

A GUIDE TO YOUR RIGHTS: Fundamental Rights and Freedoms in Ghana



A Guide to Your Rights: Fundamental Human Rights
and Freedoms in Ghana

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Centre for Human Rights, University of Pretoria

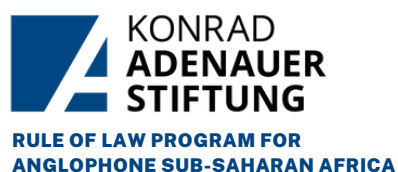
Designed by Judava Worx



The Centre for Human Rights, Faculty of Law, University of Pretoria, is an internationally recognised university-based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. It aims to contribute to advancing human rights, through education, research and advocacy.

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Konrad Adenauer Foundation (KAS) is a German Political Foundation that is committed to achieving and maintaining peace, freedom and justice through political education on a national level as well as on an international level with more than 110 offices worldwide. The KAS Rule of Law Program for Anglophone Sub-Saharan Africa based in Nairobi has been actively promoting the rule of law, democracy and human rights in the region since 2006. Strengthening constitutionalism as well as the enforcement of basic human rights enshrined in the constitutions of Sub-Saharan Africa has always been a major focus of the Program's work.



FOREWORD

It is common to hear talk of how human rights enable people to live free and dignified lives in the contemporary world. In many countries, including Ghana, rights are protected in a Constitution. The recognition of rights in the Constitution of Ghana means that people in the country can benefit from and vindicate their rights in a range of ways, including through the courts. Sadly, far too often, people have to struggle to enforce their rights. Sometimes this is the case because they are not aware of all their rights, or because they are not informed on how to enforce their rights. This booklet is designed to help overcome these obstacles.

This booklet provides an easy-to-use introduction to human rights, where they come from, and what they mean for the citizens of Ghana. Through this booklet, the Centre for Human Rights (Centre) and the Konrad-Adenauer-Stiftung (KAS) hope to enable every citizen to know their rights and better understand how these rights protect them against violations, whether such abuse is by the government, private entities such as companies, or by other people. The Booklet also seeks to empower readers on how to make rights meaningful to them.

The Centre and KAS are committed to supporting people's attempts to live in dignity and freedom. Both the Centre and KAS are convinced that providing people with information and help in understanding how to turn this information to action will help people enforce their rights, and ultimately live with more dignity. We are proud to have worked together on this booklet, and we have no doubt that it is a useful tool for people seeking to actualize the rights protected in the Constitution of Ghana.

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INTRODUCTION

Every person in Ghana has rights that are designed to protect them and to help them to live dignified and meaningful lives. These rights are found in the Ghanaian Constitution, and this is one of the reasons why the Constitution is important to everyone who lives in Ghana.

Ghana has had five constitutions since independence - the independence Constitution of 1957, the republican Constitution of 1960, the Constitution of the Second Republic of 1969, the 1979 Constitution, which promised a return to democracy, and the current Constitution,

passed in 1992. The current Constitution contains principles that are the result of hundreds of years of struggle for self-determination and independence, a struggle that resulted in full independence in 1957. Independence was an assertion of the sovereignty of the Ghanaian people, of their desire and right to participate in the decisions that impact their lives. Independence brought freedom from foreign rule, an elected president, and a constitution chosen by the Ghanaian people.

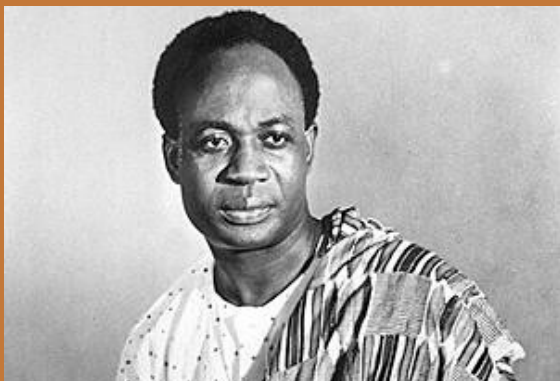


(CREDIT: Louis Stippel, USAID)

“

We shall measure our progress by the improvement in the health of our people; by the number of children in school, and by the quality of their education; by the availability of water and electricity in our towns and villages, and by the happiness which our people take in managing their own affairs. The welfare of our people is our chief pride, and it is by this that my government will ask to be judged.

”



**- Kwame Nkrumah,
first President of Ghana,
1957**

However, over the years, many of the promises that accompanied independence were either not realised or were only partially realised. After many years of military rule, the government of Ghana proposed the introduction of a new constitution in 1992, which the people of Ghana had the chance to decide whether to accept or reject, through a referendum. Through this vote, the 1992 Constitution was approved by Ghanaians, with 92% of those who voted to adopt the constitution proposed by the State.



(CREDIT: The Presidency, The Republic of Ghana)

The 1992 Constitution is important for a number of reasons. One example of its importance is that it reasserts the importance of democratic principles in Ghana and provides a framework for a responsive and honest government, which people in Ghana can hold answerable for its actions. Through this, the Constitution makes clear the importance of participation and of the rights of everyone in Ghana. It states clearly that military rule or rule by a single party has no place in Ghana, and places the rights of the people of Ghana at its heart, helping to provide the essential elements that are necessary for a dignified life.

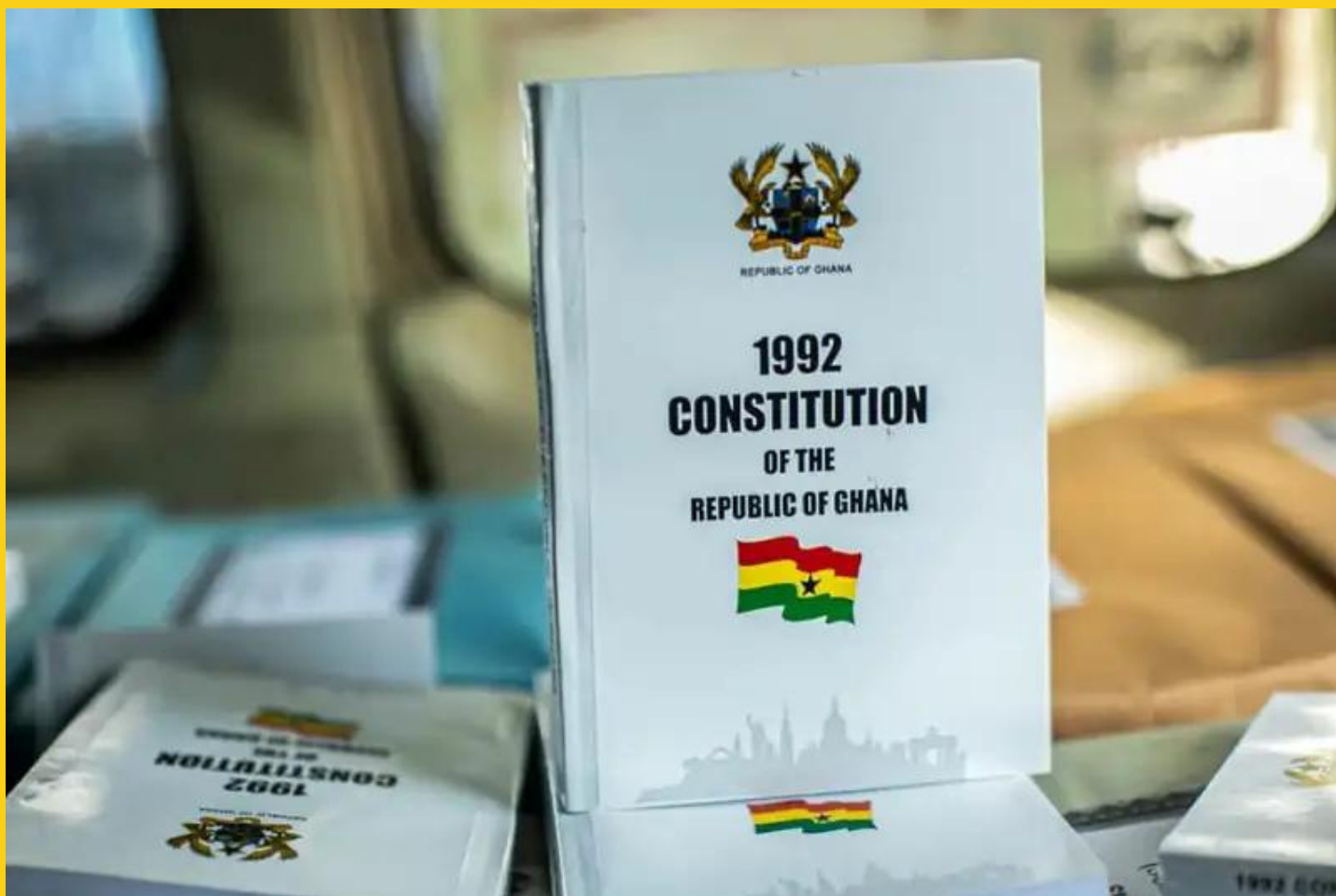
This booklet will tell you a little about how the Constitution holds the government to account, and about how Chapter 5 of the Constitution (called 'Fundamental rights and freedoms' and which is the chapter in the Constitution that contains many of the human rights) protects you and your community.

