer the bill at this point, the bill becomes law with the President’s obligatory assent.³⁸

Within Presidential powers, referral to the Council of State exists as a measure to assent or refuse. The Council of State is a “small body of prominent citizens of proven character [that] advises the President on national issues.”³⁹ According to Article 106, clause (8), “the President [can refer] a bill to the Council of State for consideration and comment”. If the President refers a bill to the Council of State, consideration of the bill must be done 30 days after the Third Reading of Parliament. This rule stands under all circumstances, except if the bill is introduced under a Certificate of Urgency.

When a bill is introduced under a Certificate of Urgency, the Council of State has 72 hours to consider and to make subsequent recommendations. If the Council of State does not propose any amendments, the chairman must send a Certificate of the Council’s decision to the President within 7 days. If the Council decides to include proposed amendments, the chairman must send a memorandum of the proposed amendments to the President within 15 days after the Council’s decision. Upon receipt of the certificate or memorandum, parliament considers the comments and recommendations of the Council and casts a vote. A two-thirds vote passes the resolution. The bill is then sent for the President’s assent. When the bill receives assent, it becomes law and is published in the Gazette.⁴⁰ The Gazette is, therefore, a source for locating bills or proposed legislation in Ghana.

Some special situations exist where the mode of legislative exercise differs. “Parliament shall not, unless the bill is introduced or the motion is introduced

³⁸Article 106, 1992 Constitution of the Republic of Ghana

³⁹http://www.ghanaweb.com/GhanaHomePage/parliament/council_of_state.php

⁴⁰Article 106, 1992 Constitution of the Republic of Ghana

⁴¹Article 108, 1992 Constitution of the Republic of Ghana

by, or on behalf of, the President –

(a) proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for any of the following-

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction; or

(ii) the imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction; or

(iii) the payment, issue, or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue, or withdrawal; or

(iv) the composition or remission of any debt due to the Government of Ghana.”⁴¹

This is the provision regarding ‘Money bills’. Bills concerning the settlement of Ghanaian financial affairs automatically have the assent of the President, because they are introduced by or on behalf of him. If a Committee of Parliament decides that a bill is very urgent, all that is required is an explanatory memorandum and the bill is presented directly to the President for assent. A bill introduced into parliament by or on behalf of the President must be dealt with within 3 months.

Parliament cannot make laws for the purpose of changing a decision or judgment of a court, or to impose burden, obligation, or liability:

“Parliament shall have no power to pass any law –

(a) to alter the decision or judgement of any court as between the parties subject to that decision or judgement; or (b) which operates retrospectively to impose any limitations on, or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation, or liability on any person except in the case of a law enacted under articles 178 or 182 of this Constitution.”⁴²

bills concerning the settlement of financial affairs must be presented to parliament by or on behalf of the President. bills concerning the settlement of financial affairs include: the imposition of or increase of taxes; the imposition of or increase of charges on the Consolidated Fund or any other public fund; the payment, issue, or withdrawal of money from public funds, including the Consolidated Fund; and the composition or remission of any debt due to the Government of Ghana. Parliament may regulate any professional, trade, or business organisation and make sure the affairs of these organisations are along democratic lines.⁴³

“When a bill is introduced under a Certificate of Urgency, the Council of State has 72 hours to consider and to make subsequent recommendations.”

⁴²Article 107, 1992 Constitution of the Republic of Ghana

Roles of Organs of Government in Law-making

“It is important to note that Article 93, clause (2), of the Constitution clearly states: “The legislative power of Ghana shall be vested in Parliament and exercised in accordance with this Constitution.”

All organs of government have a role in law-making. Law-making power is distributed between parliament, which passes the bill, and the President, who assents it. Non-governmental organisations, judges, public officers, or any other group of people have the ability to influence legislation. The majority of bills are initiated through the ministries, the executive institutions of the government.

It is important to note that Article 93, clause (2), of the constitution clearly states: “The legislative power of Ghana shall be vested in Parliament and exercised in accordance with this Constitution.”⁴⁴ The Attorney General, part of the executive branch of government, has a considerable influence in law-making. According to Article 88, clause (1), of the constitution, is the “principal legal adviser”. Law-making is a legal matter and the Attorney General advises on all legal matters. The Parliamentary Counsel is ranked under the Attorney General’s office, and exercise an important role in law-making, because they draft all legislative documents and draft all the bills.

The Attorney General is responsible for all government’s legal documents, verifies constitutionality of legal issues, and assesses legal soundness and appropriateness of all legal matters.⁴⁵ All bills are constantly referred to the public to incorporate civil society into the formation of laws. According to the Standing Orders of Parliament, bills must be published in the Gazette: before introduced in parliament, after being passed by parliament, and after the presidential assent when the bill becomes law.

