

**THE LEGISLATURE AND GOOD GOVERNANCE
FROM A HUMAN RIGHTS PERSPECTIVE
A COMPARATIVE STUDY OF GHANA AND SOUTH AFRICA**

**BY
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DECLARATION

I, **George Buadi** hereby declare that this study is my own academic presentation. It has never been submitted to this or any other university for the award of a degree. I also declare that the source of every secondary information used in the study has been duly acknowledged.

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DATE 31 OCTOBER 2002

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DATE 31 OCTOBER 2002

DEDICATION

This study is dedicated to my soul mate Comfort Frema-Buadi and the children – Madeleine M' Adwoa Buadi, Ephraim Paa Kwadwo Buadi and Nana Yaw Ofori-Amanfo Buadi – for their forbearance and prayer support.

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“Those who complete the marathon course will do so only because they do not, as fatigue sets in convince themselves that the road ahead is still too long, the incline too steep, the loneliness impossible to bear and the prize itself of doubtful value”.

Thabo Mbeki.

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With all the wealth of guidance from my supervisor, errors, omissions and inadequacies remain mine.

ACRONYMS

ANC	African National Congress
BOR	Bill of Rights
CC	Constitutional Court
CDD	Center for Democracy and Development
CG	Constitution of Ghana
CSA	Constitution of South Africa
CSO	Civil Society Organization
CSO	Civil Society Organization
FC	Final Constitution
FPTP	First-Past-The Post
IC	Interim Constitution
IDASA	Institute for Democracy in South Africa
IFT	International Financial Transaction
ISODEC	Integrated Social Development Center
LG	Legislature of Ghana
LSA	Legislature of South Africa
MDA	Ministries, Departments and Agencies
MP	Member of Parliament
MTEF	Medium Term Expenditure Framework
NCOP	National Council of Provinces
NDC	National Democratic Congress
NEPAD	New Partnership For Africa's Development
NPP	New Patriotic Party
PR	Proportional Representation
SA	South Africa
SADF	South Africa Defense Force
SC	Supreme Court
SCOPA	Standing Committee on Public Accounts
SIU	Special Investigation Unit
UNDP	United Nations Development Programme

1.1 BACKGROUND TO THE STUDY

Many reasons have been given for the poor democratic practices in Africa. One of the most important is the absence of good governance, interpreted variously as the lack of competitive democratic practices, rule of law, efficient bureaucracy, accountability, participation and transparency. “Crises of governance” had been identified as at the heart of Africa’s problem. The central theme of the 2002 Human Development Report is that effective governance is central to human development and that good governance is the missing link to successful economic growth in Africa.¹

There appears to be a historical link between contemporary democratic practices in Africa and the colonial government administration. Within the colonial empires constructed under European imperialism, the idea that governance of the natives should be mediated by norms and practices that constrained state power, fostered individual autonomy and promoted equality were considered anathema.² Ironically, the Order in Council of the British Parliament mandated the colonial Legislative Councils (LC) to advise the colonial Governor to enact legislation “for the peace, order and good government of the subject”.³ Whatever “good government” meant at that time is unclear, but it shows that the concept is not new. The colonial administration possessed formal attributes of structured democratic governance, ostensibly separated and functioning as the legislature, executive and judicial institutions, but which were effectively fused.

This legacy of “colonial non-constitutionalism” became the running feature of governance in post-colonial Africa.⁴ The concentration of unlimited power in the hands of one person has been the feature of governance in Africa. Montesquieu has long observed that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.⁵ Strengthening democratic institutions of government to counter the dominance of executive power is essential for the rule of law.

¹ United Nations Development Programme Report, 2002 <<http://www.undp.org> > (accessed 20 Aug 2002).

² Oloka-Oyango (ed) 2001 *Constitutionalism in Africa: Creating Opportunities, Facing Challenges* p 4.

³ Parliament Fact Sheet No.1 “A Brief Historical Background of the Legislature of Ghana” p 1.

⁴ Oloka-Oyango (n 2 above) 4.

⁵ M. Judd Harmon 1964 *Political Thought: From Plato to the Present* p 281 para 2.

The military continues to be a prominent threat to democratic consolidation in Africa.⁶ Military adventurism and populist revolutionaries have not allowed democratic institutions established on the attainment of independence to mature.⁷

The global environment has helped to shape governance in Africa. The last decade of the twentieth century signaled the end of the cold war. It released pro-democracy movements into action for the pursuit of good governance. No longer was the struggle for democratic rights and rights for self-determination suspiciously seen as communist-inspired. Within the second half of 1990 Africa experienced new inclusive multiparty elections in 33 states based on constitutions guaranteeing civil and political rights.⁸

Would the values contained in these constitutions ever be fulfilled? What are the states' capacities to address the social backlogs of poverty, inequality, illiteracy and ignorance, HIV/AIDS, poor health and social conditions? These factors are widely believed as not conducive for the growth of sustainable democracy. Will populist revolutionaries once again exploit the public's impatience towards governments' non-delivery of essential services, and scuttle the new wind of democratization?

The constitutions of most African countries have since independence contained a fair amount of human rights provisions. These constitutions presently meet international and regional human rights requirement.⁹ Some of these constitutions, for some historical reasons go even further than these instruments.¹⁰ What has been lacking is the translation of these provisions into practice.¹¹

Analysis of how the legislature discharges or may be expected to discharge its responsibility in this era of good governance forms the basis of this study.

1.2 STATEMENT OF THE PROBLEM

The study is informed by three main problems. Firstly, the legislature receives little attention in issues of good governance and human rights in Africa. Available literature on human rights

⁶ "Ivory Coast Troops, Rebels head for Showdown" *The Star* 24 Sept 2002 4.

⁷ Prior to the 4th Republic Constitution none of the three previous Legislatures have served its full term.

⁸ Breytenbach, W *Democratisation in Sub-Saharan Africa: Transitions, Elections and Prospects for Consolidation* 1997 p 1 para 1.

⁹ The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR).

¹⁰ The South African Constitution 1996, Act 108 of 1996.

¹¹ C Heyns (ed) *Human Rights Law in Africa* 1996 p viii.

discourse seems to be focused on pro-democracy and human rights civil society groups and the judiciary. Surely, the judiciary is doing well in some African countries.¹² Some however, are yet to be awake to contemporary demands of good governance and human rights.¹³ It is worth noting that the judiciary is an institution of last resort. Practically, access to the courts is limited.

Secondly, there is dearth of literature on the subject. This situation might be the result of the only recent currency of the concept of “good governance” in political discourse. The little available literature on democracy rarely links the legislature’s activities to good governance.

Presently, benchmarks in human rights discourse seem to be the ratification of international human rights treaties and enactment of constitutions. The ratification of treaties and adoption of constitutions are only a means and not an end.¹⁴ Ineffective democratic institutions to restrain undemocratic governmental impulses are Africa’s governance problem. With effective legislature complementing the roles of civil society organizations (CSOs), the press and the judiciary, good governance can be nurtured and sustained.

1.3 MOTIVATION

The motivation for the study flows from the problem statement. The study is motivated by the responsibility constitutions place on the legislature and the expectations arising therefrom. Firstly, constitutions of most African countries have entrenched and enforceable bill of rights (BOR).¹⁵ Secondly, international and regional human rights instruments enjoin state parties to take steps to the maximum of their available resources, with a view to achieving progressively the full realizations of the rights recognized in the documents by all appropriate means including particularly the adoption of legislative measures.¹⁶

Recent developments on the continent, culminating in the signing of the Constitutive Act of the African Union¹⁷ and the launching of the New Partnership for Africa’s Development (NEPAD) have without precedent promoted democracy and good governance.¹⁸ NEPAD shows its commitment to democracy and good governance by its undertaking to adhere to separation of powers, through

¹² The Court had held the Government obliged under the Constitution to respect the socio- economic rights of the citizenry by providing anti-retroviral to HIV-positive pregnant women in South Africa in the *Treatment Action Campaign and Others v The Minister of Health and Others* (Case CCT 8/02).

¹³ The Zimbabwe case of *Venia Magaya v Nakayi Shonhiwa Magaya* Civil Appeal No.635 of 1992.

¹⁴ Heyns (n 11 above).

¹⁵ See chap 5 CG; chap 2 CSA; chap 4 Const Uganda.

¹⁶ Art 2 of ICESCR; art 1 ACHPR.

¹⁷ The Constitutive Act of the African Union (AU) replaced the OAU Charter.

¹⁸ Arts 3(g), (h), 4(h), (i), (m), (o), & (p) Constitutive Act of the AU.

effective parliaments.¹⁹ What does all these portend for democracy and good governance on the continent, and what is the role of the legislature?

1.4 RESEARCH METHODOLOGY

The study makes use of the following methodologies:

- Literature review: The study makes use of the available books on the subject, concept papers, conference reports and journal articles.
- Conceptual analysis: The concepts in the study – the legislature, democracy, good governance and human rights, as they are generally understood are examined. Attempts are made at providing the interconnectedness of the concepts.
- A comparative approach is employed throughout the study. At every stage of the discussion, similarities and contrasts are drawn.

1.5 LIMITATIONS OF THE STUDY

The study is limited in its geographic scope by its focus only on the Legislatures of Ghana and South Africa. The choice of Ghana and South Africa is based on the similarities they share such as the following:

- Long history of struggle against colonialism and apartheid for the right of participation in governance.
- History of colonial parliamentary sovereignty and executive supremacy.
- Affinity with the Commonwealth, and the influence of common law values, traditions and jurisprudence.
- Hybrid of parliamentary and executive systems of governance.
- Present constitutional supremacy with structured division of powers of government.
- Holding of their recent widely acclaimed free and fair general elections.
- Peaceful transition of power from one form of government to the other.

The study is further limited to only the National Assemblies of the two countries.²⁰ In Ghana it is a single chamber House referred to as the Parliament.²¹ In South Africa, it is one of the Houses of

¹⁹ See NEPAD Document "Declaration on Democracy, Political, Economic and Corporate Governance" p 4 para 4.

²⁰ In both Ghana and South Africa, Chap 20, and Chap 3 of their Constitutions provide for other lower spheres of governance.

²¹ Art 93.

Parliament. The other House is the National Council of Provinces (NCOP).²² Even though NCOP, subject to a few constitutional limitations participates and performs similar legislative processes, reference to the Legislature of South Africa (LSA) is limited to the National Assembly.

Whilst acknowledging the multifaceted roles of Legislatures, the study is limited to a few crucial roles of the Legislature – its role in representation and participation; in law-making and in oversight. These roles are perhaps the most crucial and generally known roles that legislatures perform in all political systems. As a few of the crucial aspects of the legislature are discussed, the study does not deal with any of these in great depth, but rather places the different aspects in context by providing general overview.

The methodology applied in the study faced a few limitations. There is limited literature on the subject, perhaps due to the nascent state of inquiry into the subject. The subject is not discussed in any single volume of work. The linkages of the concepts are either rare or of limited relevance to present day discussion on the subject. Access to information on the LG was difficult as the website of the House was down at the time of writing.²³

Responses to the Questionnaire sent out to committees and selected members of both Legislatures were not responded to. Neither did I receive responses of the civil society groups from both countries even though they acknowledged receipts.²⁴ Responses to the Questionnaire (copies of which are attached as “Annexure”) would have enriched the study with more current facts and activities on both Legislatures.

1.6 HYPOTHESES

The study tests the following hypotheses:

- There is nothing new, and both Legislatures are not different from past Legislatures.
- The hybrid system compromises an effective oversight role.
- The Legislatures’ own structural weaknesses blunt their effectiveness.
- The capacity of the Legislatures to fulfill their role is determined by external factors such as resources and the nature of the political system.

²² Sec 42.

²³ See <http://www.parliament.gov.gh>. Ghana.

²³ They are IDASA in South Africa and CDD in Ghana.

1.7 LITERATURE REVIEW

There is limited literature on the subject, probably due to the only recent currency of the use of the concept - "good governance". Legislative studies that have been undertaken in the past have focused on the internal operation of the legislature. They have ignored the consequences of the legislature's actions and inactions as well as interaction with other components of the political and economic systems.²⁵ There are other works on the legislature, however their focus bears no relevance apart from the basic principles they espouse on the legislature.²⁶ Lees and Shaw argue that the vehicle of a strong and effective legislature lies in a strong committee system.²⁷

Considering the dominance of the Westminster parliamentary system in most African countries Oloka-Onyango raised the question whether separation of powers is the panacea to the malaise of African polity.²⁸

Smith and Musolf point out that the effectiveness of Legislatures lie in their influence over executive action.²⁹ They conclude that it is easier to raise questions than to answer them. Like Smith and Musolf, the author hopes to raise contemporary issues firstly, as an insider,³⁰ and secondly as a student of human rights with legislative biases.

1.8 CONCEPTUAL CLARIFICATIONS

1.8.1 Introduction

It is reasonable to attempt defining briefly the scope of the institution and concepts the study intends discussing. The meaning of words and concepts vary depending on the scope of activity, the circumstance and perspective one has in mind. It needs pointing out that the meanings attached to the concepts have been used restrictively to strike an interconnected chord in the study.