Using this booklet

This booklet is intended to provide you with an introduction to the Constitution of Ghana, to tell you what your rights are and to help you to understand what these rights mean for you. It includes some important court cases where people have claimed their rights and held others – particularly the government, but also private citizens – to account for their actions.

This booklet only provides you with a summary of the rights found in the Constitution. If you want to read the Constitution as it is written, in full, you can find the full Constitution online by entering “Ghana Constitution” into a search engine, or by visiting this website: <https://judicial.gov.gh/index.php/preamble>.

If you would like to find out more about a particular case that this booklet refers to, you can type the name of the case into a search engine, and you should be able to find the case.



CONSTITUTIONS: WHAT ARE THEY?

Most countries in the world have a constitution. In these countries, the constitution is, often, the highest law in the land: This means that every law in a country, and every action taken by the government of that country, must be in accordance with that country's constitution. Constitutions tell us what a country's government should do and what structure it should have, about the rights that people in that country have, and about how different government institutions, like the police, the courts, the parliament and the president, should function.

Constitutions often make clear the kind of society that a country wants to be. They reflect problems that a country has had in the past, and its hopes and aspirations for the future. Ghana's Constitution makes clear the commitments that the Ghanaian people think are important as captured in the Preamble of the Constitution.





PREAMBLE

IN THE NAME OF THE ALMIGHTY GOD

We the People of Ghana,

IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessing of liberty, equality of opportunity and prosperity;

IN A SPIRIT of friendship and peace with all peoples of the world;

AND IN SOLEMN declaration and affirmation of our commitment to;

Freedom, Justice, Probity and Accountability;

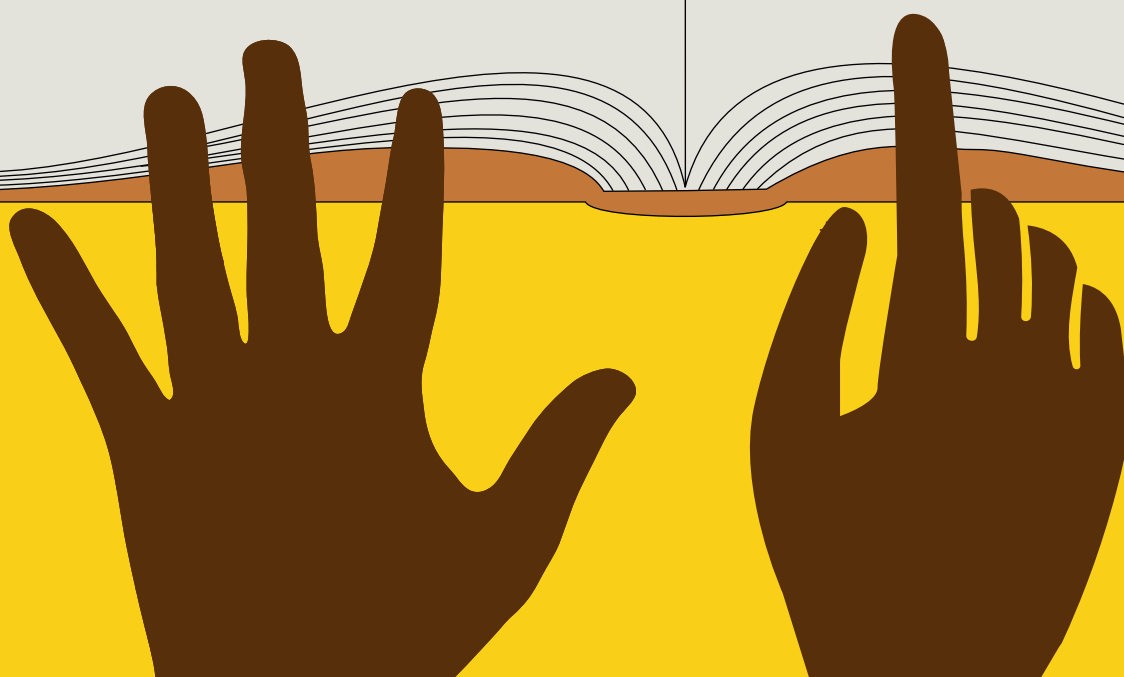
The Principle that all powers of Government spring from the Sovereign Will of the People;

The Principle of Universal Adult Suffrage;

The Rule of Law;

The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation;

DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.



THE HISTORY OF GHANA'S CONSTITUTION

On 6 March 1957, Ghana became independent. A country in which the people of Ghana would have the sovereign right to determine key elements about their country. This was a significant break from the colonial era, where British politicians and administrators made many of the decisions that affected Ghana and its people. A constitution was introduced - the Independence Constitution.

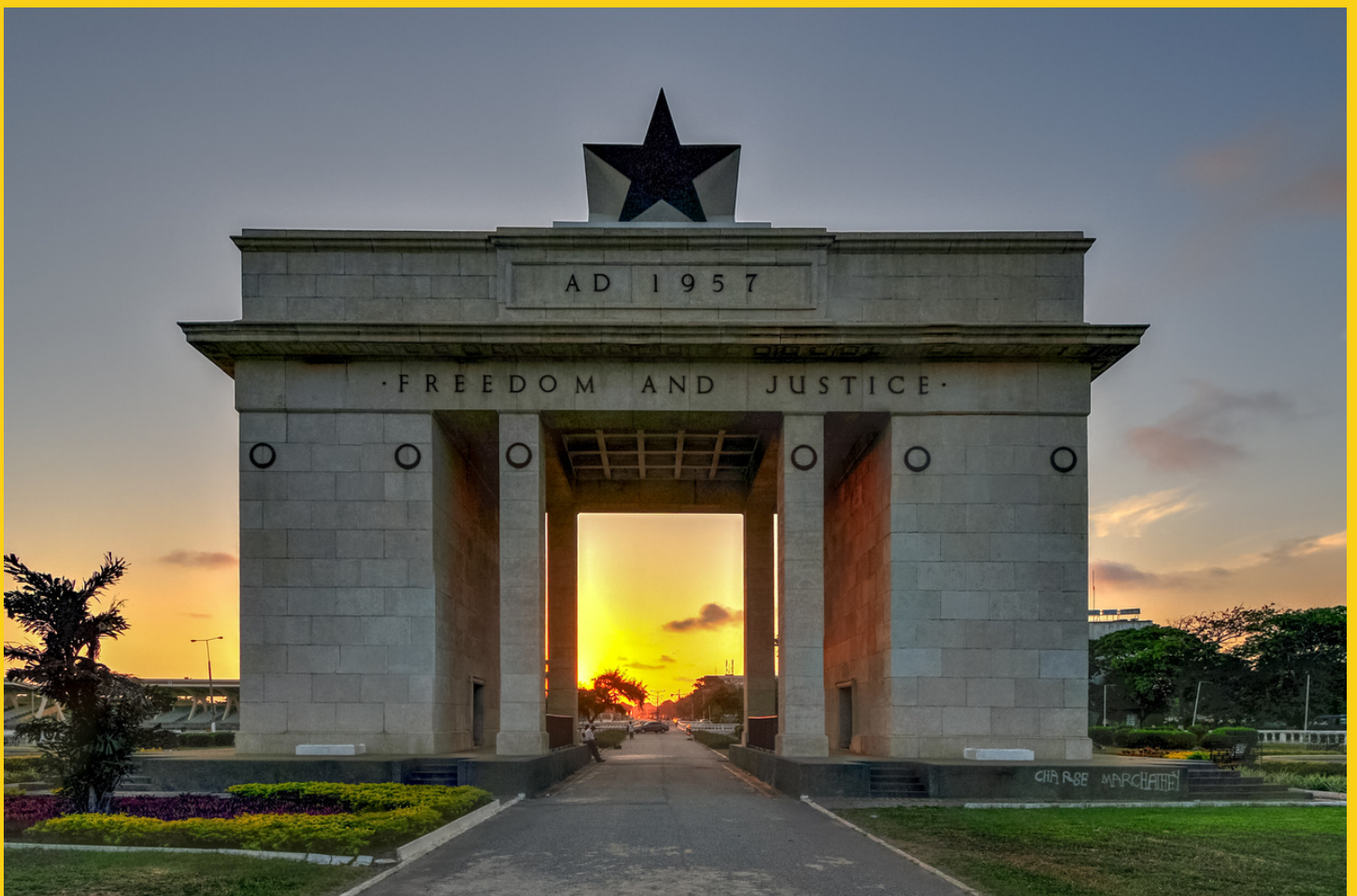
The 1957 Constitution claimed to protect human rights and to give political power to the people of Ghana. In reality, this did not always happen. Some elements of Ghana's early Constitutions allowed for people in government to control power: Amongst other problems, individual rights were not properly protected. Additional constitutional amendments allowed for a single party system of politics, and frequent intervention of the military into politics threatened democracy and people's rights. Taken together, many things in the early years of Ghana's independence undermined the sovereignty of the Ghanaian people, including the right of people to choose their government, and the rights of the people of Ghana.