Civil society and the public are most directly included in the law-making process through the publication in the Gazette and through public hearings and investigations conducted by the Committees of parliament. When memoranda or bills are published in the Gazette, people are made aware of and included in the law-making processes.⁴⁶

Before a possible Governmental Appointment is discussed before the Appointments Committee of Parliament, a memorandum is published, so that anyone who has important information about the candidate for appointment can come forward.⁴⁷ Some of the constitutionally-mandated part of the law-making process are the committee inquiries and investigations between the First and Second Readings. Here, committee members can include the public to probe whether the intended legislation will help or harm, and gather more information about the issue.⁴⁸

⁴³Article 109, 1992 Constitution of the Republic of Ghana

⁴⁴Article 93, 1992 Constitution of the Republic of Ghana

Why some bills do not become Laws

The bane for bills not being passed in parliament usually concerns highly controversial political matters. An example of a tough legislation that met resistance in parliament is the transfer of Convicted Persons bill. This bill sought a legal framework for Ghanaians convicted of offences and serving jail terms abroad, to be transferred to Ghana to continue their sentences. The proposal also included the possibility of sending foreigners to serve sentences for offences committed in Ghana. This bill met resistance because of high profile political entanglements.

Also, legislation that may negatively affect a law-maker's chances of being re-elected or alienate his party constituents will not be easily passed.

The ministers may be advised to withdraw such a bill.⁴⁹

⁴⁵*Discussion with Mr. Ebenezer Djietror, Principal Assistant Clerk to Parliament of Republic of Ghana*

⁴⁶*Article 106, 1992 Constitution of Republic of Ghana* ⁴⁷*Discussion with Parliament Assistant Librarian, Jessica Mensah* ⁴⁸*Article 106, 1992 Constitution of Republic of Ghana*

“Every Member of Parliament must be a member of at least one committee of parliament.”

Parliament Committees

Every Member of Parliament must be a member of at least one committee of parliament. The committees have specialised functions in governance, including investigation and screening of bills. The committees hold public hearings and receive public opinion on various matters, from potential laws to potential Government Appointments.⁵¹

The committees of parliament are formed by the Committee of Selection. The Committee of Selection is appointed during the first meeting of parliament and is comprised of the Speaker of Parliament as the chairperson and no more than 19 other members. The Standing Orders of Ghana mandate that it is the duty of the Committee of Selection to prepare appointment lists of Chairmen, Vice-Chairmen, Members, Ranking Members and Deputy Ranking Members, of the Committees of Parliament.⁵¹

The two types of committees in parliament are the 14 Standing Committees, including the Ad-hoc Committee, and the 19 Select Committees. The Parliamentary Assistant Librarian remarked that the Standing Committees are “compulsory” and are “core” parts of the parliamentary makeup. They are mandates, guaranteed in the Standing Orders No. 152, that exist independently despite political ebbs or current events. In comparison, Select Committees are more closely affiliated with the government ministries and change as the need for modification arises. For instance, in the event that mining becomes more important in Ghana, the Committee of Mining and Energy could separate into the Committee of Mining and the Committee of Energy.

The Ad-hoc Committee is a Standing Committee that allows for a new committee to be appointed to meet an immediate or special need. Today, the Ad-hoc Committee is the Poverty Reduction Committee. The Poverty Reduction Committee was formed in response to the United Nations’ Millennium Development Project, which gives Highly Indebted Poor Countries (HIPC) until 2015 to make progress in 8 major areas.⁵²

The Standing Committees of the Parliament of Ghana, as listed in the Standing Orders, are:

- (a) the Standing Orders Committee;
- (b) the Business Committee;
- (c) the Committee of Privileges;
- (d) the Public Accounts Committee;
- (e) the Subsidiary Legislation Committee;
- (f) the House Committee;
- (g) the Finance Committee;
- (h) the Appointments Committee;
- (i) the Committee on Members Holding Offices of Profit;

⁴⁹Discussion with Mr. Ebenezer Djietror, Principal Assistant Clerk to Parliament of the Republic of Ghana
⁵⁰Article 106, 1992 Constitution of the Republic of Ghana

- (j) the Committee on Government Assurance;
- (k) the Judiciary Committee;
- (l) the Special Budget Committee;
- (m) the Petitions Committee; and
- (n) The Poverty Reduction Committee (Ad-hoc)

The Select Committees of the Parliament of Ghana, as listed in the Standing Orders, are:

- a) the Committee on Food, Agriculture and Cocoa Affairs;
- (b) the Committee on Lands and Forestry;
- (c) the Committee on Health;
- (d) the Committee on Constitutional, Legal and Parliamentary Affairs;
- (e) the Committee on Works and Housing;
- (f) the Committee on Local Government and Rural Development;
- (g) the Committee on Communications;
- (h) the Committee on Foreign Affairs;
- (i) the Committee on Employment, Social Welfare and State Enterprises;
- (j) the Committee on Defence and Interior;
- (k) the Committee on Trade, Industry and Private Sector Development;
- (l) the Committee on Environment, Science and Technology;
- (m) the Committee on Education;
- (n) the Committee on Youth and Sports;
- (o) the Committee on Mines and Energy;
- (p) the Committee on Roads and Transport;
- (q) the Committee on Gender and Children;
- (r) the Committee on Tourism and Culture and;
- (s) the Committee on Regional Integration and NEPAD⁵³

⁵¹No. 152, *Standing Orders of Ghana* ⁵²Discussion with Parliament Assistant Librarian, Jessica Mensah
⁵³No. 152, *Standing Orders of Ghana*

“While most Bills are expected to come from the executive level, Members of Parliament can initiate legislation through ‘Private Members’ Bills’.”