1.8.2 The Legislature

It would be appropriate for our purposes to see the legislature as a predominantly elected body of people that acts collegially and that has at least the formal but not necessarily the exclusive power

²⁵ Smith & Musolf, (eds) 1979 *Legislatures in Development*) p ix para 2.

²⁶ S Goode 1980 *The New Congress*; Schwarz & Shaw 1976 *The United States Congress in Comparative Perspective*.

²⁷ J D. Less & M Shaw (eds) 1979 *Committees in Legislatures: A Comparative Analysis*.

²⁸ Oloka-Oyango (n 2 above) p 2 para 3.

²⁹ See n 25 above.

³⁰ The author was privileged to have served a two four-year term as member of the Ghanaian Legislature from Jan. 1993 to Jan. 2001.

to enact laws binding on all members of a specific geopolitical entity.³¹ Although there are considerable variations among legislatures, all functioning legislatures have predictable roles - representing the people, making laws to regulate society and exercising oversight roles.³² Their effectiveness however vary. This is the point of variation and classification between mature and young, effective and ineffective legislatures.

1.8.3 Good Governance

Relatively new, the concept of good governance predominates contemporary national and global political discussions. It is not a concept that is easy to define, as it requires a value judgment, whether in socio-economic development or politico-administrative framework.³³ It might entail structures and processes that support the creation of a participatory, responsive and an accountable polity embedded in a competitive, non-discriminatory, yet equitable economy.³⁴ Good governance requires prudent allocation of resources generated by the people to serve their basic human needs, which will in turn expand the opportunities open to them.

To Kofi Annan, the UN Secretary-General, good governance is perhaps the single most important factor in eradicating poverty and promoting development; ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration.³⁵

NEPAD identifies eradication of poverty, and the fostering of socio-economic development as its main twin objectives. The NEPAD Document provides that these twin objectives could only be achieved through democracy and good governance.³⁶ For our purposes good governance is with reference purely to political governance, which among other things include participatory, transparent, and accountable governance.

Good governance promotes the rule of law and ensures that political, social and economic priorities are based on broad consensus in society and the voices of the poorest and most

³¹ Mezey, M L 1979 *Comparative Legislatures* p 6 para 1.

³² J. K. Johnson & R. T. Nakamura "Legislatures and Good Governance" (A Concept Paper prepared for the UNDP) 1999. See (n 1 above).

³³ Weiss, T G "Governance, Good Governance and Global governance: Conceptual and Actual Challenges" in *Third World Quarterly*, 2000, Vol. 21 Issue 5 p 795.

³⁴ See n 32 above.

³⁵ 2002 UNDP Report (n 1 above) p 51.

³⁶ See n 19 above.

vulnerable are heard in decision making over the allocation of development resources.³⁷ Thus, the link between good governance, democracy and human rights is close and often complementary.³⁸

1.8.4 Democracy and Good Governance

But is good governance compatible with democracy? There have been arguments whether the two go together at least in the short run.³⁹ Some argue that there might be a fundamental contradiction between the two. Good governance requires a long-term policy perspective while democracy works on a short time frame. A democratically elected leader might not have long-term interest in good governance, although the fact of re-election removes the worst of bad governance. Leaders might seem to have little interest in implementing such policies that may yield results in the long run but which are to the peril of their short-term electoral advantage.

1.8.5 Human Rights

Generally, human rights concern the dignity and welfare of mankind. Human rights are understood here as rights that constitutions and bill of rights protect. Most constitutional provisions presently cover social or communal rights from the original protection of “life, liberty and property”. There is a direct relationship between good governance and human rights. Invariably, citizens enjoy a considerable degree of human rights in countries that have good governance practices.⁴⁰

One of the tests by which the quality of a democracy is judged is the protection it provides for citizens, especially the vulnerable, the minority and the disadvantaged. This is buttressed by the standard definition of democracy – “government of the people by the people and for the people”.⁴¹ It is for the purposes of securing the human rights of the citizenry is government instituted. There can hardly be democracy, properly so called without the respect of the human rights of the people.

1.9 STRUCTURE OF THE STUDY

The study is divided into six chapters. Chapter one introduces the study, by looking at the background factors contributing to the poor governance in Africa. The chapter sets off with the

³⁷ “Good Governance Sustainable Development Networking Programme” < www.global-issues.net/ > (accessed 20 Aug 2002).

³⁸ 2002 UNDP Report (n 1 above).

³⁹ “Democracy versus Good Governance” The Indian Express <www.expressindia.com/iedaily/19970816/> (accessed 20 Aug 2002).

⁴⁰ The Scandinavian countries.

⁴¹ In reference to the famous Gettysburg Address delivered in 1863 by the American President Abraham Lincoln. See “Issues of Democracy: Accountability in Government” *Electronic Journals* 2000 Vol. 5 No.2. See <http://www.usinfo.state.gov/journals> (accessed 20 Aug 2002)

problem, objective, and motivation of the study. The chapter sets out the hypotheses of the study, the methodology used, and the review of the available literature. The chapter concludes with the clarifications of concepts used in the study.

Chapter two makes a brief background legislative history by looking at the past constitutional frameworks and the political systems that might have influenced the Legislatures of the two countries. The chapter continues with the current constitutional frameworks of both countries and examines the Legislatures established under them.

Chapter three starts with the crux of the study - the roles of both Legislatures and delves into their representation and participation roles. The chapter assesses the medium of representation and extent to which the general public gets involved and participates in the deliberations of the LG and LSA.

Chapter four looks at the law-making role. The chapter looks into how through legislation both Legislatures flesh out their constitutional values to create more tangible boundaries within which their citizens conduct their lives. Chapter five looks into the oversight role over the executive. The chapter looks into the mechanisms in place to oversee the executive, and to hold them to account on their performances.

Chapter six concludes the study with a summary. It makes a comparative analysis of the LG and LSA. The chapter tests the hypotheses of the study. It looks also at the challenges of both Legislatures. The chapter concludes with recommendations aimed at effective performance of the Legislature in Ghana and South Africa.

CHAPTER 2 THE LEGISLATURE OF GHANA AND SOUTH AFRICA: HISTORICAL OVERVIEW AND CURRENT STATUS

2.1 INTRODUCTION

After long years of illegitimacy, ineffectiveness and marginalization, the Legislatures in Ghana and South Africa have begun to emerge as key institutions of good governance. Their new liberal Constitutions have substantially improved their legal and political statuses. They are presently equipped with greater powers and legitimacy, enjoying greater confidence and respect. These prime legislative institutions must have owed their present status to their historical experiences. The rest of the chapter shall therefore look briefly into their legislative outlook as fashioned by their past and current constitutions.

2.2 THE HISTORY OF THE LEGISLATURE IN GHANA

2.2.1 Introduction

Ghana's political system has been greatly influenced by the political traditions of the British parliamentary model ever since formal political authority of the Crown was established in the Gold Coast (Ghana). Significantly, the Bond of 1844 marked the formal recognition of British authority in the native affairs of the Gold Coast. Signed between the British Governor of the Gold Coast settlements, and several Fante chiefs, the latter acknowledged the "power and jurisdiction" of the Crown.⁴²

2.2.2 The First Colonial Legislative Council (1850)

In 1850, the British set up the first Legislative and Executive councils. The first Governor was appointed to administer separately from Sierra Leone British forts and settlements in the Gold Coast and also to enact laws (Ordinances) "for the peace, order and good government of the subject".⁴³ Purely British officials composed the LC.⁴⁴ In 1888, the first African unofficial member of the Council was appointed.⁴⁵ The appointment of unofficial members marked the first stage in the process of participation by the local population in the deliberations of the government.⁴⁶

⁴² Rubin, L & Murray, P 1961 *The Constitution and Government of Ghana* p 1.

⁴³ Alman, M 1972 *Debates of African Legislatures* p 22.

⁴⁴ The official members are British civil servants in the colony or senior officials who sat in the Legislature by virtue of their office in the colonial executive, appointed by the Governor. They were compelled to support and vote for the Government's policies whatever might be their private views. The Executive council consisted of the Judicial Assessor (the Chief Justice), the Collector of Customs, and two of the resident merchants, with the Governor as President. See n. 42 above.

⁴⁵ L Rubin (n 42 above) 1.

⁴⁶ See n 42 above p 2.

2.2.3 The 1925 Constitution

A significant advancement in participatory governance introduced in this Constitution was the system of direct elections. It was the first LC elections ever to take place in the Gold Coast. The Council was further reconstituted to comprise 15 official and 14 unofficial members. Nine of the latter were elected native Africans (six representing the provinces, three the municipalities), and the five remaining members were Europeans.⁴⁷

2.2.4 The 1946 Constitution

The significance of the Burns Constitution was the establishment of a representative government. The representatives of the natives form the majority of the Legislature.⁴⁸ The Governor ceased to be the ex officio President of the LC.

2.2.5 The 1950 Constitution

The 1950 Constitution was principally a product of internal political disturbances in 1948 for self-government. The Constitution provided for a LC of 84 members of whom 75 were natives. In 1951 the first large-scale elections to the LC took place and 75 members were elected. The remaining members were, three nominated ex-officio members and six special members representing mining interests.⁴⁹ The election was conducted on a constituency-based first-past-the-post (FPTP) electoral system, which has since remained the only known electoral system in Ghana.

2.2.6 The 1954 Constitution

The 1954 Constitution expanded the membership of the LC from 84 to 104 elected by secret ballot under universal adult suffrage in FPTP electoral model. The Constitution eradicated the concessionary representative privilege previously accorded traditional rulers.

2.2.7 The 1957 (Independence) Constitution

The 1957 Constitution marked the first independent Legislature of Ghana (LG) with a membership of not less than 104 elected by adult suffrage under the constituency-based electoral system. The Constitution vested executive power in the Queen, represented by a Governor-General. The Queen remained part of the Legislature. Bills passed by the Legislature were validated by her assent. The Judiciary had the final judicial power. It also had the power to interpret provisions of the Constitution.⁵⁰

⁴⁷ Murray (n 42 above p 2 para 2.

⁴⁸ The Gold Coast became the first colony in tropical Africa to have an elected unofficial majority

⁴⁹ See n 42 above p 5.

⁵⁰ Independent though, the judiciary characteristic of the parliamentary could not substantively invalidate legislations duly passed by the Legislature. See *Re Akoto* [1961] GLR (Pt II) 523 SC.

The Constitution continued with the Westminster model - the Prime Minister formed his Cabinet from among members of the Legislature. The majority party in the Legislature formed the government with the leader as the Prime Minister. The party with the next largest number of seats in the Legislature became the opposition party, who formed the shadow cabinet to oversee the government and to hold it to account.

The then Prime Minister, Kwame Nkrumah saw the critical role of the opposition as destructive and obstructionist, branding it as “violent, waspish and malignant”.⁵¹ Arguments about the efficacy of the inherited British political traditions were raised. Draconian laws with human rights implications were passed by the dominant Legislature to counter the “obstructive” opposition.⁵² These measures gradually eroded the underpinnings of the British political system – the co-existence of opposition.

2.2.8 The 1960 Constitution

Ghana became a republic within the Commonwealth. The 1960 Constitution welded the British, American, French and African political traditions.⁵³ Repressive measures against the opposition led to a *de facto* one-party state.

2.2.9 The 1969/79 Constitutions

The Second Republic Constitution reverted governance to the Westminster model. Under the Third Republic (1979), Ghana discarded the Westminster system for the purely presidential American system. To constrain executive power, the Constitutional Commissions of 1968 and 1978 discussed the doctrine of separation of powers. Whilst the 1968 Constitutional Commission proposed the Westminster model, the 1978 Constitutional Commission proposed the presidential system.⁵⁴

Like its predecessor, on which it was largely based, the 1979 Constitution was a constitutionalist constitution. It places reasonable limitations on the powers of government by providing for the rule of law, the independence of the judiciary and judicial review, fundamental human rights (including press freedom) and elaborate amendment procedure, popular representation, a competitive party system, universal adult suffrage as well as separation of powers of the American variety. The

⁵¹ Ninsin, K A & Drah, F K (eds) 1991 *Ghana's Transition to Constitutional Rule* p 53.

⁵² Among these were Avoidance of Discrimination Act, 1957 which forbade the existence of parties on regional, tribal or religious basis; The Constitution (Amendment) Act, 1959 which abolished the Regional Assemblies; Deportation Act 1957 and the Preventive Detention Act (PDA), 1958 under which it was possible to arrest, detain and deport a person for conduct allegedly prejudicial to the security and defence of the state and its foreign relations without trial. See n 51 p 54.

⁵³ See (n 42 above) p vi.