“ The heart of democracy is the political right of its people to be equally represented and to trust in the decisions of their elected leaders. ”

- Kofi Annan, 2017

In the late 1980s, the military government that was ruling Ghana started taking steps towards returning the country to democratic rule. Part of the return to democracy was the writing and passing into law of a new constitution. The military leadership began a process that would ultimately return Ghana to democracy. This involved consulting constitutional experts, who devised recommendations that were considered by a Consultative Assembly, which would ultimately design the new constitution the people of Ghana would consider and vote upon. The Consultative Assembly consisted of 258 people, who represented districts across Ghana, as well as civic and business-linked organisations. The Ghanaian people were also invited to make submissions to the Consultative Assembly, and over 1000 submissions were received, many of which shaped the final version of the constitution that was voted on by the people of Ghana, on 28 April 1992, and which was overwhelmingly approved by those who voted.



Since the 1992 Constitution came into force on 7 January 1993, it has played a big role in introducing an era in which government power is significantly curtailed in favour of a government responsive to the needs of the people, and in which human rights are respected. Even though the Constitution is not perfect, and the government and other organs of state do not always comply with it, it is a step forward from the unaccountable, unrestricted military rule that was present for much of the period of Ghana's independence before 1992.

Why did the 1992 Constitution represent a 'new era'?

In the past, Ghana's legal system was used to benefit the powerful. The 1992 Constitution sought to change this.

CASE STUDY: NO-ONE IS ABOVE THE CONSTITUTION

The actions of the President must be in alignment with the Constitution

In 1993, shortly after the 1992 Constitution became the law of the land, and democratic rule was restored, the government made a decision to celebrate a revolution and overthrowing of the democratic government that took place on 31 December 1981, declaring a public holiday and an intention to use public funds for this celebration. An opposition political party, the New Patriotic Party, objected to this celebration and to its public funding, believing it to be inconsistent with the Constitution. This objection was heard before the Supreme Court in the case of *New Patriotic Party v Attorney-General* (1994).

The Supreme Court held that, whatever positive things some people, including the government, thought might have resulted from the 1981 overthrow of the government, celebrating the overthrow of a democratic and constitutional government may have the effect of undermining the 1992 Constitution's demand that the people of Ghana defend the Constitution (found at Article 3(4)) – the celebration would be against the letter and spirit of the Constitution. A majority of the judges of the Supreme Court held that Parliament could not choose to declare 31 December a public holiday, or to finance any celebration on the day from public funds. Celebrations could take place, but there would be no public holiday, and no state financing for the celebration. This meant that the Constitution restricted the actions that the government could take.

This case shows how the government, and people who work in government, have to act in accordance with the Constitution – in this case, because of the contents of the Constitution, the government could not do whatever it wanted to celebrate 31 December 1981 with public funds. It also shows how the judiciary has to interpret the Constitution to determine what is legally acceptable under Ghana's Constitution.

While the Constitution contains many important elements, and although a lot of effort went in to finalising the Constitution, this does not mean that it should never be changed. The Constitution is intended to develop over time.

In fact, the Constitution itself contains a procedure that explains how it can be changed. Although the Constitution can be changed, it is difficult to do so. This is for many reasons, including the importance of preventing powerful people in government from changing the Constitution to benefit themselves and their allies. Changing the Constitution is particularly difficult for important parts of the Constitution - this process includes a six-month notice period of any proposed amendment, and the requirement that the public be given the chance to approve or reject the amendment through a referendum.



- Justice Georgina Wood, former Chief Justice of Ghana

“A Constitution is not meant to be static. It is a living political document capable of growth. Consequently, the framers of the Constitution, under Chapter 25, have designed a process, albeit an arduous and stringent process, by which necessary amendments to it may be effected.



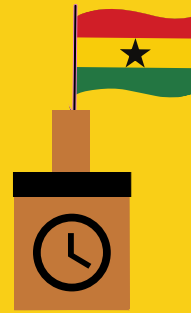
The importance of regularly reviewing the Constitution and of considering how it can better serve the people of Ghana is shown by the existence of a body called the 'Constitutional Review Commission'. This Commission is a body of experts with instructions to:

1. Hear from the people of Ghana about their views on how the 1992 Constitution has worked and, in particular, its strengths and weaknesses;
2. Give voice to the concerns that the people of Ghana have about amendments that may be required; and
3. Make recommendations to the Government about possible amendments to the 1992 Constitution.

The Commission last delivered a report to the President in December 2011. This report relied on a consultation process that involved reaching millions of Ghanaians, directly and indirectly, and recommended ways for constitutionalism to function better in Ghana.

WHAT IS IN THE CONSTITUTION?

Everyone regardless of their status in society has to act in accordance with the Constitution and must respect the rights of others. The importance of this is highlighted at the very beginning of the Constitution, at Article 1, which says:



“This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void”.

This means that no one should act in a way that is inconsistent with the Constitution. The Constitution imposes limitations on everyone in Ghana, including the President, government ministers, Parliament, judges, the police and the military.

Constitutions also make clear the principles and values that a particular country thinks are important. The Ghanaian Constitution makes clear the kind of country that Ghana wants to be:

“Article 35

(1) - Ghana shall be a democratic state dedicated to the realization of freedom and justice; and accordingly, sovereignty rests in the people of Ghana, from whom Government derives all its powers and authority through this Constitution;

...

(4) The State shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person.”

All public officials in Ghana, including the President, derive their power from the Constitution, which was approved by the people. This means that everything that happens in Ghana should be in line with the Constitution, and it means that everyone, including the State, should do all of the things that the Constitution requires them to do.

The Constitution of Ghana has 26 Chapters. Each chapter deals with a different element of life or governance in the country.

THE CONSTITUTION OF GHANA: CHAPTERS

- Preamble
- Chapter 1 – The Constitution
- Chapter 2 – Territories of Ghana
- Chapter 3 – Citizenship
- Chapter 4 – The Laws of Ghana
- Chapter 5 – Fundamental Human Rights and Freedoms
- Chapter 6 – The Directive Principles of State Policy
- Chapter 7 – Representation of the People
- Chapter 8 – The Executive
- Chapter 9 – The Council of State
- Chapter 10 – The Legislature
- Chapter 11 – The Judiciary
- Chapter 12 – Freedom and Independence of the Media
- Chapter 13 – Finance
- Chapter 14 – The Public Services
- Chapter 15 – The Police Service
- Chapter 16 – The Prison Service
- Chapter 17 – The Armed Forces of Ghana
- Chapter 18 – Commission on Human Rights and Administrative Justice
- Chapter 19 – National Commission for Civic Education
- Chapter 20 – Decentralization and Local Government
- Chapter 21 – Lands and National Resources
- Chapter 22 – Chieftaincy
- Chapter 23 – Commissions of Inquiry
- Chapter 24 – Code of Conduct of Public Officers
- Chapter 25 – Amendment of the Constitution
- Chapter 26 – Miscellaneous

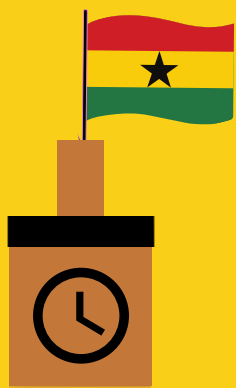


As can be seen from the titles of the different chapters of the Constitution, the Constitution has an impact on all elements of life in Ghana, all of which are aimed at ensuring that the government is dedicated to helping the people of Ghana “secure...the blessings of liberty, equality of opportunity and prosperity.” Everything that is in the Constitution is important, but this booklet will focus on Chapter 5, the 'Fundamental Human Rights and Freedoms' that people in Ghana have. If you would like to read any of the other chapters of the Constitution, you can consult the full_Constitution here: <https://judicial.gov.gh/index.php/preamble>.

SEPARATION OF POWERS AND THE THREE ARMS OF GOVERNMENT

Ghana's Constitution recognises that countries often face a problem when one person or one institution has too much power. It is easy for people in such situations to abuse their power, and to undermine the rights of others in that country. One of the ways that the Constitution protects against anyone in government abusing their power, or the government, as a whole, abusing its power, is by dividing power amongst different arms of government.

There are three different arms of government, each of which exercises some powers of the State, but not all of them:



The Legislature (Chapter 10 of the Constitution), which consists of members of Parliament and makes the laws.

The Judiciary (Chapter 11 of the Constitution), which consists of the courts, judges, and magistrates, that decide disputes and interpret the laws.

The Executive (Chapter 8 of the Constitution) puts the laws into effect and ensures the laws are upheld. The executive authority of Ghana is vested in the President, who can delegate others to act in their name. Ministers are also members of the executive.

This is called the 'separation of powers' principle. In theory, each of the three arms of government is independent of the others, and each one is as important as the others. They are intended to act as a check on each other - no one person or branch of government can do whatever it wants, because the other arms of government will have enough power to stop this abuse. This separation of powers is also very important for the protection of rights. There are often very important reasons to hold people with power to account, and this booklet will include some examples of occasions where the State was held to account.

The separation of powers is not absolute – for example, many ministers (who form part of the Executive) serve in Parliament. There are some people in Ghana who worry that the Constitution places too much power with the Executive – perhaps most notably, with the President. Some people also worry that, because of this concentration of power within the Presidency, Parliament’s powers have been reduced. In order for the separation of powers to function properly, and for power to be properly controlled, each branch of government has to have some independence from the other.