Private Members’ bills

While most bills are expected to come from the executive level, Members of Parliament can initiate legislation through “Private Members’ bills”. Although parliamentary rules of procedure allow for Members of Parliament (MPs) to initiate bills, MPs have “not exercised this right because of the lack of resources or expertise needed to draft legislation.”⁵⁴ Interestingly, in reality, most of the impact on policy initiatives comes in the form of informal consultations between MPs and Ministers. Statements on the floor of the House impact policy formulation.

However, it is difficult to distinguish the catalysts: a Member of Parliament making a statement on the floor that leads to legislative action by the Executive, or the Executive starting work on an area that leads to a statement of a Member of Parliament.⁵⁵

According to the Government officials -Ebenezer Djietror and Justice V.C.R.A.C. Crabbe - Members of Parliament seldom initiate bills. The majority of legislation begins as a proposal to a Ministry or a department of the Government. From there, a Cabinet Memorandum is drafted and approved by Cabinet in principle for the drafting of a bill.

Then Drafting Instructions are sent to Parliamentary Counsel to have the official bill drafted. Once the bill is drafted, the law-making process in Parliament begins.

According to Article 108, Members of Parliament can initiate any bill. One Private Member Motion was “Measures to Remove Algae in Marine Waters” introduced by Mr. Lee Ocran of the National Democratic Congress Party. He asked parliament to urge the Government of Ghana to “take appropriate measures to remove the algae in the marine waters of the Jomoro District which have greatly affected the livelihood of the people of this area”. Even the opposition recognised that the problem was “taking an international dimension”. However, like many Private Member Motions, the Motion died prematurely due to lack of support.

Effectiveness of Ghanaian Legislative Process

The legislative process of Ghana is very effective. The use of Parliamentary Counsel as the sole drafters of legislative documents is effective, because the average Member of Parliament may not have the necessary resources to draft the legislation.

To rectify this, the Parliamentary Counsel are well-trained and highly-equipped to draft such documents.

⁵⁴http://pdf.usaid.gov/pdf_docs/PDAB5796.pdf

⁵⁵Lindberg, Stephen I. and Joel Barken (ed). “The Rise and Decline of Parliament in Ghana”. *Legislatures in Emerging Democracies*. World Bank: Washington D.C. (2008)

Recommendations

Places for improvement include:

- *More research by the Attorney General on policy and financial implications of proposals*

As the principal legal advisor, the Attorney General drafts and investigates all proposed bills and laws. A Parliamentary Services Officer believes these investigations should be more thorough and detailed. He believes this would improve the overall effectiveness and validity of the law-making process.⁵⁶

- *Increased efforts in raising public participation*

Former Justice to the Supreme Court of Ghana and current legal professor and the Statute Law Revision Commissioner, Justice V.C.R.A.C. Crabbe, believes that the idea of the average person participating in government is problematic. This problem arises from the incapability of many Ghanaian citizens to understand the legislative process and their rights under the law. He believes that efforts must be made to present legislation in a way that is easily understandable for the common citizen. This would ensure greater participation in governmental processes and it would force the Government to reflect on the direct concerns of the people it represents.

- *Clarification of Article 108: the limitations of introduction of bills concerning the settlement of financial affairs*
- Some officials believe that an amendment of Article 108 is needed in order to ensure that parliament plays a more active role in debating laws and legislation concerning the imposition of taxes and public funds. Article 108 currently prohibits parliament from debating laws that impose taxes or make a charge on public funds, unless the bill is introduced on behalf of the President. This is highly problematic since virtually any law has some form of financial implication. Article 108 therefore prevents the introduction of any law reform initiative without the sponsorship of the Executive. Thereby it limits the power of the Ghanaian Parliament.⁵⁷

“Article 108 currently prohibits parliament from debating laws that impose taxes or make a charge on public funds, unless the bill is introduced on behalf of the President.”

⁵⁶Discussion with Mr. Ebenezer Djjetror, Principal Assistant Clerk to the Parliament of the Republic of Ghana ⁵⁷http://pdf.usaid.gov/pdf_docs/PDABS796.pdf

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7. Article 108, 1992 Constitution of the Republic of Ghana
8. Article 107, 1992 Constitution of the Republic of Ghana
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