⁵⁴ K A Ninsin (n 51 above) 103.

dominant party's non-tolerance of divergent views, and military coups altogether contributed to dissipate the strength and growth of the Legislature.⁵⁵

2.2.10 The Current Constitution

The 1992 Constitution continued the search for a durable political system. Taking lessons from the past democratic failures, the Constitution adopted a hybrid political system - the American and the British systems. The Constitution (not the Legislature) is supreme.⁵⁶ The Constitution provides for a multi-party system, an executive president elected directly by the people, and a single Legislature elected by universal adult suffrage in a constituency-based FPTP electoral system. The Constitution also provides for an entrenched bill of rights.⁵⁷ The first Legislature under the 1992 Constitution was *de facto* one-party.⁵⁸ The second Legislature was however represented by opposition parties. This gave much credibility to the Legislature.⁵⁹ The third Legislature, composed after the December 2000 elections have a more or less balanced composition.⁶⁰

2.3 THE HISTORY OF THE LEGISLATURE IN SOUTH AFRICA

2.3.1 Introduction

Like Ghana, South Africa's political system had also been influenced by the British. The British parliamentary system of government was the model for the Union Constitution and has played influential role throughout South Africa's political history. For more than 80 years, the Legislature was used to entrench unequal treatment of individuals.⁶¹

2.3.2 The Union Constitution (1910)

The Legislature comprised two Houses. The Lower House was a representative body whose members were elected in accordance with the constituency-based FPTP electoral model. The Upper House was an indirectly elected body. The distinguishing feature of this Constitution was the unrepresentative nature of the Legislature composed under it. Blacks and Indians were disenfranchised, while "coloured" voters retained a limited voting rights. Typical of parliamentary system, the executive formed part of the Legislature and was composed from it. The judiciary was

⁵⁵ See n 51 above p. 102 para 5.

⁵⁶ Art 1.

⁵⁷ See chap 5.

⁵⁸ Opposition parties alleging fraud in the presidential elections boycotted the later to be held legislative elections. With the exception of an Independent Member, all the three-remaining parties were in an alliance – NDC, NCP and Egle.

⁵⁹ The then ruling NDC had 133 seats as against 67 of the Opposition.

⁶⁰ The hitherto opposition party, the New Patriotic Party (NPP) presently the ruling party has 101, as against 91 of the NDC now in opposition. The rest are PNC 3, CPP1, and Independent 4 seats.

⁶¹ H J Kotze "Backbenchers' Background and Role Perception in the South African Parliament" *Politeia* 2000 Vol 19 No. 1 p 47.

independent of the other two branches, but the Constitution was not supreme. The courts except for procedural lapses had no power to declare acts of the Legislature invalid.⁶² A significant event that took place prior to the 1961 Constitution was the African National Congress's adoption of the Freedom Charter in 1955 demanding a non-racial democratic government.

2.3.3 The 1961 Constitution

An important event of the period between 1961 and 1981 was the abolition of the senate and the institution of the president's council in 1980. The council also had the power to legislate by proclamation and regulation.⁶³ The Constitution maintained all the strictures of parliamentary system. Non-whites remained disenfranchised. Strikes, boycotts, and civil disobedience intensified as a result of legislation that formed the cornerstone of the apartheid system – social segregation.

2.3.4 The 1983 Constitution

A salient feature under this Constitution was the ethnic or racial classification, evidenced in the Tri-cameral Legislature - one for whites, "coloureds", and Indians. Blacks remained disenfranchised and were not represented in the Legislature. Retaining features of the Westminster, the Constitution was generally described as a hybrid, as it contained features of both presidential and parliamentary.⁶⁴

2.3.5 The Interim Constitution (1994)

The pre-democratic and unrepresentative Tri-cameral Legislature passed the Interim Constitution (IC). Nonetheless, the IC paved the way for a smooth transition to the 1996 Constitution. The IC accomplished three fundamental changes unprecedented in the history of South Africa. Firstly, all citizens without racial or ethnic qualification were accorded the right to vote. In addition, a proportional representation (PR) electoral system was adopted. Secondly, the foundation of the British parliamentary system – parliamentary sovereignty - was discarded. The Constitution became supreme, with entrenched Bill of Rights (BOR). Thirdly, a cooperative government with federalist elements replaced the strong centralist governance of the past.⁶⁵ Until 1996 the Legislature had a limited legitimacy –one that flowed from the consent of the governed.

⁶² Holsten, W J *et al* 1995 *Introduction to South African Law And Legal Theory* p 952.

⁶³ Holsten (n 62 above) 954.

⁶⁴ See n 62 above p 955 para 1.

⁶⁵ Waal, J D *et al* (eds) 2001 *The Bill of Rights Handbook* 2 para 1.

2.3.6 The Current Constitution

The 1996 Constitution⁶⁶ retained virtually all the democratic pillars the IC introduced including a hybrid political system - an executive president (elected by the Legislature) who forms his executive largely from the Legislature.⁶⁷ The Legislature comprises two Houses - a National Assembly composed of 400 members elected by adult suffrage, and National Council of Provinces composed of ten delegates each from the nine Provinces.

The Constitution is supreme and provides for a multi-party system. The Constitution, regarded as one of the best in the world provides for an entrenched BOR, with justiciable socio-economic rights. The BOR provides for the right to have access to adequate housing, health care services and sufficient food and water.⁶⁸

The CSA specifies the roles expected of the Legislature to:⁶⁹

- represent the people, and ensure a peoples' government
- choose the president
- provide a national forum for public discussion of issues and policies
- pass laws
- ensure good governance by scrutinizing and overseeing the executive.

2.4 LESSONS FROM THE PAST

The pertinent question that flows from this brief historical overview is: What is the reason for the retention of the fusion (though with distinct separate functions) of the Legislature and the executive in Ghana and South Africa? The question of a suitable and enduring political system that take lessons from the past came up for discussion in the transitional processes leading to the adoption of the current Constitutions of both countries.

Learning from the antagonism that characterized the purely 1979 presidential system that precipitated to its own demise,⁷⁰ the Consultative Assembly that drew the 1992 CG reasoned that strict separation of powers in presidential systems do not promote democratic stability in young and fragile democracies.

⁶⁶ See n 10 above.

⁶⁷ Waal (n 65 above) 2.

⁶⁸ See sec 26 & 27.

⁶⁹ Sec 42(3).

⁷⁰ The ruling PNP lost its motion for the adoption of the 1981 Budget in its own dominated Parliament.

In South Africa, the concept of separation of powers was also raised in the *First Certification Case*.⁷¹ It was argued that the non-adherence to the strict separation of powers between the executive, the legislature and the judiciary in the Final Constitution (FC) 1996 was a failure to comply with Constitutional Principle IV. The Constitutional Court (CC) held that the doctrine of separation of powers is not “a fixed or rigid doctrine” and that it is given expression in different forms and made subject to checks and balances of many kinds.⁷²

The Court recognized that a delicate balance must be developed between “the need, on the one hand, to control government by separating powers and enforcing checks and balances, and, on the other, to avoid diffusing power so completely that the government is unable to take timely measures in the public’s interest”.⁷³ With such hindsight, the present hybrid model in Ghana and South Africa seemed to be a compromise between stability and democracy.

2.5 COMPARATIVE ANALYSIS

The processes leading to the final draft of the CG and CSA were influenced by a deep reflective sense of the past. The CSA is regarded as one of the most progressive constitutions in the world. The reason is the inclusion of, and the justiciable socio-economic rights in the BOR. The CG contains limited justiciable socio-economic rights.⁷⁴

Both Constitutions enjoin the executive, the Legislature and the judiciary to respect, uphold and promote the entrenched BOR.⁷⁵ Through appropriate legislative measures, both Legislatures are expected to ensure that all constitutional values, especially socio-economic rights are translated into goods and services within the reach of the people. In both Countries the executive controls the initiation, and process of policy-making. The mode of exercising legislative power is by passing bills, initiated by the executive. Both Legislatures have powers to initiate legislation except money bills.⁷⁶

Principally, legislative committees exercise the oversight role. In Ghana, they are charged with such functions as the investigation and inquiry into the activities of ministries departments and agencies (MDAs) extending even to making proposals for legislation.⁷⁷ The LSA is enjoined to

⁷¹ *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*, 1996 (4) 744 (CC).

⁷² See n 71 above.

⁷³ See Ackerman J in *De Lange v Smuts NO* 1998 (3) 785 (CC) para 60 in J De Waal (n 72 above) 20

⁷⁴ See Chap 5 Const. There are no express constitutional rights to health, access to housing, and food.

⁷⁵ Sec 7(1) & (2); and Sec 8(1) of the Const. 1996 South Africa; Art 12 of Const. Ghana.

⁷⁶ Art 106 CG, sec 55(1) (b) CSA.

⁷⁷ Art 103(3).

provide for mechanisms to ensure that the executive arm and all its organs are accountable to it.⁷⁸ Constitutional provisions further enjoin both Legislatures and their committees to facilitate public access and involvement, and to conduct their businesses in an open manner.⁷⁹

The CSA mandates the judiciary to monitor the Legislature to determine compliance with fulfilling constitutional obligations.⁸⁰ The CG has no such provision that empowers the judiciary to monitor the activities and performance of the Legislature.

2.6 CONCLUSION

A number of conclusions are deducible from the historical analysis. Firstly, the parliamentary and electoral systems have shaped governance in both countries. The CG assumes the traditional roles of the Legislature and therefore leaves out detailing the roles of the Legislature. The CSA however provides in detail the expectations of the Legislature. Secondly, considering the nature of rights the Constitution provides, public expectations of the LSA could be higher than of the LG.

Differential historical antecedents might explain these variations, but the CSA provides a clearer and better focus for the Legislature. The formal legal frameworks of the CSA provide a better basis for good governance. Though abandoned for constitutional supremacy, the relics of parliamentary supremacy will still affect the political system.

The later chapters shall reveal how the three arms of government relate among themselves. The rest of the study examines the representation and participation role, lawmaking and oversight roles of both Legislatures.

⁷⁸ Sec 55(2.)

⁷⁹ Sec 59.

⁸⁰ Sec 167(4)(e).

CHAPTER 3 THE LEGISLATURE'S REPRESENTATION AND PUBLIC PARTICIPATION ROLE

3.1 INTRODUCTION

Representation and participation form the central pillars of democratic governance. The legislature is the medium of governance. It is the branch to which popular complaints, dissatisfaction, and demands for actions are first articulated. Territorial and population sizes and technical organizational forms of modern societies had divorced societies from direct participation in governance.⁸¹ They do so through their elected representatives.

Strictly construed, representative democracy means that elected representatives directly represent the views of those who voted them into power. However, representatives often develop views on other issues and adapt a mandate of their own in line with their party policy in accordance with international human rights principles.⁸²

The LG is presently composed of 200 members, whilst 400 members compose the LSA. Legislators represent and echo the interests of their constituencies in the House. Both in Ghana and South Africa, historical experiences - the struggle against elitism and apartheid respectively - influenced the principles of representation and participation in their Constitutions. The common view is that, where people are not involved in the decisions that affect their lives, social policies and political intervention are likely to fail. Lack of effective spheres of participation and channels of communication breeds conflicts and instability.

The chapter looks firstly at the existing legal frameworks of the two Legislatures and assesses their representative and participatory character in response to the right of participation of the citizenry. It will also assess the structures the two Legislatures have created to promote the right of participation. The chapter concludes with a comparative analysis of the two Legislatures.

3.2 THE LEGAL FRAMEWORK

International and regional human rights instruments enjoin all state parties to afford their citizens the unrestricted right and the opportunity to take part in the conduct of public affairs either directly

⁸¹ N L Mahao "The Electoral System and the Legitimacy of Representation in a Democracy: A Plea for Reform in Lesotho" *Lesotho Law Journal* 1999 Vol. 10 No. 2 p 243.

⁸² Despite popular calls for the re-introduction of the death penalty in South Africa, their elected representatives cannot represent their views.

or through their chosen representatives.⁸³ The CG and CSA also afford their citizens above the age of 18 the right to elect or to be elected into the Legislature.⁸⁴ Both Constitutions provide that the people are the object of the exercise of power and governance.⁸⁵ Such participation takes a variety of forms – right to vote to elect representatives, participation and involvement in the decision making process, the making of submissions, petitions and lobbying.

The CSA in particular enjoins the Legislature to conduct its business in an open manner - hold its sittings in public and not to exclude the media from its activities.⁸⁶ In Ghana even though there is no such express constitutional provision, the public and the media have access to the Legislature and do participate in legislative activities.

3.3 THE ELECTORAL SYSTEM

Electoral system determines the way in which votes cast in an election are translated into seats in the legislature. Electoral system provides the link between representatives in the legislature and the voters who elected them. The electoral system thus has important ramifications for representation, participation, accountability, legitimacy and stability of governments.⁸⁷ An unsuitable choice of electoral system breeds conflicts, tension and precipitates the state into crises.

A variety of electoral systems are in operation, but in principle, all electoral systems can be traced back to either one or two basic principles of representation: the principle of majority representation characterised by its FPTP winner-takes-all feature, or the principle of PR, also characterized by equitable distribution of seats to reflect the proportion of votes gained in elections. The distinction between the two models is based mainly on their political objectives. The major aim of the principle of FPTP is to produce a parliamentary majority for one or for coalition of powers, whilst the principle of PR is to reflect in the Legislature the social and political forces in a country.⁸⁸ The FPTP has been identified as simple and easy to understand. It is also easy for voters to know who their representatives in the Legislature are, making it possible for legislators to be directly accountable to their constituencies. However the system is known to lack inclusiveness, making it

⁸³ Art 25 ICCPR; Art 13 ACHPR.