CASE STUDY: THE THREE ARMS OF GOVERNMENT MUST RESPECT EACH OTHER’S POWER

The Judiciary can intervene in the actions of the Executive if these actions are not consistent with the Constitution

In 1995, the President appointed a new Chief Justice, after consulting the Council of State. In *Ghana Bar Association v Attorney-General and Another*, the Ghana Bar Association challenged this appointment, claiming that the new Chief Justice was not a person of “high moral character and proven integrity” and, because of this, the President had gone beyond his constitutional authority, and so had acted unlawfully. In defending the appointment, the Executive argued that decisions made by the President, or any other member of the Executive, could not be reviewed by courts, as this would violate the doctrine of separation of powers.

The Supreme Court held that the Constitution makes clear that the actions of the Executive can be looked at by the Judiciary and, to be valid, must meet the standards of the Constitution. The Supreme Court held that the Judiciary’s power to do this is a fundamental part of the Separation of Powers doctrine. The Supreme Court also noted, however, that the Constitution provides the Executive with the right to take particular actions, and this is also part of the Separation of Powers. As long as the Executive does this in a way consistent with the Constitution, the Judiciary should not intervene. In order to respect the powers of the different arms of government, the Judiciary has to be careful not to replace the constitutionally sound actions of the Executive with its own opinion. When the Courts are considering an action of the Executive (or, in other cases, Parliament), the question is not about whether the Judiciary agrees with the actions of the Executive (or of Parliament), but whether the actions of the Executive comply with the Constitution.

In this case, the Court held that, although the actions of the Executive (the President) could be constitutionally reviewed, the Judiciary had no cause to intervene in this case, and the appointment of the new Chief Justice was permitted.

THE STRUCTURE OF THE COURT SYSTEM IN GHANA

The Judiciary plays a vital role in the protection of the rights of people in Ghana, and has an obligation to provide justice to everyone in the country. Everyone should be able to have their case considered by a judge or a magistrate who is committed to hearing the matter impartially and to applying the law equally to everyone.

There are five different types of courts in Ghana. Each court has a different role to play in the justice system. Taken together, the courts in the country attempt to ensure that everyone can have their disputes settled quickly and fairly.



(CREDIT: Guido Sohne)

The court structure

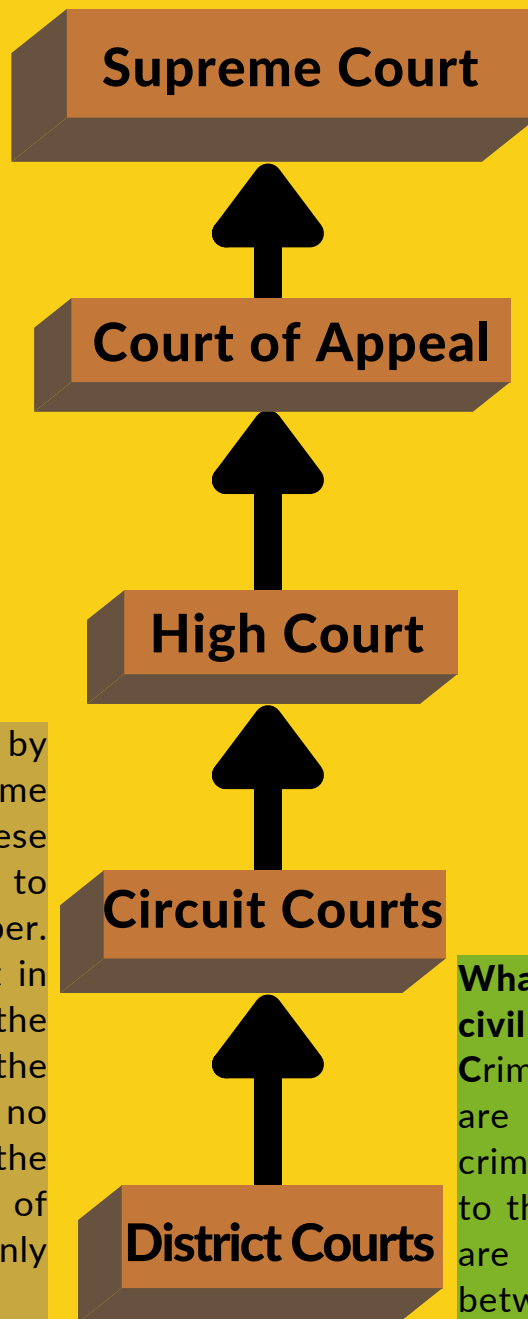
- **The Supreme Court** is the highest court in the land, and can hear all matters, whether they are criminal or civil. The Supreme Court consists of the Chief Justice and at least nine other judges, but there may be more than nine at any one time. Each matter before the Supreme Court is heard by at least five judges. All decisions of this court are final.
- **The Court of Appeal** only hears cases on appeal from the High Courts, Regional Tribunals or Circuit Courts. When someone is unhappy with a decision that they have received in the High Court, they can appeal to the Supreme Court. The Court of Appeal can hear criminal and civil matters.
- **The High Court of Ghana** can hear all criminal and civil cases. It also has a number of specialised divisions, including the Commercial, Finance, Land and Human Rights divisions, amongst others. There are 103 High Courts in Ghana, and these courts can hear matters for the first time, criminal appeals from Circuit Courts, and all appeals, criminal and civil, from the District and Juvenile Courts. The Constitution also makes allowance for Regional Tribunals, which could hear certain criminal matters, and which would be in all regional capitals. At present, there are no Regional Tribunals in the country.
- **The Circuit Courts** can hear both criminal and civil cases, but there are limits on the matters that a Circuit Court can hear. If a dispute involves less than GH¢500 000 or more than GH¢2 000 000 or involves a serious crime, the Circuit Court will not have authority to hear it. In some places, the Circuit Courts have established specialised courts dealing with family and sexual violence – Gender-Based Violence Courts.
- **The District Courts** hear the majority of cases in Ghana. Magistrates are in charge of these courts and can deal with civil claims where the amounts are less than GH¢500 000, and criminal claims where the potential term of imprisonment is less than 2 years. There are specialised divisions of the District Court, and these deal with matters that affect children who are accused of crimes, families, motor offences and traffic violations and Chieftaincy disputes.

The court structure



If a matter is heard in a High Court, it can be appealed to the Court of Appeal and, after that, to the Supreme Court

Many disputes are heard by the judiciary for the first time in the District Courts. These courts are often easier to access, and are cheaper. Some disputes might start in the Circuit Courts, in the High Court or even in the Supreme Court. However, no cases can be heard for the first time in the Court of Appeal - this court only hears appeals.



Decisions of the Court of Appeal can be appealed to the Supreme Court

If a matter is heard in the Circuit Court or the District Court and someone is unhappy with the decision, an appeal will usually be lodged at the High Court

What is the difference between civil and criminal?

Criminal cases are where suspects are arrested and charged with a crime which is considered harmful to the society, whereas civil cases are all other private disputes between persons or organisations

CUSTOMARY LAW

The Constitution recognizes customary law as an important element of Ghana's legal system. The National and Regional Houses of Chiefs play an important role in enforcing customary law and resolving chieftaincy disputes. All Houses of Chiefs are independent of the Judiciary.

If a case involves **human rights violations**, and the victim thinks that they have not received justice before the national courts, they can approach the African Commission on Human and Peoples' Rights or the African Court on Human and Peoples' Rights. Human rights cases may also be filed directly with the ECOWAS Community Court of Justice without first needing to approach a national court

CASE STUDY: THE CONSTITUTION RECOGNISES CUSTOMARY LAW AS IMPORTANT IN MODERN DAY GHANA

Chapter 22 of the Constitution makes clear that matters affecting chieftaincy must be dealt with by the National or Regional House of Chiefs

The Constitution protects the institution of chieftaincy, recognising that the role of chiefs is very important to the Ghanaian society, and emphasises the importance of protecting the honour and dignity of chieftaincy. The Constitution also places limitations on chiefs, and this is perhaps clearest in the Constitution's prohibition on chiefs taking part in party politics, and if anyone has been convicted of a serious crime, they are disqualified from being a chief.

If there is a problem or an issue that impacts chieftaincy, it should be dealt with by a House of Chiefs, whether Regional or National. In *Ekow Garbrah v Central Regional House of Chiefs and Others*, a 2005 case, the power and authority of the National House of Chiefs was made clear – if someone is unhappy about a decision that impacts chieftaincy made by a Regional House of Chiefs, they can take the matter on appeal. But the ability to appeal to the National House of Chiefs is only for matters affecting chieftaincy – any legal matter that does not affect chieftaincy would have to be appealed to other courts, like the High Court.



(CREDIT: Wikimedia Commons)

WHAT ARE RIGHTS AND WHAT DO THEY MEAN TO YOU?

The rights of every individual are an important part of Ghana's Constitution. Many of these rights are found in Chapter 5 of the Constitution, titled "Fundamental rights and freedoms".

What is a right?