⁸⁴ Arts 42 & 94 of CG; sec 47 of CSA.

⁸⁵ See art 1 CG; sec 1 CSA.

⁸⁶ Sec 59 CSA.

⁸⁷ Ndengwa S.N "The Relevance of the Electoral System: A Simulation of the 1992 Kenyan Election" *African Journal of Political Science*, 1997 Vol. 2 No.1 p 14. See also Mahao N L (n 81 above) p 244 para 2. The Kingdom of Lesotho in Southern Africa is a typical example of the link between the stability of a country and its choice of electoral system.

⁸⁸ Ville, J D & Steytler, N 1996 *Voting in 1999: Choosing an Electoral System* p 8 para 3.

difficult for minorities to be represented. It is also more costly as a national voters' roll need to be compiled.⁸⁹

The PR on the other hand produces wide and equitable representation, as it promotes fair distribution of votes into seats in the legislature. Instead of division into single member constituencies, the whole country is designated a single constituency. It is less costly as there is no need for a national voters' roll. It has been identified as producing stable governments and recommended as suitable for emerging democracies. It facilitates highest percentage of women and minority representation in the legislature.⁹⁰

On the other hand the PR produces strong centralist parties. The PR promotes loyalty to parties rather than loyalty and accountability to electorates. The right of participation of the people, and to hold their elected representatives to account is compromised under PR. The network of relationships between politicians and the grassroots is often meagre in Africa and worse still in PR system.⁹¹

The LSA is composed under the PR system. The legislators therefore have no constituencies, and therefore have no direct link to the grassroots. Arguments continue to be raised whether the absence of constituencies leads necessarily to the severance of links between voters and the Legislature.⁹² A commission – the Van Zyl Slabbert Commission - is presently investigating into an appropriate electoral system for South Africa.

Awaiting the Slabbert report, the Constitutional Court has ruled that floor crossing in the House is not unconstitutional.⁹³ The ruling has a negative impact on the powers of voters on their representatives. Floor crossing undermines voters' expectations. The ruling will produce voting apathy and undermine public participation. Voters will be hesitant to participate in a political process where their choices could leave them to join different political parties.

Ghana continues to use the FTPT system. Whilst it promotes the direct link between electorates and their representatives, the annual update of the national voters' roll drains the state of the resources to undertake such exercise. FPTP does not promote smaller parties, minority and gender interests as their votes are not equitably reflected in seat allocation in the Legislature.

⁸⁹ Ville (n 88 above).

⁹⁰ R E Matland "Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems" p 77.

⁹¹ Bruce Baker "The Quality of African Democracy: Why and How it should be Measured" *Journal of Contemporary African Studies*, 1999 Vol. 17, No. 2, p 280 para 3.

⁹² Ville (n 88 above) 2.

⁹³ See *United Democratic Movement v The President of South Africa & Others* (Case No. 23/02).

3.4 POLITICAL PARTIES

Political parties are the medium through which interests, demand and support for or differences are shown towards the political system of a country. Political parties therefore play an important role in the governance of a country. They provide an arena for representation and participation. A political system could be categorized as either multi-party or *de facto* single or dominant party. Generally, dominant or *de facto* single party systems abuse their parliamentary majority. They are not seen to promote good governance. Dominant party legislatures have facilitated the amendment of constitutions.⁹⁴

Four parties are presently represented in the LG. The first Legislature of the current Constitution was a *de facto* one-party.⁹⁵ The second Legislature was however represented by opposition parties, giving credibility to the Legislature. It was however a dominant party Legislature.⁹⁶ The third Legislature composed after the December 2000 elections has a balanced composition. The ruling New Patriotic Party (NPP) has 50.5 percent of the seats as against 45.5 percent of the former government, National Democratic Congress (NDC) now in opposition. The other two smaller parties share the remaining 4 percent seats.

The June 1999 elections produced 13 political parties in the LSA.⁹⁷ The ruling ANC has a commanding 266 seats, comprising 66 percent of the total number of seats in the Legislature. The other prominent opposition parties are Democratic Party, Inkatha Freedom Party, New National Party and the United Democratic Movement, which together have 114 seats. The other eighth minor parties constitute the remaining 20 seats.⁹⁸

3.5 PUBLIC PARTICIPATION

3.5.1 Introduction

Participatory democracy goes beyond the choosing of representatives. The processes of government are often remote from the mass of the people who participate only indirectly and to a limited extent in political decision-making. Narrowly construed, representative democracy is limited democracy. It is exacerbated by the PR system, illiteracy, social class structure and

⁹⁴ Dominant party legislatures in Namibia and Cote d'Ivoire extended the presidential term of office.

⁹⁵ The other opposition political parties alleging vote rigging in the presidential elections boycotted the later to be held legislative elections. With the exception of an Independent Member, all the three remaining parties were in an alliance – NDC, NCP, Egle.

⁹⁶ The then ruling NDC had 133 seats as against 67 of the Opposition.

⁹⁷ See The Parliamentary Directory 2002, published by the Public Education Office of the Parliament of South Africa.

⁹⁸ "A Peoples' Parliament" <http://www.parliament.gov.za> (accessed 30 July 2002).

gender. Racial and social inequalities, particularly in South Africa, tend to demobilize and truncate popular participation. It is therefore incumbent on the legislature to take positive steps to overcome these obstacles by creating and sustaining popular participation.

In practice, most government buildings are not easily accessible to the citizenry. Zambia's Parliament, for example, is located at the outskirts of Lusaka. Access to it, is through an imposing iron gate.⁹⁹ Whilst legitimate security concerns may partly explain this, legislatures are enjoined by their constitutions to be accessible. Programmes to help open up legislatures should involve redesigning buildings, creating legislative space for meeting rooms where legislators can meet with constituents, and also relaxing security arrangements.

The activities of the LG and LSA are formally open to the public. The public has liberty to attend proceedings of the House. The CSA expressly provides for public access and involvement in the activities of the legislature.¹⁰⁰ Periodically, sessions of the legislative activities especially Question Time are televised live to the public.

Special measures and facilities need be put in place to promote public participation of marginalized and the handicapped constituencies in the absence of which decision- making becomes vulnerable to be captured by special interests - the rich and powerful in society. Participation helps contain conflicts by encouraging expression of societal and communal differences within the system rather than against the system. Participation sustains a stable framework in which the executive can govern and sustain democracy in a complex and diverse society.¹⁰¹

It is often argued that people get no better government than what they are. Despite the structures constitutions establish, they shall be of no use if the beneficiaries do not make use of them. Under their current Constitutions citizens in both countries are more involved in governance, more particularly activities in the Legislature and other lower spheres of governance. People attend political meetings to listen to and to be heard. MPs in both Legislatures receive letters of submissions, petitions and complaints from their constituents. Personal and misdirected though some of the complaints are, they manifest a renewed interest and legitimacy of the political institutions.

⁹⁹ UNDP Concept Paper on "Legislatures and Good Governance", July 1999 <<http://www.undp.org>> (accessed 20 Aug 2002).

¹⁰⁰ See sec. 59 CSA.

¹⁰¹ Cachalia F "Good Governance Needs an Effective Parliament". See <http://www.undp.org> (n 1 above).

3.5.2 Civil Society

CSOs led and accompanied the democratization process in both Ghana and South Africa. CSOs act as the intermediary between the state and the people. Considering the widespread illiteracy and ignorance, there is a potential gap between the governed and the government. The sustainability of democracies in both countries therefore demands the civil society to fill this gap to ensure good governance.

Both in Ghana and South Africa, civil society groups are doing well. In South Africa, although the civil society has been weakened by a withdrawal of external financial support and a loss of personnel to government and the private sector, it continues to be active and involved in issues of governance.¹⁰² Institute of Democracy in South Africa, Open Democracy Advice Centre, Treatment Action Campaign and the Legal Resources Centre have been at the forefront in ensuring good governance. They participate in the activities of the LSA in a way that benefits the most disadvantaged members of society.

In Ghana, the Centre for Policy Analysis, Centre for Democracy and Development,¹⁰³ Institute of Economic Affairs¹⁰⁴ and the National Democratic Institute¹⁰⁵ have been at the forefront in organizing lectures, workshops and seminars for MPs to sharpen their legislative skills in budget analysis and legislative drafting. They also assist the Legislature to reach out to the populace.

3.5.3 Lobbying

Lobbying means the process of influencing parliamentary decision. It is part of the political participation process. It is much developed and recognized in older democracies. Formally, they are in their nascent stages in these two countries. In Ghana, the introduction and processes through the Legislature of the Children's Bill and the Trees and Timber Bill in 2000 saw the emergence of influential lobby groups aimed principally at influencing the Legislature to ensure that the law reflects their perception of children's interests and concerns.

In South Africa, consideration of the Firearms Control Bill witnessed the benefits or otherwise of lobbying.¹⁰⁶ The Safety and Security Committee was torn apart between Gun Free South Africa (GFSA), a lobby group which demanded a tougher gun control on one hand, and on the other

¹⁰² "The 'Two South Africas': Defining the Public" in *A People's Government* (n 98 above) (accessed 20 Aug 2002)..

¹⁰³ The CDD at the time of writing was sponsoring the Parliamentary Sub-Committees on Judiciary in Public Outreach on Corruption.

¹⁰⁴ The IEA drafted the proposals for the draft Freedom of Information Act.

¹⁰⁵ The NDI among others sponsored the Parliamentary Research Team for MPs and also Legislative Drafting Course for Parliamentary Staffers and MPs.

¹⁰⁶ See n 98 above.

hand, arms manufacturers and those who supported unfettered access to and ownership of guns. The sentiments of local community representatives best express the importance of lobbying and the right of participation to the grassroots:

No one in our community had ever made a submission before. The submission pack was good. It empowered us. We learnt that individuals could make submissions. Also, if we have to make other submissions, we could use these guidelines, which help us to stay focused on the areas that affect us.¹⁰⁷

Public participation, triggered by CSOs of this nature arising out of the belief that they can influence decision-making, engenders faith in and legitimacy of the established democratic institutions.

Although lobbying potentially stands to be captured by the rich and well-resourced groups, the strategy of the GFSA, the processes and the outcome of the Firearms Control Bill have shown the importance of lobby to the local communities.

Due to their representative activities CSOs make frequent calls to be recognized as an arm of government. The eminent danger of the people's voices being captured by this fourth arm of government is real, considering their sources of funding, interests and apparent elitist outlook. Legislative intervention might be necessary to govern the participation of CSOs in both Legislatures.

3.6 ACCESS TO THE LEGISLATURE

3.6.1 Introduction

Participation of the public in the legislative activities largely depends on the accessibility of the Legislature. The public often finds it uneasy to exercise the constitutionally guaranteed rights. The activities of the Legislature should in practice respect and promote the rights accorded citizens in the constitutions, else the right of participation in political activities become of no use.¹⁰⁸ There are many forms by which both Legislatures could make their roles and activities reach the people for whom they serve and thus encourage people to participate in their activities.

¹⁰⁷ See n 98 above.

¹⁰⁸ "Parliament House is not "disabled friendly" *GR in Parliament* 23 March 2001

<[http:// www.ghanaweb.com](http://www.ghanaweb.com) (accessed 20 Aug 2002).

3.6.2 Language of Legislative Proceedings

The importance of language cannot be overemphasized. Being a form of communication, any conferred right or privilege that is not communicated in a form comprehensible to the beneficiaries make the right redundant. Legislatures in most African countries for historical reasons conduct proceedings in languages quite foreign to most of their citizens. Even though the Standing Orders of both Legislatures permit proceedings in any of the other officially recognized native languages, in practice, English is the common denominator. State Broadcasting studios reach the general public with daily activities and programmes of the Legislature in both countries.

In Ghana, a radio programme - "Today in Parliament"- broadcast to the public the activities of the Legislature in all the five major native languages. The proceedings of the LSA reach the populace through state broadcasting studio in the native languages.

3.6.3 The Hansard

The Hansard is the official verbatim report of proceedings in both LG and LSA. The Hansard contains the proceedings and processes of all bills passed, as well as the arguments preceding the passage of the bill. Ministers' responses to questions and speeches and everything that happens on the floor of the House are captured in the Hansard. It is therefore a source of useful information. This could be an effective means to link the public with the Legislature. However in both Legislatures, access to the Hansard is limited by production costs. The Hansard might have a limited use to illiterate. It however serves as data for researchers.

3.6.4 Legislative Web Sites

Most legislatures are using the Internet to transmit information to their citizens about legislative activities. LSA is far advanced than the LG in this medium of communication. The web site on the LG is often non-functional. They also contain less information and data. Basic information on members, officials and activities of the House is unavailable.

The South African Parliamentary web site is always on-line. It provides information to the public of the bills under consideration as well as those passed.¹⁰⁹ The agenda of the House (Order Paper) for the day is provided including the full text of bills. It facilitates access of the House to the distant public. The system is interactive, allowing citizens to comment on legislation through the parliamentary web site. Certainly, this medium is accessible to the urban few. However, it facilitates research not only of MPs, but also, among other researchers and CSOs. Effective communication boosts the work of the LSA.

¹⁰⁹ See n 98 above.

3.6.5 Legislative Directory

Legislative directories explain the structure, membership, and responsibilities of the legislature and of members. It is a ready source of information of the operations, departments and officers of the House. It is an important tool that enables individuals and CSOs to understand whom to contact in order to have the Legislature address their particular concerns. These are materials that could be available to visitors at all receptions of the Legislature.

The LG does not have such a facility. In South Africa, it is published and up dated by the Public Education Office of the Legislature. The contents often include how laws are made in the House, the composition of the House, as well as how the country is governed. Others include the Officers of the House, the Committees, MPs, and the administration of the House.¹¹⁰

3.6.6 Constituency Offices

Access to the Legislature is achieved by access to the MP, for the MP is the intermediary between the public and the Legislature. The constituency-based electoral system promotes more direct access of electorates to their MPs than the PR system does. The nature of the work of MPs does not permit them to be at their constituencies for long. Accessibility to the Legislature is therefore enhanced by the creation of constituency offices that serve as contact points. The programme of both Houses is structured to take into account of MPs duty to their constituencies to:

- be available at the constituency
- help solve problems
- report back to their constituents on what is happening in the Legislature
- take their legitimate concerns to the Legislature.

In spite of the inherent advantages that accrue from the establishment of such offices, parties other than the ruling government hardly find it easy to maintain such offices immediately after elections. The situation calls for a form of state support in this regard.

An opportunity was lost in Ghana during the consideration of the Political Parties Bill, 2000. The NDC government (now in opposition) saw no need and therefore opposed calls for providing mechanisms in the Bill for state financial assistance to political parties. In the LSA, funds are available for political parties to establish constituency links with the electorates. Functional staff is

¹¹⁰ 'Parliamentary Directory' 2002, (n 98 above) (accessed 20 Aug 2002).

kept in these constituency offices to receive public petitions, complaints and submissions to the Legislature through the MP.

3.7 CONCLUSION

From the study, constitutional provisions exist for representation and public participation in both countries. However the effectiveness of representation and participation is shaped by the political and electoral systems. The LG has a better formal mechanism to foster representation and participation. The electoral system promotes direct access of the public to their MPs. The availability of limited communication facilities and general information on the Legislature however limits public participation.

The LSA has better formal mechanisms to promote transparency than the LG. However the electoral system does not promote representation and participation. There is a strong central party system, which puts too much power in the hands of political parties other than the voters. Accountability of MPs to voters is poor as there is no direct link between MPs and voters.

CHAPTER 4 THE LEGISLATURE'S LAW-MAKING ROLE

4.1 INTRODUCTION

Constitutional rights are broad-brush statements of principles and values. The Legislature fleshes out these values to create more tangible boundaries within which citizens conduct their lives. Legislation then becomes a dynamic tool for social reconstruction. Poverty, malaria and its effects on child mortality, road accidents, corruption, armed-crime, unemployment, lack of housing, HIV/AIDS, high food prices and poverty are serious social issues in both countries that need legislative intervention or re-intervention to translate the constitutional values into social goods for the benefit of the citizenry.

The chapter looks at the Legislatures' law-making role, driven largely by the extent of their formal powers, adequacy of the legislative procedures to ensure quality of legislations that reminisce the constitutional and international human rights values.

4.2 LEGAL FRAMEWORK

4.2.1 Introduction

Legislative authority is reposed in both Legislatures. It is exercised in Ghana by the passage of bills.¹¹¹ The LSA has power to initiate or prepare bills.¹¹² The LG has no such express constitutional powers. That does not in itself deny the House its inherent legislative authority to initiate bills. Financial or monetary bills are however introduced by the finance minister on behalf of the President.¹¹³

The LG considers three bills – ordinary, money, and constitutional amendment bills.¹¹⁴ In South Africa, the aim of a bill (National or Provincial) determines the Legislature's authority to consider the bill.¹¹⁵ Four types of bills therefore get to the House - ordinary bills; constitutional amendment bills; bills not affecting the provinces; bills affecting the provinces and money bills.¹¹⁶

¹¹¹ Art 106.

¹¹² Sec 55(1) (b).

¹¹³ Art. 108.

¹¹⁴ Art. 106, 108, 289.

¹¹⁵ See Sched 4 & 5 CSA.

¹¹⁶ Secs 74, 75, 76, 77.

4.2.2 Constitutionally Scheduled Legislation

The Constitution compels LG to enact certain laws within six months and some within a reasonable period on the coming into force of the Constitution.¹¹⁷ Ten years since the coming into force of the Constitution, the House is yet to legislate on property rights of married women and the rights of the disabled.¹¹⁸ Is complexity of the subject matter or legislative inertia the reason for the delay?¹¹⁹ The Ghana Law Reform Commission has long finalized draft proposals on some of these constitutionally scheduled legislations.¹²⁰ There appears to be no justification therefore for breach of this constitutional injunction.

The LSA is enjoined within three years on the coming into effect of the Constitution to pass legislations to give effect to some vital provisions of the BOR.¹²¹ The Promotion of Access to Information Act, Act 2 of 2000 and Promotion of Administrative Justice Act, Act 3 of 2000 were passed within the stipulated time. However, the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000 was not passed on time.¹²²

Moreover, Act 4 of 2000 was passed without the necessary enabling institutional structures. Presently, sections 16, 17, and 31 of that Act are subject of review before the House “to regulate the designation of presiding officers of equality courts; to provide for the designation of magistrate's courts as well as equality court.¹²³ Act 3 of 2000 is also being reviewed. These constant amendments suggest two possibilities: Either less consultations and scrutiny were done when the bills were initially considered or the amendments are due to the dynamism of the South African society.¹²⁴

4.3 POLICY INITIATION

4.3.1 Formulation

Policy-making is divided into three phases - formulation, deliberation and oversight. Political systems determine the role and involvement of legislatures in each phase. Legislatures in presidential systems have extensive powers in all the stages, although counter-balanced by

¹¹⁷ Art 166, 216, 231, 258, 269.

¹¹⁸ Art 22(2).

¹¹⁹ “Property Rights in Marriage Bill in the offing – Papa” *GR in Parliament* (n 107 above) (accessed 4 Oct 2002)..

¹²⁰ See 19th–22nd Annual Report of the Law Reform Commission.

¹²¹ See Item 23 of Sched 6.

¹²² Sec 237.

¹²³ The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002 (n 98 above) (accessed 10 Oct 2002).

¹²⁴ “Position of Acts: 28 Feb200” Parliamentary Monitoring Group <http://www.pmg.org.za> (accessed 10 Oct 2002).

presidential veto. Policy-making powers of legislatures in parliamentary and hybrid systems are limited, more especially with respect to the formulation and initiation of bills.¹²⁵ Although there are issues of serious concern that MPs of both Legislatures know need urgent legislative intervention their powers to initiate legislation is limited. The executive controls the initiation of legislations.

Executive policies are however, often activated and influenced by the views of MPs privately or publicly expressed, either in the House in the form of parliamentary statements, questions and debates. Backbenchers and the opposition groups are the main conduits.¹²⁶ The law-making authority involves the consideration, amendment, passage or rejection of executive policy-proposals.

4.3.2 Deliberation

At this phase, the merits of alternative proposals are discussed and debated. Whatever the political system, the role of the legislature in influencing policies is clearly seen in the deliberative process. The ability to amend bills or the budget proposals is strongly influenced by the effectiveness of committees. The dominance of the ruling party in the House and at the committees blunt the legislature's role at this phase. The fairly balanced composition of the LG promotes better deliberative role than the LSA, whose dominance by the ruling ANC compromises deliberative role.¹²⁷

4.3.3 Oversight

At this stage, policies are evaluated to determine how well they are being administered, and whether or not they are in need of modification, reversal, or enlargement. This phase is very critical, because ineffective oversight could create its own new problems. Effective oversight activity creates new demands for which new policies must be formulated, deliberated, and decided upon.¹²⁸ This role will be looked into more critically under the broader oversight role in the next chapter.

4.4 THE LAW-MAKING PROCESS

4.4.1 Introduction

The BOR in both CG and CSA have made the task of considering the human rights implications of bills a central element in the scrutiny of legislations. The study looks at what goes into producing a

¹²⁵ Mezey (n 31 above) 47 para 3.

¹²⁶ See n 31 above.

¹²⁷ See n 31 above.

¹²⁸ See (n 25 above) p 48 para 3.

“good law” rather than recounting laws passed by both Houses *in seriatim*. This approach is based on the assumption that if a good legal framework exists, coupled with the capacity of the Legislature and its members, there is the possibility of the House to come out with legislation that open and enlarge frontiers of good governance as envisaged in both Constitutions.

4.4.2 Legislative Tools

(a) Explanatory Memorandum

A necessary condition for passing “good laws” is the appreciation of the reason for the law, the defects the law intends to remedy, whether the new law makes unreasonable intrusion into the rights of the citizenry, and whether such intrusion is justifiable within the constitution.

The CG forbids the Legislature from considering any bill introduced into the House that is unaccompanied by an explanatory memorandum setting out in detail the policy and principles of the bill, the defects of the old law, the remedies proposed in the new law to deal with those defects and the necessity for its introduction.¹²⁹ Memorandum therefore provides the House with the tool to subject bills to constitutional scrutiny.

The CSA does not have such provision. However all bills tabled before the House has a short explanatory memorandum that indicates the purpose of the law.¹³⁰ Not all legislators are familiar with the intricacies of public law or human rights law, but for purposes of appreciating public expectations, a basic knowledge of human rights and their implication in the art of legislation will be crucial. This is an area both Legislatures need the assistance and involvement of the civil society.

(b) Committees

Legislatures are known by the nature, strength, capacity and effectiveness of their committees, as much of what takes place in the House are processed in the committees. Even though legislation is not the only concern of committees, they are by far the most important and most continuously exercised activity.¹³¹ Within the limits of their Constitutions, both Legislatures regulate the life and structure of their committees through standing orders and parliamentary practice. Committees monitor, investigate and make recommendations on any matter relating to government departments, including budgets, rationalization, restructuring, organization, structure, function, personnel and policy formulation.¹³²

¹²⁹ Art 106(2).

¹³⁰ See n 124 above.

¹³¹ See generally, Erskine May 1989 *Parliamentary Practice* p 611.

¹³² H Kotze (n 61 above) p 5 para 2.

The nature of the legislatures' work is interrelated such that all matters of public participation and representation discussed earlier do apply here as well whilst the committees work presently under discussion also do apply in the exercise of the oversight roles of the legislature.

Both Houses are obliged by their Constitutions to ensure that the composition of membership of their committees is in accordance with democratic practices and reflects as far as possible the different shades of opinion in the House.¹³³ Work at the committee level is comparatively devoid of the adversarial politics characteristic of debates at the floor of the House. Save highly controversial bills, a high degree of cross-party consensus and co-operation is evident at the committees. The caliber of members and experience in their chosen careers and professions greatly affect the effectiveness of committees. In both Legislatures the dominant professions are law and teaching.¹³⁴

Both Legislatures have two main kinds of committees – the permanent or select committees (portfolio), and standing committees. In both Legislatures, select committees have jurisdictions that tend to run parallel with the executive ministries or departments. The very nature of their parallel link with the various ministries and departments makes select committees take more active part in legislations than standing committees.

In both Legislatures all bills, after the first reading are referred to the appropriate Committees for study, consideration and report. The Committee then causes the bill to be advertised to the public for their comments, written or oral submissions. Members of the public have the right, and are often allowed and encouraged to attend most parliamentary committee meetings. The consideration process involves information gathering from the citizenry. The frequency and diversity of the hearing and information gathering process is dependent on a committee's resources and size and its ability to research and analyze policy proposals. Committees have powers to suggest amendments, and to recommend the adoption or rejection of the bill based on submissions made to them by the public.

In Ghana, the Children's Act, 1998 (Act 560) is yet to be amended – perhaps a sign of its wide acceptance – largely because of the wide consultation and participation in the legislative process. Similarly, Political Parties Act, 2000 (Act 574) and others - the Citizenship Act, Immigration Act, and Trees and Timber (Amendment) Act - came out of the legislative process quite different in form, and substance from when they were laid in the House. This is as a result of the extensive

¹³³ Art 103(5); See also sec 57(2) of CSA.

¹³⁴ Gastrow, S 1995 *Who's Who in South African Politics* p 1.

consultation the committees undertook to seek public opinion and other stakeholders. The process also led to the rejection of a few bills. These include Chieftaincy (Membership of Regional Houses of Chiefs) Instrument, 2000, L.I. 1666 and the Vice President (Succession Bill) Bill 1999.¹³⁵

In South Africa the rate of legislative review is high.¹³⁶ The dynamism of the society or the fact that there were not adequate consultations and participation on the passage of the bills could be the reasons. However the changes made by the committee to the Open Democracy Bill tabled in 1998 were considerable. With the intention of enacting a separate piece of legislation, the committee called for the removal of the chapter on Whistleblower.¹³⁷

(c) At the Plenary

Debates on the acceptance or rejection of committee reports commence at the second reading of bills. The principles and the rationale of the bill as well as the defects the new bill is meant to cure are discussed. The House does any of these:

- Scrutinize the proposals with a view to improving it
- Less constructively, draw attention to weaknesses in the bill, and
- Simply play the political card, harass ministers with the aim of rejecting the bill.¹³⁸

The second activity is common to scrutinizers and opponents of bills. Opponents of bills adopt the last two. Scrutiny is however of a more principled activity. Difficult as it is to exclude party politics entirely from their legislative activity, it is suggested that MPs be principled scrutinizers. They should test provisions of bills against standards (human rights standards) independent of, and largely unaffected by, political or any parochial short-term considerations.