A right is a 'legal entitlement' – something that someone can claim. Human rights are a particular kind of right, and are something that every human has, simply because they are human. A human right could include an entitlement to be free from the State interfering in a person's life – for example, by demanding that the State should not violate that person's privacy – or it could be an entitlement to demand something from the State, like access to healthcare.

EXAMPLE

A right can be something that requires the State to do something:

"I have the right to a fair trial"

If someone has a right to a fair trial, it requires the government to provide all of the things that make a legal process fair, which in criminal cases includes the right to be presumed innocent, the right to remain silent, the right to have a trial start reasonably quickly, and to have a legal representative, amongst many other things. The State needs to ensure that all of the requirements are provided to everyone who faces a trial. The State must also ensure that there is a functioning police service to investigate the case, an effective prosecution service to promptly prosecute the case and efficient judiciary to ensure quick and fair adjudication of the case.

Or it may require the State to not do something:

"I have a right not to be tortured"

The State cannot torture anyone and must make sure that no one in the country tortures anyone else.



(CREDIT: USAID)

By protecting human rights in a constitution, a country shows its commitment to its people and to being held responsible for its actions. The protection of human rights ensures that individuals and communities in a country have the ability to protect themselves from the actions of others, whether they are threatened by the government or by other people. Every person in Ghana has rights that come from the Constitution. They also have obligations. These obligations include the requirement that everyone respect the rights of others, and that they abide by the constitutional values in their own lives.

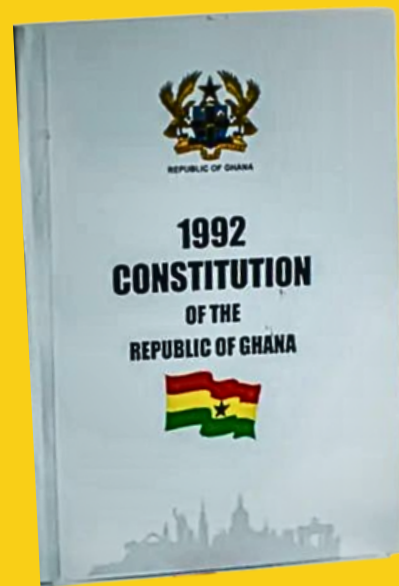
The indivisibility of rights

There are a range of different rights in the Constitution of Ghana, including, amongst many others, the right to life, the right to privacy and the right to freedom of expression. None of these rights are more important than others. Every right is essential in order for people to be able to live a dignified life – so every right is equally important.

The rights fit together like a puzzle. They rely on each other, otherwise they would not be fully realised. The fundamental rights and freedoms in the Ghanaian Constitution are designed to create the foundation for the citizens to live dignified and meaningful lives.

Limiting rights

Although the rights in the Constitution are important, rights are not absolute. Sometimes the rights that different people have conflict – for example, freedom of speech might need to be balanced by respect for someone else’s right to dignity. The Constitution also allows for the limiting of rights: some articles in Chapter 5 allow for rights to be limited if it would be necessary “in the interest of defence, public safety, public order, public morality, public health” or on several other grounds.



When a right is limited because of these reasons, the limitation should not be excessive – the limitation should be proportionate to the reason why the right is being limited (some people say that this can be linked to the saying “Don’t use a sledgehammer to crack a nut”).



(CREDIT: Retlaw Snellac)

CASE STUDY: RIGHTS SHOULD ONLY BE LIMITED TO THE MINIMUM EXTENT POSSIBLE

The Constitution itself places limitations on some Chapter 5 rights

The Constitution gives everyone the right to assemble freely, and to take part in processions and demonstrations, but also allows for this right to be restricted on a range of grounds, including the interests of defence, of public safety or public health, or in the interests of public order. In 1993, the case of *New Patriotic Party v Inspector General of Police* helped people in Ghana understand what it means to have a right restricted, and how this is different from a right being taken away.

In 1993, a political party, the New Patriotic Party (NPP), sought a permit to hold a political rally. This permit was required in terms of the Public Order Decree, a 1972 law which required that permission from the police was needed in order to hold public meetings. The police originally granted the permit but then withdrew it. A subsequent protest, held without permission, was broken up by the police, and some protesters were arrested and charged with violating the Public Order Decree. Several weeks later, another request by the NPP for permission to hold a rally, this time in memory of Dr J B Danquah, was, again, granted and then withdrawn. The NPP went to the Supreme Court, claiming that the power that the Public Order Decree gave to the police allowed the police to violate the right to freedom of assembly. The NPP also claimed that no police permission should be required by anybody who wanted to hold a rally or a procession.

The Supreme Court agreed with the NPP – having to obtain permission in advance of a rally or a public procession was a violation of the right of freedom of assembly, saying that “any such restriction on the right to freedom of assembly would make it meaningless and a sham. This meant that some sections of the Public Order Decree were inconsistent with the Constitution. The Supreme Court noted that the Constitution might allow for the restriction of a right, on the grounds of important issues like public safety. However, the Public Order Decree allowed the police to do more than restrict the right – they could deny the right to assemble entirely by refusing to grant permission for a rally or a demonstration. The Supreme Court said that this was unacceptable, and declared the relevant sections of the Public Order Decree to be unconstitutional.

INTRODUCTION TO THE DECLARATION OF RIGHTS

Chapter 5 of the Constitution tells us about the rights that every person in Ghana has, and about how they can claim these rights. Because every person in the country, including the State and the President, is bound by the Constitution, these rights protect people from having their rights abused by the State and by other people.

Why does Ghana protect human rights?

The Constitution of Ghana indicates that the country believes that human rights are a fundamental part of human existence, and worthy of protection. The importance of human rights in the country is reflected in many parts of the Constitution, including in the Preamble and amongst the Directive Principles found in Chapter 6 of the Constitution, which are meant to inform all policy decisions in the country. The Directive Principles include principles which state the importance of “the realization of basic human rights, a healthy economy, the right to work, the right to good health care, and the right to education.” The Directive Principles also recognise and seek to promote “the dignity of the human person” and the need to “prohibit discrimination and prejudice”. These values and principles are a promise and a commitment to every person in Ghana: Each person shall be treated with respect.

What rights can be found in Chapter 5 of the Constitution?

There are a number of rights in the Constitution, all of which are designed to make sure that everyone in Ghana has their dignity protected and feels valued as a human being. Some rights require the State to take action and provide people with help, while others are designed to make sure that the State does not interfere with people’s lives.

This is a summarised version of the rights in the Declaration of Rights. You can read Chapter 5 in its entirety in the full [Constitution](#):

<https://judicial.gov.gh/index.php/preamble>

CHAPTER 5 OF THE CONSTITUTION: FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS, AT A GLANCE!

- 12 – Protection of fundamental rights and freedoms
- 13 – Protection of right to life
- 14 – Protection of personal liberty
- 15 – Respect for human dignity
- 16 – Protection from slavery and forced labour
- 17 – Equality and freedom from discrimination
- 18 – Protection of privacy of home and other property
- 19 – Fair trial
- 20 – Protection from deprivation of property
- 21 – General fundamental freedoms
- 22 – Property rights of spouses
- 23 – Administrative justice
- 24 – Economic rights
- 25 – Educational rights

How rights are understood is often informed by Chapter 6, which contains principles that help people to understand the aims and values of Ghana:

Chapter 6 of the Constitution: The Directive Principles of State Policy

- 34 – Implementation of Directive Principles
- 35 – Political Objectives
- 36 – Economic Objectives
- 37 – Social Objectives
- 38 – Educational Objectives
- 39 – Cultural Objectives
- 40 – International Relations
- 41 – Duties of a Citizen

- 26 – Cultural rights and practices
- 27 – Women’s rights
- 28 – Children’s rights
- 29 – Rights of disabled people
- 30 – Rights of the sick

The Constitution also contains a set of provisions that arise in an emergency, to prevent the abuse of power:

- 31 – Emergency powers
- 32 – Persons detained under emergency laws

Another important element of the Constitution is that it confirms that the Courts have the power to protect rights:

- 33 – Protection of rights by the courts

The right to vote is a vital part of Ghana’s democracy, and is protected in a separate part of the Constitution:

Chapter 7: Representation of the people

- 42 – Right to vote



CHAPTER 5 OF THE CONSTITUTION: FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS – A SUMMARY

This section of the booklet contains a summarised version of the rights in the Bill of Rights. To read these rights in full, you can find them in Chapter 5 of the [Constitution](#).

Every number below relates to a particular article of the Constitution.

12 – Protection of fundamental human rights and freedoms – Everyone in Ghana, regardless of race, place of origin, political opinion, colour, religion, creed or gender is entitled to the protection of the rights found in Chapter 5 of the Constitution, and, at the same time, must respect the rights of others. All three arms of government, the Executive, the Legislature, and the Judiciary, as well as every person and every organisation in the country, must respect these rights.

13 – Life – Everyone has the right to life, unless they have been sentenced to death in a court after they have been convicted of a crime. No one will have violated the right to life of another person if they kill someone:

- during a lawful war; or
- when protecting themselves, or someone else, from violence; or
- when protecting property; or
- to stop that person escaping from lawful detention; or
- to stop a riot, a violent uprising against the government or an attempt to overthrow the government; or
- to stop that person from committing a crime.

With the exception of a situation of war, the killing of another person in any of the circumstances indicated above will only be lawful if the force that was used was reasonable and justified under the circumstances of the case.

14 – Personal liberty – No one can be put in prison or have their freedom taken away, unless they have been sentenced to a jail sentence, are suspected of having committed a crime, or it would be in the interests of public health or safety to detain the person. The liberty of a child may be limited for the purposes of providing the child with education or for the welfare of the child. No one can be arrested without being told in a language they understand, the reason(s) why they are being arrested and being informed of the fact that they have a right to a lawyer of their choice. Anyone who is arrested or detained must be brought before a court within 2 days of their arrest or detention otherwise they must be released with or without a condition to reappear at a later date for investigation or trial. When a person has been arrested and detained unlawfully, they are entitled to receive compensation. Compensation may also be awarded by the Supreme Court to a person who is initially convicted of a crime and is later acquitted on appeal.

CASE STUDY: PERSONAL LIBERTY MUST BE PROTECTED AS FAR AS POSSIBLE

If a suspect has not been tried within a reasonable time, they should be granted bail

The right to personal liberty is an important right, but is one that is frequently limited – for example, people being imprisoned or held while awaiting trial are both limitations of personal liberty. Where personal liberty is removed, it should be carefully considered – taking away someone’s freedom, for any amount of time, is significant.

One way in which personal liberty is protected after arrest, but before trial, is through people being able to apply for bail – this means that someone can apply to be released from custody, in exchange for posting a sum of money with the Court, which is returned when that person arrives at their trial. Used like this, bail is one way to secure someone’s attendance at trial, but to also protect their personal liberty before any potential conviction. There are, however, some offences that are considered so serious that people suspected of them are not allowed to apply for bail. Some of these offences are listed in section 96(7) of the Criminal Procedure Act (examples include murder, treason, hijacking, piracy and rape). In 2010, in the case of *Awayevu v the Republic*, the Supreme Court made clear that the constitutional right to personal liberty is so important that it could render section 96(7) unconstitutional.

In this case, a man had been waiting more than 5 years for his trial. He was suspected of committing a section 96(7) offence, which had prevented him from getting bail. This meant that he had been in jail for more than 5 years without having a trial. In considering this case, the Supreme Court held that the right to personal liberty is so important that if the person concerned has waited an unreasonably long time for their trial, they should get bail, even if their offence was a section 96(7) offence.



(CREDIT: Caroline Gluck)

15 – Respect for human dignity – The dignity of every person in Ghana can never be taken away. No one should be tortured, and no one should be punished or treated cruelly, inhumanely or in a degrading way, or subjected to anything that undermines their dignity. The protection of dignity includes some specific protections: for people who are detained before their criminal trial, they must be kept separately from people who have already been convicted; and juveniles who have been convicted of crimes must be kept separately from adults.

16 – Protection from slavery and servitude – No one can be made a slave or kept in enslavement, or be made to perform forced labour. However, a court can sentence a person who has been convicted of a crime to perform tasks that require labour as part of the sentence, and, people can be required to perform particular tasks as part of their military service or community obligations. Additionally, a person may be compelled to perform certain tasks during periods where Ghana is at war or in a state of emergency, if this is necessary during such crisis.

17 – Equality and freedom from discrimination – Everyone has the right to be treated equally, and no one shall be discriminated against (given different treatment, better or worse) because of their gender, race, colour, ethnic origin, religion, creed or social or economic status. Parliament can, however, pass laws that would allow for different treatment if these laws would correct social, economic or educational imbalances in society.

18 – Protection of privacy of home and other property – Everyone has the right to own property either alone or jointly with other people. The privacy of a person’s home, property, and their correspondence and communication, shall not be interfered with, except if it is necessary to do so in the interests of public safety or the economic well-being of the country, the protection of health or morals, for the prevention of a crime or to ensure the protection of the rights and freedoms of others. When someone’s privacy is interfered with, it must be done in a way that meets the standards of a free and democratic society.

CASE STUDY: PRIVACY

The Constitution protects people against unwanted intrusions into a person’s privacy

The Supreme Court decided that a secret recording of a phone call was an unconstitutional violation of privacy, showing how important the right to personal privacy is. In *Cubagee v Asare and Others*, a 2018 case, a private telephone conversation was recorded without consent. The Supreme Court said that this recording was a violation of the right to privacy, which protected “the individual against unwarranted intrusion, scrutiny and publicity and guarantees his control over intrusions into his private sphere.” Thus, one aspect of the right to privacy is that people cannot be secretly recorded.

19 – Rights of arrested persons – If someone is arrested, they must have a fair hearing within a reasonable time. Everyone has the right to be presumed innocent until they are proven or have pleaded guilty. A person who is arrested for a crime has to be informed of what they are being charged with, in a language that they understand. They also have the right to an interpreter if they do not understand the language in which the trial and the charge is taking place. People need to be given the chance to defend themselves, with a lawyer or by themselves. This includes the right to call witnesses and ask them questions. The trial of a person charged with a crime should generally be done in the presence of the accused person except in circumstances where the person has refused to appear or has disrupted the trial. Everyone has the right to receive a record of their trial within six months, if they ask for it. A person can only be charged or tried for an offence if their conduct was against the law when it was committed. Thus, a person cannot be charged or tried for a conduct that was not against the law at the time the act or conduct was performed. A person can only be tried once before a court for the same offence, whether they were convicted or acquitted. However, if a person is acquitted of the offence of treason or high treason, that would not prohibit the State from bringing other criminal charges against that person. Everyone has the right to silence – they do not have to testify in their own trial. No one can be convicted of an offence, unless that offence and the penalty for the offence are defined in a written law. All trials will be in public, unless there is a compelling reason for not doing so, which can include public morality, public safety or public order.

CASE STUDY: FAIR TRIAL RIGHTS

Everyone has the right to be presumed innocent, and to be considered for bail

In 2015, in the case of *Martin Kpebu v Attorney-General*, the principle of the presumption of innocence was considered. As in the *Awayevu* case, discussed earlier, section 96(7) of the Criminal Procedure Act was questioned, with someone claiming that the law interfered with the presumption of innocence that every person has. Ultimately, judges must decide who gets bail, and section 96(7) (discussed in the *Awayevu* case, above) prevented judges from considering how to best protect the rights of the still-innocent person before a court. Accordingly, section 96(7) of the Criminal Procedure Act was ruled to be unconstitutional.

This case shows how important it is for everyone to receive a fair trial, and not to be treated as if they are guilty, including by being kept behind bars, until they have actually been found to be guilty.

20 – Protection from deprivation of property – No one can have their property taken away by the State unless it would be in the interests of the defence of the country, public safety, public morality, public health or for the general benefit of the public. If the State does take someone's property, fair compensation must be paid. If the State takes land that removes someone from their home, that person must be given alternative land that protects their economic well-being and their way of life.

CASE STUDY: DEPRIVATION OF PROPERTY

'Public interest' and 'public purpose' should be understood broadly when assessing the use of land

In 2012, the Supreme Court considered what 'public interest' and 'public purpose' meant in relation to Article 20 'when it was dealing with a case called *Mr Samuel Okudzeto Ablakwa and Another v The Attorney General and Another*. The Supreme Court said that 'public interest' and 'public purpose' could mean a range of things, and might mean that the purpose for which land was originally held could be changed, but that this would not be a constitutional problem, as long as the "general public will have a benefit or the benefit of the project will inure to the entire country, either directly or indirectly."



(CREDIT: Justice Okai-Allotey)

21 – General fundamental freedoms – Everyone has the rights of:

- *Freedom of speech and expression*, which includes the freedom of the press. This right means every person should be able to speak freely, including being able to freely publish things online or in other media;
- *Freedom of thought, conscience and belief*, including academic freedom, which means that the State cannot control what people in Ghana think;
- *Freedom to follow any religion* and to follow the practices and requirements of that religion;
- *Freedom to assemble*, which includes the right to take part in processions, protests and demonstrations;
- *Freedom of association*, which means that people can join any organisation that they want to, including trade unions, that they believe will protect their interests;
- *Access to Information*, guarantees every Ghanaian the right to information regarding public sector affairs and governance in general;
- *Freedom of movement*, in Ghana, and the right to leave or enter Ghana. The right to freedom of movement does not mean that a person cannot be lawfully arrested or detained.
- *Freedom to join or form a political party*, and to be involved in the activities of a political party;

Even though these rights are to be enjoyed by all persons in Ghana, the State can pass laws that limit people's rights if it necessary for the defence of the nation, for public safety, or for public well as to protect the rights and freedoms of other people in the country. People who are not citizens of Ghana can be prevented from entering the country. Laws can also be made to prevent the people of Ghana from any teachings or doctrines that disrespect the country of Ghana, or that incite hatred against others. If the State does pass laws that limit rights in this way, the limitation of rights must be justifiable in terms of the Constitution.