The appropriateness of legislations is often value-laden, judged by contesting political values and objectives. However, standards like the constitutionality, human rights compatibility, opportunity cost and budget implications and transparency (accessibility and readability) of the proposed law should command general support without unreasonable political controversy. Both Legislatures would then not invite the attention of the highest court of the land into their activities. To enhance their capacity to achieve this noble objective, it shall be proper to tap all available resources the country offers and to allow legislations to reflect the aspirations of the citizenry.

¹³⁵ 'Parliament Rejects Instrument on Chieftaincy (n 107 above) (accessed 4 Oct 2002).

¹³⁶ See n 123 above.

¹³⁷ J De Waal (n 65 above) p 530.

¹³⁸ D Feldman "Parliamentary Scrutiny of Legislation and Human Rights" 2002 *Public Law* p 328.

(d) The Scrutiny Process

The overall purpose of scrutinizing legislation is to keep in check the tendency of governments to extend their powers or the liabilities of citizens too greatly for unacceptable purposes. Scrutiny takes place at three main levels: scrutiny of policy or purpose; scrutiny of the mechanisms for achieving objectives; and scrutiny of drafting.¹³⁹ There is a demand for adequate information at every level to assist the scrutiny process, but getting that information is not easy in settings where the executive controls information. Governments prefer to conceal information that does not reflect credit on their administration.

In Ghana, various subsections of section 3 of the State Secrets Acts 1962, Act 101 impose limitations on the ability of civil servants to communicate, handle, retain and use certain kinds of specified official information in their possession. Information and data gathering continue to be a frustrating exercise. This greatly undermines the legislative activities of the House. Conversely, section 9 of Freedom of Information Act (Act 3 of 2000) enables the public and the Legislature free access to state-held information in South Africa.

The outlook of final bills reflects the effectiveness of legislative scrutiny. This requires allotment of adequate time for committees to study and report. Scrutiny requires participation of the general public. The composition of committees as well as the capacity of committee members to utilize the available information also reflects on the scrutiny process. Scrutiny is compromised in dominant legislatures where the government uses the whip on members to get through its legislative programmes. Extensive power of political parties and the dominance of the ANC in the LSA make it less inclined to effectively discharge its scrutiny role.

4.5 COSTS ANALYSIS

Effective law-making demands making comparative cost analysis of the social, economic, and opportunity-cost implications of legislations. Good governance demands the rational use of available resources. The poor social conditions under which majority of people live in Ghana and South Africa not only demand urgent legislative intervention but also strict scrutiny of social-cost implications of budgetary requests for acquisitions of presidential jets and bulletproof fleet of vehicles.¹⁴⁰

¹³⁹ Feldman (n 138 above) p 336 para 3.

¹⁴⁰ "Mbeki Flies in Luxury, Lying on a Queen-sized Bed" *The Citizen* 24 October 2002 1

The LG had to review the Courts Act 1993, Act 459 the same year it was passed for reasons of cost of recruiting professional lawyers to chair the lower courts the law created. In South Africa the implementation of the Magistrates' Courts Amendment Act, 1998 (Act 67 of 1998) and the Criminal Matters Amendment Act, 1998 (Act 68 of 1998) have had to be delayed because of substantial financial, accommodation and practical implications, which were not initially factored into the law.¹⁴¹

4.6 REVIEW OF LEGISLATION

4.6.1 Introduction

Not only does legislatures make laws but it also repeal and amend existing ones in respond to the changing needs of society at every point in time. Public reaction to the impact of the existing law on their rights mostly sets the review process in motion either through their MPs or the civil society.

4.6.2 Constitutional/Supreme Court Rulings

In Ghana, the Public Order Act, 1994 was a legislative response to the SC's ruling that declared some portions of the old law unconstitutional.¹⁴² The Legislature has also amended various criminal legislation to protect the constitutional rights of children, pregnant women, victims of rape and defilement.¹⁴³

The LSA's response to suspension of invalidity of legislations by the CC has not been prompt. For example, for 17 months the Legislature failed to rectify section 309(4)(a) of the Criminal Procedure Act, which the CC declared as unconstitutional.¹⁴⁴ In response to another CC ruling the LSA is considering constitutional amendments to allow national legislators to cross the floor to join political parties of their choice.¹⁴⁵

4.6.3 Legality or Morality?

J.S. Mill over two centuries ago has warned of the dangers of conflating "self-regarding actions with other-regarding actions".¹⁴⁶ The latter has consequences for the public. Legislations need not

¹⁴¹ See n 124 above.

¹⁴² *NPP v Inspector-General of Police & Others* [1992-93] GBR 586.

¹⁴³ "Criminal Procedure Code Amendment Goes Through Second Reading" *Ghana Review* (n 107 above) (accessed 4 Oct 2002).

¹⁴⁴ Application to extend period of suspension was refused by the CC – *Minister of Justice v Ntuli* 1997 (6) BCLR 677.

¹⁴⁵ See n 93 above.

¹⁴⁶ J S Mill 1859 *On Liberty* in Oloka-Onyango (n 2 above) 32.

intrude into peoples' self-regarding actions, for reasons of immorality and societal disapproval. Thus, conduct or actions devoid of violence, dishonesty, treachery or any recognizable social harm do not need legislative intervention simply because a greater section of society register their disapproval.¹⁴⁷ Such moral issues are for the church and not for the Legislature.¹⁴⁸

In Ghana prostitution, brothel keeping, homosexuality and lesbianism are criminal offences.¹⁴⁹ In South Africa, prostitution and homosexuality are not criminal.¹⁵⁰ The role of the LSA in the decriminalization of "self-regarding actions" gives effect to the constitutional values.

4.7 ACCESS TO LEGISLATION

Good governance reflects in transparency and accessibility of legislations. Both in Ghana and South Africa, all legislations do not come into force unless they have been published.¹⁵¹ Whilst they need prompt publication in South Africa, there is no such injunction on the LG. Difficulties in accessing legislations passed by the House keeps greater majority of people in Ghana ignorant of such legislation.

Primary sources of law such as legislation, administrative regulations, and judicial decisions must be published and collected in public and law libraries that are accessible not only to the Bar and the Judiciary but also to the general public. Unpublished laws invite corruption, raise the cost of conducting business,¹⁵² and generate an atmosphere of distrust of law and government. A system of unknown laws is a return to a structure where justice is dependent on personal status and influence.

In Ghana publication costs are often cited as the cause of the limited circulation of copies of the Constitution and legislation. Law reports are in arrears of publication in spite of the entry of private publishers. Most people are ignorant of the existence of the Constitution and its contents, and where they can secure copies. There is a potential threat to the rights of people if even lawyers and judges cannot easily access the laws passed by the Legislature.

¹⁴⁷ *National Coalition For Gay & Lesbian Equality v Min of Justice & Others* 1998 (12) BCLR p.1521E.

¹⁴⁸ *Oloka-Onyango* (n 2 above) 32 para 3. See also *Ellen Jordan v The State & Others*, Case CCT 31/01 (Decided on 9 Oct 2002).

¹⁴⁹ See chaps 6 & 7 Criminal Code 1960, Act 29.

¹⁵⁰ See n 147.

¹⁵¹ Sec 81 CSA.

¹⁵² D A Levy "Strengthening the Legislature and Judiciary for Improving Governance in Africa: A case for the Rule of Law and Economic Development". <http://www.ili.org.publicafrica> (accessed 16 Aug 2002).

Free copies of CSA are available from the Department of Constitutional Development Directorate.¹⁵³ In a transparent system where there is knowledge of and free access to laws and regulation, there are no secret laws and the discretion of officials are limited.

4.8 CONCLUSION

Access to information is basic to the enactment of good laws. The continued crippling effects of the State Secrets Act and the undue executive reverence in Ghana affects free flow of vital information for an effective law-making role. The fairly balanced composition however has potential to promote autonomy and effective legislative scrutiny. It might also discourage the executive from introducing controversial bills in the House.

The existence of legislation on access to information is likely to enhance the LSA's capacity to access free information from the public and the civil society for its legislative activities. However the dominance of the ANC affects its legislative scrutiny process. The dynamism of CSOs and their influence on the LSA to influence decriminalization of self-regarding actions is stronger than in Ghana.

¹⁵³ "Why the Constitution is so Important?" (n 98 above) (accessed 7 Aug 2002).

5.1 INTRODUCTION

Oversight refers to the role of legislatures in monitoring and reviewing the actions of executive organs of government for efficiency, probity, and accountability. Oversight emphasizes the concept of separation of powers and checks and balances of the arms of government to ensure good governance. Executive organs exercise considerable power and influence. A condition of the exercise of that power in a democracy is an equal power of the legislature to demand accountability.

Accountability requires persons placed in executive positions to give account, justify and explain their actions and decisions. Accountability encourages open, responsive and participatory government, thereby enhancing public confidence in the polity.¹⁵⁴ When such a culture of justification of power is present in a state, explanation of the exercise of public power in decision-making is the norm and not the exception.¹⁵⁵

Corruption is a worldwide phenomenon. Gerrymandering and MPs taking money in return for asking parliamentary questions is rife even in mature democracies.¹⁵⁶ It has been noted that the persistence of corruption is not an indication of democratic failure but rather of incomplete democratization.¹⁵⁷

Corruption is endemic on the continent. Some countries in Africa are referred to as "personally appropriated states".¹⁵⁸ The fortunes of Mobutu Sese Seko and Ibrahim Babaginda come to mind. The eight-year tenure of the latter saw the disappearance of US\$12.4 billion in oil receipts in Nigeria.¹⁵⁹ Corruption costs Africa billions of dollars annually, increasing the cost of living, deterring investments and development.¹⁶⁰ The state has been identified as the problem and liberalization and democratization as the solution to the problem of corruption.¹⁶¹

¹⁵⁴ "Law, Politics and Accountability" in D Oliver (ed) 1994 *Public Law* p 246.

¹⁵⁵ E Mureinik "A bridge to where? Introducing the Interim Bill of Rights" 1994 *SAJHR* Vol. 10 p 31.

¹⁵⁶ Heywood, Paul (ed) 1997 *Political Corruption* p 2.

¹⁵⁷ Morris Szeftel "Misunderstanding African Politics: Corruption and the Governance Agenda" *Review of African Political Economy* 1998 Vol. 25 No.76 p. 221 para 1.

¹⁵⁸ 'The Political Economy of Africa Personal Rule' in D Apter and C Rosberg (eds) 1994 *Political Development and the New Realism in Sub-Saharan Africa* p 300.

¹⁵⁹ Eddy Maloka (ed) 2001 *A United States of Africa?* p 2.

¹⁶⁰ "Billion-dollar Scandal Hits Angola" *Sunday Times* 20/10/02 1.

¹⁶¹ Morris Szeftel (n 157 above) p 222.

Corruption and abuse of executive power necessitate an effective legislative oversight. Good governance addresses the management and appropriate allocation of resources. The chapter will look at the existing legal frameworks and the capacity of the two Legislatures to exercise this crucial role.

5.2 THE LEGAL FRAMEWORK

The CG and CSA are supreme.¹⁶² The executive arm is accountable to the Legislature.¹⁶³ The executive is bound to respect and uphold the BOR of both countries.¹⁶⁴ Article 67 of the Constitution requires the President to annually address the LG the policies and programmes aimed at fulfilling the values and principles enshrined in the Constitution.

Article 103(3) accords committees in the LG power to investigate and enquire into the activities and administration of MDAs of government. Particularly, article 184 empowers the Finance Committee to monitor the foreign exchange receipts, payments and transfers of the Central Bank, and to report on them to the Legislature. The Auditor-General is required within six months at the end of each financial year to submit audited report of accounts of government to the Legislature and to draw the attention of the House to any irregularities.¹⁶⁵

Section 42(3) of the CSA provides for legislative scrutiny and oversight of executive actions. Members of the Cabinet are accountable collectively and individually to the Legislature for the exercise of their powers and performance of their functions. They are also required to provide the Legislature with full and regular reports concerning matters under their control.¹⁶⁶ The LSA is required to provide mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and also to maintain oversight over them.¹⁶⁷

5.3 OVERSIGHT TOOLS

5.3.1 Introduction

Legislatures have a variety of mechanisms for performing their oversight role. Prominent among these are Question Time, Statements, Motions and Debates, and the Committee system. Legislatures have formal powers to impeach presidents and also to compel delivery of

¹⁶² See Art 1(2) CG; and secs 1(c) & 2, CSA.

¹⁶³ Sec 42(3).

¹⁶⁴ Art 12 CG; sec 8 CSA.

¹⁶⁵ Art 187(5).

¹⁶⁶ Sec 92(3).