CASE STUDY: FREEDOM OF EXPRESSION AND MEDIA FREEDOM

Freedom of expression is at the heart of democratic process but can still be limited

The Supreme Court has made clear that freedom of expression and of the media are vital for the protection of democracy in Ghana. Although the Constitution allows for the limitation of expression, for reasons like public safety and public health, when freedom of expression and of the media is limited, it must be done so deliberately and carefully. In the case of *Ghana Independent Broadcasters Association v Attorney-General and Others*, which took place in 2017, a State regulation which required that broadcasters tell the State what they were going to broadcast, and get permission was challenged. Broadcasters claimed that the need to get permission was an unconstitutional limitation, amounted to censorship, and could undermine freedom of expression, which would threaten democracy. The Supreme Court agreed that this pre-authorisation was unconstitutional – it provided the State with too much control over what could be said or reported.

This case shows that any regulation of expression or media freedom will be carefully looked at, because of the potential impact on Ghana's democracy.

22 – Property rights of spouses – If a spouse dies, their surviving spouse shall inherit at least a reasonable portion of the properties of the deceased spouse, even if the deceased spouse made a will that says otherwise. Parliament is supposed to pass a law to regulate the property rights of spouses. All property that married people acquire during their marriage will be shared, and if they divorce, this property will be shared fairly.

CASE STUDY: PROPERTY RIGHTS OF SPOUSES

Wives are entitled to an equal share of marital property, by right

The Constitution is clear that marital property must be shared fairly when a marriage dissolves. A 1998 case called *Mensah v Mensah* explored what 'fairly' means. In the past, it was necessary for a spouse in a dissolving marriage (such as when a divorce happens) to show that they had made a substantial contribution in the acquisition of the property. This often favoured men, as this contribution was often reduced to a direct financial contribution – the exclusion or undermining of women in the workplace often placed women in a weaker position. This meant that, usually the work that women performed in the home such as taking care of household chores and raising children were not considered as part of the wife's contribution to the property that the couple acquired during the marriage. In *Mensah v Mensah* a different approach was introduced, which favoured equal distribution, regardless of contribution. The case held that this was required by the Constitution. The new approach looks at what would constitute a 'fair' division on a case-by-case basis, and recognises that not all contributions to the acquisition are financial. Often, and absent compelling evidence, the division of property will result in the property being divided equally, but this is not always the case – sometimes it might be 'fair' to favour one spouse over the other.

23 – Administrative justice – Public officials must act fairly and reasonably, and must act in accordance with the law. If anyone is unhappy with an act or a decision made by a public official can approach a court for help.

24 – Economic rights – Everyone has the right to work in safe and healthy conditions, and everyone must receive equal pay for equal work. Every employee should work fair working hours, and have access to paid leave and public holidays. Trade unions are legal, and every worker can join, or form, a trade union.

25 – Educational rights – Everyone should have the right to educational opportunities. To ensure this, basic education is compulsory, and shall be free, while secondary education shall be made as widely available as possible and should be made free over time. Higher education should be made accessible to all, and should, over time, become freely available. Private schools are permitted, provided they meet legal conditions.

CASE STUDY: EDUCATION

The Constitution promises everyone free basic education, but this relies on available resources

The Constitution requires that the State make basic education freely available. The State drew up a plan to deliver free basic education, intending to provide this by 2005. In 2015, in the case of *Progressive People's Party (PPP) v Attorney-General*, the Supreme Court considered what the right to education meant. The PPP claimed that as many as 500 000 children of school-going age were not in school, and this meant that the State was in violation of article 25 of the Constitution and was therefore acting unconstitutionally. The Supreme Court rejected this claim, noting that the right to education was a right that the State must realise over time, making sure that there is constant progress. The fact that the right has not yet been fully realised – that not everyone has access to education – is not unconstitutional, because of the fact that the State does not have unlimited resources to deliver the rights that everyone has, immediately.



(CREDIT: Mal Warwick)

26 – Cultural practices – Everyone can enjoy, take part in, share and promote any culture, language, tradition or religion that they want to, as long as these practices do not go against the Constitution. No customary practice that harms the physical or mental well-being of a person will be permitted.

27 – Women’s rights – Women will receive special care immediately before and after giving birth, and this will include paid leave for all working new mothers. Recognising that the responsibilities for childcare have traditionally fallen on women, and in order to help women realise their full potential, childcare will be provided for all children below school-going age. Women have the same rights as men to receive training and to be considered for promotion.



28 – Children’s rights – Every child (which is everyone who is under the age of 18) has the right to the care and assistance from their parents that the child needs to develop (except if the parents have given up their rights as parents). All children, whether their parents are married or not, are entitled to the support of their parents. Parents must act in the best interests of their children in all matters that affect the child, and children must be protected from physical and moral harms. Families should be protected and safeguarded, in the interests of children. Children must be protected from work that could harm them, and children shall not be tortured or subjected to cruel, inhuman or degrading treatment. Children cannot be deprived required medical treatment, education or any other social or economic benefit on the grounds of religious or other beliefs.

29 – Rights of persons with disabilities – People with disabilities have the right to live with their parents or foster parents, and to participate in social, creative and recreational activities in society. People with disabilities will not be discriminated against in respect of their residence, as long as their condition or need for treatment permits. If a person with a disability needs to live in a specialised establishment, the living conditions and environment must match, as closely as possible, the conditions expected for someone of that person’s age. No one with a disability should be discriminated against or abused. All facilities available to the public should, as far as possible, ensure access for people with disabilities. Incentives shall be provided to support people with disabilities in business, and to encourage businesses to employ people with disabilities.

30 – Rights of the sick – If someone is too sick to be able to agree to medical treatment, or to an educational or other social or economic benefit, or is unable to consent for some other reason, that person will not be denied the treatment or the benefit by someone else’s beliefs, religious or of some other nature.

31 – Emergency powers – The President, acting on the advice of the Council of State, may declare a state of emergency in Ghana. States of emergency can happen when there is a natural disaster or when there is a situation where there could be a threat to the essentials of life, or where it might be necessary to take measures to secure public safety, the defence of the country, or the maintenance of public order. When the President declares a state of emergency, they have to explain to Parliament why the declaration is required. Parliament must, within 72 hours, decide whether to support or revoke the declaration of state of emergency. The President is bound by Parliament’s decision. A declaration of a state of emergency approved by Parliament shall last 3 months after the approval, unless it is extended. It can be extended by Parliament by a maximum of 1 month at a time, but this month-long approval can be repeated many times by Parliament. Parliament can also choose to revoke a declaration of a state of emergency, at any time. Any measures taken during a state of emergency must be reasonably justifiable for the purposes of dealing with the situation at hand.

32 – Persons detained under emergency laws – When a person is arrested or detained during a state of emergency, they have the right to be told, in writing, in a language that they understand, why they have been detained, for their family to be informed or their detention within 24 hours of having been detained, and for their family to be able to visit them. The notice of their detention and the reasons for it must be published in a government gazette and in the media. It is important for a court to oversee the detention, and a court must review the case within 10 days, and every 3 months, if the detention continues. In these reviews, the detained person can have a lawyer present to make a case on their behalf, if they so wish. If a court decides that the person has been unfairly detained, it can order their release, and order that compensation be paid by the State.

33 - Protection of rights by the courts – When people think that any of their Chapter 5 rights have been violated, then they can approach the High Court for assistance. The High Court can, if the circumstances demand, assist the person who thinks that their rights have been violated. If someone asserting their rights is unhappy with the decision of the High Court, they can approach the Court of Appeal, and have a further right to appeal to the Supreme Court. Note that the rights that are guaranteed in the Constitution are not exhaustive and therefore do not exclude other rights which are not specifically mentioned in the Constitution but are considered to be important in a democracy to ensure the freedom and dignity of everyone.

CASE STUDY: RIGHTS BEYOND CHAPTER 5

Although Chapter 5 lists the fundamental rights and freedoms for all Ghanaians, the courts can also protect other rights

The right to vote is found at Article 42 of the Constitution, in Chapter 7. The Supreme Court, in a 2010 case called *Ahumah-Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General and Electoral Commission* held that the right to vote is so important and so central to Ghana's democratic order, that it qualifies as a fundamental human right. The Chief Justice highlighted article 33(5) of the Constitution, which allows for the protection of rights not mentioned in Chapter 5 that “are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

This means that the people in Ghana can rely on the courts to protect even more rights than are protected in Chapter 5, and, possibly, even more rights than are specifically listed in any part of the Constitution, if these rights would be relevant to democracy and to the dignity of the people of Ghana. For instance, the Supreme Court decided in *Adjei-Ampofo v Attorney-General*, a 2003 case and *Ghana Lotto Operators Association & Others v National Lottery Authority*, a 2008 case, that the rights referred to in article 33(5) of the Constitution may include those rights contained in international and regional human rights treaties that have been ratified by Ghana or even from the human rights legislation and practices of other states.



(CREDIT: NORVANREPORTS)

CHAPTER 6: THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution contains a series of principles that are intended to “guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons” when they interpret the Constitution or make policy.”

There are a number of important elements contained within the Chapter 6 Directive Principles. Perhaps the most important of these is a series of rights that are called Socio-Economic Rights. These are rights that help to ensure that everyone in Ghana has the means to live a dignified life, including:

- **Economic objectives (Article 36):**
 - The State has to take action to help “secure the maximum welfare, freedom and happiness of every person in Ghana, and to provide adequate means of livelihood and suitable employment and public assistance to the needy”;
 - To ensure that everyone has access to the basic necessities of life;
 - The State has to ensure that everyone has equal economic opportunities. Special measures should be taken to ensure that women are fully included in the economic development of Ghana.
- **Social objectives (Article 37):**
 - The State has to create policy that works towards helping every citizen have equal rights and opportunities;
 - The State should pass laws that protect and promote basic human rights and freedoms.
- **Educational objectives (Article 38):**
 - The State should provide educational facilities at all levels and, as far as possible, make these facilities available to all citizens;
 - Plans must be put in place for free, compulsory and universal basic education.



(CREDIT: Hiroo Yamagata)

At Article 41, the Constitution lists the 'Duties of a Citizen', and notes that the rights and freedoms contained in the Constitution are linked to a series of duties and obligations. These duties and obligations include the duties to:

- Uphold and defend the Constitution and the law;
- Promote national unity and to live in harmony with others;
- Respect the rights and freedoms of others, and not to do anything that causes harm to anyone else;
- Protect and preserve public property; and
- Expose and combat misuse of public funds and property.

The role of Chapter 6: The Directive Principles of State Policy in modern Ghana

The Directive Principles are intended to ensure that Ghana becomes the country that the drafters of the Constitution envision. This is a society in which the socio-economic rights of all within Ghana are promoted, respected, protected and fulfilled. However, realising these rights will take time, and the Constitution itself recognises this: Chapter 6 requires the President to report to Parliament every year on how the State is making progress to realise the rights, with a special focus on the "the realization of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education." This means that it will take time for everyone to be able to access these rights, but it requires that the State must take steps to ensure that progress is being made.

CASE STUDY: THE ROLE OF THE CHAPTER 6 DIRECTIVE PRINCIPLES **The Chapter 6 Directive Principles are usually enforceable in court**

The Supreme Court, in a case called *Ghana Lotto Operators v National Lottery Authority*, which took place in 2008, said that if the State were to introduce a law that went against any of the Directive Principles, the Supreme Court would have the right "to strike down the provisions in the legislation which are incompatible with the objectives concerned." The Supreme Court said that the Directive Principles are assumed to be enforceable in court, but that there may be exceptions when the Courts are not able to enforce the principles.

CHAPTER 7: REPRESENTATION OF THE PEOPLE

42 – Right to vote – Every citizen of Ghana who is an adult (so who is over the age of 18) has the right to vote in public elections and whenever there is a referendum.

CASE STUDY: RIGHTS BEYOND CHAPTER 5

Although Chapter 5 lists the fundamental rights and freedoms for all Ghanaians, the courts can also protect other rights

The 2010 *Ahumah-Ocansey* case, discussed above, helped people in Ghana to understand how important the right to vote is. A law in Ghana prohibited prisoners from being able to vote. In 2010 the Supreme Court made clear that “sovereignty rests with the people and further that the entrenched article 42, the right to vote, provides the basic constitutional democratic framework for securing the exercise of the will of the People of Ghana.” The “just requirements of the Constitution, the Supreme Law of the land” meant that the changes to the law needed to be made so the prisoners would be able to vote.



(CREDIT: Patience Owusu-Ansah)

CLAIMING YOUR RIGHTS

The rights in the Constitution are designed to ensure that everyone in the country is protected against abuse and mistreatment. Any person whose rights are threatened can take action to enforce their rights – or can even take action to protect the rights of others.

There are a range of different ways for people to ensure that their rights are protected, but the most common way is to approach the courts. Courts can order the State or anyone to take measures to protect rights, may order compensation, or may order any other solution that helps people whose rights and freedoms are threatened or violated. The courts get their power from the people of Ghana, and as tasked with making sure that rights and principles of the Constitution are upheld”:

“Article 125 of the Constitution:

(1) Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.”

People can also receive assistance in claiming their rights through other organisations, which can include organisations that are linked to the State and some that are independent. One of the most important bodies that is intended to help people claim their rights is created by the Constitution itself: the Commission on Human Rights and Administrative Justice (CHRAJ).

CHRAJ was created to investigate complaints about human rights violations, whether



they are committed by a public official, a member of the military, police or prisons service, or by private individuals or organisations. CHRAJ is also empowered to investigate corruption, and is required, by the Constitution, to educate the public about human rights.

It is important to note that the Constitution protects the independence of CHRAJ. CHRAJ and its staff are supposed to be answerable to the Constitution. This means that they cannot be controlled by any other government body. The reason that the independence of these bodies is so important is because CHRAJ has to ensure that the government is acting constitutionally and hold it to account when it is not.

Other organisations, like non-governmental organisations (NGOs) and public interest litigation lawyers, can help people claim their rights. These organisations frequently engage with the government in order to protect the rights of people in Ghana, and may help to take cases to court or to resolve matters outside court.

CASE STUDY: ENFORCING RIGHTS

Democracy and constitutionalism in Ghana need people to act in the public interest

Everyone in Ghana has an interest in the rights contained in the Constitution being upheld, and may enforce them in the public interest – the protection of human rights is of fundamental importance to constitutional, democratic Ghana. In *Adjei-Ampofo (No 1) v Accra Metropolitan Municipality and Another*, a lawyer acted on behalf of people who were contracted to carry human waste, claiming that this violated their human rights and their dignity. The Supreme Court agreed, and made special mention of the lawyer, Nana Adjei-Ampofo, congratulating him for acting in the public interest.

From the *Adjei-Ampofo* case, and several others, it is clear that individuals can enforce rights that they are claiming for themselves, or for others. The ability of people to act in the public interest is important to Ghana, and the Supreme Court has protected and encouraged these actions.

CONCLUSION

The point of knowing your rights, of knowing about the Constitution, is for you to be able to lead a dignified life, to have the opportunity to fulfil your potential as a human being. But these rights come with responsibilities. Each of us needs to make sure that we hold the government to account, and to make sure that government fulfils the obligations that the Constitution imposes on it. This includes ensuring that the government does not violate our rights or violate the rights of others in Ghana. Each one of us has a responsibility to treat other people with the dignity and the respect they deserve. If we think our rights should be respected, we need to respect other people's rights.

The Constitution has a vision of the society that Ghana should be. Progress has been made in realising this vision. But there is still much to do, still so many steps that need to be taken in order for everyone in Ghana to enjoy their rights. By monitoring and holding the government accountable, and by exhibiting the constitutional values in our lives, each of us can bring this vision closer to reality.



(CREDIT: USAID)

ORGANISATIONS THAT CAN HELP YOU CLAIM YOUR RIGHTS

State-linked organisations

Courts

Supreme Court of Ghana

Address: Independence Avenue, Accra

Telephone: +233302667706

Court of Appeal

Accra

Address: Law Court Complex, Independence Avenue, Accra

Telephone: +233302748100

Kumasi

Address: Guggisberg Rd, Asafo, Kumasi

Telephone:+233302663951

High Court

Accra

Address: Law Court Complex, Independence Avenue, Accra

Telephone: +233302748100

Kumasi

Address: Steward Avenue , nearby the GAF Museum and the Lands Commission-Survey Department Building, Kumasi

Telephone: +233302663951

Legal Aid Scheme

Address: Opposite Ministry Police Station, Liberia Road, Accra

Telephone:+233302669220

Email: eswaia@hotmail.com

Website: <https://www.lac.gov.gh/>

Commission on Human Rights and Administrative Justice (CHRAJ)

Head Office

Address: Old Parliament House High Street, Accra, Greater Accra

Telephone: +233302662150

Email: info@chraj.gov.gh

Website: <https://chraj.gov.gh>

Regional offices of the CHRAJ

Regional offices of the CHRAJ can be found in Goaso (Ahafo Region), Techiman (Bono East Region), Sunyani (Bono Region), Cape Coast (Central Region), Nalerigu (North East Region), Tamale (Northern Region), Damabi (Oti Region), Damongo (Savannah Region), Bolgatanga (Upper East Region), Wa (Upper West Region), Ho (Volta Region), Sefwi Wiawso (Western Northern Region), Takoradi (Western Region), Koforidua (Eastern Region), Obuasi (Ashanti Region)

Right to information Commission

Address: No. 4 Osu Badu Link Airport West Residential Area, GA-156-1702

Telephone: +233302788353

Email: rticommission@rtic.gov.gh

Website: <https://rtic.gov.gh/>

National Media Commission

Address: 1st Rangoon Close, Cantonments, Accra

Telephone: +233302737514

Email: nmc@nca.org.gh

Non-governmental organisations

Commonwealth Human Rights Initiative

Address: Dr Stanley Marbell Plaza, H/No 158/2 Asylum Down, Accra

Telephone: +233302971170

Email: chriafrika@humanrightsinitiative.org

Website: humanrightsinitiative.org

Amnesty International Ghana

Address: First Floors, SAL HEIGHTS, 52 Swaniker St, Accra

Telephone: +233302220814

Email: info@amnestyghana.org

Website: <https://amnestyghana.org/>