¹⁶⁷ Sec 55(2).

information, testimonies and reports of executive organs. Public Accounts and Finance Committees need to exercise control over the national purse to ensure that resources are appropriately directed to the needs of the public.

The rest of the chapter shall focus particularly at how the Public Accounts and Finance Committees of both Legislatures exercise this role. Considering the magnitude of corruption at high levels of government in Ghana and South Africa, the greatest challenge of both Legislatures is their effectiveness to protect national treasuries and also to hold corrupt public officials to account.

5.3.2 Committees

Both Legislatures have committees, each of which focuses on one of the MDAs of government. The parliamentary and hybrid systems of government do not give full expression to the notion of separation of powers because of the close links between the Legislature and the executive. The executive is not only chosen from the Legislature but also primarily from the leadership of the majority party. This situation hampers effective oversight, as committee members may be reluctant to call to account a government that is made up of leaders of their party. Members of the majority party in particular may be unwilling to subject the government to rigorous scrutiny for fear of being perceived as disloyal, or even expulsion from the party and a consequent loss of their parliamentary positions with respect to LSA.

MPs of the ruling party in Ghana usually defend the government's proposals. Oquaye alludes to two reasons.¹⁶⁸ Firstly, the appointment of ministers from the Legislature subjugates and weakens it to the executive, as ministerial aspirants strive to please the executive. Secondly, most members rely on their central party leadership for approval and funding of their parliamentary candidacy and political campaigns.

A strong party-based system exists in South Africa as a result of the PR electoral system. Parties wield enormous influence on MPS capacity to exercise effective oversight role. PR diverts loyalty of members from voters to the Party. The recent CC ruling on "floor crossing" will certainly affect not only committees' oversight role but also democracy and good governance. MPs are at the mercy of the Party.¹⁶⁹ Baker notes that dominant party legislatures are the death of the legislature's control of the executive.¹⁷⁰

¹⁶⁸ Oquaye, M "The Process of Democratisation in Contemporary Ghana" *Commonwealth & Comparative Politics* 2000, Vol. 38 No.3.

¹⁶⁹ "Ruling leaves MPs at Parties' mercy" *The Citizen* 5 October 2002 1.

¹⁷⁰ Baker (n 91 above).

The biggest challenge ever to have confronted the LSA, democracy and good governance is perhaps the “Arms Deal Saga” which is on record as the single biggest expenditure in the history of South Africa, perhaps on the continent.¹⁷¹ The facts are that in mid-2000 the Auditor-General, presented his mid-year report to the Parliamentary Standing Committee on Public Accounts (SCOPA). The report raised concerns about the probity of a cabinet decision to enter into a R29 billion (\$4bn) arms procurement package for the South African Defence Force (SADF), which apparently did not receive prior legislative approval.¹⁷² The transaction also suffered from a lack of transparency, as it did not go through the normal tender process.

SCOPA made adverse preliminary findings and recommended further investigations by a quadruple-body – the Auditor-General, Ombudsman, National Director of Public Prosecutions and the Special Investigating Unit (SIU). SCOPA’s report was backed by the adoption of unanimous resolution of the Legislature.¹⁷³

Reacting to SCOPA’s report, the President of the Republic declined to grant SIU a proclamation to be part of the Investigation Team (IT).¹⁷⁴ The ANC’s Chief Whip Tony Yengeni succeeded in removing Feinstein from his position as chair of SCOPA. Feinstein later resigned from the House. The ANC used its majority on SCOPA to pass another resolution for the withdrawal of SIU’s participation in the Arms Deal investigation.¹⁷⁵

Media probe into the Arms Saga revealed that the Chief Whip, Yengeni among others were beneficiaries of a fall-out from a company with a stake in the procurement package of the deal.¹⁷⁶ The IT reported multiple failings in government’s contracts procedure, citing the conduct of some senior government officials as despicable. The IT however absolved the President and the cabinet of any culpable conduct.¹⁷⁷

A few issues need to be raised about SCOPA and its oversight role in this saga. Firstly, whilst agreeing with SCOPA on the need to access “investigative expertise and a number of differing

¹⁷¹ “ A South African Case Study: A ‘Litmus Test’ for Democratic Accountability” (Lecture delivered by A V Zyl, Institute for Democracy South Africa (IDASA) at the Winter School on Good Governance, Univ of Pretoria, July- Aug 2002.

¹⁷² The Hansard of Parliament reveals that no such approval or resolution was sought or obtained, see n 172 below). See also sec 213 of the Constitution and the Public Finance Management Act of 1999 which provide for how money is drawn from the National Revenue Fund.

¹⁷³ 14th Report of SCOPA dated 30th Oct 2000.

¹⁷⁴ See n 171 above.

¹⁷⁵ See n 171 above.

¹⁷⁶ See *The Sunday Times*, 25 March 2001.

¹⁷⁷ See “Comrades in Corruption: Arms Deal Saga” Who is fooling whom? United Democratic Movement’s Reaction to the JIT Report.

areas of legal competence and authority,¹⁷⁸ SCOPA sold out its oversight role by subcontracting to the IT and by not just inviting IT to assist SCOPA. Secondly, the arms-twisting at SCOPA during the period created the perception of executive meddling and lack of autonomy in the Legislature, specifically SCOPA. Thirdly, the executive has been let off the hook in what could have been a test case of the capacity of the Legislature to oversee the executive organs and to hold them to account even prior to general elections. As a result, questions of necessity, affordability and prudence of such an expenditure considering the daring socio-economic conditions of most South Africans were left unanswered.

In Ghana, the media and the minority in the House have raised a number of government's irregular international financial transactions (IFT).¹⁷⁹ The executive did not seek the requisite legislative approval.¹⁸⁰ The President seems to suggest that he needs no approval of the House.¹⁸¹ The Auditor-General's reports to the Legislature on MDAs have consistently contained corrupt financial and administrative practices. Another major weakness is that there is no legislation empowering the Legislature to compel the executive to enforce sanctions recommended by the Auditor-General.¹⁸²

5.4 BUDGETARY SCRUTINY

5.4.1 Introduction

Why is the role of the legislature crucial in the budgetary process? The budget is most important economic policy tool of the government. It manifests a comprehensive statement of priorities of the government.¹⁸³ The fulfillment of the promises of ruling governments and the realization of the rights envisaged in constitutions are addressed by budgets. The legislature is the appropriate institution to ensure that budget proposals best match the needs of the masses within the available resources.

¹⁷⁸ See n 173 above.

¹⁷⁹ "Obasanjo Under Fire for 'Helping' Ghana Police" *Ghana Home Page* 16 Sept 2002
"My Lips Are Sealed – IFC Man" *Ghana Home Page* <http://www.ghanaweb.com> (accessed 9 Sept 2002).

¹⁸⁰ Art 184.

¹⁸¹ "Obasanjo Under Fire For "Helping" Ghana Police" (n 179 above).

¹⁸² "Parliament endorses Public Accounts Committee's Report" *Ghana Review International* 7 July 2000

<<http://www.ghanaweb.com>> (accessed 18 Sept 2002).

¹⁸³ Krafchik, W & Wehner, J "The Role of Parliament in the Budgetary Process" *The South African Journal of Economics* 1998 Vol. 66 No. 4 p 512.

5.4.2 Initiation and Preparation

In parliamentary systems the executive, represented by the President, has the exclusive right to initiate, prepare and cause budgets to be tabled in the legislature for approval.¹⁸⁴ Both Legislatures lack authority to initiate money bills.¹⁸⁵ Their role is to authorize the executive to raise revenue and to withdraw money from the treasury.¹⁸⁶

5.4.3 Amendment Powers

The extent of powers of amendment of the legislature varies and depends on the political system. Legislatures in presidential systems have greater powers of budgetary amendment though counter-balanced by presidential veto. Legislatures are therefore classified according to their powers of influence over budgets and government policies.¹⁸⁷ Both Legislatures have limited powers of budgetary amendment.¹⁸⁸

The LSA's powers of amendment need a legislation to flesh out the details of exercising such power.¹⁸⁹ The LG has no such conferred powers. The closest constitutional provision is a legislation prescribing the procedure for presentation of Appropriation Bills. MPs in Ghana have been calling for such legislation.

5.4.4 Budget Committee

The complex nature of budgets, notwithstanding the adoption of the contemporary Medium Term Expenditure Framework (MTEF) by the treasuries of both countries makes it no less easy to understand let alone raise useful issues out of them. The sheer volume of documents and the technical nature of the subject matter easily overwhelm MPs. Their capacity to discharge meaningful oversight role requires their empowerment in that specialty. Alternatively there could be the setting up of a separate Budget Committee distinct from the Finance Committee composed by a core of experts in their own right. The major activity of such a Committee will be to analyze and raise issues on the budget and to measure governments' performances in conformity with constitutional obligations and electoral promises.

The time period within which the House is expected to pass budgets might not permit exhaustive examination by amateurs. A developed committee system enables the legislature to divide its labour in a way that generates expertise in important policy areas. Budget Committees shall

¹⁸⁴ Art.179.

¹⁸⁵ See sec 55(1) (b) CSA, art.108 CG.

¹⁸⁶ See Art. 179 CG.

¹⁸⁷ Mezey (n 31 above).

¹⁸⁸ Art. 108 CG; Sec. 77(2) of CSA.

¹⁸⁹ See sec. 77(2) b. At the time of writing this enabling Act is not in place yet.

provide room for such expertise to be applied to budgetary scrutiny. The Budget Committee may exercise the role of advising the cost implications of all bills and to recommend for the rejection of expenditure requests which to its opinion do not promote maximum economic returns. Good governance demands the rational use of the available resources.

The LG is presently vetting six additional SC justices appointed by the President.¹⁹⁰ The issue that should engage the Legislature is whether in addition to the existing 11, Ghana can afford additional six SC justices. A litigious and vibrant society like the United States (US), a country of 250 million people, has nine SC justices. South Africa, with a population of 40 million, has 11 CC justices. Is there any economic reason why Ghana, a country of 20 million people, with daring socio-economic conditions should have 17 SC justices?¹⁹¹

5.5 SELF-ACCOUNTABILITY

A pertinent question could be posed: Who oversees MPs? The moral courage to exercise their oversight role over the executives greatly depends on their own integrity. They should be accountable to the constitution rather than to their electorates. Public life as a whole must be marked by a sense of ethics and integrity. Appropriate norms and codes of ethics must be established to hold MPs to be role models. Because of their powerful and influential standing in society, and their capacity to influence high-level decision-making to their personal advantage, they need standards of ethical behaviour.

In Ghana the law requires public officers, including MPs, to declare their assets on assumption of public office. Spouses of public officers are however excluded from declaring their assets. Moreover, the information provided is not made public. At the time of the passage of the law¹⁹² most MPs were opposed to suggestions from the civil society compelling spouses of public officers to be included in the category of persons required to declare their assets.

Practical efforts are needed to complement the penal code on corruption. If some types of payments, gifts or presentations to public officials are viewed as acceptable gifts or tips, they should be legalized and made subject to reporting requirements. A test of the cultural justification is to make such gifts, payments and presentations public.¹⁹³

¹⁹⁰ Art 144(2).

¹⁹¹ "Will the Real MPs Stand Out and Be Counted?" [http:// www.ghanaweb.com](http://www.ghanaweb.com)> (accessed 4 Oct 2002).

¹⁹² Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 Act 550.

¹⁹³ "Corruption and Good Governance" A Discussion Paper of the UNDP, 1997. See n 1 above.

Cultural and executive deference promotes difficulty of accessing certain kinds of public information in Ghana. Most Ghanaians do not know the salaries of their legislators and ministers. Features of secrecy of this nature do not promote good governance. In politics, public perception matters more than reality. Perceptions will simply not go away in the absence of explanation as to why certain leaders who entered government poor all of a sudden become affluent on their meager salaries and allowances.¹⁹⁴

In South Africa, salaries of legislators and their allowances are available on the Parliament website.¹⁹⁵ Legislators are also expected to register their financial interests as well as those of their spouses, dependents and permanent companions every year.¹⁹⁶

5.6 COMPARISON

Both countries have the legal frameworks providing for legislative oversight roles. However, firstly, the electoral system compromises the LSA's oversight of the executive. Secondly the dominance of ANC in the Legislature, coupled with the floor-crossing ruling would exacerbate the crisis of independence and oversight role of the LSA.

The more or less balanced composition of the LG, coupled with the relative autonomy of MPs has the potential to promote much better oversight role. Members of the LG lose their seats if they cross the floor. However, in terms of transparency in governance facilitated by information legislations, the LG has a lot to learn from the LSA.

5.7 CONCLUSION

Considering the magnitude of corruption in governance, both Legislatures are yet to rise to the occasion. The LSA missed the test of its oversight role in the "Arms Deal Debacle". With improvement of research capacity, and information flow, the LG's oversight role could be effective in reversing the tide of abuses of executive power.

¹⁹⁴ Address at the NEC of the Movement for Multi Party Democracy in Zambia *The Post*, 12 May 1995.

¹⁹⁵ 'Members of Parliament' (n 98 above) (accessed 7 Aug 2002).

¹⁹⁶ See n 98 above.

6.1 INTRODUCTION

The chapter concludes the study. It provides a summary of the capacities of the two Legislatures as expounded in the study to promote good governance. The chapter looks at some of the basic weaknesses the study identified in both Legislatures and make comparisons. Recommendations, based on the identified weaknesses, are made. Principally the chapter compares the practices of the two Legislatures with the hypotheses set down at chapter one.

6.2 CONCLUSION**6.2.1 Comparative Analysis**

Written constitutions are concrete statements of expectations from the legislature. The CSA provides more detailed clarity on the roles and expectations of the Legislature. This provides a better basis and focus than the LG. The supremacy of both Constitutions however provides a substantial departure from their consistent past models of executive and legislative supremacy. Their current legal frameworks provide much hope of good governance. From the study the first hypothesis could therefore be proved incorrect, as there is a proven substantial departure from past legal frameworks of both countries.

The study brought out some of the weaknesses of the hybrid system that affects both Legislatures' capacity to ensure good governance. A basic factor that holds up parliamentary and hybrid political systems is the independence of legislators and the existence of a strong opposition. In this regard the LG shows better promise of good governance as the present Legislature is more or less balanced between the two strongest parties. However, expectations of ministerial appointments and funding of political campaigns expose the MPs to executive manipulations. As a result, their oversight role stands to be compromised.

The dominance of the ANC in the LSA, coupled with the PR electoral system that places power in the hands of political parties rather than MPs, weakens the capacity of the LSA to promote good governance. In this regard, the study confirms the second hypothesis - the capacity of both Legislatures to promote good governance remains compromised by the political and electoral systems. Conditions that nurture parliamentary systems – critical opposition and autonomy of MPs - are weak.

The study confirms the impression that both Legislatures ordinarily are not the prime movers in the political process. In spite of the enabling legal frameworks, the study brought out some of the structural weaknesses of both Legislatures. The study thus confirms the last two hypotheses. The capacity of both Legislatures to effectively discharge their roles depends on other factors outside their control. Apart from the choice of political and electoral systems, the availability of resources and the attitude of the civil society towards the workings of the Legislature are all factors that were shown in the study to have strong influence on the effectiveness of both Legislatures.

The study shows that strong committee system is the lifeline of legislatures. It makes special reference to the Public Accounts and Finance Committees and observes that both committees lack effective oversight roles as envisaged in their Constitutions. The hybrid system compromises the committees' potential to curb executive corruption.

The study also shows that transparency greatly facilitates public access to and participation of the Legislatures' activities. There is a better framework conducive to transparency in the LSA than in the LG. Legislations that promote free access to information, administrative justice and equal participation are non-existent in Ghana, as they exist in South Africa.

In conclusion, the study shows however, that the LG and LSA have moved away from their past marginalization by the executive, facilitated by weak legal frameworks. Conducive legal frameworks to promote good governance presently exist. Both Legislatures are better poised than before to contribute to good governance. However, their effectiveness depend on the provision of logistical structures and facilities. The weaknesses the study identified of both Legislatures are influenced largely by the circumstances of their origin, age and economic base of the two countries.

From the identified weaknesses, the rest of the chapter makes recommendations.

6.3 RECOMMENDATIONS

6.3.1 Legal Framework

(a) Budgetary Process

The budgetary process in any Legislature is an important tool. It is a fundamentally crucial moment in the lifespan of governments, which brings the full scope of the legislative oversight role to bear on government's priorities. Both Legislatures do not currently effectively participate in the budget process. It is recommended that the LSA activates its constitutional budgetary role by

enacting the legislation envisaged in section 77 (2) of the Constitution. The LG will also have to enact legislation in terms of article 179(7) to prescribe the procedure for the presentation of Appropriation Bills to the House. It will also have to enact legislation to compel the executive to enforce sanctions recommended by the Auditor-General.

(b) Budget Committee

The study recommends the setting up of a Standing Committee on Budget on the enactment of the above legislation. This committee will not only enhance effective legislative capacity to scrutinize budgets but also oversee implementation of all government's agencies. The legal framework might consider the requirement of mid-year reports of all MDAs to the Budget Committee. A major role the Budget Committee shall play is to monitor and control unbridled expenditure of MDAs, a factor which has negative monetary policy implications.

(c) Transparency

The continued existence in Ghana of official secrecy legislations, and the non-existence of legislation that promotes the free access to information, undermine transparency in the budgetary process. This affects the LG's oversight role over organs of government. Ghana needs to repeal the State Secrets Act, Act 101 and to establish the appropriate legal framework that guarantees public access to state-held information.

6.3.2 Committee on Democracy-Supporting Institutions

Considering the important complementary roles of institutions such as the Auditor-General, Human Rights Commission, The Commission on Civic Education, Public Protector, Commission for Gender Equality and the Central Banks play in both Ghana and South Africa, it will be necessary that both Legislatures establish closer working relationship with them.

To concretize the relationship, the study recommends the establishment of standing Committee on Democracy-Supporting Institutions. This relationship is vital considering the weak oversight capacity of both Houses. Invariably these institutions act as watchdog bodies over the government and organs of state. Secondly, they support and aid the Legislature in its oversight function. They also provide the House with information that is not derivable from the executive.

6.3.3 Capacity Building of Members

Effective and proper oversight over the executive requires MPs and members of the executive to fully understand the constitutional justifications behind accountable government. The Legislatures' accountability and oversight roles can be effective if it is recognized by MPs, especially those of

the government party as the central organizing principle of both Constitutions. The oversight role need not be seen solely as that of opposition parties alone, designed to police and expose maladministration and corruption. The study therefore recommends that capacity building be made part of the Legislative programme. MPs' knowledge and skills in legislative drafting, budgetary analysis, human rights, and the art of governance should be deepened.

6.3.4 State Sponsorship

To maintain the independence of MPs and the direct link between electorates and the LG, the state needs to provide some sponsorship of candidates and other legislative activities of MPs. Constituency offices, serving as links between MPs and the constituency, need to be functioning all the year round and not only during elections. Financial and logistical assistance to MPs in LG as in LSA is recommended.

It is also recommended that the lower structures of government be strengthened to reduce the demands on members of the LG. A scheme to pay monthly allowances (and not travel allowances) to the members of the District Assemblies will rekindle the dwindling interests of members of the Assembly. Participation of governance flows from the grassroots to the national politics.

6.3.5 Mixed Electoral System

In South Africa, there could be an allocation of geographic constituencies to all the MPs, especially the dominant ruling party. The natural attachment to the constituencies might not be present, but it will promote public participation in the Legislature. South Africa might have to consider the potential of a mixed-electoral system, thus falling midway between the party-dominant PR system and the constituency-based FPTP.

6.3.6 Participation

The mere existence of legal framework of participation will do little to enhance participation if the broader Ghanaian and South African society do not appreciate the importance of the Legislature. The Legislatures of both countries need to adopt programmes to reach the people. Whilst the "Speaker's Breakfast Forum" and the annual "Parliament in Retrospect" programmes of the LG are commendable, the opening sessions of both Legislatures could be arranged to take place outside the traditional locations of Accra and Cape Town. The LG need to redesign its buildings to accommodate the access of disabled persons.

CSOs are playing a representative role on behalf of the great majority of people demobilized by economic circumstances. However, there is the need to avoid over-reliance of their views. This is to forestall the views of the marginalized poor being overridden, consumed and misrepresented by the CSOs.

6.3.7 Resources to the Legislature

A country's economic base limits its political system's ability to provide services. The economic base affects as well the ability of the legislature to be effective in fulfilling its constitutional role. The resource base of both Legislatures needs to be strengthened to facilitate the effective discharge of their roles. Office facilities for MPs with research assistants are recommended. Alternatively, there could be a central pool of researchers from which MPs could resource on matters pertaining to their legislative role. Annual budgetary allocations to the House have to be upwardly reviewed. The playing down of the Legislature as second fiddle to the executive as regards resourcefulness needs to be reconsidered.

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ANNEXURE

QUESTIONNAIRE

TOPIC: **THE LEGISLATURE AND GOOD GOVERNANCE FROM A HUMAN RIGHTS PERSPECTIVE: A COMPARATIVE STUDY OF GHANA AND SOUTH AFRICA.**

George Buadi*

A THE LEGISLATURE'S FINANCIAL OVERSIGHT ROLE

- 1 How does the Legislature control and monitor general national expenditure?
- 2 How effective is this control and/or monitoring mechanism in the ff:
 - (i) the raising of international loans(N/A in S/Africa).
 - (ii) domestic borrowing from the national reserve or other commercial banks.
 - (iii) the purchase of arms, and general defense budget.
 - (iv) national spending.
 - (v) Did the alleged purchase of the presidential aircraft receive parliamentary approval? (n/a in Ghana).
- 3 Comment on the debate on the national budget. Has the legislature any influence on the revenue-raising mechanism (taxation) of the executive?
- 4 Are debates on the national budget and other crucial issues that affect the general populace tainted with partisanship? What is/are the cause/s?
- 5 What are the capacity, resourcefulness and logistics or otherwise of MPs to scrutinize budgets and other financial reports laid before the House?
- 6 How do the civil society and the individuals at the grassroots involved or allowed to participate in the Legislature's oversight role over the Executive?

* LLM student in Human Rights and Democratisation in Africa 2002, University of Pretoria. This questionnaire may be used as an annex to the dissertation. All respondents are requested kindly to sign at the last page.

- 7 Does the Legislature play any role after the approval of the use of allocations to the various MDAs, prior to the Auditor-General's (AG) Report to Parliament, and if yes how does it do this?

- 8 How does the Legislature deal with the AG's Report?
How effective is the Legislature's role in handling the Report? Does the Legislature's role and input have effect in controlling or promoting whatever reports contained in the Report?

- 9 Could you suggest alternatives within the legal framework to enhance the effectiveness of the Legislature in this role?

- 10 Is the relationship between the Executive and Legislature too cosy for an effective legislative oversight? Why is this so? How practical is the concept of separation of powers at play in the work of the Legislature in this regard?

- 11 What are some (if any) of the legislative interventions that have resulted in the discovery, abatement and/or retrieval of state money? (Please give specific examples and details)

- 12 Has the intervention led to the dismissal, resign, prosecution and conviction of any minister of state or public official? (Give examples as well)

- 13 What is the role of the Committee of Government Assurances? How does it perform this role?

Dated this.....day of..... 2002.

Signed by.....

The Chairman
Public Accounts Committee.

cc: 1 The Chairman.
Finance Committee.

2 Selected Members of Parliament.

- 3 Centre for Democracy and Development
Accra.
- 4 Institute for Democracy in South Africa Institute
Cape Town.

NB

In response to any of the questions I shall be very grateful if:

- 1 It shall be laced with suggestions of alternatives, or practical methods of improvement.
You may add other relevant information that might not be elicited by the questionnaire.
- 2 Comparison of the previous legislatures with the present one in the performance or discharge of this responsibility is made.
- 3 Real practical instances is cited, quoting the name, date and heading of document, personalities and the amount involved.
- 4 Your quick but carefully analyzed responses shall be very much appreciated.

B THE LEGISLATURE'S LAW-MAKING ROLE

- 1 How does the Legislature ensure or monitor the implementation of legislation to the benefit of the people for whom they were passed?
- 2 How does the Legislature involve the citizenry in the passage of laws, or its deliberations generally?
- 3 How do the proceedings of the House reach the people? Are the laws passed easily accessible to the people?
- 4 Is there an instance where the House had had to have a second look of a piece of legislation as result of public outcry, and what was the outcome?
- 5 What is the perception of the link of the populace with their Members of Parliament or the Legislature as a whole?

- 6 How does the Legislature in legislating take into account the role and effect of the highest court's interpretation of the laws?

Dated this.....day of.....2002.

Signed by.....

The Clerk of Parliament.

- cc 1 Selected Members of Parliament.
- 2 Selected Members of Parliament.
- 3 Centre for Democracy and Development
Accra.
- 4 Institute for Democracy in South Africa Institute
Cape Town.

C THE BUDGETARY PROCESS

- 1 Does Parliament have a Budget Committee separate from the Public Accounts and the Finance Committees?
- 2 What is the nature of relationship between the above Committees and the Central Bank, Auditor-General and the Auditor-General?
- 3 Has Parliament the power to alter/amend (cut/reduce, shift/transfer, or increase the votes in the Money Bill or the Budget of the government?
- 4 What is the capacity of MPs to analyze the Budget? Does the Committee have Researchers? Is there any civil society group that assists the Committee?

- 5 How long does it take the Committee that works on the Budget to report to the main House?
- 6 Do Committees have access to regular reports and activities of the various Ministries, Departments and Agencies (MDAs) other than at the end of financial year?
- 7 Has there ever been an occasion when government has either withdrawn or amended portions/aspects of her budget policies or proposals as a result of the reactions of the House?
- 8 Did the House approve the alleged purchase of the presidential aircraft?

Dated this.....day of.....2002.

Signed by.....

The Clerk of Parliament.

The Chairman

Budget/Public Accounts/

Finance Committees

cc Selected Members of Parliament.

Centre for Democracy and Development

Accra, Ghana.

Institute for Democracy in South Africa

Cape Town.